Reprinted
February 2, 2010

SENATE BILL No. 35

DIGEST OF SB 35 (Updated February 1, 2010 3:04 pm - DI 75)

Citations Affected: IC 4-13; IC 4-13.6; IC 4-20.5; IC 4-31; IC 12-7; IC 12-10; IC 12-12.7; IC 14-21; IC 14-22; IC 20-21; IC 20-22.

Synopsis: State administration matters. Increases the maximum amount for the department of correction to use employee or inmate labor from $100,000 to $500,000. Increases the threshold for bidding certain state public works projects to $150,000. Increases the threshold on state public works projects for holding retainage from contractors to $1,000,000. Permits the department of administration to use electronic signatures from all contracting parties using an electronic method that does not comply with Indiana's electronic signature act, if the method allows the contracting party to read the terms of the contract before accepting them and to manifest the party's agreement to the contract by clicking an "ok" or "agree" button or not accept the terms of the contract by clicking on a "don't agree", "cancel", or "close

(Continued next page)

Effective: July 1, 2010.

Kenley, Dillon

January 5, 2010, read first time and referred to Committee on Rules and Legislative Procedure.
January 19, 2010, amended; reassigned to Committee on Appropriations.
January 28, 2010, amended, reported favorably — Do Pass.
February 1, 2010, read second time, amended, ordered engrossed.

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Digest Continued

window" button. Provides that the department of administration is not required to obtain a property appraisal for a property that is sold using a public auction or public sealed bid procedure. Provides that the department of administration may sell real property owned by the state by use of a request for proposals. Requires certain documentation to be kept if the department negotiates a sale of state owned real property with a potential buyer. Provides that the department may dispose of state owned real property involved in a dispute by exchanging the state owned real property for property of like value, regardless of the value of the state owned real property to be transferred. (Under current law, such an exchange may not be made if the value of the state owned real property exceeds $10,000.) Provides that state owned real property may also be exchanged for other real property to improve the state's ability to manage state property or to improve access to state property. Requires the division of historic preservation and archeology of the department of natural resources to notify the department of the results of its review of the disposition of state owned real property not later than 30 days after receiving notice from the department of the intent to dispose of the state owned real property. Eliminates the requirement to submit fingerprints to the horse racing commission every five years and requires the commission to coordinate with the state police department for storage of fingerprints. Eliminates the Alzheimer's disease and related senile dementia programs. Eliminates the Alzheimer's and dementia special care disclosure by a health facility that provides or offers Alzheimer's and dementia special care. Eliminates the requirement for the community and home options to institutional care for the elderly and disabled board (CHOICE board) to conduct an annual conference on the problems of the aging and the aged. Repeals the requirement that the CHOICE board meet at least six times each year. Increases the maximum monthly cost share amount for services under the infants and toddlers with disabilities program. Removes the 50% limitation on using the lifetime hunting, fishing, and trapping license trust fund for land purchases. Permits the board for the deaf school and blind school to prescribe, subject to the approval of the state personnel department and the budget agency, a salary schedule for the school without having to make the daily rate of pay for a teacher equal to that of a teacher at the Indianapolis public schools. Repeals corresponding definitions and cross-references.

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Reprinted
February 2, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 35

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:

SECTION 1. IC 4-13-2-11.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11.1. (a) Notwithstanding the other provisions of this chapter or IC 5-16-1 concerning the awarding of contracts, if a project is for the rehabilitation, extension, maintenance, construction or repair of any structure, improvement, or facility under the control of the department of correction, the department may purchase materials for that project in the manner provided by law and use, without awarding a contract, its inmates to perform the labor and use its own employees for supervisory purposes if:

(1) they use equipment owned or leased by that department; and

(2) the cost of the project using employee or inmate labor is estimated by the department of administration to be less than ~~one~~ **five** hundred thousand dollars ~~($100,000).~~ **($500,000).**

(b) All projects covered by this section must comply with the remaining provisions of this chapter, and all plans and specifications must be approved by a licensed architect or engineer as required by

law.

SECTION 2. IC 4-13-2-14.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14.1. (a) A contract to which a state agency is a party must be approved by the following persons:

(1) The commissioner of the Indiana department of administration.

(2) The director of the budget agency. The director of the budget agency is not required to approve a contract:

(A) for supplies under IC 5-22, unless the budget agency is required to approve the contract under rules or written policies adopted under IC 5-22; or

(B) for public works under IC 4-13.6, if the estimated cost of the contract is less than one hundred thousand dollars ($100,000).

