January 25, 2008

HOUSE BILL No. 1340

DIGEST OF HB 1340 (Updated January 23, 2008 4:46 pm - DI 117)

Citations Affected: IC 2-5; IC 4-3; IC 4-13; noncode.

Synopsis: Privatization review committee. Establishes the privatization review committee. Requires a state agency to develop a privatization plan before privatizing any state program. Requires the state agency to hold a hearing on the plan and report the results of the hearing to the public and the committee. Requires the committee to: (1) review a privatization plan before the plan is implemented; and (2) make advisory recommendations to the governor. Requires that certain privatization contracts must be approved under the "Reorganization Act of 1967". Provides that such a privatization contract entered into in violation of the Reorganization Act of 1967 is void. Makes technical changes in the Reorganization Act of 1967. Requires a state agency to perform a cost benefit analysis before entering into a contract for services. Requires the department of administration to compile semiannual reports on the cost benefit analysis for each contract.

Effective: Upon passage.

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January 15, 2008, read first time and referred to Committee on Interstate and International Cooperation.
January 24, 2008, reported — Do Pass.

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January 25, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1340

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

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

SECTION 1. IC 2-5-29 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 29. Privatization Review Committee

Sec. 1. The definitions in IC 4-13-1.8 apply throughout this chapter.

Sec. 2. As used in this chapter, "committee" refers to the privatization review committee established by section 3 of this chapter.

Sec. 3. The privatization review committee is established to review privatization plans before the implementation date.

Sec. 4. (a) The committee consists of the following members:

(1) Three (3) members of the house of representatives, appointed by the speaker of the house of representatives.

(2) Three (3) members of the house of representatives, appointed by the minority leader of the house of representatives.

(3) Three (3) members of the senate, appointed by the president pro tempore of the senate.

(4) Three (3) members of the senate, appointed by the minority leader of the senate.

(5) Three (3) members of the public, appointed jointly by the chairman and the vice chairman of the legislative council as follows:

(A) One (1) representative of labor.

(B) One (1) representative of the business community.

(C) One (1) representative of a public university of the state.

(b) Not more than two (2) members appointed under subsection (a)(5) may be members of the same political party.

(c) The term of a member is four (4) years.

(d) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(e) A legislative member of the committee may be removed at any time by the appointing authority who appointed the legislative member.

(f) If a vacancy exists on the committee, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

Sec. 5. (a) Each member of the committee who is not a member of the general assembly is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the committee who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council.

Sec. 6. The chairman of the legislative council shall appoint a member of the committee to serve as the committee's chair. Whenever there is a new chairman of the legislative council, the new chairman may remove the committee's chair and appoint another chair.

Sec. 7. The committee shall hold hearings to do the following:

(1) Review the plan of a state agency that proposes to enter

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into a privatization contract that has a total value greater than ten million dollars ($10,000,000).

(2) Make advisory recommendations to the governor regarding the agency's plans.

Sec. 8. The committee may meet at any time during the year upon the call of the chair.

Sec. 9. The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any recommendation.

Sec. 10. The legislative services agency shall staff the committee.

Sec. 11. The expenses of the committee shall be paid from appropriations made to the legislative council or the legislative services agency.

Sec. 12. Except as provided in this chapter, the committee shall operate under the policies governing study committees adopted by the legislative council.

SECTION 2. IC 4-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** As used in this chapter,

~~(1)~~ "agency" means ~~any~~ **an** executive or administrative department, commission, council, board, bureau, division, service, office, officer, administration, or other establishment in the executive or administrative branch of the state government not provided for by the Constitution **of the State of Indiana.** The term ~~"agency"~~ does not include **any of the following:**

(1) The secretary of state.

(2) The auditor of state.

(3) The treasurer of state.

(4) The lieutenant governor.

(5) The state superintendent of public instruction. ~~and~~

(6) The attorney general. ~~nor~~

(7) The departments of which ~~they are,~~ **an officer described in any of subdivisions (1) through (6),** by the statutes first adopted setting out ~~their~~ **the officer's** duties, **is** the administrative ~~heads.~~ **head.**

(b) "Private sector person" has the meaning set forth in IC 4-13-1.8-4.

(c) "Privatization contract" has the meaning set forth in IC 4-13-1.8-6.

~~(2)~~ **(d)** "Reorganization" means **any of the following:**

~~(A)~~ **(1)** The transfer of the whole or any part of ~~any~~ **an** agency, or of the whole or any part of the functions ~~thereof,~~ **of an agency,** to the jurisdiction and control of ~~any other~~ **another** agency.

