



February 18, 2011

# HOUSE BILL No. 1216

DIGEST OF HB 1216 (Updated February 15, 2011 12:55 pm - DI 96)

**Citations Affected:** IC 4-13.6; IC 5-16; IC 8-10; IC 8-23; IC 36-1.

**Synopsis:** Public works projects. Provides that plans, specifications, and contract documents for a public works contract may not: (1) require a bidder, contractor, or subcontractor to enter into or comply with an agreement with a labor organization on the same or a related public works project; or (2) discriminate against a bidder, contractor, or subcontractor for refusing to enter into, remain signatory to, or comply with an agreement with a labor organization on the same or a related public works project. Provides certain interested parties a cause of action to enforce this prohibition. Raises the threshold for the application of the common construction wage statute from \$150,000 to \$1,000,000. Provides that a common construction wage committee must consider any information 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 common wage committee may not address matters other than worker classification and hourly wages. Provides that the common construction wage statute does not apply to public works contracts entered into by a school corporation or a state educational institution. Makes technical changes.

**Effective:** July 1, 2011.

**Davis**

January 12, 2011, read first time and referred to Committee on Employment, Labor and Pensions.  
February 17, 2011, reported — Do Pass.

HB 1216—LS 7512/DI 75+



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February 18, 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. 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 4-13.6-2-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The division shall  
3 comply with this article and the following statutes in the administration  
4 of public works contracts:

- 5 (1) IC 5-16-3.
- 6 (2) IC 5-16-6.
- 7 (3) IC 5-16-7, if the estimated cost of the public works project is
- 8 at least twenty-five thousand dollars (\$25,000).
- 9 (4) IC 5-16-8.
- 10 (5) IC 5-16-9.
- 11 **(6) IC 5-16-12.**

12 SECTION 2. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS  
13 [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Any firm, individual,  
14 partnership, limited liability company, or corporation that is awarded  
15 a contract by the state, a political subdivision, or a municipal  
16 corporation for the construction of a public work, and any  
17 subcontractor of the construction, shall pay for each class of work

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1 described in subsection (c)(1) on the project a scale of wages that may  
2 not be less than the common construction wage.

3 (b) For the purpose of ascertaining what the common construction  
4 wage is in the county, the awarding governmental agency, before  
5 advertising for the contract, shall set up a committee of five (5) persons  
6 as follows:

7 (1) One (1) person representing labor, to be named by the  
8 president of the state federation of labor.

9 (2) One (1) person representing industry, to be named by the  
10 awarding agency.

11 (3) A third member to be named by the governor.

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

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

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

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

- 26 (A) Skilled labor.
- 27 (B) Semiskilled labor.
- 28 (C) Unskilled labor.

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

30 **The committee's written determination may not address**  
31 **requirements other than those required by subdivisions (1) and (2).**

32 The committee is not required to consider information not presented to  
33 the committee at the meeting. IC 5-14-1.5 (open door law) applies to  
34 a meeting of the committee.

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

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

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

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

10 (h) It shall be a condition of a contract awarded under this chapter  
11 that the successful bidder and all subcontractors shall comply strictly  
12 with the determination made under this section.

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

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

- 21 (1) owned entirely; or
  - 22 (2) leased with an option to purchase;
- 23 by the state or a political subdivision (as defined in IC 36-1-2-13).

24 (k) Notwithstanding any other law, this chapter does not apply to  
25 projects in which the actual construction costs less than one ~~hundred~~  
26 ~~fifty thousand dollars (\$150,000);~~ **million dollars (\$1,000,000).**

27 SECTION 3. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS  
28 [EFFECTIVE JULY 1, 2011]: Sec. 4. The **following** definitions ~~in this~~  
29 ~~section~~ apply throughout this chapter:

30 (1) "Common construction wage" means a scale of wages for each  
31 class of work described in section 1(c)(1) of this chapter that is  
32 not less than the common construction wage of all construction  
33 wages being paid in the county where a project is located, as  
34 determined by the committee described in section 1(b) of this  
35 chapter after having considered **the following:**

- 36 (A) Reports from the department of workforce development.
- 37 ~~and~~
- 38 (B) **Any information submitted by the Indiana State**
- 39 **Building and Construction Trades Council.**
- 40 (C) **Any information submitted by the Associated Builders**
- 41 **and Contractors of Indiana.**
- 42 ~~(B)~~ (D) Any other information submitted by any person to the

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- 1 committee established under section 1(b) of this chapter.
- 2 (2) "State" ~~of Indiana~~ includes any officer, board, commission,
- 3 or other agency authorized by law to award contracts for the
- 4 performance of public work on behalf of the state, ~~excepting~~
- 5 **except** as otherwise provided in this chapter.
- 6 (3) "Municipal corporation" includes any county, city, town, ~~or~~
- 7 ~~school corporation~~; as well as any officer, board, commission, or
- 8 other agency authorized by law to award contracts for the
- 9 performance of public work on behalf of ~~any such a~~ municipal
- 10 corporation. The term also includes a redevelopment commission
- 11 established under IC 36-7-14-3.
- 12 (4) "Public work" includes any public building, highway, street,
- 13 alley, bridge, sewer, drain, improvement, or any other work of any
- 14 nature or character ~~whatsoever which that~~ is paid for out of
- 15 public funds, ~~excepting except~~ as otherwise provided in this
- 16 chapter.