(3) The attorney general, as required by section 14.3 of this chapter.

(b) Each of the persons listed in subsection (a) may delegate to another person the responsibility to approve contracts under this section. The delegation must be in writing and must be filed with the Indiana department of administration.

(c) The Indiana department of administration may adopt rules under IC 4-22-2 to provide for electronic approval of contracts. **Electronic approval may include obtaining the equivalent of a signature from all contracting parties using an electronic method that does not comply with IC 5-24 (the electronic digital signature act), so long as the method allows the party to read the terms of the contract and to manifest the party's agreement to the contract by clicking on an "ok", an "agree", or a similarly labeled button or allows the party to not agree to the contract by clicking on a "cancel", "don't agree", "close window", or similarly labeled button.** Rules adopted under this subsection must provide for the following:

(1) Security to prevent unauthorized access to the approval process.

(2) The ability to convert electronic approvals into a medium allowing persons inspecting or copying contract records to know when approval has been given.

The rules adopted under this subsection may include any other provisions the department considers necessary.

(d) The Indiana department of administration shall maintain a file of information concerning contracts and leases to which a state agency is a party.

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SECTION 3. IC 4-13.6-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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~~ **one hundred fifty** thousand dollars ~~($25,000).~~ **($150,000).**

(4) IC 5-16-8.

(5) IC 5-16-9.

SECTION 4. IC 4-13.6-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Except as provided by this chapter and IC 16-33-4-10, if the estimated cost of a public works project is at least ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a public works project is at least ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division shall develop contract documents for a public works contract and keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The division shall advertise for bids under section 8 of this chapter. The director shall award a contract under IC 4-13.6-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid. The director may waive filing of the financial statement.

(e) After bids are opened but before a contract is awarded, the director may require a contractor to submit a statement of the contractor's experience, a proposed plan of performing the work, and a listing of the equipment that is available to the contractor for performance of the work.

(f) The statements required by this section shall be submitted on forms approved by the state board of accounts. The forms shall be based, so far as applicable, on standard questionnaires and financial statements for contractors used in investigating the qualifications of contractors on public construction work.

(g) The division shall reject the bid of a contractor if:

(1) the estimated cost of the public works project is one hundred fifty thousand dollars ($150,000) or more and the contractor is not qualified under chapter 4 of this article;

(2) the estimated cost of the public works project is less than one hundred fifty thousand dollars ($150,000) and the director makes

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a written determination, based upon information provided under subsections (d) and (e), that the contractor is not qualified to perform the public works contract;

(3) the contractor has failed to perform a previous contract with the state satisfactorily and has submitted the bid during a period of suspension imposed by the director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the director);

(4) the contractor has not complied with a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or

(5) the contractor has not complied with any requirement under section 2.5 of this chapter.

(h) The division shall keep a record of all bids. The state board of accounts shall approve the form of this record, and the record must include at least the following information:

(1) The name of each contractor.

(2) The amount bid by each contractor.

(3) The name of the contractor making the lowest bid.

(4) The name of the contractor to whom the contract was awarded.

(5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.

(6) Purchase order numbers.

SECTION 5. IC 4-13.6-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) If the estimated cost of a public works project is less than ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division may award a public works contract either under section 2 of this chapter or under this section, at the discretion of the director.

(b) If the director awards a contract under this section, the division shall invite quotations from at least three (3) contractors known to the division to deal in the work required to be done. However, if fewer than three (3) contractors are known to the division to be qualified to perform the work, the division shall invite quotations from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division may authorize the governmental body for which the public work is to be performed to invite quotations, but award of a contract based upon those quotations is the responsibility of the division.

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(d) Quotations given by a contractor under this section must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the division awards a public works contract.

(e) The division shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirement imposed under section 2.5 of this chapter.

SECTION 6. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) If the estimated cost of a public works project is less than ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** 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) 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 ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000).~~ **($150,000).**

(c) 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

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or engineer.

SECTION 7. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) If the estimated cost of a public works project is ~~one hundred fifty thousand~~ **one million** dollars ~~($150,000)~~ **($1,000,000)** or more, the division shall include as part of the public works contract provisions for the retainage of portions of payments by the division to the contractor, by the contractor to subcontractors, and for the payment of subcontractors and suppliers by the contractor. The contract must provide that the division may withhold from the contractor sufficient funds from the contract price to pay subcontractors and suppliers as provided in section 4 of this chapter.