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~~(B)~~ **(2)** The abolition of all or any part of the functions of ~~any~~ **an** agency.

~~(C)~~ **(3)** The consolidation or coordination of the whole or any part of ~~any~~ **an** agency, or of the whole or any part of the functions ~~thereof,~~ **of an agency,** with the whole or any part of ~~any other~~ **another** agency or the functions ~~thereof,~~ **of another agency.**

~~(D)~~ **(4)** The consolidation or coordination of any part of ~~any~~ **an** agency or the functions ~~thereof~~ **of an agency** with any other part of the same agency or the functions ~~thereof,~~ **of the same agency.**

~~(E)~~ **(5)** The authorization of ~~any~~ **an** officer to delegate any of ~~his~~ **the officer's** functions. ~~or~~

~~(F)~~ **(6)** The abolition of the whole or any part of ~~any~~ **an** agency which agency or part does not have, or upon the taking effect of a reorganization plan will not have, any functions.

(7) The awarding of a privatization contract that satisfies both of the following:

(A) The contract has a value of more than one hundred million dollars ($100,000,000).

(B) The term of the contract is more than two (2) years.

SECTION 3. IC 4-3-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The governor shall examine, and from time to time reexamine, the organization of all agencies of the state government, and shall determine what changes ~~therein~~ **in the organization of the agencies of state government** are necessary to accomplish the following purposes:

(1) To promote the better execution of the laws, the more effective management of the executive and administrative branch of the government and of its agencies and functions, and expeditious administration of the public business.

(2) To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the government.

(3) To increase the efficiency of the operations of the government to the fullest extent practicable.

(4) To group, coordinate, and consolidate agencies and functions of the government, as nearly as possible according to major purposes.

(5) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish ~~such~~ agencies or functions ~~thereof~~ **of agencies** as may not be necessary for the efficient conduct of the government.

(6) To eliminate overlapping and duplication of effort.

(7) To increase the control of the electorate over the policy

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making functions of government.

(b) The general assembly declares that the public interest demands the carrying out of the purposes specified in this section, and that these purposes may be accomplished in great measure by proceeding under ~~the provisions of~~ this chapter.

SECTION 4. IC 4-3-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) This section applies** whenever the governor, after investigation, finds that

~~(1) the transfer of the whole or any part of any agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency;~~

~~(2) the abolition of all or any part of the functions of any agency;~~

~~(3) the consolidation or coordination of the whole or any part of any agency, or of the whole or any part of the functions thereof, with the whole or any part of any other agency or the functions thereof;~~

~~(4) the consolidation or coordination of any part of any agency or the functions thereof with any other part of the same agency or the functions thereof;~~

~~(5) the authorization of any officer to delegate any of that officer's functions; or~~

~~(6) the abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of the reorganization plan will not have any functions;~~

a reorganization is necessary to accomplish one (1) or more of the purposes of this chapter.

(b) If this section applies, the governor shall **do the following:**

(1) Prepare a reorganization plan for accomplishing the changes in government indicated by the governor's findings included in the plan. ~~and shall~~

(2) Submit the plan in an electronic format under IC 5-14-6 to the general assembly, together with a declaration that, with respect to each reorganization included in the plan the governor has found that the reorganization is necessary to accomplish one (1) or more of the purposes of this chapter.

(c) The governor, in the message submitting a reorganization plan, ~~shall specify,~~ **must state both of the following:**

(1) With respect to each abolition of a function included in the plan, the statutory authority for the exercise of the function. ~~and shall specify~~

(2) The reduction of expenditures which it is probable will be brought about by the taking effect of the reorganizations included

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in the plan.

(d) After submission of the governor's reorganization plan, the privatization review committee shall review the plan as provided in IC 2-5-29 if the reorganization is the awarding of a privatization contract described in section 2(d)(7) of this chapter.

SECTION 5. IC 4-3-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a)** ~~Any~~ **A** reorganization plan submitted by the governor under this chapter ~~(a) shall~~ **may:**

(1) change, in cases ~~he deems~~ **the governor considers** necessary, the name of ~~any~~ **an** agency affected by ~~a~~ **the** reorganization and the title of ~~its~~ **the agency's** head; and ~~shall~~

(2) designate the name of ~~any~~ **the** agency resulting from ~~a~~ **the** reorganization and the title of ~~its~~ **the agency's** head.

