



Reprinted  
March 25, 2011

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# ENGROSSED HOUSE BILL No. 1183

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DIGEST OF HB 1183 (Updated March 24, 2011 2:05 pm - DI 14)

**Citations Affected:** IC 2-5; IC 5-22; IC 36-1.

**Synopsis:** Indiana business price preferences. Provides an additional preference for purchases made by a state agency for supplies manufactured, assembled, grown, or produced by an Indiana business in Indiana. Deletes a provision specifying that the Indiana price preferences are ignored in certain circumstances if an offeror is from a state bordering Indiana. Requires the commission on military and veterans' affairs to study veterans' procurement preferences. Provides a price preference to local Indiana businesses bidding on purchasing and public works contracts awarded by political subdivisions.

**Effective:** July 1, 2011.

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## Dermody, Goodin

(SENATE SPONSORS — CHARBONNEAU, ARNOLD, TOMES, PAUL)

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January 10, 2011, read first time and referred to Committee on Government and Regulatory Reform.

January 25, 2011, amended, reported — Do Pass.

February 8, 2011, read second time, amended, ordered engrossed.

February 9, 2011, engrossed.

February 10, 2011, read third time, passed. Yeas 91, nays 0.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Commerce and Economic Development.

March 8, 2011, amended, reported favorably — Do Pass.

March 24, 2011, read second time, amended, ordered engrossed.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1183

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 2-5-20-7 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) The commission shall study  
3 the following:

4 (1) Matters relating to veterans and veterans' affairs.

5 (2) Matters relating to the active and reserve members of the  
6 armed forces of the United States.

7 (b) The commission may study other topics assigned by the  
8 legislative council or as directed by the commission's chairman.

9 **(c) The commission shall study veterans' procurement**  
10 **preferences and provide the legislative council with a report before**  
11 **November 1, 2011. The report shall be in electronic format under**  
12 **IC 5-14-6. As part of the study, the commission shall work with the**  
13 **Indiana department of administration created by IC 4-13-1-2.**

14 SECTION 2. IC 5-22-15-20.5, AS AMENDED BY P.L.123-2009,  
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2011]: Sec. 20.5. (a) This section applies only to a contract  
17 awarded by a state agency.

**EH 1183—LS 6306/DI 14+**



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- 1 (b) As used in this section, "Indiana business" refers to any of the
- 2 following:
- 3 (1) A business whose principal place of business is located in
- 4 Indiana.
- 5 (2) A business that pays a majority of its payroll (in dollar
- 6 volume) to residents of Indiana.
- 7 (3) A business that employs Indiana residents as a majority of its
- 8 employees.
- 9 (4) A business that makes significant capital investments in
- 10 Indiana.
- 11 (5) A business that has a substantial positive economic impact on
- 12 Indiana as defined by criteria developed under subsection (c).
- 13 (c) The Indiana department of administration shall consult with the
- 14 Indiana economic development corporation in developing criteria for
- 15 determining whether a business is an Indiana business under subsection
- 16 (b). The Indiana department of administration may consult with the
- 17 Indiana economic development corporation to determine whether a
- 18 particular business meets the requirements of this section and the
- 19 criteria developed under this subsection.
- 20 (d) There are the following price preferences for supplies purchased
- 21 from an Indiana business:
- 22 (1) Five percent (5%) for a purchase expected by the state agency
- 23 to be less than five hundred thousand dollars (\$500,000).
- 24 (2) Three percent (3%) for a purchase expected by the state
- 25 agency to be at least five hundred thousand dollars (\$500,000) but
- 26 less than one million dollars (\$1,000,000).
- 27 (3) One percent (1%) for a purchase expected by the state agency
- 28 to be at least one million dollars (\$1,000,000).
- 29 (e) Notwithstanding subsection (d), a state agency shall award a
- 30 contract to the lowest responsive and responsible offeror, regardless of
- 31 the preference provided in this section, if:
- 32 (1) the offeror is an Indiana business; or
- 33 (2) the offeror is a business from a state bordering Indiana and the
- 34 business's home state does not provide a preference to the home
- 35 state's businesses more favorable than is provided by Indiana law
- 36 to Indiana businesses.
- 37 (e) If an Indiana business offers to provide supplies
- 38 manufactured, assembled, grown, or produced in Indiana, and if
- 39 two (2) or more bids submitted were the same, the following price
- 40 preference is available to the Indiana business, in addition to the
- 41 price preference available under subsection (d):
- 42 (1) Three percent (3%) for a purchase expected by the state

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agency to be less than five hundred thousand dollars (\$500,000).