(b) A public works contract and contracts between contractors and subcontractors, if portions of the public works contract are subcontracted, may include a provision that at the time any retainage is withheld, the division or the contractor, as the case may be, may place the retainage in an escrow account, as mutually agreed, with:

(1) a bank;

(2) a savings and loan institution;

(3) the state of Indiana; or

(4) an instrumentality of the state of Indiana;

as escrow agent. The parties to the contract shall select the escrow agent by mutual agreement. The parties to the agreement shall enter into a written agreement with the escrow agent.

(c) The escrow agreement must provide the following:

(1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.

(2) The escrow agent shall hold the escrowed principal and income until it receives notice from both of the other parties to the escrow agreement specifying the percentage of the escrowed principal to be released from the escrow and the persons to whom this percentage is to be released. When it receives this notice, the escrow agent shall promptly pay the designated percentage of escrowed principal and the same percentage of the accumulated escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions

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that are not inconsistent with subsection (c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent.

SECTION 8. IC 4-20.5-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) This section applies only to ~~the following:~~

~~(1)~~ the transfer of property to a political subdivision under section 10 of this chapter.

~~(2) The sale of property under sections 11 through 16 of this chapter.~~

(b) This section does not apply under the following circumstances:

(1) The lease of property for a term of four (4) years or less.

(2) If the commissioner determines that the value of the property is likely to be less than either of the following:

(A) Five thousand dollars ($5,000).

(B) An amount established by the department in rules adopted under IC 4-22-2.

(c) The property shall be appraised by an appraiser who has the qualifications determined by the commissioner.

(d) The transferring agency shall pay for the cost of the appraisal.

SECTION 9. IC 4-20.5-7-10.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.7. ~~(a) This section does not apply if the value of the state property is more than ten thousand dollars ($10,000).~~

~~(b)~~ **(a)** The department may transfer state property to a person in exchange for property of like value transferred by the person to the state:

(1) to:

(A) settle a dispute relating to either or both of the properties; **or**

(B) improve:

(i) the state's ability to manage state property; or

(ii) access to state property; and

(2) without offering to transfer the state property:

(A) to state agencies, state educational institutions, or a political subdivision under this chapter; or

(B) after a sale of the property under this chapter.

~~(c)~~ **(b)** The department must establish that properties exchanged under this section are of like value through appraisals or other means approved by the commissioner.

SECTION 10. IC 4-20.5-7-11 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. **(a)** The department may sell the property through ~~either~~ **any** of the following:

(1) Competitive bids.

(2) By auction.

(3) By request for proposals.

(b) The department may enter into negotiations with the respondent who has the highest offer only if the negotiations are documented. Negotiation documentation must include the following:

(1) A log of the date and time of each meeting with a respondent. The log must include the identity of the respondent.

(2) A description of the nature of all communications with a respondent.

(3) Subject to subsection (d), a copy of all written communications, including electronic communications, with each respondent.

(c) Except as provided in subsection (d), the contents of the contract file are subject to public inspection.

(d) Proprietary information included with a response, including trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the invitation for bids, live auction, or requests for proposals, is not subject to public inspection.

(e) The negotiation documentation is subject to public inspection only after the transfer of the property.

SECTION 11. IC 4-31-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Applicants for a license issued by the commission shall submit their fingerprints to the commission once. ~~every five (5) years.~~ Except as provided in subsection (d), the fingerprints shall be submitted as follows:

(1) The commission shall have fingerprints taken of an applicant for a license before approving the applicant for admission to the racing premises.

(2) Persons not appearing at the racing premises shall submit their fingerprints in the manner prescribed by the commission.

(b) Except as provided in subsection (d), fingerprints required by this section must be submitted on forms prescribed by the commission.

(c) The commission may forward to the Federal Bureau of Investigation or any other agency for processing all fingerprints submitted by license applicants. The commission shall maintain a file of fingerprints.

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(d) The commission may accept the results of fingerprints taken within the preceding five (5) years and accepted by a racing body in another racing jurisdiction. The commission may require that acceptance of fingerprints under this subsection be dependent on the existence of a reciprocal agreement through which the state providing the fingerprints agrees to accept fingerprints from Indiana.

