First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1019

AN ACT to amend the Indiana Code concerning public offices, officers, and employees and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-13.5-1.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. ~~(a) An agreement or a contract under this chapter is subject to IC 5-16-7.~~

~~(b)~~ **(a)** The contractor and each subcontractor engaged in installing energy conservation measures under a guaranteed energy cost savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work together with an accurate record of the number of hours worked by each worker and the actual wages paid.

~~(c)~~ **(b)** The payroll records required to be kept under this section must be open to inspection by an authorized representative of the commission and the department of labor.

SECTION 2. IC 4-13.6-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. The division shall comply with this article and the following statutes in the administration of public works contracts:

(1) IC 5-16-3.

(2) IC 5-16-6.

~~(3) IC 5-16-7, if the estimated cost of the public works project is~~

~~at least twenty-five thousand dollars ($25,000).~~

~~(4)~~ **(3)** IC 5-16-8.

~~(5)~~ **(4)** IC 5-16-9.

(5) IC 5-16-13.

(6) IC 5-16-14.

SECTION 3. IC 4-13.6-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) A contractor having a contract with the division for a public works project may enter into a subcontract with a value of one hundred fifty thousand dollars ($150,000) or more, involving the performance of any part of the public work upon which the contractor may be engaged only if the subcontractor has been properly qualified under the terms of this chapter for the work subcontracted.

(b) A contractor that enters into a public works contract with an estimated cost of one hundred fifty thousand dollars ($150,000) or more must complete at least ~~twenty~~ **fifteen** percent ~~(20%)~~ **(15%)** of the work (measured in dollars of the total contract price) with its own forces. The director may determine whether a contractor has completed at least ~~twenty~~ **fifteen** percent ~~(20%)~~ **(15%)** of the work with its own forces, and this determination is final and conclusive.

(c) The director may find a contractor violating this section to be in breach of the contract and may employ any legal remedies or administrative remedies that the department may prescribe by rule or in the contract documents. The division may develop contract provisions that assure compliance by contractors with this section and provide for remedies if a contractor breaches these provisions.

SECTION 4. IC 4-13.6-5-4, AS AMENDED BY P.L.172-2011, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) If the estimated cost of a public works project is less than ~~one~~ **three** hundred ~~fifty~~ thousand dollars ~~($150,000),~~ **($300,000),** the division may perform the public work without awarding a public works contract under section 2 of this chapter. In performing the public work, the division may authorize use of equipment owned, rented, or leased by the state, may authorize purchase of materials in the manner provided by law, and may authorize performance of the public work using employees of the state.

(b) The workforce of a state agency may perform a public work described in subsection (a) only if:

(1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and

(2) for a public works project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars

($100,000), the agency:

(A) publishes a notice under IC 5-3-1 that:

(i) describes the public work that the agency intends to perform with its own workforce; and

(ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

(B) determines at a public meeting that it is in the public interest to perform the public work with the agency's own workforce.

A public works project performed by an agency's own workforce must be inspected and accepted as complete in the same manner as a public works project performed under a contract awarded after receiving bids.

(c) If a public works project involves a structure, an improvement, or a facility under the control of an agency, the agency may not artificially divide the project to bring any part of the project under this section.

(d) If a public works project involves a structure, improvement, or facility under the control of the department of natural resources, the department of natural resources may purchase materials for the project in the manner provided by law and without a contract being awarded, and may use its employees to perform the labor and supervision, if:

(1) the department of natural resources uses equipment owned or leased by it; and

(2) the division of engineering of the department of natural resources estimates the cost of the public works project will be less than ~~one~~ **three** hundred ~~fifty~~ thousand dollars ~~($150,000).~~ **($300,000).**

(e) If a public works project involves a structure, improvement, or facility under the control of the department of correction, the department of correction may purchase materials for the project in the manner provided by law and use inmates in the custody of the department of correction to perform the labor and use its own employees for supervisory purposes, without awarding a contract, if:

(1) the department of correction uses equipment owned or leased by it; and

(2) the estimated cost of the public works project using employee or inmate labor is less than the greater of:

(A) fifty thousand dollars ($50,000); or

(B) the project cost limitation set by IC 4-13-2-11.1.

All public works projects covered by this subsection must comply with the remaining provisions of this article, and all plans and specifications for the public works project must be approved by a licensed architect

or engineer.

SECTION 5. IC 4-13.6-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. ~~(a) An agreement or a contract under this chapter is subject to IC 5-16-7.~~

~~(b)~~ **(a)** The contractor and each subcontractor engaged in installing energy conservation measures under a guaranteed energy savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work and an accurate record of the number of hours worked by each worker and the actual wages paid.

~~(c)~~ **(b)** The payroll records required to be kept under this section must be open to inspection by an authorized representative of the department and the department of labor.

SECTION 6. IC 5-1-16-45, AS AMENDED BY P.L.113-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 45. ~~(a)~~ A county desiring to have a building erected or renovated on land owned or to be acquired by the county may sell that land or building to the authority. Before the sale may take place, the county commissioners shall file a petition with the circuit court of the county requesting the appointment of:

(1) one (1) disinterested freeholder of the county as an appraiser; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to determine the fair market value of the land or building. One (1) of the appraisers described under subdivision (2) must reside not more than fifty (50) miles from the land or building. Upon appointment, the appraisers shall fix the fair market value of the land or building and shall report that value within two (2) weeks from the date of their appointment. The county may then sell the land or building to the authority for an amount not less than the amount fixed by the appraisers as the fair market value. The amount shall be paid in cash upon delivery of the deed by the county to the authority. If a cumulative building fund exists at the time of the sale, the proceeds from the sale shall be placed in that fund. If a cumulative building fund does not exist at the time of the sale, the proceeds from the sale shall be paid into the county hospital fund with the principal and interest on the fund to be used solely by the county hospital for the purposes set forth in IC 16-22-5-3 (or IC 16-12.1-4-4 before its repeal on July 1, 1993). A sale of land or a building by a county to the authority shall be authorized by the board of commissioners by an order that shall be entered in the official records of the board. The deed shall be executed

on behalf of the county by the board of county commissioners.

