

## **IC 8-23-2**

### **Chapter 2. Indiana Department of Transportation**

#### **IC 8-23-2-1**

##### **Establishment of department**

Sec. 1. The Indiana department of transportation is established.  
*As added by P.L.112-1989, SEC.5.*

#### **IC 8-23-2-2**

##### **Commissioner; appointment; compensation**

Sec. 2. (a) The governor shall appoint a commissioner who is responsible for organizing and administering the department.

(b) The commissioner:

(1) serves at the pleasure of the governor; and

(2) is entitled to receive compensation set by the budget agency.

*As added by P.L.112-1989, SEC.5.*

#### **IC 8-23-2-3**

##### **Repealed**

*(As added by P.L.112-1989, SEC.5. Amended by P.L.5-1989, SEC.77. Repealed by P.L.100-2012, SEC.23.)*

#### **IC 8-23-2-4**

##### **Repealed**

*(Repealed by P.L.1-1991, SEC.82.)*

#### **IC 8-23-2-4.1**

##### **Department responsibilities; activities**

Sec. 4.1. The department is responsible for the following activities:

(1) The identification, development, coordination, and implementation of the state's transportation policies.

(2) The approval of applications for federal transportation grants from funds allocated to the state:

(A) from the Highway Trust Fund (23 U.S.C.);

(B) from the Aviation Trust Fund (49 U.S.C.);

(C) through the Federal Transit Administration (49 U.S.C. 5301 et seq.); or

(D) from any other federal grant that has a transportation component.

(3) The review, revision, adoption, and submission of budget proposals.

(4) The construction, reconstruction, improvement, maintenance, and repair of:

(A) state highways; and

(B) a toll road project or toll bridge in accordance with a contract or lease entered into with the Indiana finance authority under IC 8-9.5-8-7 or IC 8-9.5-8-8.

(5) The administration of programs as required by law, including the following:

- (A) IC 8-3-1 (railroads).
- (B) IC 8-3-1.5 (rail preservation).
- (C) IC 8-21-1 (aeronautics).
- (D) IC 8-21-9 (airports).
- (E) IC 8-21-11 (aviation development program).

*As added by P.L.1-1991, SEC.83. Amended by P.L.14-2003, SEC.1; P.L.235-2005, SEC.122.*

### **IC 8-23-2-5**

#### **Department duties**

Sec. 5. (a) The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

- (A) long range comprehensive transportation plans;
- (B) work programs; and
- (C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

(A) developing and recommending public transportation policies, plans, and work programs;

(B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;

(C) developing work programs for the utilization of federal mass transportation funds;

(D) furnishing data from surveys, plans, specifications, and estimates required to qualify a state agency or political subdivision for federal mass transportation funds;

(E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;

(F) serving, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;

(G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and

(H) developing and including in its own proposed

transportation plan a specialized transportation services plan for the elderly and persons with disabilities;

(6) provide technical assistance to units of local government with road and street responsibilities;

(7) develop, undertake, and administer the program of research and extension required under IC 8-17-7;

(8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter); and

(9) adopt rules under IC 4-22-2 to reasonably and cost effectively manage the right-of-way of the state highway system by establishing a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for an exchange of information among the department, utilities, and the department's highway construction contractors.

(b) Rules adopted under subsection (a)(9):

(1) shall not unreasonably affect the cost, or impair the safety or reliability, of a utility service; and

(2) must require a utility to provide information concerning all authorized representatives of the utility for purposes of highway improvement projects and improvement projects undertaken by local units of government.

(c) A civil action may be prosecuted by or against the department, a department highway construction contractor, or a utility to recover costs and expenses directly resulting from willful violation of the rules. Nothing in this section or in subsection (a)(9) shall be construed as granting authority to the department to adopt rules establishing fines, assessments, or other penalties for or against utilities or the department's highway construction contractors.

(d) Based on information provided by utilities under rules described in subsection (b)(2), the department shall establish and publish on the department's Internet web site a searchable data base of authorized representatives of utilities for purposes of improvement projects that involve the relocation of utility facilities. A utility that provides information described in subsection (b)(2) shall:

(1) update the information provided to the department on an annual basis; and

(2) notify the department of any change in the information not more than thirty (30) days after the change occurs.