(e) The commission shall coordinate with the state police department for the storage of fingerprints submitted under this section.

SECTION 12. IC 12-7-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 103. "Health facility", ~~means the following:~~

~~(1) For purposes of IC 12-10-5.5, the meaning set forth in IC 12-10-5.5-2.~~

~~(2)~~ for purposes of IC 12-10-12, **has** the meaning set forth in IC 12-10-12-3.

SECTION 13. IC 12-7-2-168 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 168. "Respite care" means the following:

(1) For purposes of ~~IC 12-10-4 and~~ IC 12-10-5, temporary care or supervision of an individual with Alzheimer's disease or a related senile dementia that is provided because the individual's family or caretaker is temporarily unable or unavailable to provide needed care.

(2) For purposes of IC 12-22-1, the meaning set forth in IC 12-22-1-1.

SECTION 14. IC 12-10-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. The bureau shall perform the following duties:

(1) Provide a comprehensive and coordinated service system for Indiana's aging population, giving high priority to those individuals in greatest need.

(2) Conduct studies and research into the needs and problems of the aging.

(3) Ensure participation by the aging in the planning and operation of all phases of the system.

(4) Provide a focal point for advocacy, coordination, monitoring, and evaluation of programs for the aging and the aged.

(5) Provide for the performance of any other functions required by regulations established under the Older Americans Act (42 U.S.C. 3001 et seq.).

(6) Function as the sole state agency to develop a comprehensive

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plan to meet the needs of the aged.

(7) Evaluate programs, services, and facilities for the aged and determine the extent to which those programs, services, and facilities meet the needs of the aged.

(8) Coordinate programs, services, and facilities furnished for the aged by state agencies and make recommendations regarding those programs, services, and facilities to the governor and the general assembly.

(9) Receive and disburse federal money made available for providing services to the aged or related purposes.

(10) Administer any state plan for the aging required by federal law.

(11) Provide consultation and assistance to communities and groups developing local services for the aged.

(12) Promote community education regarding the problems of the aged through institutes, publications, radio, television, and the press.

(13) Cooperate with agencies of the federal government in studies and conferences designed to examine the needs of the aged and prepare programs and facilities to meet those needs.

(14) Establish and maintain information and referral sources throughout Indiana when not provided by other agencies.

(15) Act, in accordance with regulations established under the Older Americans Act (42 U.S.C. 3001 et seq.), as the agent for providing state money to the area agencies on aging designated in each planning and service region in Indiana.

(16) Initiate, evaluate, and provide assistance for improving programs in cooperation with all other state agencies having concerns or responsibility for the aged.

~~(17) Conduct an annual conference on the problems of the aging and the aged.~~

~~(18)~~ **(17)** Designate area agencies on aging in each planning and service region in Indiana.

~~(19)~~ **(18)** Examine the needs of the aged and prepare programs and facilities to meet those needs.

SECTION 15. IC 12-10-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. ~~(a)~~ The task force shall ~~assist the division in carrying out the division's duties under IC 12-10-4 and IC 12-10-5.5, including the formulation of rules adopted under IC 12-10-4.~~

~~(b) The task force shall~~ do the following:

(1) Identify areas of concern to be addressed by the division.

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(2) Compile available research in the area of Alzheimer's disease or related senile dementia.

(3) Recommend services to the division to meet the needs of individuals with Alzheimer's disease or related senile dementia, including the needs of the individual's families.

(4) Recommend the development of training materials by the division for persons who care for or provide services to individuals with Alzheimer's disease or related senile dementia.

SECTION 16. IC 12-12.7-2-17, AS ADDED BY P.L.93-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17. (a) A family shall participate in the cost of programs and services provided under this chapter to the extent allowed by federal law according to the following cost participation schedule:

Percentage of Federal Income Poverty Level		Copayment Per Treatment	Maximum Monthly Cost Share
At Least	But Not More Than		
0%	250%	$ 0	$ 0
251%	350%	$ 3	~~$ 24~~ **$30**
351%	450%	$ 6	~~$ 48~~ **$60**
451%	550%	$ 15	~~$ 120~~ **$150**
551%	650%	$ 25	~~$ 200~~ **$250**
651%	750%	$ 50	~~$ 400~~ **$500**
751%	850%	$ 75	~~$ 600~~ **$750**
851%	1000%	$ 100	~~$ 800~~ **$1,000**
1001%		$ 120	~~$ 960~~ **$1,200**

