



Reprinted
March 29, 2011

HOUSE BILL No. 1216

DIGEST OF HB 1216 (Updated March 28, 2011 6:34 pm - DI 75)

Citations Affected: IC 4-13.6; IC 5-16; IC 6-1.1; 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. Provides that a public question may be placed on the ballot along with a public question relating to issuance of bonds or other evidence of indebtedness by a political subdivision asking whether the prohibition should be suspended and union-only contracts be authorized for any public works projects financed from the bond or lease proceeds. Raises the threshold for the application of the common construction wage statute from \$150,000 to
(Continued next page)

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

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Digest Continued

\$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 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 reports and other information submitted to a common construction wage committee must include a written affirmation under the penalties for perjury. Provides that a public works project may not be artificially divided to avoid application of the common construction wage statute. Makes technical changes.

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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.

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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



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

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

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

41 (f) A determination under subsection (c) shall be made and filed
 42 with the awarding agency at least two (2) weeks prior to the date fixed

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1 for the letting, and a copy of the determination shall be furnished upon
2 request to any person desiring to bid on the contract. The schedule is
3 open to the inspection of the public.

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

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

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

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

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

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

- 25 **(1) For contracts awarded after December 31, 2011, and**
- 26 **before January 1, 2013, two hundred fifty thousand dollars**
- 27 **(\$250,000).**
- 28 **(2) For contracts awarded after December 31, 2012, three**
- 29 **hundred fifty thousand dollars (\$350,000).**

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

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

- 38 (1) "Common construction wage" means a scale of wages for each
- 39 class of work described in section 1(c)(1) of this chapter that is
- 40 not less than the common construction wage of all construction
- 41 wages being paid in the county where a project is located, as
- 42 determined by the committee described in section 1(b) of this

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

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 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.

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

Chapter 12. Prohibited Public Works Contract Requirements
Sec. 1. This chapter applies to the plans, specifications, and

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1 contract documents for a public works contract entered into,
2 awarded, or renewed by a contracting agency after June 30, 2011.

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

6 Sec. 3. As used in this chapter, "interested party" includes the
7 following:

8 (1) A bidder, contractor, or subcontractor for a public works
9 contract covered by a public works statute.

10 (2) An employee of a bidder, contractor, or subcontractor for
11 a public works contract covered by a public works statute.

12 (3) A taxpayer of an entity awarding a public works contract
13 covered by a public works statute.

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

16 (1) IC 4-13.6.

17 (2) This article.

18 (3) IC 8-10-1-31.

19 (4) IC 8-23-9-59.

20 (5) IC 36-1-12.

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

23 (1) Require a bidder, contractor, or subcontractor to enter
24 into or comply with an agreement with a labor organization
25 on the same or a related public works project.

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

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

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

35 (1) A declaration that the provisions of the public works
36 contract that violate this chapter are void.

37 (2) Costs and attorney's fees.

38 (3) Any other appropriate relief requested by the interested
39 party.

40 Sec. 8. (a) This chapter does not prohibit an employer or any
41 other person covered by the federal National Labor Relations Act
42 from entering into agreements or engaging in any other activity

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1 protected by law. This chapter may not be interpreted to interfere
 2 with the labor relations of persons covered by the federal National
 3 Labor Relations Act.

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

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

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

14 (c) In addition to the question placed on the ballot under section
 15 3.6(c) of this chapter, the following question shall be submitted to
 16 the eligible voters at the election conducted under section 3.6 of this
 17 chapter:

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

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

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

35 (f) If a majority of the eligible voters voting on the public
 36 question put to the voters under subsection (c) vote in opposition
 37 to that public question, the political subdivision may not suspend
 38 the provisions of IC 5-16-12-5 for any public works projects paid
 39 from the proceeds of the bonds or lease.

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

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1 SECTION 7. IC 8-10-1-31 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 31. (a) This section applies to a contract for the
4 following:**

- 5 (1) **Altering, building, constructing, demolishing, improving,**
- 6 **or repairing a building or structure by the commission.**
- 7 (2) **Making an improvement to real property owned by, or**
- 8 **leased in the name of, the commission.**
- 9 (3) **Performing the routine operation, routine repair, or**
- 10 **routine maintenance of existing structures, buildings, or real**
- 11 **property by the commission.**

12 (b) **The plans, specifications, and contract documents for a**

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

19 SECTION 9. IC 36-1-12-15 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 15. (a) A contract by**
21 **the board for public work must conform to the wage scale provisions**
22 **of IC 5-16-7.**

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

27 (c) **The plans, specifications, and contract documents for a**
28 **public works contract awarded under this chapter must comply**
29 **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.

 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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