



Reprinted
March 19, 1999

ENGROSSED HOUSE BILL No. 1509

DIGEST OF HB 1509 (Updated March 18, 1999 2:26 pm - DI 75)

Citations Affected: IC 4-13.5; IC 4-13.6.

Synopsis: Various public contracting matters. Provides that a certificate of qualification for a contractor or a person performing professional services on a state public works project expires 27 months after the date of issuance. (Under current law, a certificate expires 15 months after issuance.) Requires a person that holds a certificate of qualification to notify the certification board of any material changes in information supplied in the application submitted to the board. Provides that a subcontractor on a state public works project must hold a certificate of qualification if the value of the subcontract is \$150,000 or more. (Under current law, the threshold for requiring a certificate of qualification is \$100,000.) Provides that energy cost savings contracts
(Continued next page)

Effective: July 1, 1999.

Hasler, Scholer, Sturtz, Lutz J

(SENATE SPONSORS — MEEKS R, WASHINGTON, HOWARD)

January 19, 1999, read first time and referred to Committee on Environmental Affairs.
January 28, 1999, reported — Do Pass.
February 1, 1999, read second time, ordered engrossed. Engrossed.
February 8, 1999, read third time, passed. Yeas 95, nays 3.

SENATE ACTION

February 22, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
March 11, 1999, amended, reported favorably — Do Pass.
March 18, 1999, read second time, amended, ordered engrossed.

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entered into by the state are administered by the Indiana department of administration rather than state agencies that occupy the facilities that benefit from the contracts. Requires persons who perform qualified energy cost savings contracts for political subdivisions entered into after June 30, 1999 to have a certificate of qualification given by the Indiana department of administration and to satisfy certain other criteria. Requires a subcontractor on a qualified energy cost savings contract entered into after June 30, 1999 with a political subdivision to have a certificate of qualification if the value of the subcontract is more than \$150,000. Repeals superseded energy efficiency contract statutes.

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Reprinted
March 19, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1509

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

1 SECTION 1. IC 4-13.5-1.5-10.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. As used in this chapter,**
4 **"energy cost savings contract" has the meaning set forth in**
5 **IC 4-13.6-8-2.**

6 SECTION 2. IC 4-13.5-1.5-10.6 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 1999]: **Sec. 10.6. As used in this chapter,**
9 **"governmental body" has the meaning set forth in IC 4-13.6-1-9.**

10 SECTION 3. IC 4-13.5-1.5-10.7 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 1999]: **Sec. 10.7. As used in this chapter,**
13 **"qualified energy savings project" has the meaning set forth in**
14 **IC 4-13.6-8-3.**

15 SECTION 4. IC 4-13.5-1.5-10.8 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 1999]: **Sec. 10.8. As used in this chapter,**
 3 **"qualified provider" has the meaning set forth in IC 4-13.6-8-4.**

4 SECTION 5. IC 4-13.5-1.5-14 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. The amount of state
 6 appropriations available to a ~~state institution~~ **governmental body** may
 7 not be reduced because of energy cost savings and operational cost
 8 savings realized from a qualified energy savings project and an energy
 9 cost savings contract.

10 SECTION 6. IC 4-13.5-1.5-16 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. The general
 12 assembly:

13 (1) finds that ~~the state needs~~ **governmental bodies need** to save
 14 energy ~~at state institutions and reduce operating costs;~~ and

15 (2) authorizes the commission to enter into energy cost savings
 16 contracts with qualified providers under this article **and**
 17 **IC 4-13.6-8.**

18 SECTION 7. IC 4-13.6-4-4 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) If, after its
 20 examination, the board finds that an applicant possesses the
 21 qualifications prescribed by this chapter and by its rules, the board
 22 shall issue the applicant a certificate of qualification. A certificate of
 23 qualification issued under this chapter is valid for a period of ~~fifteen~~
 24 ~~(15)~~ **twenty-seven (27)** months from the date of its issuance, unless
 25 revoked by the board for cause.

26 (b) Except for restrictions as to the amount or class of work or
 27 services that the board may place in the certificate, the certificate of
 28 qualification authorizes a contractor to bid on all proposed public
 29 works contracts and authorizes a person offering to perform
 30 professional services to perform those services.