(b) A cost participation plan used by the division for families to participate in the cost of the programs and services provided under this chapter:

(1) must:

(A) be based on income and ability to pay;

(B) provide for a review of a family's cost participation amount:

(i) annually; and

(ii) within thirty (30) days after the family reports a reduction in income; and

(C) allow the division to waive a required copayment if other medical expenses or personal care needs expenses for any member of the family reduce the level of income the family has available to pay copayments under this section;

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(2) may allow a family to voluntarily contribute payments that exceed the family's required cost participation amount;

(3) must require the family to allow the division access to all health care coverage information that the family has concerning the infant or toddler who is to receive services;

(4) must require families to consent to the division billing third party payors for early intervention services provided;

(5) may allow the division to waive the billing to third party payors if the family is able to demonstrate financial or personal hardship on the part of the family member; and

(6) must require the division to waive the family's monthly copayments in any month for those services for which it receives payment from the family's health insurance coverage.

(c) Funds received through a cost participation plan under this section must be used to fund programs described in section 18 of this chapter.

SECTION 17. IC 14-21-1-14, AS AMENDED BY P.L.2-2007, SECTION 171, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) This section does not apply to real property that is owned by a state educational institution.

(b) The Indiana department of administration shall notify the division of a proposed transfer of real property owned by the state at the earliest planning stage and ~~no~~ **not** later than ninety (90) days before the date of the proposed transfer.

(c) The division shall:

(1) inspect the property; and

(2) notify the Indiana department of administration of the location of each historic site or historic structure on the property;

not later than thirty (30) days after receiving notice under subsection (b). If the division does not notify the Indiana department of administration within thirty (30) days after receiving notice, the Indiana department of administration may proceed with the proposed transfer.

~~(d) Real property owned by the state may not be sold or transferred until the division has stated in writing that the property does not, to the best of the division's knowledge, contain a historic site or historic structure.~~

~~(e)~~ **(d)** If the Indiana department of administration receives notice of a historic site or historic structure on the property, the Indiana department of administration shall reserve control of the appropriate historic property by means of a covenant or an easement contained in the transferring instrument.

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~~(f)~~ **(e)** The ~~division of state museums and historic sites~~ **department** shall administer property reserved under subsection ~~(c).~~ **(d).**

SECTION 18. IC 14-22-4-6, AS AMENDED BY P.L.132-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) On July 1 of each year:

(1) all of the accumulated earnings in the fund; plus

(2) two and one-half percent (2 1/2%) of the money in the fund, less the accumulated earnings;

shall be transferred to the fish and wildlife fund to maintain the automated point of sale licensing system implemented under IC 14-22-12-7.5. Any unused part of the transfer under this subsection may be used for the other purposes specified in IC 14-22-3-5(a).

(b) The director:

(1) with the approval of the commission;

(2) with the approval of the budget agency; and

(3) after review by the budget committee;

may use money in the fund to acquire real property that will be used and managed for hunting and fishing. ~~The money used under this subsection to acquire real property may not exceed fifty percent (50%) of the appraised value of the real property.~~

(c) The money in the fund may be used only for the purposes authorized in this section.

SECTION 19. IC 20-21-4-3, AS ADDED BY P.L.1-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The board shall prescribe, subject to the approval of the state personnel department and the budget agency, a salary schedule for the school. ~~using a daily rate of pay for each teacher that must be equal to that of the largest school corporation in the county in which the school is located.~~

(b) The board shall prescribe the terms of the annual contract awarded to licensed teachers qualifying for payment under the salary schedule as described in subsection (a).

(c) The hours of work for all teachers shall be set in accordance with IC 4-15-2.

SECTION 20. IC 20-22-4-3, AS ADDED BY P.L.1-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The board shall prescribe, subject to the approval of the state personnel department and the budget agency, a salary schedule for the school. ~~using a daily rate of pay for each teacher, that must be equal to that of the largest school corporation in the county in which the school is located.~~

(b) The board shall prescribe the terms of the annual contract

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awarded to licensed teachers qualifying for payment under the salary schedule as described in subsection (a).

(c) The hours of work for all teachers shall be set in accordance with IC 4-15-2.