~~(b) A contract entered into under this chapter for a public work (as defined in IC 5-16-7-4) is subject to IC 5-16-7.~~

SECTION 7. IC 5-1-17-18, AS AMENDED BY P.L.1-2006, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) Subject to subsection (h), the authority may issue bonds for the purpose of obtaining money to pay the cost of:

(1) acquiring real or personal property, including existing capital improvements;

(2) constructing, improving, reconstructing, or renovating one (1) or more capital improvements; or

(3) funding or refunding bonds issued under IC 36-10-8 or IC 36-10-9 or prior law.

(b) The bonds are payable from the lease rentals from the lease of the capital improvements for which the bonds were issued, insurance proceeds, and any other funds pledged or available.

(c) The bonds shall be authorized by a resolution of the board.

(d) The terms and form of the bonds shall either be set out in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds shall mature within forty (40) years.

(f) The board shall sell the bonds at public or private sale upon the terms determined by the board.

(g) All money received from any bonds issued under this chapter shall be applied to the payment of the cost of the acquisition or construction, or both, of capital improvements, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

(1) planning and development of the facility and all buildings, facilities, structures, and improvements related to it;

(2) acquisition of a site and clearing and preparing the site for construction;

(3) equipment, facilities, structures, and improvements that are necessary or desirable to make the capital improvement suitable for use and operations;

(4) architectural, engineering, consultant, and attorney's fees;

(5) incidental expenses in connection with the issuance and sale of bonds;

(6) reserves for principal and interest;

(7) interest during construction;

(8) financial advisory fees;

(9) insurance during construction;

(10) municipal bond insurance, debt service reserve insurance,

letters of credit, or other credit enhancement; and

(11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on, the bonds being refunded or refinanced.

(h) The authority may not issue bonds under this chapter unless the authority first finds that the following conditions are met:

(1) Each contract or subcontract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds

~~(A) requires payment of the common construction wage required by IC 5-16-7; and~~

~~(B)~~ requires the contractor or subcontractor to enter into a project labor agreement as a condition of being awarded and performing work on the contract.

(2) The capital improvement board and the authority have entered into a written agreement concerning the terms of the financing of the facility. This agreement must include the following provisions:

(A) Notwithstanding any other law, if the capital improvement board selected a construction manager and an architect for a facility before May 15, 2005, the authority will contract with that construction manager and architect and use plans as developed by that construction manager and architect. In addition, any other agreements entered into by the capital improvement board or a political subdivision served by the capital improvement board with respect to the design and construction of the facility will be reviewed by a selection committee consisting of:

(i) two (2) of the members appointed to the board of directors of the authority under section 7(a)(1) of this chapter, as designated by the governor;

(ii) the two (2) members appointed to the board of directors of the authority under section 7(a)(2) of this chapter; and

(iii) the executive director of the authority.

The selection committee is not bound by any prior commitments of the capital improvement board or the political subdivision, other than the general project design, and will approve all contracts necessary for the design and construction of the facility.

(B) If before May 15, 2005, the capital improvement board acquired any land, plans, or other information necessary for

the facility and the board had budgeted for these items, the capital improvement board will transfer the land, plans, or other information useful to the authority for a price not to exceed the lesser of:

(i) the actual cost to the capital improvement board; or

(ii) three million five hundred thousand dollars ($3,500,000).

(C) The capital improvement board agrees to take any legal action that the authority considers necessary to facilitate the financing of the facility, including entering into agreements during the design and construction of the facility or a sublease of a capital improvement to any state agency that is then leased by the authority to any state agency under section 26 of this chapter.

(D) The capital improvement board is prohibited from taking any other action with respect to the financing of the facility without the prior approval of the authority. The authority is not bound by the terms of any agreement entered into by the capital improvement board with respect to the financing of the facility without the prior approval of the authority.

(E) As the project financier, the Indiana finance authority (or its successor agency) and the public finance director will be responsible for selecting all investment bankers, bond counsel, trustees, and financial advisors.

(F) The capital improvement board agrees to deliver to the authority the one hundred million dollars ($100,000,000) that is owed to the capital improvement board, the consolidated city, or the county having a consolidated city pursuant to an agreement between the National Football League franchised professional football team and the capital improvement board, the consolidated city, or the county. This amount shall be applied to the cost of construction for the stadium part of the facility. This amount does not have to be delivered until a lease is entered into for the stadium between the authority and the capital improvement board.

(G) The authority agrees to consult with the staff of the capital improvement board on an as needed basis during the design and construction of the facility, and the capital improvement board agrees to make its staff available for this purpose.

(H) The authority, the county, the consolidated city, the capital improvement board and the National Football League franchised professional football team must commit to using

their best efforts to assist and cooperate with one another to design and construct the facility on time and on budget.

(3) The capital improvement board and the National Football League franchised professional football team have entered into a lease for the stadium part of the facility that has been approved by the authority and has a term of at least thirty (30) years.

SECTION 8. IC 5-16-1-1.5, AS AMENDED BY P.L.6-2012, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1.5. (a) The governing board of any state educational institution, acting on behalf of said institution, may purchase materials in the manner provided by law and perform any work by means of its own employees and owned or leased equipment in the construction, rehabilitation, extension, maintenance or repair of any building, structure, improvement, or facility, of said institutions, without awarding a contract therefor, whenever the cost of such work shall be estimated to be less than ~~one~~ **three** hundred ~~fifty~~ thousand dollars ~~($150,000).~~ **($300,000).**

(b) The workforce of a state educational institution may perform a public work described in subsection (a) only if:

(1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and

(2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars ($100,000), the state educational institution:

(A) publishes a notice under IC 5-3-1 that:

(i) describes the public work that the state educational institution intends to perform with its own workforce; and

(ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

(B) determines at a public meeting that it is in the public interest to perform the public work with the state educational institution's own workforce.

