

IC 36-1-10

Chapter 10. Leasing and Lease-Purchasing Structures

IC 36-1-10-1

Application of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to:

- (1) political subdivisions and agencies of political subdivisions that determine to acquire structures, transportation projects, or systems by lease or lease-purchase;
- (2) a convention and visitor bureau established under IC 6-9-2 that determines to acquire a visitor center by lease or lease purchase; and
- (3) a convention and visitor commission established by IC 6-9-11 that determines to acquire a sports and recreation facility by lease or lease purchase.

(b) This chapter does not apply to:

- (1) the lease of library buildings under IC 36-12-10, unless the library board of the public library adopts a resolution to proceed under this chapter instead of IC 36-12-10;
- (2) the lease of school buildings under IC 20-47;
- (3) a hospital established and operated under IC 16-22 or IC 16-23;
- (4) a health and hospital corporation established and operated under IC 16-22-8; or
- (5) boards of aviation commissioners established under IC 8-22-2.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.104-1983, SEC.3; P.L.54-1983, SEC.26; P.L.182-1985, SEC.14; P.L.130-1987, SEC.4; P.L.37-1988, SEC.9; P.L.343-1989(ss), SEC.12; P.L.2-1993, SEC.196; P.L.46-1998, SEC.9; P.L.11-2001, SEC.7; P.L.1-2005, SEC.232; P.L.2-2006, SEC.186; P.L.194-2007, SEC.10.

IC 36-1-10-2

Definitions

Sec. 2. As used in this chapter:

"Leasing agent" means the board or officer of a political subdivision or agency with the power to lease structures.

"Parking facility" refers to a parking facility as defined in IC 36-9-1.

"Structure" means:

- (1) a building used in connection with the operation of a political subdivision; or
- (2) a parking facility.

The term includes the site, the equipment, and appurtenances to the building or parking facility.

"System" means:

- (1) a computer (as defined in IC 36-8-15-4);
 - (2) a communications system (as defined in IC 36-8-15-3(1));
- or

(3) mobile or remote equipment that is coordinated by or linked with a computer or communications system.

"Transportation project" means a road or highway project jointly undertaken by the Indiana department of transportation and any county through which a toll road project under IC 8-15-2 passes. A transportation project must be located within an area described in IC 8-15-2-1(a)(3) or IC 8-15-2-1(a)(4).

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.10; P.L.343-1989(ss), SEC.13; P.L.18-1990, SEC.289.

IC 36-1-10-3

Persons entitled to lease property to political subdivision or agency

Sec. 3. Any of the following persons may lease property to a political subdivision or agency under this chapter:

- (1) A profit or not-for-profit corporation organized under Indiana law or admitted to do business in Indiana.
- (2) A partnership, association, limited liability company, or firm.
- (3) An individual.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.8-1993, SEC.517.

IC 36-1-10-4

Repealed

(Repealed by P.L.1-1990, SEC.356.)

IC 36-1-10-4.1

Leasing agents; compliance with chapter; procedure in lease without option to purchase

Sec. 4.1. (a) A leasing agent who wants to lease a structure or transportation project must comply with this chapter. A leasing agent who wants to lease a system must comply with this chapter or IC 5-22.

(b) A leasing agent who enters into a lease under this section without an option to purchase must follow the procedure prescribed by section 5 of this chapter.

As added by P.L.1-1990, SEC.357. Amended by P.L.49-1997, SEC.68.

IC 36-1-10-5

Leases without option to purchase; procedure

Sec. 5. Notwithstanding sections 6, 12, 16, and 17 of this chapter, the following procedure shall be followed whenever a lease does not contain an option to purchase:

- (1) The term of the lease may not be longer than ten (10) years; however, a lease may be for a longer term if the lease is approved by the department of local government finance.
- (2) The lease must provide that the lease is subject to annual appropriation by the appropriate fiscal body.
- (3) The leasing agent must have a copy of the lease filed and

kept in a place available for public inspection.
A leasing agent may lease part of a structure.
As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.131-1984, SEC.4; P.L.330-1985, SEC.1; P.L.90-2002, SEC.462.

IC 36-1-10-6

Limitation on term of lease

Sec. 6. A leasing agent may not enter into a lease for a period of more than fifty (50) years.
As added by Acts 1981, P.L.57, SEC.36.