(b) **A reorganization plan** may include provisions for the appointment and compensation of the head and one (1) or more other officers of ~~any~~ **an** agency, including an agency resulting from a consolidation or other type of reorganization, if the governor finds, and in ~~his~~ **the governor's** message submitting the plan declares, that by reason of a reorganization made by the plan such provisions are necessary. The **agency** head so provided for may be an individual or ~~may be~~ a commission or board with two (2) or more members. The terms of office of ~~any~~ **an** appointee ~~shall~~ **may** not be fixed at more than four (4) years. The compensation ~~shall~~ **may** not be ~~at a rate in excess of~~ **greater than** that found by the governor to prevail in respect of comparable officers in the executive and administrative branch.

(c) ~~shall~~ **A reorganization plan must** make provisions for the transfer or other disposition of the records, property, and personnel affected by ~~any~~ **the** reorganization.

(d) ~~shall~~ **A reorganization plan must** make provision for the transfer of ~~such~~ unexpended balances of appropriations, and of other funds, available for use in connection with any function or agency affected by ~~a~~ **the** reorganization, as ~~he deems necessary by reason~~ **the governor considers necessary because** of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which has such functions after the reorganization plan is effective. **Transferred** unexpended balances ~~so transferred shall~~ **may** be used only for the purposes for which the appropriation was originally made.

(e) ~~shall~~ **A reorganization plan must** make provision for terminating the affairs of any agency abolished. ~~and~~

(f) ~~shall~~ **A reorganization plan must** enumerate all statutes which may be repealed if the reorganization plan becomes effective.

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SECTION 6. IC 4-3-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) ~~Each~~ **A** reorganization plan ~~shall be presented by the governor to the general assembly in the form of~~ **must include** a bill **that if enacted by the general assembly:**

(1) would authorize the reorganization; and

(2) if necessary, would make any statutory changes required to implement the reorganization.

(b) ~~Each~~ **A** reorganization plan ~~so~~ submitted by the governor ~~shall take~~ **takes** effect **only** if ~~and when it~~ **the bill** is enacted as a law by the general assembly in accordance with the Constitution of the State of Indiana.

(c) A privatization contract described in section 2(d)(7) of this chapter that is entered into in violation of this chapter is void.

SECTION 7. IC 4-3-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a) As used in this section, "action" refers to an authorization, a designation, a directive, a determination, an order, a permit, a policy, a privilege, a regulation, a requirement, a rule, or any other action.**

~~(a)~~ **(b)** An ~~act and any regulation or other~~ action made, prescribed, issued, granted, or performed in respect of or by ~~any~~ **an** agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, ~~shall,~~ except to the extent rescinded, modified, superseded, or made inapplicable by ~~or under authority of~~ law or by the abolition of a function, ~~have~~ **has** the same effect as if the reorganization had not been made. If ~~any such act, regulation, or other~~ **an** action has vested the function in the agency from which it is removed under the plan, the function shall, insofar as it is to be exercised after the plan becomes effective, be considered as vested in the agency under which the function is placed by the plan.

~~(b) As used in this section, "regulation or other action" means any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.~~

SECTION 8. IC 4-3-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. ~~No~~ **(a) A** legal action, or other proceeding lawfully commenced by or against the head of ~~any~~ **an** agency or ~~other~~ **an** officer of the state, in ~~his~~ **the officer's** official capacity or in relation to the discharge of ~~his~~ **the officer's** official duties, ~~shall~~ **does not** abate by ~~reason of~~ the taking effect of ~~any~~ **a** reorganization plan under ~~the provisions of~~ this chapter. ~~The~~

(b) A court may, on motion or supplemental petition filed at any time within twelve (12) months after the reorganization plan takes effect, showing a necessity for a survival of the action, or other

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proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of ~~such head~~ **the agency** or officer under the reorganization effected by the plan or, if there is no successor, against ~~such~~ **the** agency or officer as the governor shall designate.

SECTION 9. IC 4-13-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 1.8. Privatization Contracts

Sec. 1. This chapter applies to a privatization contract that has a total dollar amount greater than ten million dollars ($10,000,000).

Sec. 2. As used in this chapter, "committee" refers to the privatization review committee established by IC 2-5-29-3.

Sec. 3. As used in this chapter, "implementation date" means the date on which a state agency transfers administration of a program to a private sector person that will operate the program.