A public work project performed by a state educational institution's own workforce must be inspected and accepted as complete in the same manner as a public work project performed under a contract awarded after receiving bids.

(c) If a public work project involves a structure, an improvement, or a facility under the control of a state educational institution, the state educational institution may not artificially divide the project to bring any part of the project under this section.

SECTION 9. IC 5-16-7 IS REPEALED [EFFECTIVE JULY 1, 2015]. (Wage Scale of Contractors' and Subcontractors' Employees).

SECTION 10. IC 5-16-7.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 7.1. Effect of Repeal of Common Construction Wage Statute (IC 5-16-7)

Sec. 1. As used in this chapter, "common construction wage statute" refers to the following:

(1) IC 5-16-7, as in effect on June 30, 2015.

(2) Any statute, as in effect on June 30, 2015, if IC 5-16-7 is applicable.

Sec. 2. Notwithstanding the repeal of the common construction wage statute by legislation enacted in the 2015 regular session of the general assembly, the common construction wage statute applies to a public works contract awarded before July 1, 2015, and shall be enforced as if the common construction wage statute had not been repealed.

SECTION 11. IC 5-16-7.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 7.2. Wage Scales for Public Works Projects

Sec. 1. (a) This chapter applies to a public works contract awarded by a public agency after June 30, 2015.

(b) This chapter does not apply to contracts awarded by the Indiana department of transportation when IC 8-23-9 applies.

Sec. 2. As used in this chapter, "applicable public works statute" refers to whichever of the following statutes is applicable to public works projects of the public agency:

(1) IC 4-13.6.

(2) This article.

(3) IC 36-1-12.

(4) Any other statute applicable to the public works projects of the public agency.

Sec. 3. As used in this chapter, "public agency" has the meaning set forth in IC 5-30-1-11.

Sec. 4. As used in this chapter, "public works project" refers to a construction project governed by an applicable public works statute.

Sec. 5. Unless federal or state law provides otherwise, a public agency may not:

(1) establish;

(2) mandate; or

(3) otherwise require;

a wage scale or wage schedule for a public works contract awarded by the public agency.

SECTION 12. IC 5-16-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 13. Requirements for Contractors on Public Works Projects

Sec. 1. (a) This chapter applies only to a public works contract awarded after June 30, 2015.

(b) The requirements described in this chapter are in addition to requirements for contractors stated in the applicable public works statute. The provisions of an applicable public works statute shall be construed consistently with this chapter, but to the extent an applicable public works statute is inconsistent with this chapter, the provisions of this chapter govern.

(c) A provision of an invitation for bids, request for proposals, or a public works contract inconsistent with this chapter is void.

Sec. 2. (a) Except as provided in subsection (b), as used in this chapter, "applicable public works statute" refers to whichever of the following statutes is applicable to public works projects of the public agency:

(1) IC 4-13.6.

(2) This article.

(3) IC 36-1-12.

(4) Any other statute applicable to the public works projects of the public agency.

(b) This definition does not include the following statutes:

(1) IC 5-23-4 (build, operate, transfer, and public-private agreements).

(2) IC 5-30 (design-build).

(3) IC 5-32 (employment of construction manager as constructor).

Sec. 3. As used in this chapter, "contractor" refers generally to a contractor in any contractor tier.

Sec. 4. As used in this chapter, "contractor tier" refers collectively to the following classes of contractors on a public works project:

(1) "Tier 1 contractor" includes each person that has a contract with the public agency to perform some part of the work on, supply some of the materials for, or supply a service for, a public works project. A person included in this tier is also known as a "prime contractor" or a "general

contractor".

(2) "Tier 2 contractor" includes each person that has a contract with a tier 1 contractor to perform some part of the work on, supply some of the materials for, or supply a service for, a public works project. A person included in this tier is also known as a "subcontractor".

(3) "Tier 3 contractor" includes each person that has a contract with a tier 2 contractor to perform some part of the work on, supply some of the materials for, or supply a service for, a public works project. A person included in this tier is also known as a "sub-subcontractor".

(4) "Lower tier contractor" includes each person that has a contract with a tier 3 contractor or lower tier contractor to perform some part of the work on, supply some of the materials for, or supply a service for, a public works project. A person included in this tier is also known as a "lower tier subcontractor".

Sec. 5. As used in this chapter, "public agency" has the meaning set forth in IC 5-30-1-11.

Sec. 6. As used in this chapter, "public works project" refers to a construction project governed by an applicable statute.

Sec. 7. The substance of the provisions of this chapter must be stated or incorporated by reference in each public works contract.

Sec. 8. A public works project may not be structured other than in the contractor tier structure.

Sec. 9. Each tier 1 contractor must contribute in:

(1) work performed by the tier 1 contractor's employees;

(2) materials supplied directly by the tier 1 contractor;

(3) services supplied directly by the tier 1 contractor's employees; or

(4) any combination of subdivisions (1) through (3);

at least fifteen percent (15%) of the tier 1 contractor's total contract price as determined at the time the contract is awarded.

Sec. 10. (a) This section applies to each contractor in any contractor tier of a public works project.

(b) A contractor must maintain general liability insurance in at least the following amounts:

(1) For the each occurrence limit, one million dollars ($1,000,000).

(2) For the general aggregate limit, two million dollars ($2,000,000).

(c) A contractor must be qualified under either of the following

before doing any work on a public works project:

(1) IC 4-13.6-4.

(2) IC 8-23-10.

Sec. 11. Except as provided in this section, the following apply to each contractor in any contractor tier of a public works project:

(1) IC 22-5-1.7. A contractor shall submit, before work begins on a public work project, the E-Verify case verification number for each individual who is required to be verified under IC 22-5-1.7. An individual who is required to be verified under IC 22-5-1.7 whose final case result is final nonconfirmation may not be employed on the public works project.

