



April 15, 2011

**ENGROSSED  
HOUSE BILL No. 1216**

DIGEST OF HB 1216 (Updated April 13, 2011 11:58 am - DI 102)

**Citations Affected:** IC 5-16; noncode.

**Synopsis:** Public works projects. Raises the threshold for the application of the common construction wage statute from \$150,000 to \$250,000 for contracts awarded after December 31, 2011 and before January 1, 2013, and to \$350,000 for contracts awarded after December 31, 2012. Provides that a common construction wage committee (committee) must consider any written reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council or the Associated Builders and Contractors of Indiana when making a determination of the common construction wage for a public works project. Provides that a committee's determination may not address matters other than those specifically described in the statute. Provides that a public works project may not be artificially divided to avoid application of the common construction wage statute. Urges the legislative council to assign the topic of the use of an agreement with a labor organization on public works projects covered by a public works statute to a study committee during the 2011 legislative interim. Makes technical changes.

**Effective:** July 1, 2011.

**Davis**

(SENATE SPONSORS — WALKER, BOOTS, KRUSE)

January 12, 2011, read first time and referred to Committee on Employment, Labor and Pensions.

February 17, 2011, reported — Do Pass.

March 28, 2011, read second time, amended, ordered engrossed.

March 29, 2011, engrossed.

March 30, 2011, read third time, passed. Yeas 54, nays 44.

**SENATE ACTION**

March 31, 2011, read first time and referred to Committee on Pensions and Labor.

April 14, 2011, amended, reported favorably — Do Pass.

EH 1216—LS 7512/DI 75+



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April 15, 2011

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. 1216

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

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

- 1 SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Any firm, individual,
- 3 partnership, limited liability company, or corporation that is awarded
- 4 a contract by the state, a political subdivision, or a municipal
- 5 corporation for the construction of a public work, and any
- 6 subcontractor of the construction, shall pay for each class of work
- 7 described in subsection (c)(1) on the project a scale of wages that may
- 8 not be less than the common construction wage.
- 9 (b) For the purpose of ascertaining what the common construction
- 10 wage is in the county, the awarding governmental agency, before
- 11 advertising for the contract, shall set up a committee of five (5) persons
- 12 as follows:
- 13 (1) One (1) person representing labor, to be named by the
- 14 president of the state federation of labor.
- 15 (2) One (1) person representing industry, to be named by the
- 16 awarding agency.
- 17 (3) A third member to be named by the governor.

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1 (4) One (1) taxpayer who pays the tax that will be the funding  
2 source for the project and resides in the county where the project  
3 is located. The owner of the project shall make the appointment  
4 under this subdivision.

5 (5) One (1) taxpayer who pays the tax that will be the funding  
6 source for the project and resides in the county where the project  
7 is located. The legislative body (as defined in IC 36-1-2-9) for the  
8 county where the project is located shall make the appointment  
9 under this subdivision.

10 (c) As soon as appointed, the committee shall meet in the county  
11 where the project is located and determine in writing the following:

12 (1) A classification of the labor to be employed in the  
13 performance of the contract for the project, divided into the  
14 following three (3) classes:

- 15 (A) Skilled labor.
- 16 (B) Semiskilled labor.
- 17 (C) Unskilled labor.

18 (2) The wage per hour to be paid each of the classes.

19 The **committee's written determination may not address matters**  
20 **other than those required by subdivisions (1) and (2).** The  
21 committee is not required to consider information not presented to the  
22 committee at the meeting. IC 5-14-1.5 (open door law) applies to a  
23 meeting of the committee.

24 (d) The rate of wages determined under subsection (c) shall not be  
25 less than the common construction wage for each of the three (3)  
26 classes of wages described in subsection (c) that are currently being  
27 paid in the county where the project is located.

28 (e) ~~The provisions of This chapter shall~~ **does** not apply to contracts  
29 let by the Indiana department of transportation for the construction of  
30 highways, streets, and bridges. IC 8-23-9 applies to state highway  
31 projects.

32 (f) A determination under subsection (c) shall be made and filed  
33 with the awarding agency at least two (2) weeks prior to the date fixed  
34 for the letting, and a copy of the determination shall be furnished upon  
35 request to any person desiring to bid on the contract. The schedule is  
36 open to the inspection of the public.

37 (g) If the committee appointed under subsection (b) fails to act and  
38 to file a determination under subsection (c) at or before the time  
39 required under subsection (f), the awarding agency shall make the  
40 determination, and its finding shall be final.