SECTION 21. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2010]: IC 12-7-2-14.3; IC 12-10-4; IC 12-10-5.5; IC 12-10-11-4.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 35, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 35 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President:

The Senate Committee on Appropriations, to which was referred Senate Bill No. 35, 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 6, line 6, reset in roman "Maximum".
Page 6, line 7, reset in roman "Monthly".
Page 6, line 8, reset in roman "Cost Share".
Page 6, line 11, reset in roman "$0".
Page 6, line 12, after "$24" insert "**$30**".
Page 6, line 13, after "$48" insert "**$60**".
Page 6, line 14, after "$120" insert "**$150**".
Page 6, line 15, after "$200" insert "**$250**".
Page 6, line 16, after "$400" insert "**$500**".
Page 6, line 17, after "$600" insert "**$750**".

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Page 6, line 18, after "$800" insert "**$1,000**".
Page 6, line 19, after "$960" insert "**$1,200**".

and when so amended that said bill do pass.

(Reference is to SB 35 as printed January 20, 2010.)

DILLON, Ranking Member

Committee Vote: Yeas 8, Nays 4.

SENATE MOTION

Madam President: I move that Senate Bill 35 be amended to read as follows:
Page 7, delete lines 28 through 42.
Delete page 8.
Page 9, delete lines 1 through 2.
Renumber all SECTIONS consecutively.

(Reference is to SB 35 as printed January 29, 2010.)

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 35 be amended to read as follows:
Page 2, after line 42, begin a new paragraph and insert:
"SECTION 3. IC 4-13.6-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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~~ **one hundred fifty** thousand dollars ~~($25,000).~~ **($150,000).**
(4) IC 5-16-8.
(5) IC 5-16-9.
SECTION 4. IC 4-13.6-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Except as

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provided by this chapter and IC 16-33-4-10, if the estimated cost of a public works project is at least ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a public works project is at least ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division shall develop contract documents for a public works contract and keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The division shall advertise for bids under section 8 of this chapter. The director shall award a contract under IC 4-13.6-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid. The director may waive filing of the financial statement.

(e) After bids are opened but before a contract is awarded, the director may require a contractor to submit a statement of the contractor's experience, a proposed plan of performing the work, and a listing of the equipment that is available to the contractor for performance of the work.

(f) The statements required by this section shall be submitted on forms approved by the state board of accounts. The forms shall be based, so far as applicable, on standard questionnaires and financial statements for contractors used in investigating the qualifications of contractors on public construction work.

(g) The division shall reject the bid of a contractor if:

(1) the estimated cost of the public works project is one hundred fifty thousand dollars ($150,000) or more and the contractor is not qualified under chapter 4 of this article;

(2) the estimated cost of the public works project is less than one hundred fifty thousand dollars ($150,000) and the director makes a written determination, based upon information provided under subsections (d) and (e), that the contractor is not qualified to perform the public works contract;

(3) the contractor has failed to perform a previous contract with the state satisfactorily and has submitted the bid during a period of suspension imposed by the director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the director);

(4) the contractor has not complied with a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or

(5) the contractor has not complied with any requirement under section 2.5 of this chapter.

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(h) The division shall keep a record of all bids. The state board of accounts shall approve the form of this record, and the record must include at least the following information:

(1) The name of each contractor.

(2) The amount bid by each contractor.

(3) The name of the contractor making the lowest bid.

(4) The name of the contractor to whom the contract was awarded.

(5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.

(6) Purchase order numbers.

SECTION 5. IC 4-13.6-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) If the estimated cost of a public works project is less than ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** the division may award a public works contract either under section 2 of this chapter or under this section, at the discretion of the director.

(b) If the director awards a contract under this section, the division shall invite quotations from at least three (3) contractors known to the division to deal in the work required to be done. However, if fewer than three (3) contractors are known to the division to be qualified to perform the work, the division shall invite quotations from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division may authorize the governmental body for which the public work is to be performed to invite quotations, but award of a contract based upon those quotations is the responsibility of the division.

(d) Quotations given by a contractor under this section must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the division awards a public works contract.

(e) The division shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirement imposed under section 2.5 of this chapter.