31 (c) **A person that holds a certificate of qualification shall notify**
 32 **the board of any material changes in information in the application**
 33 **submitted to the board.**

34 ~~(c)~~ (d) The board may revoke a certificate of qualification after it
 35 notifies the holder of the certificate and provides the holder with an
 36 opportunity to be heard on the proposed revocation. The notice must be
 37 in writing and must state the grounds of the proposed revocation.

38 SECTION 8. IC 4-13.6-4-10 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A contractor
 40 having a contract with the division for a public works project may enter
 41 into a subcontract with a value of one hundred ~~fifty~~ thousand dollars
 42 ~~(\$100,000)~~ **(\$150,000)** or more, involving the performance of any part

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1 of the public work upon which the contractor may be engaged only if
 2 the subcontractor has been properly qualified under the terms of this
 3 chapter for the work subcontracted.

4 (b) A contractor that enters into a public works contract with an
 5 estimated cost of one hundred **fifty** thousand dollars (~~(\$100,000)~~
 6 **(\$150,000)** or more must complete at least twenty percent (20%) of the
 7 work (measured in dollars of the total contract price) with its own
 8 forces. The director may determine whether a contractor has completed
 9 at least twenty percent (20%) of the work with its own forces, and this
 10 determination is final and conclusive.

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

17 SECTION 9. IC 4-13.6-8 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 1999]:

20 **Chapter 8. Energy Cost Savings Contracts**

21 **Sec. 1. As used in this chapter, "commission" refers to the state**
 22 **office building commission established by IC 4-13.5-1-1.5.**

23 **Sec. 2. As used in this chapter, "energy cost savings contract"**
 24 **means a contract between:**

- 25 (1) the state or the commission; and
 26 (2) a qualified provider;

27 **for the implementation of at least one (1) qualified energy savings**
 28 **project and related measures for a governmental body.**

29 **Sec. 3. As used in this chapter, "qualified energy savings**
 30 **project" means a facility alteration designed to reduce energy**
 31 **consumption costs or other operating costs. The term includes the**
 32 **following:**

- 33 (1) **Providing insulation of the facility and systems within the**
 34 **facility.**
 35 (2) **Installing or providing for window and door systems,**
 36 **including:**
 37 (A) **storm windows and storm doors;**
 38 (B) **caulking or weatherstripping;**
 39 (C) **multi-glazed windows and doors;**
 40 (D) **heat absorbing or heat reflective glazed and coated**
 41 **windows and doors;**
 42 (E) **additional glazing;**



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- 1 **(F) reduction in glass area; and**
 2 **(G) other modifications that reduce energy consumption.**
 3 **(3) Installing automatic energy control systems.**
 4 **(4) Modifying or replacing heating, ventilating, or air**
 5 **conditioning systems.**
 6 **(5) Unless an increase in illumination is necessary to conform**
 7 **to Indiana laws or rules or local ordinances, modifying or**
 8 **replacing lighting fixtures to increase the energy efficiency of**
 9 **the lighting system without increasing the overall illumination**
 10 **of a facility.**
 11 **(6) Providing for other measures that reduce energy**
 12 **consumption or reduce operating costs.**
 13 **Sec. 4. As used in this chapter, "qualified provider" means a**
 14 **person experienced in the design, implementation, and installation**
 15 **of energy and operational cost savings systems.**
 16 **Sec. 5. (a) At the request of a governmental body, the**
 17 **department, in consultation with the governmental body, may do**
 18 **the following:**
 19 **(1) Solicit proposals from qualified providers for an energy**
 20 **cost savings contract.**
 21 **(2) Review proposals and contract with a qualified provider.**
 22 **(b) An energy cost savings contract may cover more than one (1)**
 23 **governmental body.**
 24 **Sec. 6. An energy cost savings contract may do any of the**
 25 **following:**
 26 **(1) Provide that energy cost savings are guaranteed by the**
 27 **qualified provider to the extent necessary to make payments**
 28 **for the qualified energy savings project.**
 29 **(2) Include contracts for building operation programs,**
 30 **maintenance, and management or similar agreements with**
 31 **the qualified provider to reduce energy or operational costs.**
 32 **Sec. 7. (a) After reviewing the proposals submitted and after**
 33 **receiving a recommendation from the budget committee, the**
 34 **department may approve an energy cost savings contract with a**
 35 **qualified provider that best meets the needs of the governmental**
 36 **body if the department reasonably expects the cost of the qualified**
 37 **energy savings project recommended in the proposal would not**
 38 **exceed the amount to be saved in:**
 39 **(1) energy costs;**
 40 **(2) operational costs; or**
 41 **(3) both energy and operational costs;**
 42 **not later than ten (10) years after the date installation is completed**



1 if the recommendations in the proposal are followed.

