



Reprinted
April 19, 2011

ENGROSSED HOUSE BILL No. 1216

DIGEST OF HB 1216 (Updated April 18, 2011 4:02 pm - DI 102)

Citations Affected: IC 5-16; noncode.

Synopsis: Public works projects. Provides that the industry representative on a common construction wage committee (committee) be named by the state president of the Associated Builders and Contractors of Indiana. (Currently the industry representative is named by the awarding agency.) 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 committee must consider any written reports with
(Continued next page)

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.

April 18, 2011, read second time, amended, ordered engrossed.

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Digest Continued

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 following topics to a study committee during the 2011 legislative interim: (1) The use of an agreement with a labor organization on public works projects covered by a public works statute. (2) Job classifications used in a common construction wage determination. Makes technical changes.

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Reprinted
April 19, 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~~ **state president of the Associated Builders**
17 **and Contractors.**

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- 1 (3) A third member to be named by the governor.
- 2 (4) One (1) taxpayer who pays the tax that will be the funding
- 3 source for the project and resides in the county where the project
- 4 is located. The owner of the project shall make the appointment
- 5 under this subdivision.
- 6 (5) One (1) taxpayer who pays the tax that will be the funding
- 7 source for the project and resides in the county where the project
- 8 is located. The legislative body (as defined in IC 36-1-2-9) for the
- 9 county where the project is located shall make the appointment
- 10 under this subdivision.
- 11 (c) As soon as appointed, the committee shall meet in the county
- 12 where the project is located and determine in writing the following:
- 13 (1) A classification of the labor to be employed in the
- 14 performance of the contract for the project, divided into the
- 15 following three (3) classes:
- 16 (A) Skilled labor.
- 17 (B) Semiskilled labor.
- 18 (C) Unskilled labor.
- 19 (2) The wage per hour to be paid each of the classes.
- 20 **The committee's written determination may not address matters**
- 21 **other than those required by subdivisions (1) and (2). The**
- 22 **committee is not required to consider information not presented to the**
- 23 **committee at the meeting. IC 5-14-1.5 (open door law) applies to a**
- 24 **meeting of the committee.**
- 25 (d) The rate of wages determined under subsection (c) shall not be
- 26 less than the common construction wage for each of the three (3)
- 27 classes of wages described in subsection (c) that are currently being
- 28 paid in the county where the project is located.
- 29 (e) ~~The provisions of This chapter shall~~ **does** not apply to contracts
- 30 let by the Indiana department of transportation for the construction of
- 31 highways, streets, and bridges. IC 8-23-9 applies to state highway
- 32 projects.
- 33 (f) A determination under subsection (c) shall be made and filed
- 34 with the awarding agency at least two (2) weeks prior to the date fixed
- 35 for the letting, and a copy of the determination shall be furnished upon
- 36 request to any person desiring to bid on the contract. The schedule is
- 37 open to the inspection of the public.
- 38 (g) If the committee appointed under subsection (b) fails to act and
- 39 to file a determination under subsection (c) at or before the time
- 40 required under subsection (f), the awarding agency shall make the
- 41 determination, and its finding shall be final.
- 42 (h) It shall be a condition of a contract awarded under this chapter

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1 that the successful bidder and all subcontractors shall comply strictly
 2 with the determination made under this section.

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

9 (j) Notwithstanding any other law, ~~the provisions of~~ this chapter
 10 ~~apply~~ **applies** to projects that will be:
 11 (1) owned entirely; or
 12 (2) leased with an option to purchase;
 13 by the state or a political subdivision (as defined in IC 36-1-2-13).

14 (k) Notwithstanding any other law, this chapter does not apply to
 15 projects in which the actual construction costs ~~are~~ less than ~~one~~
 16 ~~hundred fifty thousand dollars (\$150,000): the following:~~
 17 **(1) For contracts awarded after December 31, 2011, and**
 18 **before January 1, 2013, two hundred fifty thousand dollars**
 19 **(\$250,000).**
 20 **(2) For contracts awarded after December 31, 2012, three**
 21 **hundred fifty thousand dollars (\$350,000).**