41 (h) It shall be a condition of a contract awarded under this chapter  
42 that the successful bidder and all subcontractors shall comply strictly

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with the determination made under this section.

(i) ~~The provisions of This chapter do~~ **does** not apply to public projects in ~~this state~~ **Indiana** that would otherwise be subject to ~~the provisions of this chapter~~ that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant ~~shall consent~~ **consents** in writing that ~~the provisions of this chapter are~~ **is** applicable to the project.

(j) Notwithstanding any other law, ~~the provisions of this chapter~~ **apply applies** to projects that will be:

- (1) owned entirely; or
- (2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

(k) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs ~~are~~ less than ~~one hundred fifty thousand dollars (\$150,000)~~; **the following:**

- (1) For contracts awarded after December 31, 2011, and before January 1, 2013, two hundred fifty thousand dollars (\$250,000).**
- (2) For contracts awarded after December 31, 2012, three hundred fifty thousand dollars (\$350,000).**

SECTION 2. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The **following** definitions ~~in this section~~ apply throughout this chapter:

- (1) "Common construction wage" means a scale of wages for each class of work described in section 1(c)(1) of this chapter that is not less than the common construction wage of all construction wages being paid in the county where a project is located, as determined by the committee described in section 1(b) of this chapter after having considered **the following:**
  - (A) Reports from the department of workforce development.
  - ~~and~~
  - (B) Any reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council.**
  - (C) Any reports with respect to wage scales submitted by the Associated Builders and Contractors of Indiana.**
  - ~~(B)~~ **(D)** Any other information submitted by any person to the committee established under section 1(b) of this chapter.
- (2) "State" ~~of Indiana~~ includes any officer, board, commission, or other agency authorized by law to award contracts for the performance of public work on behalf of the state, ~~excepting~~ **except** as otherwise provided in this chapter.

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1 (3) "Municipal corporation" includes any county, city, town, or  
2 school corporation, as well as or any officer, board, commission,  
3 or other agency authorized by law to award contracts for the  
4 performance of public work on behalf of any such a municipal  
5 corporation. The term also includes a redevelopment commission  
6 established under IC 36-7-14-3.

7 (4) "Public work" includes any public building, highway, street,  
8 alley, bridge, sewer, drain, improvement, or any other work of any  
9 nature or character whatsoever which that is paid for out of  
10 public funds, ~~excepting~~ **except** as otherwise provided in this  
11 chapter.

12 SECTION 3. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE  
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2011]: **Sec. 6. (a) A public work project may not be artificially  
15 divided into two (2) or more projects to avoid the application of  
16 this chapter.**

17 (b) A bidder, quoter, or other person who is a party to a public  
18 work contract who knowingly violates this section commits a Class  
19 A infraction and may not be a party to, or benefit from, a public  
20 work contract for two (2) years after the date of the adjudication.

21 (c) An officer or employee of the state or a municipal  
22 corporation who knowingly violates this section commits a Class A  
23 infraction.

24 SECTION 4. [EFFECTIVE JULY 1, 2011] (a) As used in this  
25 SECTION, "legislative council" refers to the legislative council  
26 established by IC 2-5-1.1-1.

27 (b) As used in this SECTION, "public works statute" refers to  
28 any of the following:

- 29 (1) IC 4-13.6.
- 30 (2) IC 5-16.
- 31 (3) IC 8-10-1.
- 32 (4) IC 8-23-9.
- 33 (5) IC 36-1-12.

34 (c) As used in this SECTION, "study committee" means either  
35 of the following:

- 36 (1) A statutory committee established under IC 2-5.
- 37 (2) An interim study committee.

38 (d) The legislative council is urged to assign the topic of the use  
39 of an agreement with a labor organization on public works projects  
40 covered by a public works statute to a study committee during the  
41 2011 legislative interim.

42 (e) If the topic described in subsection (d) is assigned to a study

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1        **committee, the study committee shall determine whether legislation**  
2        **should be enacted to address the use of an agreement with a labor**  
3        **organization on public works projects covered by a public works**  
4        **statute and, if so, the study committee shall recommend proposed**  
5        **legislation.**  
6        **(f) This SECTION expires December 31, 2011.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1216, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

GUTWEIN, Chair

Committee Vote: yeas 8, nays 5.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1216 be amended to read as follows:

Page 2 delete lines 30 through 31.

Page 3, line 25, after "costs" insert "**are**".

