



February 11, 2011

HOUSE BILL No. 1174

DIGEST OF HB 1174 (Updated February 10, 2011 1:02 pm - DI 75)

Citations Affected: IC 36-1.

Synopsis: Sale of real property by local government. Provides that a local government disposing agent may hire a broker to sell real property directly rather than using the bid process if: (1) the disposing agent publishes a notice of the determination to hire the broker; and (2) the property has been up for bid for at least 60 days before the broker is hired, and either no bids were received or the disposing agent has rejected all bids that were received. Provides that a political subdivision may sell real property to an abutting landowner without using a competitive bid process if the real property has not been assessed and the property was previously part of a public right-of-way.

Effective: July 1, 2011.

Burton

January 10, 2011, read first time and referred to Committee on Local Government.
February 10, 2011, amended, reported — Do Pass.

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February 11, 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.

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HOUSE BILL No. 1174



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-1-11-4, AS AMENDED BY P.L.27-2008,
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 4. (a) A disposing agent who wants to sell or
 4 transfer real property must comply with this section, except as
 5 permitted by section 4.1, 4.2, 5, 5.5, 5.7, 5.9, 8, 14, or 15 of this
 6 chapter.
 7 (b) The disposing agent shall first have the property appraised by
 8 two (2) appraisers. The appraisers must be:
 9 (1) professionally engaged in making appraisals;
 10 (2) licensed under IC 25-34.1; or
 11 (3) employees of the political subdivision familiar with the value
 12 of the property.
 13 The appraisers shall make a joint appraisal of the property.
 14 (c) After the property is appraised, the disposing agent shall publish
 15 a notice in accordance with IC 5-3-1 setting forth the terms and
 16 conditions of the sale and, when subsection (e) is employed, may
 17 engage an auctioneer licensed under IC 25-6.1 to advertise the sale and

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1 to conduct a public auction. The advertising conducted by the
2 auctioneer is in addition to any other notice required by law and shall
3 include a detailed description of the property to be sold stating the key
4 numbers, if any, of the tracts within that property. If the disposing agent
5 determines that the best sale of the property can be made by letting the
6 bidders determine certain conditions of the sale (such as required
7 zoning or soil or drainage conditions) as a prerequisite to purchasing
8 the property, the disposing agent may permit the bidders to specify
9 those conditions. The notice must state the following:

- 10 (1) Bids will be received beginning on a specific date.
- 11 (2) The sale will continue from day to day for a period determined
- 12 by the disposing agent of not more than sixty (60) days.
- 13 (3) The property may not be sold to a person who is ineligible
- 14 under section 16 of this chapter.
- 15 (4) A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must
- 16 identify each:

- 17 (A) beneficiary of the trust; and
- 18 (B) settlor empowered to revoke or modify the trust.

19 (d) A bid must be open to public inspection. A bidder may raise the
20 bidder's bid, and subject to subsection (e), that raise takes effect after
21 the board has given written notice of that raise to the other bidders.

22 (e) The disposing agent may also engage an auctioneer licensed
23 under IC 25-6.1 to conduct a sale by public auction. The auction may
24 be conducted either at the time for beginning the sale in accordance
25 with the public notice or after the beginning of the sale. The disposing
26 agent shall give each bidder who has submitted a bid written notice of
27 the time and place of the auction.

28 (f) The disposing agent may, before expiration of the time set out in
29 the notice, sell the property to the highest and best bidder. The highest
30 and best bidder must have complied with any requirement under
31 subsection (c)(4). However, the disposing agent may sell the property
32 for less than ninety percent (90%) of the appraised value of the tracts
33 only after having an additional notice of the sale published in
34 accordance with subsection (c). The disposing agent may reject all
35 bids. **If the disposing agent rejects all bids, the disposing agent must**
36 **make a written determination to reject all bids explaining why all**
37 **bids were rejected.**

38 (g) If the disposing agent determines that, in the exercise of good
39 business judgment, the disposing agent should hire a broker or
40 auctioneer to sell the property, the disposing agent may do so and pay
41 the broker or auctioneer a reasonable compensation out of the gross
42 proceeds of the sale. ~~However, the disposing agent must still comply~~

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1 with the procedural requirements of this section. A disposing agent
2 may hire a broker to sell real property directly rather than using
3 the bid process under subsections (c) through (f) if:

- 4 (1) the disposing agent publishes a notice of the determination
- 5 to hire the broker in accordance with IC 5-3-1; and
- 6 (2) the property has been up for bid for at least sixty (60) days
- 7 before the broker is hired, and either no bids were received or
- 8 the disposing agent has rejected all bids that were received.