(e) Not later than August 1 of each year, the department, through the commissioner or the commissioner's designee, shall prepare for the interim study committee on roads and transportation a report that includes updates on the following:

(1) Transportation and infrastructure funding.

(2) Public-private agreements under IC 8-15.5.

(3) Public-private partnerships under IC 8-15.7.

(4) Reports and supplements prepared under IC 8-23-12.

(5) Programs and projects conducted in cooperation with Purdue University under IC 8-23-9-56.

(6) Any other information requested by the study committee.

The report must be submitted in an electronic format under IC 5-14-6.

*As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.207; P.L.23-1993, SEC.20; P.L.52-1995, SEC.2; P.L.35-2005, SEC.1; P.L.5-2012, SEC.1; P.L.16-2014, SEC.3; P.L.53-2014, SEC.85.*

#### **IC 8-23-2-5.5**

##### **Coordinated use of public rights-of-way; sharing of information; adoption of rules**

Sec. 5.5. (a) The department shall develop a program to coordinate the efficient and cost effective use of public rights-of-way by the department and utilities when the department undertakes an infrastructure improvement project.

(b) A program developed under subsection (a) may require the department and utilities to share the following information:

- (1) Active construction and excavation permits.
- (2) Locations of existing utility facilities.
- (3) Short and long term project schedules.

(c) The department may adopt rules under IC 4-22-2 to implement this section.

*As added by P.L.133-2013, SEC.6.*

#### **IC 8-23-2-6**

##### **Department powers; contracts and lease with the Indiana finance authority; confidential documents**

Sec. 6. (a) The department, through the commissioner or the commissioner's designee, may do the following:

- (1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities.
- (2) Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department.
- (3) Enter into:
  - (A) a contract with the Indiana finance authority under IC 8-9.5-8-7; or
  - (B) a lease with the Indiana finance authority under IC 8-9.5-8-8;

for the construction, reconstruction, improvement, maintenance, repair, or operation of toll road projects under IC 8-15-2 and toll bridges under IC 8-16-1.

(4) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department.

- (5) Hire attorneys.
  - (6) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation.
  - (7) Hold investigations and hearings concerning matters covered by orders and rules of the department.
  - (8) Execute all documents and instruments necessary to carry out its responsibilities.
  - (9) Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to:
    - (A) qualify the department for; and
    - (B) receive; federal government funding on a full or participating basis.
  - (10) Adopt rules under IC 4-22-2 to carry out its responsibilities, including emergency rules in the manner provided under IC 4-22-2-37.1.
  - (11) Establish regional offices.
  - (12) Adopt a seal.
  - (13) Perform all actions necessary to carry out the department's responsibilities.
  - (14) Order a utility to relocate the utility's facilities and coordinate the relocation of customer service facilities if:
    - (A) the facilities are located in a highway, street, or road; and
    - (B) the department determines that the facilities will interfere with a planned highway or bridge construction or improvement project funded by the department.
  - (15) Reimburse a utility:
    - (A) in whole or in part for extraordinary costs of relocation of facilities;
    - (B) in whole for unnecessary relocations;
    - (C) in accordance with IC 8-23-26-12 and IC 8-23-26-13;
    - (D) in whole for relocations covered by IC 8-1-9; and
    - (E) to the extent that a relocation is a taking of property without just compensation.
  - (16) Provide state matching funds and undertake any surface transportation project eligible for funding under federal law. However, money from the state highway fund and the state highway road construction and improvement fund may not be used to provide operating subsidies to support a public transportation system or a commuter transportation system.
- (b) In the performance of contracts and leases with the Indiana finance authority, the department has authority under IC 8-15-2, in the case of toll road projects and IC 8-16-1, in the case of toll bridges necessary to carry out the terms and conditions of those contracts and

leases.

(c) The department shall:

- (1) classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening;
- (2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division; and
- (3) classify as confidential records that are the product of systems designed to detect collusion in state procurement and contracting that, if made public, could impede detection of collusive behavior in securing state contracts.

This subsection does not apply to parcel files of public agencies or affect IC 8-23-7-10.