17 SECTION 4. IC 5-16-7-5 IS AMENDED TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) This chapter does not apply  
 19 to contractors or subcontractors performing public work for ~~Purdue~~  
 20 ~~University on agricultural or forestry land owned or occupied by the~~  
 21 ~~university and used by it for educational or research purposes if the~~  
 22 ~~cost of the work is estimated to be less than fifty thousand dollars~~  
 23 ~~(\$50,000).~~ **any of the following:**

- 24 (1) **A school corporation.**
- 25 (2) **A state educational institution.**
- 26 (b) Except as provided in IC 5-23, this chapter does not apply to a
- 27 person that has entered into an operating agreement with the state, a
- 28 municipal corporation, or another political subdivision for the
- 29 management or operation of a public facility under IC 5-23.

30 SECTION 5. IC 5-16-12 IS ADDED TO THE INDIANA CODE AS  
 31 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2011]:

33 **Chapter 12. Prohibited Public Works Contract Requirements**

34 **Sec. 1. This chapter applies to the plans, specifications, and**  
 35 **contract documents for a public works contract entered into,**  
 36 **awarded, or renewed by a contracting agency after June 30, 2011.**

37 **Sec. 2. As used in this chapter, "contracting agency" refers to**  
 38 **the agency, board, commission, officer, or trustee that enters into**  
 39 **a public works contract covered by a public works statute.**

40 **Sec. 3. As used in this chapter, "interested party" includes the**  
 41 **following:**

- 42 (1) **A bidder, contractor, or subcontractor for a public works**

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- contract covered by a public works statute.
- (2) An employee of a bidder, contractor, or subcontractor for a public works contract covered by a public works statute.
- (3) A taxpayer of an entity awarding a public works contract covered by a public works statute.

Sec. 4. As used in this chapter, "public works statute" refers to any of the following:

- (1) IC 4-13.6.
- (2) This article.
- (3) IC 8-10-1-31.
- (4) IC 8-23-9-59.
- (5) IC 36-1-12.

Sec. 5. Plans, specifications, and contract documents for a public works project may not do either of the following:

- (1) Require a bidder, contractor, or subcontractor to enter into or comply with an agreement with a labor organization on the same or a related public works project.
- (2) Discriminate against a bidder, contractor, or subcontractor for refusing to enter into, remain signatory to, or comply with an agreement with a labor organization on the same or a related public works project.

Sec. 6. An interested party has a cause of action to challenge the award of a public works contract that violates this chapter.

Sec. 7. Subject to section 8 of this chapter, an interested party that prevails in an action under this chapter is entitled to the following relief:

- (1) A declaration that the provisions of the public works contract that violate this chapter are void.
- (2) Costs and attorney's fees.
- (3) Any other appropriate relief requested by the interested party.

Sec. 8. (a) This chapter does not prohibit an employer or any other person covered by the federal National Labor Relations Act from entering into agreements or engaging in any other activity protected by law. This chapter may not be interpreted to interfere with the labor relations of persons covered by the federal National Labor Relations Act.

(b) Relief that would interfere with the labor relations of persons covered by the federal National Labor Relations Act may not be granted under this chapter.

SECTION 6. IC 8-10-1-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 2011]: **Sec. 31. (a) This section applies to a contract for the**  
2 **following:**

3 (1) **Altering, building, constructing, demolishing, improving,**  
4 **or repairing a building or structure by the commission.**

5 (2) **Making an improvement to real property owned by, or**  
6 **leased in the name of, the commission.**

7 (3) **Performing the routine operation, routine repair, or**  
8 **routine maintenance of existing structures, buildings, or real**  
9 **property by the commission.**

10 (b) **The plans, specifications, and contract documents for a**  
11 **contract awarded by the commission must comply with IC 5-16-12.**

12 SECTION 7. IC 8-23-9-59 IS ADDED TO THE INDIANA CODE  
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2011]: **Sec. 59. The plans, specifications, and contract documents**  
15 **for a contract awarded by the department must comply with**  
16 **IC 5-16-12.**

17 SECTION 8. IC 36-1-12-15 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 15. (a) A contract by**  
19 **the board for public work must conform to the wage scale provisions**  
20 **of IC 5-16-7.**

21 (b) **A contract by the board for public work must conform with the**  
22 **antidiscrimination provisions of IC 5-16-6. The board may consider a**  
23 **violation of IC 5-16-6 a material breach of the contract, as provided in**  
24 **IC 22-9-1-10.**

25 (c) **The plans, specifications, and contract documents for a**  
26 **public works contract awarded under this chapter must comply**  
27 **with IC 5-16-12.**

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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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