9 The disposing agent may hire one (1) of the appraisers as the broker or
10 auctioneer.

11 (h) The following apply if a broker is hired under subsection (g):

- 12 (1) The property may not be sold to a person who is ineligible
- 13 under section 16 of this chapter.
- 14 (2) If the property is sold to a trust (as defined in
- 15 IC 30-4-1-1(a)), the following information must be placed in
- 16 the public record relating to the sale:

- 17 (A) Each beneficiary of the trust.
- 18 (B) Each settlor empowered to revoke or modify the trust.

19 SECTION 2. IC 36-1-11-5 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) As used in this
21 section, "abutting landowner" means an owner of property that:

- 22 (1) touches, borders on, or is contiguous to the property that is the
- 23 subject of sale; and
- 24 (2) does not constitute a:
 - 25 (A) public easement; or
 - 26 (B) public right-of-way.

27 (b) As used in this section, "offering price" means the appraised
28 value of real property plus all costs associated with the sale, including:

- 29 (1) appraisal fees;
- 30 (2) title insurance;
- 31 (3) recording fees; and
- 32 (4) advertising costs.

33 (c) The disposing agent may proceed under this section if either
34 of the following apply:

- 35 (1) The assessed value of a tract of real property to be sold is less
- 36 than fifteen thousand dollars (\$15,000), based on the most recent
- 37 assessment of the tract or of the tract of which it was a part before
- 38 it was acquired. ~~the disposing agent may proceed under this~~
- 39 ~~section.~~
- 40 (2) If the property has not been assessed and the property was
- 41 previously part of a public right-of-way.
- 42 (d) The disposing agent may determine that:

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- 1 (1) the highest and best use of the tract is sale to an abutting
- 2 landowner;
- 3 (2) the cost to the public of maintaining the tract equals or
- 4 exceeds the estimated fair market value of the tract; or
- 5 (3) it is economically unjustifiable to sell the tract under section
- 6 4 of this chapter.

7 (e) Within ten (10) days after the disposing agent makes a
 8 determination under subsection (d), the disposing agent shall publish
 9 a notice in accordance with IC 5-3-1 identifying the tracts intended for
 10 sale by legal description and, if possible, by key number and street
 11 address. The notice must also include the offering price and a statement
 12 that:

- 13 (1) the property may not be sold to a person who is ineligible
- 14 under section 16 of this chapter; and
- 15 (2) an offer to purchase the property submitted by a trust (as
- 16 defined in IC 30-4-1-1(a)) must identify each:
- 17 (A) beneficiary of the trust; and
- 18 (B) settlor empowered to revoke or modify the trust.

19 At the time of publication of notice under this subsection, the disposing
 20 agent shall send notice by certified mail to all abutting landowners.
 21 This notice shall contain the same information as the published notice.

22 (f) The disposing agent shall also have each tract appraised. The
 23 appraiser must be professionally engaged in making appraisals, a
 24 person licensed under IC 25-34.1, or an employee of the political
 25 subdivision who is familiar with the value of the tract. However, if the
 26 assessed value of a tract is less than six thousand dollars (\$6,000),
 27 based on the most recent assessment of the tract or of the tract of which
 28 it was a part before it was acquired, the disposing agent is not required
 29 to have the tract appraised.

30 (g) If, within ten (10) days after the date of publication of the notice
 31 under subsection (e), the disposing agent receives an eligible offer to
 32 purchase a tract listed in the notice at or in excess of the offering price,
 33 the disposing agent shall conduct the negotiation and sale of the tract
 34 under section 4(c) through 4(g) of this chapter.