Page 3, line 25, strike "one".

Page 3, line 26, delete "million dollars (\$1,000,000)." and insert "**the following:**

**(1) For contracts awarded after December 31, 2011, and before January 1, 2013, two hundred fifty thousand dollars (\$250,000).**

**(2) For contracts awarded after December 31, 2012, three hundred fifty thousand dollars (\$350,000).**

**(l) A person who submits written reports or other information to a committee under this chapter must include a written affirmation, under the penalties for perjury, that to the best of the person's knowledge and belief, the information submitted is accurate and true."**

Page 3, line 38, delete "information" and insert "**reports with respect to wage scales**".

Page 3, line 40, delete "information" and insert "**reports with respect to wage scales**".

Page 4, line 7, reset in roman "school corporation,"

Page 4, line 7, after "as well as" insert "**or**".

Page 4, line 7, reset in roman "any".

Page 4, delete lines 17 through 29, begin a new paragraph and insert:

"SECTION 4. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 6. (a) A public work project may not be artificially**

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divided into two (2) or more projects to avoid the application of this chapter.

(b) A bidder, quoter, or other person who is a party to a public work contract who knowingly violates this section commits a Class A infraction and may not be a party to, or benefit from, a public work contract for two (2) years after the date of the adjudication.

(c) An officer or employee of the state or a municipal corporation who knowingly violates this section commits a Class A infraction."

Page 5, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 6. IC 6-1.1-20-3.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.9. (a) This section applies if a political subdivision wants authority to use project labor agreements in the plans, specifications, or contract documents for any public works project that is part of the controlled project.

(b) The definitions in IC 5-16-12 apply in this section.

(c) In addition to the question placed on the ballot under section 3.6(c) of this chapter, the following question shall be submitted to the eligible voters at the election conducted under section 3.6 of this chapter:

"Shall \_\_\_\_\_ (insert the name of the political subdivision) be authorized to suspend IC 5-16-12-5 and enter into a union-only contract for any public works projects paid for from the proceeds of the bonds or lease to finance \_\_\_\_\_ (insert the description of the controlled project used in the public question under section 3.6(c) of this chapter)?"

(d) If a political subdivision submits the public question described in subsection (c) to the voters, the political subdivision shall submit to the department of local government finance an explanation of the effect of suspension of IC 5-16-12-5 with the information required to be posted on the department's Internet web site under section 3.6(k) of this chapter.

(e) If a majority of the eligible voters voting on the public question put to the voters under section 3.6(c) of this chapter vote in opposition to that public question, the result of the vote on the public question put to the voters under this section has no effect.

(f) If a majority of the eligible voters voting on the public question put to the voters under subsection (c) vote in opposition to that public question, the political subdivision may not suspend the provisions of IC 5-16-12-5 for any public works projects paid

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from the proceeds of the bonds or lease.

(g) IC 3 and section 3.6 of this chapter, to the extent not inconsistent with this section, apply to an election held under this section."

Renumber all SECTIONS consecutively.

(Reference is to HB 1216 as printed February 18, 2011.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1216, 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 1 through 11.

Page 2, line 30, after "The" insert "committee's written determination may not address matters other than those required by subdivisions (1) and (2). The".

Page 3, delete lines 30 through 34.

Page 4, delete lines 38 through 42.

Delete pages 5 through 6.

Page 7, delete lines 1 through 29, begin a new paragraph and insert: "SECTION 4. [EFFECTIVE JULY 1, 2011] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) As used in this SECTION, "public works statute" refers to any of the following:

- (1) IC 4-13.6.
- (2) IC 5-16.
- (3) IC 8-10-1.
- (4) IC 8-23-9.
- (5) IC 36-1-12.

(c) As used in this SECTION, "study committee" means either of the following:

- (1) A statutory committee established under IC 2-5.
- (2) An interim study committee.

(d) The legislative council is urged to assign the topic of the use of an agreement with a labor organization on public works projects covered by a public works statute to a study committee during the 2011 legislative interim.

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**(e) If the topic described in subsection (d) is assigned to a study committee, the study committee shall determine whether legislation should be enacted to address the use of an agreement with a labor organization on public works projects covered by a public works statute and, if so, the study committee shall recommend proposed legislation.**

**(f) This SECTION expires December 31, 2011."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1216 as reprinted March 29, 2011.)

BOOTS, Chairperson

Committee Vote: Yeas 8, Nays 2.

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