(2) A contractor may not pay cash to any individual employed by the contractor for work done by the individual on the public works project.

(3) A contractor must be in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209) and IC 22-2-2-1 through IC 22-2-2-8.

(4) A contractor must be in compliance with IC 22-3-5-1 and IC 22-3-7-34.

(5) A contractor must be in compliance with IC 22-4-1 through IC 22-4-39.5.

(6) A contractor must be in compliance with IC 4-13-18-1 through IC 4-13-18-7.

(7) A contractor must comply with section 12 of this chapter, if applicable.

Sec. 12. (a) This section applies only to a or tier 2 contractor that employs fifty (50) or more journeymen.

(b) A contractor must provide access to a training program applicable to the tasks to be performed in the normal course of the employee's employment with the contractor.

(b) The contractor shall participate in an apprenticeship training program that meets the standards established by the United States Department of Labor, Bureau of Apprenticeship and Training.

(c) A contractor may comply with this section through any of the following:

(1) An apprenticeship program.

(2) A program offered by Ivy Tech Community College of Indiana.

(3) A program offered by Vincennes University.

(4) A program established by or for the contractor.

(5) A program offered by an entity sponsored by the United States Department of Labor, Bureau of Apprenticeship and Training.

(6) A program that results in the award of an industry recognized portable certification.

Sec. 13. (a) This section applies to a public works contract awarded after June 30, 2016. The payroll and related records of a contractor in any contractor tier must be:

(1) preserved by the contractor for a period of three (3) years after completion of the project work; and

(2) open to inspection by the department of workforce development.

(b) The department of workforce development shall maintain the confidentiality of all records inspected under this section in accordance with the confidentiality provisions of IC 22-4-19-6.

Sec. 14. (a) This section applies to a public works contract awarded after June 30, 2016.

(b) As used in this section, "department" refers to the department of workforce development established under IC 22-4.1-2-1.

(c) A public agency that is the owner of a public works project and suspects a misclassification of one (1) or more workers by a contractor in any contractor tier working on the public agency's public works project may request in writing that the department investigate the suspected worker misclassification. The public agency shall provide to the department any information or records that the public agency has concerning the misclassification.

(d) The department may investigate a request described in subsection (c). If the department finds information or records that support a finding that worker misclassification has occurred, the department may refer the matter to the appropriate agency or official for further action.

Sec. 15. (a) This section applies to a contractor in any contractor tier of a public works project.

(b) A public agency that reasonably suspects a contractor has violated a provision of this chapter shall do one (1) of the following:

(1) If the suspected violation concerns or is related to any of the following provisions, the public agency shall refer the matter to the appropriate agency as follows:

(A) For a suspected violation of section 11(1) of this chapter (E-Verify), the Indiana department of labor.

(B) For a suspected violation of section 11(3) of this

chapter (the federal FLSA or state minimum wage law), the Indiana department of labor.

(C) For a suspected violation of section 11(4) of this chapter (worker's compensation or occupational diseases), the worker's compensation board of Indiana.

(D) For a suspected violation of section 11(5) of this chapter (unemployment insurance), the department of workforce development.

(2) If the suspected violation concerns a provision of this chapter other than a provision listed in subdivision (1), the public agency shall require the contractor to remedy the violation not later than thirty (30) days after the public agency notifies the contractor of the violation. The notification to the contractor must be signed by the chief executive officer of the public agency and sent by a method that enables the public agency to verify receipt of the notice by the contractor. During the thirty (30) day period, the contractor may continue to work on the public works project. If the contractor fails to remedy the violation within the thirty (30) day period, the public agency shall find the contractor not responsible and determine the length of time the contractor is considered not responsible by the public agency.

(c) In making the determination of the length of time a contractor is not responsible under subsection (b)(2), the public agency shall consider the severity of the violation. The period during which a contractor is considered not responsible:

(1) may not exceed forty-eight (48) months; and

(2) begins on the date of substantial completion of the public works project.

(d) A finding by a public agency under subsection (b)(2) that a contractor is not responsible may not be used by another public agency in making a determination as to whether the contractor is responsible for purposes of that public agency's award of a public works contract to that contractor.

SECTION 13. IC 5-16-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 14. Determination That a Contractor for a Public Works Project Is Not Responsible

Sec. 1. (a) This chapter applies only to a public works contract awarded after June 30, 2015.

(b) The provisions of an applicable public works statute shall be

construed consistently with this chapter, but to the extent an applicable public works statute is inconsistent with this chapter, the provisions of this chapter govern.

(c) A provision of an invitation for bids, request for proposals, or public works contract inconsistent with this chapter is void.

Sec. 2. The definitions in IC 5-16-13 apply throughout this chapter.

Sec. 3. A determination that a contractor is not responsible is final and conclusive, and subject to judicial review under IC 34-13-5.

SECTION 14. IC 5-23-3-3 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 3. If a governmental body enters into a BOT agreement that involves the construction of a public facility with public funds under this section, the operator or any contractor or subcontractor engaged in the construction of that public facility shall pay the common construction wage as determined under IC 5-16-7.~~

SECTION 15. IC 5-23-4-2 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 2. If a governmental body enters into an operating agreement that involves the construction of a public facility with public funds under this section, the operator or any contractor or subcontractor engaged in the construction of that public facility shall pay the common construction wage as determined under IC 5-16-7.~~

SECTION 16. IC 5-30-6-4, AS ADDED BY P.L.74-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. In addition to the design criteria package, a request for proposals must include the following:

(1) Instructions.

(2) Proposal forms and schedules.

(3) General and special conditions.

(4) The basis for evaluation of proposals, including a description of the selection criteria with the weight assigned to each criteria.

~~(5) A determination of the common construction wage made under IC 5-16-7.~~

~~(6)~~ **(5)** Any other instructions, documents, or information relevant to the public project that the public agency considers relevant.