IC 36-1-10-7

Lease of structures, systems, or transportation projects; petition; need

Sec. 7. A leasing agent may not lease a structure, transportation project, or system unless:

- (1) the leasing agent receives a petition signed by fifty (50) or more taxpayers of the political subdivision or agency; and
- (2) the fiscal body of the political subdivision determines, after investigation, that the structure, transportation project, or system is needed.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.330-1985, SEC.2; P.L.37-1988, SEC.12; P.L.343-1989(ss), SEC.15.

IC 36-1-10-8

Joint leasing

Sec. 8. (a) If two (2) or more leasing agents propose to enter into a lease jointly, joint meetings of the leasing agents may be held. However, joint leasing must be approved by each leasing agent's fiscal body.

(b) A lease executed by two (2) or more leasing agents as joint lessees must set out the amount of the total rental to be paid by each. A lessee has no right of occupancy or use of the transportation project or system until the total rental is paid as stipulated by the contract.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.13; P.L.343-1989(ss), SEC.16.

IC 36-1-10-9

Leases; terms and conditions; options to renew or purchase; exercise of option to purchase

Sec. 9. (a) The lease may provide that the leasing agent has an option to renew the lease for a further term or to purchase the property. The terms and conditions of the purchase must be specified in the lease.

(b) Whenever the leasing agent exercises an option to purchase the property, then the political subdivision or agency may issue and sell bonds for the purpose of procuring money to pay the purchase price. If the leasing agent does not exercise an option to purchase the property, then upon the expiration of the lease and upon full performance by the leasing agent, the property becomes the absolute

property of the political subdivision or agency. The lessor shall convey title to the political subdivision or agency.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.74-1987, SEC.18.

IC 36-1-10-10

Plans, specifications, and estimates for structures, systems, and transportation projects

Sec. 10. (a) A lessor proposing to build, acquire, improve, remodel, or expand a structure for lease to a political subdivision or agency shall submit plans, specifications, and estimates to the leasing agent before executing a lease. The leasing agent shall submit the plans and specifications to the division of fire and building safety or the state building commissioner, and other agencies designated by law.

(b) A lessor proposing to acquire a transportation project or system may enter into a lease without submitting plans, designs, or specifications to any political subdivision or agency. However, before the execution of the lease, the lessor must submit to the lessee or lessees an estimate of the cost and a description of the transportation project or system.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.8-1984, SEC.122; P.L.37-1988, SEC.14; P.L.188-1988, SEC.1; P.L.343-1989(ss), SEC.17; P.L.1-2006, SEC.552; P.L.218-2014, SEC.19.

IC 36-1-10-11

Property held in fee simple; sale procedure

Sec. 11. (a) The lessor must hold in fee simple land on which a structure is to be erected, acquired, improved, remodeled, or expanded. The lessor must hold in fee simple a structure that is to be acquired, improved, remodeled, or expanded.

(b) The leasing agent may sell land or a structure owned by the political subdivision or agency to the lessor under the following procedure if the political subdivision wants to lease a structure proposed to be built, acquired, improved, remodeled, or expanded on that land:

(1) The leasing agent shall appoint two (2) appraisers to appraise the fair market value of the land or structure.

(2) The appraisers must be professionally engaged in making appraisals or licensed under IC 25-34.1.

(3) The appraisers shall return their appraisal to the leasing agent within two (2) weeks after the date of their appointment.

(4) The leasing agent shall sell the land or structure for not less than the appraised value. However, if the political subdivision or agency acquired the land or structure during the three (3) years preceding the date of the appointment of the appraisers, the land or structure may not be sold for an amount less than the amount paid by the political subdivision or agency for the land or structure.

(5) The leasing agent shall be paid in cash upon the agent's delivery of the deed.

(6) The leasing agent is not required to comply with any other law relating to the sale of land or structures by a political subdivision.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.188-1988, SEC.2.

