



## **National Association of Surety Bond Producers**

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Delivered via email to each Interim Committee member through [iga.in.gov](http://iga.in.gov).

Chair, Representative Douglas Gutwein  
Interim Study Committee on Employment and Labor  
State House, 200 W. Washington Street, Room 404  
Indianapolis, IN 46204

Vice Chair, Senator Philip Boots  
Interim Study Committee on Employment and Labor  
State House, 200 W. Washington Street, Room 404  
Indianapolis, IN 46204

### RE: Amendment to Indiana's Public-Private Partnership (P3s) Laws to Require Surety Bonds

Dear Chairman Gutwein and Vice Chairman Boots:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing professional surety bond producers including those licensed and conducting business in Indiana, I am contacting you concerning the issue that is before your Interim Committee and to specifically request that Indiana's three laws addressing public-private partnerships (P3s), §§5-23-1-1 thru 5-23-7-2, Title 5. State and Local Administration, Article 23 Public-Private Agreements, §§8-15.5-1-1 thru 8-15.5-13-8, Title 8. Utilities and Transportation, Article 15.5 Public-Private Agreements for Toll Road Projects, and §§ 8-15.7-1-1 thru 8-15.7-16-8, Article 15.7 Public-Private Partnerships, be amended to clarify that surety bonds be required at 100% of the contract value of the design and construction portion of a P3 agreement.

The recent situation involving subcontractors and suppliers who were left unpaid on the I-69 P3 agreement for nearly nine months according to INDOT, could have been easily remedied had a payment bond been in place. Indiana law has long required performance and payment bonds be required on all public construction projects (please refer to Indiana Codes 1-13.6-7-6, 4-13.6-7-7, 5-30-5-3, 5-32-4-2, and 8-23-9-9).

Furthermore, 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, as in the case of the I-69 P3 agreement where Isolux Corsan was the managing entity/concessionaire, the completed construction project is for the public benefit and will revert to an asset of the state at some point in the future. Thus, the public owner, taxpayers, subcontractors, and suppliers must be protected as on any other public works project. Projects undertaken for public benefit and welfare through P3 contracts properly bonded by sureties 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. Thus please consider amending statutes §§5-23-1-1 thru 5-23-7-2, §§8-15.5-1-1 thru 8-15.5-13-8, §§ 8-15.7-1-1 thru 8-15.7-16-8 to require bonds at 100% of the contract value of the design and construction portion of P3 agreements.

Thank you for your consideration with this request. Please feel free to contact me should you have any questions.

Sincerely,



Lawrence E. LeClair  
Director, Government Relations

cc: Sen. James Arnold (D-District 8)  
Rep. John Bartlett (D-District 95)  
Sen. Liz Brown (R-District 15)  
Rep. Robert Morris (R-District 84)  
Sen. Dennis Kruse (R-District 14)  
Rep. Charles Moseley (D-District 10)  
Sen. Earline Rogers (D-District 3)  
Rep. David Niezgodski (D-District 7)  
Sen. Karen Tallian (D-District 4)  
Rep. David Ober (R-District 82)  
Sen. Greg Walker (R-District 41)  
Rep. Timothy Wesco (R-District 41)