SECTION 6. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) If the estimated cost of a public works project is less than ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000),~~ **($150,000),** 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

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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) 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 ~~seventy-five~~ **one hundred fifty** thousand dollars ~~($75,000).~~ **($150,000).**

(c) 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 7. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) If the estimated cost of a public works project is ~~one hundred fifty thousand~~ **one million** dollars ~~($150,000)~~ **($1,000,000)** or more, the division shall include as part of the public works contract provisions for the retainage of portions of payments by the division to the contractor, by the contractor to subcontractors, and for the payment of subcontractors and suppliers by the contractor. The contract must provide that the division may withhold from the contractor sufficient funds from the contract price to pay subcontractors and suppliers as provided in section 4 of this chapter.

(b) A public works contract and contracts between contractors and

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subcontractors, if portions of the public works contract are subcontracted, may include a provision that at the time any retainage is withheld, the division or the contractor, as the case may be, may place the retainage in an escrow account, as mutually agreed, with:

(1) a bank;

(2) a savings and loan institution;

(3) the state of Indiana; or

(4) an instrumentality of the state of Indiana;

as escrow agent. The parties to the contract shall select the escrow agent by mutual agreement. The parties to the agreement shall enter into a written agreement with the escrow agent.

(c) The escrow agreement must provide the following:

(1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.

(2) The escrow agent shall hold the escrowed principal and income until it receives notice from both of the other parties to the escrow agreement specifying the percentage of the escrowed principal to be released from the escrow and the persons to whom this percentage is to be released. When it receives this notice, the escrow agent shall promptly pay the designated percentage of escrowed principal and the same percentage of the accumulated escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions that are not inconsistent with subsection (c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent.".

Page 3, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 9. IC 4-20.5-7-10.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.7. ~~(a) This section does not apply if the value of the state property is more than ten thousand dollars ($10,000).~~

~~(b)~~ **(a)** The department may transfer state property to a person in exchange for property of like value transferred by the person to the state:

(1) to:

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(A) settle a dispute relating to either or both of the properties; **or**

(B) improve:

(i) the state's ability to manage state property; or

(ii) access to state property; and

(2) without offering to transfer the state property:

(A) to state agencies, state educational institutions, or a political subdivision under this chapter; or

(B) after a sale of the property under this chapter.

~~(c)~~ **(b)** The department must establish that properties exchanged under this section are of like value through appraisals or other means approved by the commissioner.

SECTION 10. IC 4-20.5-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. **(a)** The department may sell the property through ~~either~~ **any** of the following:

(1) Competitive bids.

(2) By auction.

(3) By request for proposals.

(b) The department may enter into negotiations with the respondent who has the highest offer only if the negotiations are documented. Negotiation documentation must include the following:

(1) A log of the date and time of each meeting with a respondent. The log must include the identity of the respondent.

(2) A description of the nature of all communications with a respondent.

(3) Subject to subsection (d), a copy of all written communications, including electronic communications, with each respondent.

(c) Except as provided in subsection (d), the contents of the contract file are subject to public inspection.

(d) Proprietary information included with a response, including trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the invitation for bids, live auction, or requests for proposals, is not subject to public inspection.

(e) The negotiation documentation is subject to public inspection only after the transfer of the property.".

Page 7, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 17. IC 14-21-1-14, AS AMENDED BY P.L.2-2007, SECTION 171, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2010]: Sec. 14. (a) This section does not apply to real property that is owned by a state educational institution.

(b) The Indiana department of administration shall notify the division of a proposed transfer of real property owned by the state at the earliest planning stage and ~~no~~ **not** later than ninety (90) days before the date of the proposed transfer.

(c) The division shall:

(1) inspect the property; and

(2) notify the Indiana department of administration of the location of each historic site or historic structure on the property;

not later than thirty (30) days after receiving notice under subsection (b). If the division does not notify the Indiana department of administration within thirty (30) days after receiving notice, the Indiana department of administration may proceed with the proposed transfer.

~~(d) Real property owned by the state may not be sold or transferred until the division has stated in writing that the property does not, to the best of the division's knowledge, contain a historic site or historic structure.~~

~~(e)~~ **(d)** If the Indiana department of administration receives notice of a historic site or historic structure on the property, the Indiana department of administration shall reserve control of the appropriate historic property by means of a covenant or an easement contained in the transferring instrument.

~~(f)~~ **(e)** The ~~division of state museums and historic sites~~ **department** shall administer property reserved under subsection ~~(c).~~ **(d).**".

Renumber all SECTIONS consecutively.

(Reference is to SB 35 as printed January 20, 2010.)

CHARBONNEAU

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