2 (b) An energy cost savings contract must include a guarantee
3 from the qualified provider to the state that:

4 (1) energy cost savings;

5 (2) operational cost savings; or

6 (3) both energy and operational cost savings;

7 will meet or exceed the cost of the qualified energy project not later
8 than ten (10) years after the date installation is completed.

9 Sec. 8. (a) An agreement or a contract under this chapter is
10 subject to IC 5-16-7.

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

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

21 Sec. 9. The amount of state appropriations available to a
22 governmental body may not be reduced because of energy cost
23 savings and operational cost savings realized from a qualified
24 energy savings project and an energy cost savings contract.

25 Sec. 10. The department may recommend to the governor that
26 an energy cost savings contract be entered into by the state office
27 building commission under IC 4-13.5-1.5.

28 SECTION 10. IC 36-1-12.5-3 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) As used in this
30 chapter, "qualified provider" means **the following:**

31 (1) **Before July 1, 1999, the term means a person that satisfies**
32 **both of the following:**

33 (1) **(A) The person** is experienced in the design,
34 implementation, and installation of energy conservation
35 measures. ~~and~~

36 (2) **(B) The person** submits to the school corporation or
37 political subdivision a performance bond to ensure the
38 qualified provider's faithful performance of the qualified
39 provider's obligations over the term of the guaranteed energy
40 savings contract.

41 (2) **After June 30, 1999, the term means a person that satisfies**
42 **all of the following:**

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- 1 (A) The person is experienced in the design,
 2 implementation, and installation of energy conservation
 3 measures.
- 4 (B) The person is certified and meets the requirements of
 5 IC 4-13.6-4. The person's response to the request for
 6 proposals must include a copy of the person's certificate of
 7 qualification issued under IC 4-13.6-4.
- 8 (C) The person provides energy conservation engineering
 9 services by a professional engineer licensed under IC 25-31
 10 who is under the person's direct employment and
 11 supervision. The person's response to the request for
 12 proposals must include the license number of each
 13 professional engineer employed by the person to satisfy the
 14 requirement of this clause.
- 15 (D) The person provides:
- 16 (i) monitoring for the facility performance guarantee;
 17 and
 18 (ii) service personnel under the person's direct
 19 employment and supervision;
 20 for the duration of the contract's guarantee.
- 21 (E) The person performs at least twenty percent (20%) of
 22 the work (measured in dollars of the total contract price)
 23 with its own workforce.
- 24 (F) The person submits to the school corporation or
 25 political subdivision a performance bond to ensure the
 26 qualified provider's faithful performance of the qualified
 27 provider's obligations over the term of the guaranteed
 28 energy savings contract.
- 29 (b) For purposes of a guaranteed energy savings contract
 30 entered into before July 1, 1999, a person who was a qualified
 31 provider under subsection (a)(1) at the time the contract was
 32 entered into remains a qualified provider for that contract after
 33 June 30, 1999. If the person enters into a guaranteed energy
 34 savings contract after June 30, 1999, the person must satisfy the
 35 requirements of subsection (a)(2) to be considered a qualified
 36 provider.
- 37 SECTION 11. IC 36-1-12.5-5.3 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 1999]: **Sec. 5.3. (a) This section applies only**
 40 **to a guaranteed energy savings contract entered into after June 30,**
 41 **1999.**
- 42 (b) A qualified provider may enter into a subcontract:

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- 1 **(1) with a value of more than one hundred fifty thousand**
- 2 **dollars (\$150,000); and**
- 3 **(2) for the performance of any part of a guaranteed energy**
- 4 **savings contract;**
- 5 **only if the subcontractor is certified under IC 4-13.6-4.**