SECTION 17. IC 5-30-8-6 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 6. (a) A determination under IC 5-16-7-1(c) for a public project to be constructed under a design-build contract shall be made and filed with the public agency at least two (2) weeks before the date fixed for submission of the qualitative proposal and the price proposal under IC 5-30-6-5.~~

~~(b) If the committee appointed under IC 5-16-7-1(b) fails to act and~~

~~to file a determination under IC 5-16-7-1(c) within the time required by this section, the public agency shall make the determination, and its finding shall be final.~~

~~(c) The time periods set forth in this section apply to any construction services provided for a public project to be constructed under a design-build contract, instead of the time periods set forth in IC 5-16-7-1(h) and IC 5-16-7-1(i).~~

SECTION 18. IC 5-30-8-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7. IC 5-16-13 and IC 5-16-14 apply to a contract awarded under this article.**

SECTION 19. IC 5-32-1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4. IC 5-16-13 and IC 5-16-14 apply to a contract awarded under this article, regardless of which applicable public works statute applies to the contract.**

SECTION 20. IC 8-1.5-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 27. (a) A municipality may lease waterworks facilities from a not-for-profit corporation, a public utility, a county, or a municipality. The term of the lease may not exceed fifty (50) years. The lease must provide that the municipality has an option to:

(1) renew the lease for a further term on like conditions; and

(2) purchase the waterworks facilities covered by the lease contract with the terms and conditions of the purchase specified in the lease.

(b) If the option to purchase the waterworks facilities covered by the lease is exercised, the municipality, for the purpose of procuring money to pay the purchase price, may issue and sell revenue bonds under other laws governing the issuance and sale of waterworks revenue bonds for additions and extensions to municipal waterworks.

(c) If the municipality has not exercised an option to purchase the property covered by the lease at the expiration of the lease, and upon the full discharge and performance by the municipality of its obligations under the lease contract, the property covered by the lease thereupon becomes the absolute property of the municipality, and the lessor shall execute proper instruments conveying to the municipality good and merchantable title thereto.

~~(d) A waterworks facility leased under this section is subject to IC 5-16-7.~~

SECTION 21. IC 8-15.5-6-2, AS AMENDED BY P.L.205-2013, SECTION 157, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2015]: Sec. 2. ~~(a)~~ Unless otherwise provided by federal law or this section, the operator or any contractor or subcontractor of the operator engaged in the construction of a project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

~~(b) IC 5-16-7 concerning the common construction wage applies to the following:~~

~~(1) The operator or any contractor or subcontractor of the operator engaged in a project for the construction of the Illiana Expressway, a limited access facility connecting Interstate Highway 65 in northwestern Indiana with an interstate highway in Illinois.~~

~~(2) The operator or any contractor or subcontractor of the operator engaged in the construction of a project that is the subject of a public-private agreement entered into after April 30, 2011.~~

SECTION 22. IC 8-15.7-6-2, AS AMENDED BY P.L.163-2011, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. ~~(a)~~ Unless otherwise provided by federal law or this section, the operator or any contractor or subcontractor of the operator engaged in the construction of a project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

~~(b) IC 5-16-7 concerning the common construction wage applies to the following:~~

~~(1) The operator or any contractor or subcontractor of the operator engaged in a project for the construction of the Illiana Expressway, a limited access facility connecting Interstate Highway 65 in northwestern Indiana with an interstate highway in Illinois.~~

~~(2) The operator or any contractor or subcontractor of the operator engaged in the construction of a project that is the subject of a public-private agreement entered into after April 30, 2011.~~

SECTION 23. IC 8-24-9-1, AS ADDED BY P.L.182-2009(ss), SECTION 282, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. The district shall comply with ~~IC 5-16-7 (common construction wage),~~ IC 5-22 (public purchasing),

IC 36-1-12 (public work projects), and any applicable federal bidding statutes and regulations.

SECTION 24. IC 16-22-6-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 37. (a) A county or the governing board of the hospital may remodel or construct an addition to a hospital building leased under this chapter.

(b) To provide funds for that purpose, the county may issue general obligation bonds or appropriate money from the county's general fund or other funds available for that purpose if the hospital building is owned by the county. The governing board of a hospital may use funds available to the board if the hospital building is owned by the county.

~~(c) A contract entered into under this chapter for a public work (as defined in IC 5-16-7-4) is subject to IC 5-16-7.~~

SECTION 25. IC 16-22-7-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 42. (a) The governing board of the hospital may remodel or construct an addition to a hospital building leased by the hospital under this chapter.

(b) To provide funds for that purpose, the county may issue general obligation aid bonds or the city hospital or city may appropriate money from the city hospital's or city's general fund or other funds available for that purpose if the hospital building is owned by the city hospital or city. The governing board of the hospital may use any funds available to the board if the hospital building is owned by the city.

~~(c) A contract entered into under this chapter for a public work (as defined in IC 5-16-7-4) is subject to IC 5-16-7.~~

SECTION 26. IC 22-1-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. The commissioner of labor and ~~his~~ **the commissioner's** authorized representative shall have the power and the authority to enter any place of employment for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all of the labor laws of ~~this state, including IC 5-16-7. No~~ **Indiana. An** employer or owner ~~shall~~ **may not** refuse to admit the commissioner of labor or ~~his~~ **the commissioner's** authorized representatives to ~~his~~ **the employer's or owner's** place of employment.

SECTION 27. IC 22-5-1.7-2, AS AMENDED BY P.L.6-2012, SECTION 157, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "contractor" means a person that **satisfies either of the following:**

(1) **Is a person that:**

(A) has entered into; or

~~(2)~~ **(B)** is attempting to enter into;

a public contract for services with a state agency or political subdivision.

(2) Is a person that:

(A) has entered into; or

(B) is attempting to enter into;

a contract for a public works project with a public agency.