IC 36-1-10-12

Lease in anticipation of acquisition or construction of structure, system, or transportation project

Sec. 12. (a) The leasing agent may, in anticipation of the acquisition of a site on which a structure is to be constructed, acquired, improved, remodeled, or expanded, enter into a contract to lease a structure from the lessor before the actual acquisition of the site and the construction, acquisition, improvement, remodeling, or expansion of the structure. The lease may not provide for payment of any rental by the leasing agent if a new structure is to be constructed until it is complete and ready for occupancy. However, the lease may provide for payment of lease rental for any part of the structure to be used by the political subdivision or its agency for any period during improvement, remodeling, or expansion of the structure.

(b) A leasing agent may, in anticipation of the acquisition of a system, enter into a lease with the lessor before the completion of the acquisition. A leasing agent may, in anticipation of the acquisition or construction of a transportation project, enter into a lease with the lessor before the completion of construction or acquisition. Such a lease must require the payment of lease rental by the lessee or lessees to begin when acquisition of the system, or a discrete, functional part of the system, or acquisition or construction of the transportation project, has been completed and is ready for use, but not before that time. An opinion or report of an independent expert that the system, or a discrete, functional part of the system, or a transportation project is complete and ready for use is conclusive and binding on all parties and on all taxpayers of an eligible entity.

(c) The lease may provide that the leasing agent shall pay all taxes and assessments, maintain insurance for the benefit of the lessor, and assume all responsibilities for repair and alterations during the term of the lease.

(d) The leasing agent may require the lessor, as a condition of entering into a lease, to furnish a bond guaranteeing the lease in an amount specified by the leasing agent.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.74-1987, SEC.19; P.L.37-1988, SEC.15; P.L.188-1988, SEC.3; P.L.343-1989(ss), SEC.18.

IC 36-1-10-13

Hearing; procedure; execution of lease

Sec. 13. (a) After the leasing agent and the lessor have agreed upon the terms and conditions of the lease but before the execution

of the lease, the leasing agent shall publish notice, in accordance with IC 5-3-1, of a public hearing to be held before the leasing agent. The cost of the publication of the notice shall be paid by the lessor. Notice of the hearing must be given at least ten (10) days before the hearing is held.

(b) The notice must state the date, place, and hour of the hearing and provide a summary of the principal terms of the lease. Additionally, the notice must contain the name of the proposed lessor, the location and character of the structure, transportation project, or system to be leased, the rental to be paid, and the number of years the lease is to be in effect.

(c) The proposed lease, drawings, plans, specifications, and estimates for the structure, or description and cost estimate of the transportation project or system, are open to public inspection during the ten (10) day period and at the hearing.

(d) All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether the rental is fair and reasonable for the proposed structure or system. After the hearing, which may be adjourned from time to time, the leasing agent may modify, confirm, or rescind the proposed lease, but the rental as set out in the published notice may not be increased. The leasing agent may rely on the testimony of independent experts as to the fairness and reasonableness of the lease.

(e) If the execution of the lease as originally agreed upon or as modified is authorized by the leasing agent, the leasing agent shall give notice of the execution of the lease by publication in accordance with IC 5-3-1.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.74-1987, SEC.20; P.L.37-1988, SEC.16; P.L.343-1989(ss), SEC.19; P.L.25-1995, SEC.82.

IC 36-1-10-14

Disagreement with execution of lease; petition; hearing; decision

Sec. 14. (a) If lease rentals are payable, in whole or in part, from property taxes, ten (10) or more taxpayers in the political subdivision who disagree with the execution of a lease under this chapter may file a petition in the office of the county auditor of the county in which the leasing agent is located, within thirty (30) days after publication of notice of the execution of the lease. The petition must state the taxpayer's objections and the reasons why the lease is unnecessary or unwise.

(b) The county auditor shall immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and other data, the department of local government finance shall fix a time and place for the hearing of the matter. The hearing shall be held not less than five (5) nor more than thirty (30) days after the receipt of the certified documents.

(c) The hearing shall be held in the political subdivision where the petition arose.

(d) Notice of the hearing shall be given by the department of local government finance to the leasing agent and to the first ten (10) taxpayer petitioners listed on the petition by a letter signed by the commissioner or deputy commissioner of the department. The letter shall be sent to the first ten (10) taxpayer petitioners at their usual place of residence at least five (5) days before the date of the hearing. The decision by the department of local government finance on the objections presented in the petition is final.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.17; P.L.90-2002, SEC.463.