22 SECTION 2. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2011]: Sec. 4. The ~~following~~ definitions ~~in this~~
 24 ~~section~~ apply throughout this chapter:
 25 (1) "Common construction wage" means a scale of wages for each
 26 class of work described in section 1(c)(1) of this chapter that is
 27 not less than the common construction wage of all construction
 28 wages being paid in the county where a project is located, as
 29 determined by the committee described in section 1(b) of this
 30 chapter after having considered ~~the following:~~
 31 (A) Reports from the department of workforce development.
 32 ~~and~~
 33 **(B) Any reports with respect to wage scales submitted by**
 34 **the Indiana State Building and Construction Trades**
 35 **Council.**
 36 **(C) Any reports with respect to wage scales submitted by**
 37 **the Associated Builders and Contractors of Indiana.**
 38 ~~(B)~~ **(D)** Any other information submitted by any person to the
 39 committee established under section 1(b) of this chapter.
 40 (2) "State" ~~of Indiana~~ includes any officer, board, commission,
 41 or other agency authorized by law to award contracts for the
 42 performance of public work on behalf of the state, ~~excepting~~

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1 **except** as otherwise provided in this chapter.
2 (3) "Municipal corporation" includes any county, city, town, or
3 school corporation, ~~as well as~~ **or** any officer, board, commission,
4 or other agency authorized by law to award contracts for the
5 performance of public work on behalf of ~~any such a~~ municipal
6 corporation. The term also includes a redevelopment commission
7 established under IC 36-7-14-3.
8 (4) "Public work" includes any public building, highway, street,
9 alley, bridge, sewer, drain, improvement, or any other work of any
10 nature or character ~~whatsoever which~~ **that** is paid for out of
11 public funds, ~~excepting~~ **except** as otherwise provided in this
12 chapter.
13 SECTION 3. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2011]: **Sec. 6. (a) A public work project may not be artificially
16 divided into two (2) or more projects to avoid the application of
17 this chapter.**
18 **(b) A bidder, quoter, or other person who is a party to a public
19 work contract who knowingly violates this section commits a Class
20 A infraction and may not be a party to, or benefit from, a public
21 work contract for two (2) years after the date of the adjudication.**
22 **(c) An officer or employee of the state or a municipal
23 corporation who knowingly violates this section commits a Class A
24 infraction.**
25 SECTION 4. [EFFECTIVE JULY 1, 2011] **(a) As used in this
26 SECTION, "legislative council" refers to the legislative council
27 established by IC 2-5-1.1-1.**
28 **(b) As used in this SECTION, "public works statute" refers to
29 any of the following:**
30 **(1) IC 4-13.6.**
31 **(2) IC 5-16.**
32 **(3) IC 8-10-1.**
33 **(4) IC 8-23-9.**
34 **(5) IC 36-1-12.**
35 **(c) As used in this SECTION, "study committee" means either
36 of the following:**
37 **(1) A statutory committee established under IC 2-5.**
38 **(2) An interim study committee.**
39 **(d) The legislative council is urged to assign the following topics
40 to a study committee during the 2011 legislative interim:**
41 **(1) The use of an agreement with a labor organization on
42 public works projects covered by a public works statute.**

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- 1 **(2) Job classifications used in a common construction wage**
- 2 **determination.**
- 3 **(e) If a topic described in subsection (d) is assigned to a study**
- 4 **committee, the study committee shall determine whether legislation**
- 5 **should be enacted to address the topic and, if so, the study**
- 6 **committee shall recommend proposed legislation.**
- 7 **(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.

 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.)

DAVIS

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.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1216 be amended to read as follows:

Page 1, line 16, strike "awarding agency" and insert "state president of the Associated Builders and Contractors".

(Reference is to EHB 1216 as printed April 15, 2011.)

WALKER

SENATE MOTION

Madam President: I move that Engrossed House Bill 1216 be amended to read as follows:

Page 4, line 38, delete "topic of the" and insert "**following topics to a study committee during the 2011 legislative interim:**

(1) **The**".

Page 4, line 40, delete "statute to a study committee during the" and insert "**statute**".

(2) **Job classifications used in a common construction wage determination**".

Page 4, delete line 41.

Page 4, line 42, after "If" delete "the" and insert "**a**".

Page 5, line 2, delete "use of an agreement with a labor" and insert

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"topic".

Page 5, delete line 3.

Page 5, line 4, delete "statute".

Page 5, run in lines 2 through 4.

(Reference is to EHB 1216 as printed April 15, 2011.)

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