SECTION 28. IC 22-5-1.7-6.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 6.2. As used in this chapter, "public agency" has the meaning set forth in IC 5-30-1-11.**

SECTION 29. IC 22-5-1.7-6.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 6.4. As used in this chapter, "public works project" has the meaning set forth in IC 5-16-13-6.**

SECTION 30. IC 22-5-1.7-7, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. As used in this chapter, "state agency" has the meaning set forth in ~~IC 4-6-3-1.~~ **IC 4-13-1-1.**

SECTION 31. IC 22-5-1.7-8, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. As used in this chapter, "subcontractor" means a person that:

(1) is a party to a contract with a contractor; and

(2) provides services **or work** for work the contractor is performing under **either of the following:**

(A) A public contract for services.

(B) A contract for a public works project with a public agency.

SECTION 32. IC 22-5-1.7-11.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 11.1. This section applies only to a contract for a public works project entered into or renewed after June 30, 2015. A public agency may not enter into or renew a contract for a public works project with a contractor unless:**

(1) the contract contains:

(A) a provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program; and

(B) a provision that provides that a contractor is not required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify

program if the E-Verify program no longer exists; and

(2) the contractor signs an affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

SECTION 33. IC 22-5-1.7-12, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) A contractor or a subcontractor may not:

(1) knowingly employ or contract with an unauthorized alien; or

(2) retain an employee or contract with a person that the contractor or subcontractor subsequently learns is an unauthorized alien.

(b) If a contractor violates this section, the state agency, ~~or~~ political subdivision, **or public agency** shall require the contractor to remedy the violation not later than thirty (30) days after the date the state agency, ~~or~~ political subdivision, **or public agency** notifies the contractor of the violation.

(c) There is a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the work eligibility status of the employee through the E-Verify program.

SECTION 34. IC 22-5-1.7-13, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) Except as provided in subsection (b), if the contractor fails to remedy the violation within the thirty (30) day period provided under section 12(b) of this chapter, the **following apply:**

(1) The state agency or political subdivision shall terminate the public contract for services with the contractor for breach of the public contract for services.

(2) The public agency shall terminate the contract for a public works project with the contractor for breach of the contract for the public works project.

(b) If a contractor employs or contracts with an unauthorized alien, ~~but~~ the **following apply:**

(1) If the state agency or political subdivision (whichever the contractor has a public contract for services with) determines that terminating the public contract for services under subsection (a) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(2) If the public agency determines that terminating the contract for a public works project under subsection (a) would be detrimental to the public interest or public property, the public agency may allow the contract for the public works

project to remain in effect until the public agency procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor is liable to the state agency or political subdivision for actual damages.

(d) If a public agency terminates a contract for a public works project under subsection (a), the contractor is liable to the public agency for actual damages.

SECTION 35. IC 22-5-1.7-14, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

(1) a notice of a violation to the contractor under section 12(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or

(2) a termination of a:

(A) public contract for services under section 13(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor; **or**

(B) contract for a public works project under section 13(a) of this chapter not later than twenty (20) days after the public agency terminates the contract for the public works project with the contractor;

whichever is applicable.

SECTION 36. IC 22-5-1.7-15, AS ADDED BY P.L.171-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. If a contractor uses a subcontractor to provide services for work the contractor is performing under a public contract for services **or a contract for a public works project,** the subcontractor shall certify to the contractor in a manner consistent with federal law that the subcontractor, at the time of certification:

(1) does not knowingly employ or contract with an unauthorized alien; and

(2) has enrolled and is participating in the E-Verify program.

SECTION 37. IC 35-43-5-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 21. (a) A person who, with intent to avoid the obligation to obtain worker's compensation coverage as required by IC 22-3-5-1 and IC 22-3-7-34, falsely classifies an employee as one (1) of the following commits worker's compensation fraud:**

(1) An independent contractor.

(2) A sole proprietor.

(3) An owner.

(4) A partner.

(5) An officer.

(6) A member in a limited liability company.

(b) The offense described in subsection (a) is a Class A misdemeanor.

SECTION 38. IC 35-44.2-3-4 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 4. A person who commits a wage scale violation in a state public works contract is subject to criminal prosecution under IC 5-16-7-3.~~

SECTION 39. IC 35-44.2-3-5 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 5. A person who unlawfully divides a public works project is subject to a civil action for an infraction under IC 5-16-7-6.~~

SECTION 40. IC 35-52-5-8 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 8. IC 5-16-7-3 defines a crime concerning wage rate of contractor's and subcontractor's employees.~~

SECTION 41. IC 35-52-5-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 9.5. IC 5-16-13-14 defines a crime concerning quarterly wage reports.**

SECTION 42. IC 36-1-12-3, AS AMENDED BY P.L.172-2011, SECTION 138, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than ~~one~~ **three** hundred ~~fifty~~ thousand dollars ~~($150,000).~~ **($300,000).** Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes:

(1) the actual cost of materials, labor, equipment, and rental;

(2) a reasonable rate for use of trucks and heavy equipment owned; and

(3) all other expenses incidental to the performance of the project.

(b) This subsection applies only to a municipality or a county. The workforce of a municipality or county may perform a public work described in subsection (a) only if:

(1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and

(2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars ($100,000), the board:

(A) publishes a notice under IC 5-3-1 that:

(i) describes the public work that the board intends to perform with its own workforce; and

(ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

(B) determines at a public meeting that it is in the public interest to perform the public work with the board's own workforce.

A public work project performed by a board's own workforce must be inspected and accepted as complete in the same manner as a public work project performed under a contract awarded after receiving bids.

(c) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications.

(d) A board of aviation commissioners or an airport authority board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work by means of its own workforce and owned or leased equipment, in the construction, maintenance, and repair of any airport roadway, runway, taxiway, or aircraft parking apron whenever the cost of that public work project is estimated to be less than one hundred thousand dollars ($100,000).

(e) Municipal and county hospitals must comply with this chapter for all contracts for public work that are financed in whole or in part with cumulative building fund revenue, as provided in section 1(c) of this chapter. However, if the cost of the public work is estimated to be less than fifty thousand dollars ($50,000), as reflected in the board minutes, the hospital board may have the public work done without receiving bids, by purchasing the materials and performing the work by means of its own workforce and owned or leased equipment.