35 (h) Notwithstanding subsection (g), if within ten (10) days after the
 36 date of publication of the notice under subsection (e) the disposing
 37 agent does not receive from any person other than an abutting
 38 landowner an eligible offer to purchase the tract at or in excess of the
 39 offering price, the disposing agent shall conduct the negotiation and
 40 sale of the tract as follows:

- 41 (1) If only one (1) abutting landowner makes an eligible offer to
- 42 purchase the tract, then subject to section 16 of this chapter and

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1 without further appraisal or notice, the disposing agent shall offer
2 to negotiate for the sale of the tract with that abutting landowner.
3 (2) If more than one (1) eligible abutting landowner submits an
4 offer to purchase the tract, the other eligible abutting landowners
5 who submit offers shall be informed of the highest offer received
6 and be given an opportunity to submit one (1) additional offer.
7 The tract shall be sold to the eligible abutting landowner who
8 submits the highest offer for the tract and who complies with any
9 requirement under subsection (e)(2).
10 (3) If no eligible abutting landowner submits an offer to purchase
11 the tract, the disposing agent may sell the tract to any person who
12 submits the highest offer for the tract, except a person who is
13 ineligible to purchase the tract under section 16 of this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1174, 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 2, line 35, after "bids." insert **"If the disposing agent rejects all bids, the disposing agent must make a written determination to reject all bids explaining why all bids were rejected."**

Page 3, after line 8, begin a new paragraph and insert:

"(h) The following apply if a broker is hired under subsection (g):

(1) The property may not be sold to a person who is ineligible under section 16 of this chapter.

(2) If the property is sold to a trust (as defined in IC 30-4-1-1(a)), the following information must be placed in the public record relating to the sale:

(A) Each beneficiary of the trust.

(B) Each settlor empowered to revoke or modify the trust.

SECTION 2. IC 36-1-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) As used in this section, "abutting landowner" means an owner of property that:

(1) touches, borders on, or is contiguous to the property that is the subject of sale; and

(2) does not constitute a:

(A) public easement; or

(B) public right-of-way.

(b) As used in this section, "offering price" means the appraised value of real property plus all costs associated with the sale, including:

(1) appraisal fees;

(2) title insurance;

(3) recording fees; and

(4) advertising costs.

(c) The disposing agent may proceed under this section if either of the following apply:

(1) The assessed value of a tract of real property to be sold is less than fifteen thousand dollars (\$15,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired. ~~the disposing agent may proceed under this section:~~

(2) If the property has not been assessed and the property was previously part of a public right-of-way.

(d) The disposing agent may determine that:

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- (1) the highest and best use of the tract is sale to an abutting landowner;
- (2) the cost to the public of maintaining the tract equals or exceeds the estimated fair market value of the tract; or
- (3) it is economically unjustifiable to sell the tract under section 4 of this chapter.

(e) Within ten (10) days after the disposing agent makes a determination under subsection (d), the disposing agent shall publish a notice in accordance with IC 5-3-1 identifying the tracts intended for sale by legal description and, if possible, by key number and street address. The notice must also include the offering price and a statement that:

- (1) the property may not be sold to a person who is ineligible under section 16 of this chapter; and
- (2) an offer to purchase the property submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:
 - (A) beneficiary of the trust; and
 - (B) settlor empowered to revoke or modify the trust.

At the time of publication of notice under this subsection, the disposing agent shall send notice by certified mail to all abutting landowners. This notice shall contain the same information as the published notice.

(f) The disposing agent shall also have each tract appraised. The appraiser must be professionally engaged in making appraisals, a person licensed under IC 25-34.1, or an employee of the political subdivision who is familiar with the value of the tract. However, if the assessed value of a tract is less than six thousand dollars (\$6,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired, the disposing agent is not required to have the tract appraised.

(g) If, within ten (10) days after the date of publication of the notice under subsection (e), the disposing agent receives an eligible offer to purchase a tract listed in the notice at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the tract under section 4(c) through 4(g) of this chapter.

(h) Notwithstanding subsection (g), if within ten (10) days after the date of publication of the notice under subsection (e) the disposing agent does not receive from any person other than an abutting landowner an eligible offer to purchase the tract at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the tract as follows:

- (1) If only one (1) abutting landowner makes an eligible offer to purchase the tract, then subject to section 16 of this chapter and

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without further appraisal or notice, the disposing agent shall offer to negotiate for the sale of the tract with that abutting landowner.

(2) If more than one (1) eligible abutting landowner submits an offer to purchase the tract, the other eligible abutting landowners who submit offers shall be informed of the highest offer received and be given an opportunity to submit one (1) additional offer. The tract shall be sold to the eligible abutting landowner who submits the highest offer for the tract and who complies with any requirement under subsection (e)(2).

(3) If no eligible abutting landowner submits an offer to purchase the tract, the disposing agent may sell the tract to any person who submits the highest offer for the tract, except a person who is ineligible to purchase the tract under section 16 of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1174 as introduced.)

NEESE, Chair

Committee Vote: yeas 12, nays 0.

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