(2) Two percent (2%) for a purchase expected by the state agency to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars (\$1,000,000).

**The Indiana department of administration shall adopt rules under IC 4-22-2 to establish guidelines for determining when supplies are manufactured or assembled in Indiana.**

(f) A business that wants to claim a preference provided under this section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business. If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

**SECTION 3. IC 5-22-15-20.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 20.9. (a) This section applies only to a contract awarded by a political subdivision.**

**(b) As used in this section, "affected county" refers to a county:**

**(1) in which the political subdivision awarding a contract under this article is located; or**

**(2) that is adjacent to the county described in subdivision (1).**

**(c) As used in this section, "local Indiana business" refers to any of the following:**

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- 1           **(1) A business whose principal place of business is located in**
- 2           **an affected county.**
- 3           **(2) A business that pays a majority of its payroll (in dollar**
- 4           **volume) to residents of affected counties.**
- 5           **(3) A business that employs residents of affected counties as**
- 6           **a majority of its employees.**
- 7           **(4) A business that makes significant capital investments in**
- 8           **the affected counties as defined in rules adopted by the**
- 9           **political subdivision.**
- 10          **(5) A business that has a substantial positive economic impact**
- 11          **on the affected counties as defined by criteria in rules adopted**
- 12          **by the political subdivision.**
- 13          **(d) There are the following price preferences for supplies**
- 14          **purchased from a local Indiana business:**
- 15               **(1) Five percent (5%) for a purchase expected by the**
- 16               **purchasing agency to be less than fifty thousand dollars**
- 17               **(\$50,000).**
- 18               **(2) Three percent (3%) for a purchase expected by the**
- 19               **purchasing agency to be at least fifty thousand dollars**
- 20               **(\$50,000) but less than one hundred thousand dollars**
- 21               **(\$100,000).**
- 22               **(3) One percent (1%) for a purchase expected by the**
- 23               **purchasing agency to be at least one hundred thousand**
- 24               **dollars (\$100,000).**
- 25          **(e) Notwithstanding subsection (d), a purchasing agency may**
- 26          **award a contract to the lowest responsive and responsible offeror,**
- 27          **regardless of the preference provided in this section, if the lowest**
- 28          **responsive and responsible offeror is a local Indiana business.**
- 29          **(f) A business that wants to claim a preference provided under**
- 30          **this section must do all the following:**
- 31               **(1) State in the business's bid that the business claims the**
- 32               **preference provided by this section.**
- 33               **(2) Provide the following information to the purchasing**
- 34               **agency:**
- 35                       **(A) The location of the business's principal place of**
- 36                       **business. If the business claims the preference as a local**
- 37                       **Indiana business described in subsection (c)(1), a statement**
- 38                       **explaining the reasons the business considers the location**
- 39                       **named as the business's principal place of business.**
- 40                       **(B) The amount of the business's total payroll and the**
- 41                       **amount of the business's payroll paid to residents of**
- 42                       **affected counties.**

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- (C) The number of the business's employees and the number of the business's employees who are residents of affected counties.**
- (D) If the business claims the preference as a local Indiana business described in subsection (c)(4), a description of the capital investments made in the affected counties and a statement of the amount of those capital investments.**
- (E) If the business claims the preference as a local Indiana business described in subsection (c)(5), a description of the substantial positive economic impact the business has on the affected counties.**

SECTION 4. IC 36-1-12-4, AS AMENDED BY P.L.113-2010, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:

- (1) at least seventy-five thousand dollars (\$75,000) in:
  - (A) a consolidated city or second class city;
  - (B) a county containing a consolidated city or second class city; or
  - (C) a regional water or sewage district established under IC 13-26; or
- (2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).
- (b) The board must comply with the following procedure:
  - (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
  - (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
  - (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.
  - (4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.
  - (5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of