Sec. 4. As used in this chapter, "private sector person" refers to a person not principally a part of or associated with a governmental unit.

Sec. 5. As used in this chapter, "privatization" refers to the transfer to a private sector person of a program currently provided or performed directly by the employees of a state agency.

Sec. 6. (a) As used in this chapter, "privatization contract" refers to a contract entered into by a state agency with a private sector person for the privatization of a program.

(b) The term does not include contracting with a private sector person to provide services on a temporary or an emergency basis.

Sec. 7. As used in this chapter, "program" means a legislatively or administratively created function, project, provision of services, or duty of a state agency.

Sec. 8. As used in this chapter, "state agency" has the meaning set forth in IC 4-13-1-1(b).

Sec. 9. Before a state agency enters into a privatization contract, the state agency must prepare a privatization plan that includes the following:

(1) A description of the program to be privatized, including a reference to the legal authority under which the program was created.

(2) Detailed budget information that includes a list of revenues and expenditures for the two (2) most recent fiscal years.

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(3) A list of:

(A) all state employees currently employed by the state agency to administer the program; and

(B) the estimated effect of the privatization on the employment status of each state employee employed by the agency.

(4) A list of the:

(A) assets of the program; and

(B) proposed disposition of the assets.

(5) An estimate of:

(A) cost savings; or

(B) additional costs;

resulting from privatizing the program compared to the costs of the existing program. Cost estimates must include the estimated cost to the state for inspection, supervision, and monitoring of the program if the privatization is implemented. The estimate must also include an estimate of any costs that would be incurred if the privatization contract is discontinued.

(6) An estimate of the changes in individual wages and benefits that will result from the privatization.

(7) Descriptions and plans for ways the privatization will deliver the same or better services at a lower cost.

(8) Information on whether the contract will be awarded to an out-of-state business (as defined in IC 4-13.6-6-2.5 and IC 5-22-15-20(b)).

Sec. 10. (a) Not less than sixty (60) days before a privatization plan becomes effective, the state agency must submit the plan to the committee.

(b) The committee shall hold a hearing on the privatization plan not less than thirty (30) days before the date on which the privatization plan becomes effective.

(c) The committee shall make an advisory recommendation concerning the privatization plan to the governor not later than five (5) days after the hearing held under subsection (b). The committee shall forward a copy of the recommendation under this subsection to the legislative council in an electronic format under IC 5-14-6.

SECTION 10. IC 4-13-2-14.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14.4. **(a) As used in this section, "cost benefit analysis" means a comprehensive study to identify and compare the total cost, quality, technical**

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expertise, and timeliness of a service performed by a state employee with the total cost, quality, technical expertise, and timeliness of the same service provided under a contract for services.

(b) Before a state agency may enter into a contract for services to be provided in lieu of appointing employees to available positions, the agency must justify the cost effectiveness of the contract ~~to the commissioner of the department of administration.~~ **and conduct a cost benefit analysis.**

(c) The cost benefit analysis required by subsection (b) must be:

(1) submitted to the commissioner;

(2) submitted to the legislative council; and

(3) made available to the public;

at least ninety (90) days before the effective date of the contract. The analysis submitted to the legislative council must be in an electronic format under IC 5-14-6.

(d) The commissioner of the Indiana department of administration shall twice each year compile and make available for public inspection a report concerning the cost benefit analysis of each contract for services awarded by each state agency. Before February 1 of each year, the commissioner shall compile and make available a report covering the six (6) month period ending December 31 of the preceding calendar year. Before August 1 of each year, the commissioner shall compile and make available a report covering the six (6) month period ending June 30 of that year. The commissioner shall also submit a copy of the report to the legislative council in an electronic format under IC 5-14-6.

SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "committee" refers to the privatization review committee established by IC 2-5-29-3, as added by this act.**

(b) Each appointing authority specified in IC 2-5-29-4, as added by this act, shall make appointments to the committee under IC 2-5-29-4, as added by this act, not later than three (3) weeks after the effective date of this SECTION.

(c) This SECTION expires July 1, 2008.

SECTION 12. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 4-13-2-14.4(c), as amended by this act, the commissioner of the Indiana department of administration is not required to file a report concerning the cost benefit analysis of each contract for services until February 1, 2009.**

(b) This SECTION expires July 1, 2009.

SECTION 13. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Interstate and International Cooperation, to which was referred House Bill 1340, 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.

HARRIS E, Chair

Committee Vote: yeas 7, nays 0.

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