*As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.208; P.L.2-1991, SEC.63; P.L.63-1992, SEC.3; P.L.39-1993, SEC.3; P.L.109-1993, SEC.1; P.L.235-2005, SEC.123; P.L.135-2013, SEC.1.*

#### **IC 8-23-2-7**

##### **Repealed**

*(Repealed by P.L.18-1990, SEC.299.)*

#### **IC 8-23-2-8**

##### **Repealed**

*(Repealed by P.L.18-1990, SEC.299.)*

#### **IC 8-23-2-9**

##### **References to certain transportation agencies as references to department of transportation**

Sec. 9. After June 30, 1989, any reference to:

- (1) the transportation coordinating board (IC 8-9.5-2-1, repealed);
- (2) the transportation planning office (IC 8-9.5-3-1, repealed);
- (3) the department of highways (IC 8-9.5-4-2, repealed); and
- (4) the department of transportation (IC 8-9.5-5-2, repealed);

in any statute or rule shall be treated as a reference to the Indiana department of transportation, as established by this article.

*As added by P.L.112-1989, SEC.5. Amended by P.L.1-2009, SEC.76.*

#### **IC 8-23-2-10**

##### **Preexisting rules of certain transportation agencies as rules of department of transportation**

Sec. 10. Any rules of:

- (1) the transportation coordinating board (IC 8-9.5-2-1, repealed);
- (2) the transportation planning office (IC 8-9.5-3-1, repealed);
- (3) the department of highways (IC 8-9.5-4-2, repealed); and

(4) the department of transportation (IC 8-9.5-5-2, repealed); filed with the secretary of state before July 1, 1989, shall be treated after June 30, 1989, as though they had been adopted by the Indiana department of transportation established by this article.

*As added by P.L.112-1989, SEC.5. Amended by P.L.1-2009, SEC.77.*

#### **IC 8-23-2-11**

##### **Application of section; surplus property; trust bid**

Sec. 11. (a) This section applies to the disposal of surplus real or personal property by the department.

(b) Whenever surplus real property or personal property is disposed of by acceptance of bids, a bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (1) beneficiary of the trust; and
- (2) settlor empowered to revoke or modify the trust.

*As added by P.L.336-1989(ss), SEC.22.*

#### **IC 8-23-2-12**

##### **Engineers and land surveyors; contracts; compensation**

Sec. 12. A contract for professional services of engineers or land surveyors may be made on the basis of competence and qualifications for the type of services to be performed. Compensation that the department determines to be reasonable may be negotiated.

*As added by P.L.18-1990, SEC.209.*

#### **IC 8-23-2-12.5**

##### **"Contractor"; "professional services"; liability of contractors**

Sec. 12.5. (a) As used in this section, "contractor" refers to a person who provides professional services under a contract with the department.

(b) As used in this section, "professional services" refers to engineering, architectural, or surveying services.

(c) Notwithstanding any provision of IC 26-2-5-1 to the contrary, the department may not require a contractor to assume any liability or indemnify the state for any amount greater than the degree of fault of the contractor.

(d) Any contractual provision in conflict with the prohibitions contained in subsection (c) is void and unenforceable.

*As added by P.L.50-2008, SEC.1.*

#### **IC 8-23-2-13**

##### **Notaries public; costs and expenses; powers**

Sec. 13. (a) The department shall determine the number of its employees appointed notaries public and pay the expense of appointment, the premiums on the official bond of the notaries, and the cost of official seals. An employee of the state appointed a notary public may do the following:

- (1) Take acknowledgments of deeds, contracts, grants, and

other documents to or in which the state or a state agency is a party to or has an interest.

(2) Administer oaths to a person to a document, claim, statement, or other document to be filed with the state or a state agency.

(b) A notary public appointed under this section may not charge for the service.

*As added by P.L.18-1990, SEC.210.*

#### **IC 8-23-2-14**

##### **Extension of engineering services and testing facilities to counties and municipalities; reimbursement**

Sec. 14. The department may furnish on request of a county or municipality engineering service or consultation and extend the facilities of the department's testing laboratory for the testing of highway construction and maintenance materials or for any other highway purpose. When those services are rendered by the department, the county or municipality requesting and receiving the services shall reimburse the department to the extent of the actual cost of the service including salaries or personal services. When payment is made to the department by the county or municipality, the department shall receipt the payments into the accounts or appropriations from which the expenditures were made by the department in providing those services.