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1 time between the date of the first publication and receiving bids  
 2 may not be more than:  
 3 (A) six (6) weeks if the estimated cost of the public works  
 4 project is less than twenty-five million dollars (\$25,000,000);  
 5 and  
 6 (B) ten (10) weeks if the estimated cost of the public works  
 7 project is at least twenty-five million dollars (\$25,000,000).  
 8 (6) If the cost of a project is one hundred thousand dollars  
 9 (\$100,000) or more, the board shall require the bidder to submit  
 10 a financial statement, a statement of experience, a proposed plan  
 11 or plans for performing the public work, and the equipment that  
 12 the bidder has available for the performance of the public work.  
 13 The statement shall be submitted on forms prescribed by the state  
 14 board of accounts.  
 15 (7) The board may not require a bidder to submit a bid before the  
 16 meeting at which bids are to be received. The meeting for  
 17 receiving bids must be open to the public. All bids received shall  
 18 be opened publicly and read aloud at the time and place  
 19 designated and not before.  
 20 (8) Except as provided in subsection (c) or **section 22 of this**  
 21 **chapter**, the board shall:  
 22 (A) award the contract for public work or improvements to the  
 23 lowest responsible and responsive bidder; or  
 24 (B) reject all bids submitted.  
 25 (9) If the board awards the contract to a bidder other than the  
 26 lowest bidder, the board must state in the minutes or memoranda,  
 27 at the time the award is made, the factors used to determine which  
 28 bidder is the lowest responsible and responsive bidder and to  
 29 justify the award. The board shall keep a copy of the minutes or  
 30 memoranda available for public inspection.  
 31 (10) In determining whether a bidder is responsive, the board may  
 32 consider the following factors:  
 33 (A) Whether the bidder has submitted a bid or quote that  
 34 conforms in all material respects to the specifications.  
 35 (B) Whether the bidder has submitted a bid that complies  
 36 specifically with the invitation to bid and the instructions to  
 37 bidders.  
 38 (C) Whether the bidder has complied with all applicable  
 39 statutes, ordinances, resolutions, or rules pertaining to the  
 40 award of a public contract.  
 41 (11) In determining whether a bidder is a responsible bidder, the  
 42 board may consider the following factors:

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- 1 (A) The ability and capacity of the bidder to perform the work.
- 2 (B) The integrity, character, and reputation of the bidder.
- 3 (C) The competence and experience of the bidder.
- 4 (12) The board shall require the bidder to submit an affidavit:
- 5 (A) that the bidder has not entered into a combination or
- 6 agreement:
- 7 (i) relative to the price to be bid by a person;
- 8 (ii) to prevent a person from bidding; or
- 9 (iii) to induce a person to refrain from bidding; and
- 10 (B) that the bidder's bid is made without reference to any other
- 11 bid.
- 12 (c) Notwithstanding subsection (b)(8), a county may award sand,
- 13 gravel, asphalt paving materials, or crushed stone contracts to more
- 14 than one (1) responsible and responsive bidder if the specifications
- 15 allow for bids to be based upon service to specific geographic areas and
- 16 the contracts are awarded by geographic area. The geographic areas do
- 17 not need to be described in the specifications.
- 18 SECTION 5. IC 36-1-12-4.7, AS AMENDED BY P.L.195-2007,
- 19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2011]: Sec. 4.7. (a) This section applies whenever a public
- 21 work project is estimated to cost:
- 22 (1) at least twenty-five thousand dollars (\$25,000) and less than
- 23 one hundred thousand dollars (\$100,000) in:
- 24 (A) a consolidated city, second class city, or third class city
- 25 with a population of fifteen thousand (15,000) or more;
- 26 (B) a county containing a consolidated city or second class
- 27 city; or
- 28 (C) a regional water or sewage district established under
- 29 IC 13-26; or
- 30 (2) at least twenty-five thousand dollars (\$25,000) and less than
- 31 fifty thousand dollars (\$50,000) in a political subdivision or
- 32 agency not described in subdivision (1).
- 33 (b) The board must proceed under the following provisions:
- 34 (1) The board shall invite quotes from at least three (3) persons
- 35 known to deal in the class of work proposed to be done by mailing
- 36 them a notice stating that plans and specifications are on file in a
- 37 specified office. The notice must be mailed not less than seven (7)
- 38 days before the time fixed for receiving quotes.
- 39 (2) The board may not require a person to submit a quote before
- 40 the meeting at which quotes are to be received. The meeting for
- 41 receiving quotes must be open to the public. All quotes received
- 42 shall be opened publicly and read aloud at the time and place