(f) If a public works project involves a structure, an improvement, or a facility under the control of a department (as defined in IC 4-3-19-2(2)), the department may not artificially divide the project to bring any part of the project under this section.

SECTION 43. IC 36-1-12-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. (a) A contract by the board for public work must conform to ~~the wage scale provisions of IC 5-16-7.~~ **IC 5-16-13.**

(b) A contract by the board for public work must conform with the antidiscrimination provisions of IC 5-16-6. The board may consider a violation of IC 5-16-6 a material breach of the contract, as provided in IC 22-9-1-10.

SECTION 44. IC 36-1-12-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 24. (a) As used in this section, "contractor" includes a subcontractor of a contractor.**

(b) IC 4-13-18, regarding drug testing of employees of public works contractors, applies to a public works contract:

(1) if the estimated cost of the public works project is at least one hundred fifty thousand dollars ($150,000); and

(2) that is awarded under this chapter after June 30, 2015.

SECTION 45. IC 36-1-12.5-5, AS AMENDED BY P.L.99-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) The governing body may enter into an agreement with a public utility to participate in a utility efficiency program or enter into a guaranteed savings contract with a qualified provider to increase the political subdivision's billable revenues or reduce the school corporation's or the political subdivision's energy or water consumption, wastewater usage costs, or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds:

(1) in the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the governing body would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over twenty (20) years from the date of installation if the recommendations in the report were followed;

(2) in the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the governing body would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount of increased billable revenues or the amount to be saved in energy and water consumption costs, wastewater usage costs, and other

operating costs over twenty (20) years from the date of installation if the recommendations in the report were followed; and

(3) in the case of a guaranteed savings contract, the qualified provider provides a written guarantee as described in subsection (d)(3).

(b) Before entering into an agreement to participate in a utility efficiency program or a guaranteed savings contract under this section, the governing body must publish notice under subsection (c) indicating:

(1) that the governing body is requesting public utilities or qualified providers to propose conservation measures through:

(A) a utility efficiency program; or

(B) a guaranteed savings contract; and

(2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

(1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;

(2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty (30) days before the date by which proposals must be received; and

(3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility efficiency program or guaranteed savings contract under this section must provide that:

(1) in the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of twenty (20) years or the average life of the conservation measures installed from the date of final installation;

(2) in the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of twenty (20) years or the average life of the conservation measures

installed from the date of final installation;

(3) in the case of the guaranteed savings contract:

(A) the:

(i) savings in energy and water consumption costs, wastewater usage costs, and other operating costs; and

(ii) increase in billable revenues;

due to the conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(4) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

~~(c) An agreement or a contract under this chapter is subject to IC 5-16-7.~~

SECTION 46. IC 36-7-12-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 20. (a) All tax revenues coming into possession of the economic development commission shall be deposited, held, and secured in accordance with the statutes relating to the handling and investing of public funds. The handling and expenditure of this money is subject to audit and supervision by the state board of accounts.

(b) Contracts for construction and equipment of economic development or pollution control facilities need not be let in accordance with IC 5-16, IC 5-17, or any other statute relating to public contracts. ~~However, the construction of waterworks facilities financed for the public purpose of providing reliable water service subject to IC 5-16-7.~~

(c) Any employee of the economic development commission authorized to receive, disburse, or in any other way handle money or negotiable securities of the commission shall execute a bond payable to the state, with surety to consist of a surety or guaranty corporation qualified to do business in the state. The bond must be in an amount determined by the commission, and must be conditioned upon the employee's faithful performance of ~~his~~ **the employee's** duties and the accounting for all monies and property that may come into ~~his~~ **the employee's** hands or under ~~his~~ **the employee's** control. The cost of these bonds shall be paid by the commission.

SECTION 47. IC 36-7-14-12.3 IS REPEALED [EFFECTIVE JULY

1, 2015]. ~~Sec. 12.3. IC 5-16-7 applies to:~~

~~(1) a person that enters into a contract with a redevelopment commission to perform construction work referred to in section 12.2(a)(4), 12.2(a)(7), 12.2(a)(21), or 12.2(a)(22) of this chapter; and~~

~~(2) a subcontractor of a person described in subdivision (1); with respect to the construction work referred to in subdivision (1).~~

SECTION 48. IC 36-7.5-2-8, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The development authority must comply with ~~IC 5-16-7 (common construction wage),~~ IC 5-22 (public purchasing), IC 36-1-12 (public work projects), and any applicable federal bidding statutes and regulations. An eligible political subdivision that receives a loan, a grant, or other financial assistance from the development authority or enters into a lease with the development authority must comply with applicable federal, state, and local public purchasing and bidding law and regulations. However, a purchasing agency (as defined in IC 5-22-2-25) of an eligible political subdivision may:

(1) assign or sell a lease for property to the development authority; or

(2) enter into a lease for property with the development authority;

at any price and under any other terms and conditions as may be determined by the eligible political subdivision and the development authority. However, before making an assignment or sale of a lease or entering into a lease under this section that would otherwise be subject to IC 5-22, the eligible political subdivision or its purchasing agent must obtain or cause to be obtained a purchase price for the property to be subject to the lease from the lowest responsible and responsive bidder in accordance with the requirements for the purchase of supplies under IC 5-22.

(b) In addition to the provisions of subsection (a), with respect to projects undertaken by the authority, the authority shall set a goal for participation by minority business enterprises of fifteen percent (15%) and women's business enterprises of five percent (5%), consistent with the goals of delivering the project on time and within the budgeted amount and, insofar as possible, using Indiana businesses for employees, goods, and services. In fulfilling the goal, the authority shall take into account historical precedents in the same market.