*As added by P.L.18-1990, SEC.211.*

#### **IC 8-23-2-15**

##### **"Highway work zone"; use of off duty police officers to patrol highway work zones**

Sec. 15. (a) As used in this section, "highway work zone" means an area where:

(1) highway construction, reconstruction, or maintenance is actually occurring; and

(2) notice is posted indicating that the highway work zone is a specific area designated with signage on the highway.

(b) The department may contract with the state police department or local law enforcement agencies to hire off duty police officers to patrol highway work zones. The duties of a police officer who is hired under this section:

(1) are limited to those duties that the police officer normally performs while on active duty; and

(2) do not include the duties of a:

(A) flagman; or

(B) security officer.

(c) The department shall use the money transferred to the department under IC 33-37-9-4(a)(6) to pay the costs of hiring off duty police officers to perform the duties described in subsection (b).

(d) All money transferred to the department under



IC 33-37-9-4(a)(6) is annually appropriated to pay off duty police officers to perform the duties described in subsection (b).

*As added by P.L.64-1992, SEC.1. Amended by P.L.4-1994, SEC.2; P.L.132-2003, SEC.1; P.L.98-2004, SEC.76; P.L.217-2014, SEC.5.*

#### **IC 8-23-2-16**

##### **Repealed**

*(Repealed by P.L.35-1995, SEC.5.)*

#### **IC 8-23-2-17**

##### **Public hearings**

Sec. 17. (a) As used in this section, "public hearing" means an assembly or a meeting by the department for the purpose of:

(1) providing information early in the process of making decisions affecting proposed highway or bridge construction or improvement projects on a county arterial highway system or the state highway system so that the public can have an impact on the decision outcome, including a meeting in which the public is provided information, opportunity for review and comment, and an accounting for the rationale for a proposed project; or

(2) complying with 23 U.S.C. 128 and 49 U.S.C. 5323(b) requirements in considering economic, social, environmental, and other effects of highway projects and proposals.

(b) Whenever the department holds a public hearing, the department shall allow any person an opportunity to be heard in the presence of others who are present to testify and in accordance with subsection (c).

(c) The department, through the commissioner or the commissioner's designee, may limit testimony at a public hearing to a reasonable time stated at the opening of the public hearing.

*As added by P.L.52-1995, SEC.3. Amended by P.L.7-2015, SEC.23.*

#### **IC 8-23-2-18**

##### **Nursery stock and wildflower seed sales**

Sec. 18. (a) This section does not apply to the following:

(1) The sale or distribution of nursery stock or wildflower seeds to the following:

(A) An individual who resides in Indiana.

(B) A governmental entity.

(C) A nonprofit organization or an educational institution.

(D) An agricultural research program.

(2) The exchange of nursery stock or wildflower seeds with a person or an entity.

(b) As used in this section, "nursery stock" has the meaning set forth in IC 14-8-2-184(1).

(c) The department may not sell or distribute nursery stock or wildflower seeds to the following:

(1) An individual who resides in a state other than Indiana, unless the individual:

(A) owns land in Indiana; and

(B) submits an affidavit that affirms that the nursery stock or wildflower seeds will be planted in Indiana.

(2) A retail business that sells nursery stock or wildflower seeds.

(3) A wholesale business that sells nursery stock or wildflower seeds.

*As added by P.L.82-2007, SEC.1.*

#### **IC 8-23-2-18.5**

##### **Use of appropriated funds for the Hoosier State Rail Line**

Sec. 18.5. (a) After review by the budget committee and approval by the budget agency, money appropriated to the Indiana department of transportation for the state fiscal year beginning July 1, 2015, or for the state fiscal year beginning July 1, 2016, for any purpose may instead be expended by the department to provide for the operation of the Hoosier State Rail Line.

(b) This section expires July 1, 2017.

*As added by P.L.213-2015, SEC.124.*