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1 designated and not before.  
 2 (3) **Except as permitted in section 22 of this chapter**, the board  
 3 shall award the contract for the public work to the lowest  
 4 responsible and responsive quoter.  
 5 (4) The board may reject all quotes submitted.  
 6 SECTION 6. IC 36-1-12-5, AS AMENDED BY P.L.195-2007,  
 7 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2011]: Sec. 5. (a) This section applies whenever a public work  
 9 project is estimated to cost less than fifty thousand dollars (\$50,000).  
 10 Except as provided in subsection (g) for local boards of aviation  
 11 commissioners and local airport authorities, if a contract is to be  
 12 awarded, the board may proceed under section 4 of this chapter or  
 13 under subsection (b) or (c).  
 14 (b) The board must proceed under the following provisions:  
 15 (1) The board shall invite quotes from at least three (3) persons  
 16 known to deal in the class of work proposed to be done by mailing  
 17 them a notice stating that plans and specifications are on file in a  
 18 specified office. The notice must be mailed not less than seven (7)  
 19 days before the time fixed for receiving quotes.  
 20 (2) The board may not require a person to submit a quote before  
 21 the meeting at which quotes are to be received. The meeting for  
 22 receiving quotes must be open to the public. All quotes received  
 23 shall be opened publicly and read aloud at the time and place  
 24 designated and not before.  
 25 (3) **Except as permitted in section 22 of this chapter**, the board  
 26 shall award the contract for the public work to the lowest  
 27 responsible and responsive quoter.  
 28 (4) The board may reject all quotes submitted.  
 29 (5) If the board rejects all quotes under subdivision (4), ~~of this~~  
 30 ~~section~~, the board may negotiate and enter into agreements for the  
 31 work in the open market without inviting or receiving quotes if  
 32 the board establishes in writing the reasons for rejecting the  
 33 quotes.  
 34 (c) The board may not proceed under subsection (b) for the  
 35 resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge,  
 36 unless:  
 37 (1) the weight or volume of the materials in the project is capable  
 38 of accurate measurement and verification; and  
 39 (2) the specifications define the geographic points at which the  
 40 project begins and ends.  
 41 (d) For the purposes of this section, if contiguous sections of a road,  
 42 street, or bridge are to be resurfaced in a calendar year, all of the work

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shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in IC 5-22 and perform the public work by means of its own workforce without awarding a public work contract.

(f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

(g) This subsection applies to local boards of aviation commissioners operating under IC 8-22-2 and local airport authorities operating under IC 8-22-3. If the contract is to be awarded by a board to which this subsection applies, or to a designee of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required, **except as permitted in section 22 of this chapter.** The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than fifty thousand dollars (\$50,000) to the airport personnel in charge of airport public works projects.

(i) Quotes for public works projects costing less than twenty-five thousand dollars (\$25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection.

SECTION 7. IC 36-1-12-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 22. (a) The definitions in IC 5-22-15, including the definitions in IC 5-22-15-20.9, apply in this section.**

**(b) The procedures described in IC 5-22-15 for determining adjusted offers, price preference percentage, and total adjusted offers apply in this section.**

**(c) The price preferences stated in IC 5-22-15-20.9 apply in this section.**

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1           **(d) Notwithstanding provisions of this chapter that require the**  
2 **award of a contract to the lowest responsive and responsible bidder**  
3 **or the lowest responsive and responsible quoter, but subject to**  
4 **subsection (e), a contract shall be awarded to the lowest responsive**  
5 **and responsible local Indiana business that claims the preference**  
6 **provided by this section.**  
7           **(e) Notwithstanding subsection (d), a contract shall be awarded**  
8 **to the lowest responsive and responsible bidder or quoter,**  
9 **regardless of the preference provided in this section, if the lowest**  
10 **responsive and responsible bidder or quoter is a local Indiana**  
11 **business.**  
12           **(f) A bidder or quoter that wants to claim the preference under**  
13 **this section must claim the preference in the same manner that a**  
14 **business claims the preference under IC 5-22-15-20.9(f).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1183, has had the same under consideration and begs leave to report the same back to the House 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 2-5-31 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

**Chapter 31. Interim Study Committee on Veterans' Procurement Preferences**

**Sec. 1. As used in this chapter, "committee" refers to the interim study committee on veterans' procurement preferences established by section 2 of this chapter.**

**Sec. 2. The interim study committee on veterans' procurement preferences is established.**

**Sec. 3. The committee shall operate under the policies governing study committees adopted by the legislative council.**

**Sec. 4. The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including final reports.**

**Sec. 5. The committee shall study and make recommendations to the legislative council concerning a state preference procurement program to benefit veteran owned businesses in Indiana. The committee's research may include a review of veterans' preference programs in other states as well as municipal veterans' preference programs in Indiana.**

**Sec. 6. Before November 1, 2011, the committee shall issue a final report to the legislative council containing the findings and recommendations of the committee.**

**Sec. 7. This chapter expires December 31, 2011."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1183 as introduced.)