SECTION 49. IC 36-7.5-4-3, AS AMENDED BY P.L.1-2006, SECTION 573, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) ~~Subject to subsection (h),~~ The

development authority may issue bonds for the purpose of obtaining money to pay the cost of:

(1) acquiring real or personal property, including existing capital improvements;

(2) acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects; or

(3) funding or refunding bonds issued under this chapter or IC 8-5-15, IC 8-22-3, IC 36-7-13.5, or IC 36-9-3 or prior law.

(b) The bonds are payable solely from:

(1) the lease rentals from the lease of the projects for which the bonds were issued, insurance proceeds, and any other funds pledged or available; and

(2) except as otherwise provided by law, revenue received by the development authority and amounts deposited in the development authority fund.

(c) The bonds shall be authorized by a resolution of the development board.

(d) The terms and form of the bonds shall either be set out in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds shall mature within forty (40) years.

(f) The board shall sell the bonds only to the Indiana finance authority established by IC 4-4-11-4 upon the terms determined by the development board and the Indiana finance authority.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

(1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;

(2) acquisition of a site and clearing and preparing the site for construction;

(3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and operations;

(4) architectural, engineering, consultant, and attorney's fees;

(5) incidental expenses in connection with the issuance and sale of bonds;

(6) reserves for principal and interest;

(7) interest during construction;

(8) financial advisory fees;

(9) insurance during construction;

(10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and

(11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on, the bonds being refunded or refinanced.

~~(h) The development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.~~

SECTION 50. IC 36-7.6-2-13, AS ADDED BY P.L.232-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) A development authority shall comply with ~~IC 5-16-7 (common construction wage),~~ IC 5-22 (public purchasing), IC 36-1-12 (public work projects), and any applicable federal bidding statutes and regulations. An eligible political subdivision that receives a loan, a grant, or other financial assistance from a development authority or enters into a lease with a development authority must comply with applicable federal, state, and local public purchasing and bidding laws and regulations. However, a purchasing agency (as defined in IC 5-22-2-25) of an eligible political subdivision may:

(1) assign or sell a lease for property to a development authority; or

(2) enter into a lease for property with a development authority;

at any price and under any other terms and conditions as may be determined by the eligible political subdivision and the development authority. However, before making an assignment or a sale of a lease or entering into a lease under this section that would otherwise be subject to IC 5-22, the eligible political subdivision or its purchasing agent must obtain or cause to be obtained a purchase price for the property to be subject to the lease from the lowest responsible and responsive bidder in accordance with the requirements for the purchase of supplies under IC 5-22.

(b) In addition to the provisions of subsection (a), with respect to projects undertaken by a development authority, the development authority shall set a goal for participation by minority business enterprises and women's business enterprises. The goals must be consistent with:

(1) the participation goals established by the counties and municipalities that are members of the development authority;

and

(2) the goals of delivering the project on time and within the budgeted amount and, insofar as possible, using Indiana businesses for employees, goods, and services.

SECTION 51. IC 36-7.6-4-3, AS ADDED BY P.L.232-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) ~~Subject to subsection (h);~~ A development authority may issue bonds for the purpose of obtaining money to pay the cost of:

(1) acquiring real or personal property, including existing capital improvements;

(2) acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects; or

(3) funding or refunding bonds issued under this chapter, IC 8-5-15, IC 8-22-3, IC 36-9-3, or prior law.

(b) The bonds are payable solely from:

(1) the lease rentals from the lease of the projects for which the bonds were issued, insurance proceeds, and any other funds pledged or available; and

(2) except as otherwise provided by law, revenue received by the development authority and amounts deposited in the development authority fund.

(c) The bonds must be authorized by a resolution of the development board of the development authority that issues the bonds.

(d) The terms and form of the bonds must either be set out in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds must mature within forty (40) years.

(f) A development board shall sell the bonds only to the Indiana bond bank established by IC 5-1.5-2-1 upon the terms determined by the development board and the Indiana bond bank.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

(1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;

(2) acquisition of a site and clearing and preparing the site for construction;

(3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and

operations;

(4) architectural, engineering, consultant, and attorney's fees;

(5) incidental expenses in connection with the issuance and sale of bonds;

(6) reserves for principal and interest;

(7) interest during construction;

(8) financial advisory fees;

(9) insurance during construction;

(10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and

(11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on the bonds being refunded or refinanced.

~~(h) A development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.~~

SECTION 52. IC 36-9-23-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. A municipality may:

(1) acquire, construct, improve, operate, and maintain sewage works under this chapter;

(2) acquire, by gift, grant, purchase, condemnation, or otherwise, all lands, rights-of-way, and other property that are necessary for the sewage works;

(3) issue revenue bonds to pay the cost of acquiring, constructing, and improving the sewage works and property; and

(4) lease sewage works from a person, an entity, a corporation, a public utility, or a unit for a term not to exceed fifty (50) years.

~~A sewage works leased under this section is subject to IC 5-16-7.~~

SECTION 53. [EFFECTIVE JULY 1, 2015] **(a) The Indiana department of labor shall submit to the general assembly in an electronic format under IC 5-14-6 not later than July 1, 2021, a report concerning the effects of the repeal of the common construction wage statute (IC 5-16-7), including information about all quantifiable effects of the repeal on public works projects, including at least the following:**

(1) The cost of public works projects.

(2) The wages paid on public works projects.

(3) The number of Indiana residents working on public works projects.

(b) This SECTION expires December 31, 2021.

SECTION 54. [EFFECTIVE JULY 1, 2015] **There is appropriated to the Indiana Construction Roundtable Foundation:**

(1) for the state fiscal year beginning July 1, 2015, and ending June 30, 2016, one million dollars ($1,000,000); and

(2) for the state fiscal year beginning July 1, 2016, and ending June 30, 2017, one million dollars ($1,000,000);

from the state general fund for the Indiana Construction Roundtable Foundation's use in conducting an educational marketing campaign in Indiana to promote employment opportunities in Indiana for skilled construction craft professionals and to attract individuals to become craft professionals in the Indiana construction industry.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: 5/6/15 Time: 2:12 pm

HEA 1019 — Concur