

CHAPTER XXI LEASES

A political subdivision which determines to acquire a building, parking facility transportation project, or parking facility by lease or lease purchase must follow the procedures of IC 36-1-10 unless specifically exempted in IC 36-1-10-1.

LEASE WITH NO OPTION TO PURCHASE

If a lease does not contain an option to purchase, the provisions of IC 36-1-10-5 shall be followed:

1. The term of the lease may not be longer than ten 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. [IC 36-1-10-4.1(b); IC 36-1-10-5]

According to Scheub v. Town of Schererville, 617 NE2d 585 (Ind. App. 5 Dist. 1993), "... the legislature intended to make leases without options to purchase subject to all of the procedural requirements of the chapter with the exceptions of sections 6, 12, 16, and 17 ... (FN1.) Section 6 provides that a leasing agent may not enter a lease that will last longer than fifty years. Section 12 governs leases entered into in 'anticipation of acquisition or construction of a structure, system or transportation project.' Section 16 permits a political subdivision owning a structure with respect to which revenue bonds are outstanding to convey the structure to the lessor in fee simple and lease it from the lessor to refinance the outstanding municipal bonds. Finally, Section 17 governs annual appropriations and tax levy."

LEASE WITH OPTION TO PURCHASE

Requirements to Lease a Structure

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

1. the leasing agent receives a petition signed by 50 (fifty) or more taxpayers of the political subdivision; and,
2. the fiscal body determines, after investigation, that the structure transportation project, or system is needed. [IC 36-1-10-7]

Lease Renewal

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. [IC 36-1-10-9]

Option to Purchase

Whenever the leasing agent exercises an option to purchase the property, then the political subdivision 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, then upon the expiration of the lease and full performance by the leasing agent, the property becomes the absolute property of the political subdivision. The lessor shall convey title to the political subdivision. [IC 36-1-10-9]

Plans and Specifications

A lessor proposing to build, acquire, improve, remodel or expand a structure for lease to a political subdivision 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 Building Law Compliance Officer and other agencies designated by law. [IC 36-1-10-10(a)]

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. However, before the execution of the lease, the lessor must submit to the lessees an estimate of the cost and a description of the transportation project or system. [IC 36-1-10-10(b)]

Lessor Must Hold Fee Simple

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. [IC 36-1-10-11(a)]

Sale of Land/Structure to Lessor

The leasing agent may sell land or a structure owned by the political subdivision to the lessor 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 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 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. [IC 36-1-10-11(b)]

NOTE: A political subdivision owning a structure with respect to which its revenue bonds are outstanding may, to refinance these bonds, convey the structure to the lessor in fee simple and lease it from the lessor, subject to the approval of the Department of Local Government Finance. The minimum purchase price and procedures are located in IC 36-1-10-16. [IC 36-1-10-16]

Notice and Hearing

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 of a public hearing to be held before the leasing agent. The notice shall be published one time, at least ten days before the date of the hearing. 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 transportation project, or system, to be leased, the rental to be paid, and the number of years the lease is to be in effect. The cost of the publication of the notice shall be paid by the lessor. The proposed lease, drawings, plans, specifications, and estimates for the structure or description of and cost estimate of the transportation project, or system, are open to public inspection during the ten day period and at the hearing.

All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether rental is fair and reasonable for the proposed structure or system. After the hearing 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. 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 publishing it two times, at least one week apart, with the second publication made at least ten days before the signing. [IC 36-1-10-13]

Taxpayer Objections

If lease rentals are payable, in whole or in part, from property taxes, ten or more taxpayers in the political subdivision who disagree with the execution of a lease may file a petition with the County Auditor within thirty (30) days after publication of the 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. The petition will be forwarded to the Department of Local Government Finance, who will fix a time and place for the hearing of the matter. [IC 36-1-10-14]

Appropriation

A political subdivision that executes a lease under these provisions shall, subject to IC 36-1-10-17(d), make an annual appropriation and tax levy at a rate to provide sufficient money to pay the rental stipulated in the lease. [IC 36-1-10-17(a)]

A political subdivision that executes a lease for a transportation project may only levy a tax under this section for an amount necessary to restore debt service funds and may not levy a tax for lease rental payments. [IC 36-1-10-17(d)]

Tax Exemption

Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision 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. [IC 36-1-10-18]

COMPUTER HARDWARE AND SOFTWARE - LEASE WITH OPTION TO PURCHASE

The leasing agent may lease with option to purchase computer hardware and software by following the provisions of IC 36-1-10. The procedures required are the same as building, acquiring, improving, remodeling or expanding structures for lease to a political subdivision.

A lessor proposing to acquire computer hardware and/or software may enter into a lease without submitting plans, designs, or specifications to the leasing agent. 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 system. [IC 36-1-10-10(b)]

JOINT LEASING

If two 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.

A lease executed by two 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. [IC 36-1-10-8]

NOTIFICATION OF DEPARTMENT OF LOCAL GOVERNMENT FINANCE

IC 5-1-18 requires political subdivisions that issue bonds or enter into leases after December 31, 2005, to supply the Department of Local Government Finance (DLGF) with information concerning the bond issue or lease not later than one month after the issuance of the bonds or execution of the lease. The information required must be submitted on a form prescribed by the DLGF.