HINKLE, Chair

Committee Vote: yeas 9, nays 0.



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HOUSE MOTION

Mr. Speaker: I move that House Bill 1183 be amended to read as follows:

Page 2, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 2. IC 5-22-15-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) An offeror may claim one (1) of the following types of preference for which the offeror is eligible:

- (1) An Indiana business preference under rules adopted under section 20 of this chapter or IC 4-13.6-6-2.5.
- (2) A preference for supplies as provided by sections 16, 18, 19, and 24 of this chapter.
- (3) An Indiana small business preference as provided by section 23 of this chapter.
- (4) An Indiana farm product preference as provided by section 23.5 of this chapter.**

(b) An offeror may not claim more than one (1) preference as provided by sections 16, 18, 19, and 24 of this chapter for a given supply item.

(c) This section does not:

- (1) apply to; or
- (2) limit;

action of the Indiana department of administration under rules adopted under section 21 of this chapter."

Page 4, after line 1, begin a new paragraph and insert:

"SECTION 4. IC 5-22-15-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 23.5. (a) A governmental body may give up to a ten percent (10%) price preference for agricultural products grown, produced, or processed in Indiana.**

**(b) A governmental body may adopt rules to establish criteria to carry out this section."**

Re-number all SECTIONS consecutively.

(Reference is to HB 1183 as printed January 25, 2011.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1183 be amended to read as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 8, begin a new paragraph and insert: "SECTION 1. IC 2-5-20-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) The commission shall study the following:

- (1) Matters relating to veterans and veterans' affairs.
- (2) Matters relating to the active and reserve members of the armed forces of the United States.

(b) The commission may study other topics assigned by the legislative council or as directed by the commission's chairman.

**(c) The commission shall study veterans' procurement preferences and provide the legislative council with a report before November 1, 2011. The report shall be in electronic format under IC 5-14-6. As part of the study, the commission shall work with the Indiana department of administration created by IC 4-13-1-2."**

Page 3, line 8, after "Indiana," insert "**and if two (2) or more bids submitted were the same,**".

Page 3, line 9, delete "available," and insert "**available to the Indiana business,**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1183 as printed January 25, 2011.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Economic Development, to which was referred House Bill No. 1183, 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, delete lines 14 through 17.

Page 2, delete lines 1 through 16.



Page 4, delete lines 11 through 17.  
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1183 as reprinted February 9, 2011.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1183 be amended to read as follows:

Page 2, line 38, delete "manufactured or assembled" and insert "**manufactured, assembled, grown, or produced**".

(Reference is to EHB 1183 as printed March 9, 2011.)

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1183 be amended to read as follows:

Page 3, after line 32, begin a new paragraph and insert:

"SECTION 3. IC 5-22-15-20.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 20.9. (a) This section applies only to a contract awarded by a political subdivision.**

**(b) As used in this section, "affected county" refers to a county:**

**(1) in which the political subdivision awarding a contract under this article is located; or**

**(2) that is adjacent to the county described in subdivision (1).**

**(c) As used in this section, "local Indiana business" refers to any of the following:**

**(1) A business whose principal place of business is located in an affected county.**

**(2) A business that pays a majority of its payroll (in dollar volume) to residents of affected counties.**

**(3) A business that employs residents of affected counties as**

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a majority of its employees.

(4) A business that makes significant capital investments in the affected counties as defined in rules adopted by the political subdivision.

(5) A business that has a substantial positive economic impact on the affected counties as defined by criteria in rules adopted by the political subdivision.

(d) There are the following price preferences for supplies purchased from a local Indiana business:

(1) Five percent (5%) for a purchase expected by the purchasing agency to be less than fifty thousand dollars (\$50,000).

(2) Three percent (3%) for a purchase expected by the purchasing agency to be at least fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000).

(3) One percent (1%) for a purchase expected by the purchasing agency to be at least one hundred thousand dollars (\$100,000).

(e) Notwithstanding subsection (d), a purchasing agency may award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if the lowest responsive and responsible offeror is a local Indiana business.

(f) A business that wants to claim a preference provided under this section must do all the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the purchasing agency:

(A) The location of the business's principal place of business. If the business claims the preference as a local Indiana business described in subsection (c)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to residents of affected counties.

(C) The number of the business's employees and the number of the business's employees who are residents of affected counties.