IC 36-1-10-15

Actions to contest validity of lease or to enjoin performance under lease

Sec. 15. An action to contest the validity of a lease under this chapter, or to enjoin performance under the lease, must be brought within thirty (30) days after publication of notice of the execution of the lease by the leasing agent or, if an appeal has been taken to the department of local government finance, then within thirty (30) days after the decision of the department.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.90-2002, SEC.464.

IC 36-1-10-16

Conveyance of structure to lessor and lease back; purchase price; option to purchase

Sec. 16. (a) A political subdivision or agency owning a structure with respect to which its revenue bonds are outstanding may, to refinance those bonds, convey the structure to the lessor in fee simple and lease it from the lessor in accordance with this chapter, subject to the approval of the department of local government finance.

(b) The price of a purchase under this section must be at least the sum of:

- (1) the principal amount of the outstanding revenue bonds;
- (2) interest on those bonds to the maturity date of bonds not subject to redemption before maturity and to the first redemption date of bonds subject to redemption before maturity; and
- (3) the redemption premiums on all bonds subject to redemption before maturity.

An amount not less than this sum shall be deposited in trust for the payment of the outstanding revenue bonds in a manner consistent with the ordinance or trust agreement under which the bonds were issued. The money deposited in the trust, and investment income from it, not required for the payment of the bonds, shall be applied to the payment of the obligations issued by the lessor for the acquisition of the structure, and to a corresponding reduction of rentals for the leasing agent.

(c) Each lease entered into under this section must include an option permitting the political subdivision or agency to purchase the

structure at a price not exceeding the amount required to retire all outstanding obligations issued by the lessor to acquire the property covered by the lease. The lease and sale of a parking facility under this section does not preclude the lease of air rights.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.90-2002, SEC.465.

IC 36-1-10-17

Annual appropriation and tax levy

Sec. 17. (a) A political subdivision or agency that executes a lease under this chapter shall, subject to subsection (d), make an annual appropriation and tax levy at a rate to provide sufficient money to pay the rental payable from property taxes stipulated in the lease.

(b) The appropriation and levy are subject to review by other bodies that have the authority to ascertain that the levy is sufficient to raise the amount required to pay the rental payable from property taxes under the lease.

(c) The appropriation and levy may be reduced in any year to the extent other money or any reimbursement under IC 36-7-14-39 are pledged or available for the payment of the lease rental.

(d) A political subdivision or agency that executes a lease for a transportation project may only levy a tax under this section for an amount necessary to restore debt service reserve funds and may not levy a tax for lease rental payments.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.18; P.L.343-1989(ss), SEC.20.

IC 36-1-10-18

Tax exemption of leased structures, systems, and transportation projects; taxation of rental paid lessor

Sec. 18. Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision or agency under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.19; P.L.343-1989(ss), SEC.21.

IC 36-1-10-19

Assignment or conveyance of lease; conveyance of structure, system, or transportation project

Sec. 19. A lessor may assign or convey a lease entered into under this chapter to any other person as set forth in the lease. A lessor may convey the structures, transportation projects, or system to any person. However, an assignment or conveyance under this section does not affect the terms and conditions of the lease.

As added by Acts 1981, P.L.57, SEC.36. Amended by P.L.37-1988, SEC.20; P.L.343-1989(ss), SEC.22.

IC 36-1-10-20

Repealed

(Repealed by P.L.25-1995, SEC.94.)

IC 36-1-10-20.1

Repealed

(Repealed by P.L.25-1995, SEC.94.)

IC 36-1-10-21

Not-for-profit corporations; issuance and sale of bonds and other securities

Sec. 21. (a) A not-for-profit corporation qualifying as a lessor corporation under this chapter may issue and sell bonds and other securities. Mortgage bonds issued by a lessor corporation that are a first lien on the leased property shall be considered legal and proper investments for state banks and trust companies, insurance companies, and fiduciaries.

(b) Bonds issued by a lessor corporation may be sold at a private sale, a negotiated sale, or a public sale. If bonds are sold at public sale, they shall be sold pursuant to IC 5-1-11, but the notice of sale shall be published in the manner required for bonds of the county in which the leased property is or will be located.

(c) Approval of the securities commissioner is not required in connection with the issuance and sale of the bonds.

As added by P.L.2-1989, SEC.23.