6 SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE
7 JULY 1, 1999]: IC 4-13.5-1.5-1; IC 4-13.5-1.5-2; IC 4-13.5-1.5-3;
8 IC 4-13.5-1.5-4; IC 4-13.5-1.5-5; IC 4-13.5-1.5-6; IC 4-13.5-1.5-7;
9 IC 4-13.5-1.5-8; IC 4-13.5-1.5-9; IC 4-13.5-1.5-10.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1509, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STURTZ, Chair

Committee Vote: yeas 11, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1509, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-13.5-1.5-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. As used in this chapter, "energy cost savings contract" has the meaning set forth in IC 4-13.6-8-2.**

SECTION 2. IC 4-13.5-1.5-10.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.6. As used in this chapter, "governmental body" has the meaning set forth in IC 4-13.6-1-9.**

SECTION 3. IC 4-13.5-1.5-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.7. As used in this chapter, "qualified energy savings project" has the meaning set forth in IC 4-13.6-8-3.**

SECTION 4. IC 4-13.5-1.5-10.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.8. As used in this chapter, "qualified provider" has the meaning set forth in IC 4-13.6-8-4.**

SECTION 5. IC 4-13.5-1.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. The amount of state appropriations available to a ~~state institution~~ **governmental body** may not be reduced because of energy cost savings and operational cost savings realized from a qualified energy savings project and an energy cost savings contract.

SECTION 6. IC 4-13.5-1.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. The general assembly:

- (1) finds that ~~the state needs~~ **governmental bodies need** to save energy ~~at state institutions~~ **and reduce operating costs;** and
- (2) authorizes the commission to enter into energy cost savings contracts with qualified providers under this article **and IC 4-13.6-8."**

Page 3, line 3, delete "or business".

Page 4, delete lines 17 through 42.

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Delete page 5.

Page 6, delete lines 1 through 22.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1509 as printed January 29, 1999.)

MILLS, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Howard be added as cosponsor of Engrossed House Bill 1509.

MEEKS R

SENATE MOTION

Mr. President: I move that House Bill 1509 be amended to read as follows:

Page 2, between lines 37 and 38, begin a new paragraph and insert:
 "SECTION 8. IC 4-13.6-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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 (~~(\$100,000)~~ **(\$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 (~~(\$100,000)~~ **(\$150,000)**) or more must complete at least twenty percent (20%) 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 percent (20%) 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."

Page 5, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 10. IC 36-1-12.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) As used in this chapter, "qualified provider" means **the following:**

(1) Before July 1, 1999, the term means a person that satisfies both of the following:

(+) (A) **The person** is experienced in the design, implementation, and installation of energy conservation measures. ~~and~~



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(2) **(B) The person** submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of the guaranteed energy savings contract.

(2) After June 30, 1999, the term means a person that satisfies all of the following:

(A) The person is experienced in the design, implementation, and installation of energy conservation measures.

(B) The person is certified and meets the requirements of IC 4-13.6-4. The person's response to the request for proposals must include a copy of the person's certificate of qualification issued under IC 4-13.6-4.

(C) The person provides energy conservation engineering services by a professional engineer licensed under IC 25-31 who is under the person's direct employment and supervision. The person's response to the request for proposals must include the license number of each professional engineer employed by the person to satisfy the requirement of this clause.

(D) The person provides:

- (i) monitoring for the facility performance guarantee; and**
- (ii) service personnel under the person's direct employment and supervision;**

for the duration of the contract's guarantee.

(E) The person performs at least twenty percent (20%) of the work (measured in dollars of the total contract price) with its own workforce.

(F) The person submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of the guaranteed energy savings contract.

(b) For purposes of a guaranteed energy savings contract entered into before July 1, 1999, a person who was a qualified provider under subsection (a)(1) at the time the contract was entered into remains a qualified provider for that contract after June 30, 1999. If the person enters into a guaranteed energy savings contract after June 30, 1999, the person must satisfy the requirements of subsection (a)(2) to be considered a qualified

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provider.

SECTION 11. IC 36-1-12.5-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.3. (a) This section applies only to a guaranteed energy savings contract entered into after June 30, 1999.**

(b) A qualified provider may enter into a subcontract:

(1) with a value of more than one hundred fifty thousand dollars (\$150,000); and

(2) for the performance of any part of a guaranteed energy savings contract;

only if the subcontractor is certified under IC 4-13.6-4."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1509 as printed March 12, 1999.)

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