(D) If the business claims the preference as a local Indiana business described in subsection (c)(4), a description of the

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**capital investments made in the affected counties and a statement of the amount of those capital investments.**

**(E) If the business claims the preference as a local Indiana business described in subsection (c)(5), a description of the substantial positive economic impact the business has on the affected counties.**

SECTION 4. IC 36-1-12-4, AS AMENDED BY P.L.113-2010, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:

- (1) at least seventy-five thousand dollars (\$75,000) in:
  - (A) a consolidated city or second class city;
  - (B) a county containing a consolidated city or second class city; or
  - (C) a regional water or sewage district established under IC 13-26; or
- (2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).

- (b) The board must comply with the following procedure:
  - (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
  - (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
  - (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.
  - (4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.
  - (5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of time between the date of the first publication and receiving bids may not be more than:
    - (A) six (6) weeks if the estimated cost of the public works project is less than twenty-five million dollars (\$25,000,000); and

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- (B) ten (10) weeks if the estimated cost of the public works project is at least twenty-five million dollars (\$25,000,000).
- (6) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.
- (7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before.
- (8) Except as provided in subsection (c) **or section 22 of this chapter**, the board shall:
  - (A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or
  - (B) reject all bids submitted.
- (9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.
- (10) In determining whether a bidder is responsive, the board may consider the following factors:
  - (A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.
  - (B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
  - (C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.
- (11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:
  - (A) The ability and capacity of the bidder to perform the work.
  - (B) The integrity, character, and reputation of the bidder.
  - (C) The competence and experience of the bidder.
- (12) The board shall require the bidder to submit an affidavit:
  - (A) that the bidder has not entered into a combination or

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agreement:

- (i) relative to the price to be bid by a person;
  - (ii) to prevent a person from bidding; or
  - (iii) to induce a person to refrain from bidding; and
- (B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

SECTION 5. IC 36-1-12-4.7, AS AMENDED BY P.L.195-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.7. (a) This section applies whenever a public work project is estimated to cost:

- (1) at least twenty-five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000) in:
  - (A) a consolidated city, second class city, or third class city with a population of fifteen thousand (15,000) or more;
  - (B) a county containing a consolidated city or second class city; or
  - (C) a regional water or sewage district established under IC 13-26; or

(2) at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000) in a political subdivision or agency not described in subdivision (1).

(b) The board must proceed under the following provisions:

- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.
- (2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- (3) **Except as permitted in section 22 of this chapter**, the board shall award the contract for the public work to the lowest responsible and responsive quoter.
- (4) The board may reject all quotes submitted.

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SECTION 6. IC 36-1-12-5, AS AMENDED BY P.L.195-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) **Except as permitted in section 22 of this chapter**, the board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

(5) If the board rejects all quotes under subdivision (4), ~~of this section~~, the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in IC 5-22 and perform the public work by means of its own workforce without awarding a public work contract.

(f) Before the board may perform any work under this section by

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means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

(g) This subsection applies to local boards of aviation commissioners operating under IC 8-22-2 and local airport authorities operating under IC 8-22-3. If the contract is to be awarded by a board to which this subsection applies, or to a designee of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required, **except as permitted in section 22 of this chapter**. The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than fifty thousand dollars (\$50,000) to the airport personnel in charge of airport public works projects.

(i) Quotes for public works projects costing less than twenty-five thousand dollars (\$25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection.

SECTION 7. IC 36-1-12-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 22. (a) The definitions in IC 5-22-15, including the definitions in IC 5-22-15-20.9, apply in this section.**

**(b) The procedures described in IC 5-22-15 for determining adjusted offers, price preference percentage, and total adjusted offers apply in this section.**

**(c) The price preferences stated in IC 5-22-15-20.9 apply in this section.**

**(d) Notwithstanding provisions of this chapter that require the award of a contract to the lowest responsive and responsible bidder or the lowest responsive and responsible quoter, but subject to subsection (c), a contract shall be awarded to the lowest responsive and responsible local Indiana business that claims the preference**

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provided by this section.

**(e) Notwithstanding subsection (d), a contract shall be awarded to the lowest responsive and responsible bidder or quoter, regardless of the preference provided in this section, if the lowest responsive and responsible bidder or quoter is a local Indiana business.**

**(f) A bidder or quoter that wants to claim the preference under this section must claim the preference in the same manner that a business claims the preference under IC 5-22-15-20.9(f)."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1183 as printed March 9, 2011.)

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