

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1183 be amended to read as follows:

- 1 Page 3, after line 32, begin a new paragraph and insert:
2 "SECTION 3. IC 5-22-15-20.9 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2011]: **Sec. 20.9. (a) This section applies only**
5 **to a contract awarded by a political subdivision.**
6 **(b) As used in this section, "affected county" refers to a county:**
7 **(1) in which the political subdivision awarding a contract**
8 **under this article is located; or**
9 **(2) that is adjacent to the county described in subdivision (1).**
10 **(c) As used in this section, "local Indiana business" refers to any**
11 **of the following:**
12 **(1) A business whose principal place of business is located in**
13 **an affected county.**
14 **(2) A business that pays a majority of its payroll (in dollar**
15 **volume) to residents of affected counties.**
16 **(3) A business that employs residents of affected counties as**
17 **a majority of its employees.**
18 **(4) A business that makes significant capital investments in**
19 **the affected counties as defined in rules adopted by the**
20 **political subdivision.**
21 **(5) A business that has a substantial positive economic impact**
22 **on the affected counties as defined by criteria in rules adopted**
23 **by the political subdivision.**
24 **(d) There are the following price preferences for supplies**
25 **purchased from a local Indiana business:**
26 **(1) Five percent (5%) for a purchase expected by the**
27 **purchasing agency to be less than fifty thousand dollars**
28 **(\$50,000).**
29 **(2) Three percent (3%) for a purchase expected by the**
30 **purchasing agency to be at least fifty thousand dollars**

1 **(\$50,000) but less than one hundred thousand dollars**
 2 **(\$100,000).**

3 **(3) One percent (1%) for a purchase expected by the**
 4 **purchasing agency to be at least one hundred thousand**
 5 **dollars (\$100,000).**

6 **(e) Notwithstanding subsection (d), a purchasing agency may**
 7 **award a contract to the lowest responsive and responsible offeror,**
 8 **regardless of the preference provided in this section, if the lowest**
 9 **responsive and responsible offeror is a local Indiana business.**

10 **(f) A business that wants to claim a preference provided under**
 11 **this section must do all the following:**

12 **(1) State in the business's bid that the business claims the**
 13 **preference provided by this section.**

14 **(2) Provide the following information to the purchasing**
 15 **agency:**

16 **(A) The location of the business's principal place of**
 17 **business. If the business claims the preference as a local**
 18 **Indiana business described in subsection (c)(1), a statement**
 19 **explaining the reasons the business considers the location**
 20 **named as the business's principal place of business.**

21 **(B) The amount of the business's total payroll and the**
 22 **amount of the business's payroll paid to residents of**
 23 **affected counties.**

24 **(C) The number of the business's employees and the**
 25 **number of the business's employees who are residents of**
 26 **affected counties.**

27 **(D) If the business claims the preference as a local Indiana**
 28 **business described in subsection (c)(4), a description of the**
 29 **capital investments made in the affected counties and a**
 30 **statement of the amount of those capital investments.**

31 **(E) If the business claims the preference as a local Indiana**
 32 **business described in subsection (c)(5), a description of the**
 33 **substantial positive economic impact the business has on**
 34 **the affected counties.**

35 SECTION 4. IC 36-1-12-4, AS AMENDED BY P.L.113-2010,
 36 SECTION 108, IS AMENDED TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) This section applies whenever
 38 the cost of a public work project will be:

39 (1) at least seventy-five thousand dollars (\$75,000) in:

40 (A) a consolidated city or second class city;

41 (B) a county containing a consolidated city or second class
 42 city; or

43 (C) a regional water or sewage district established under
 44 IC 13-26; or

45 (2) at least fifty thousand dollars (\$50,000) in a political
 46 subdivision or an agency not described in subdivision (1).

47 (b) The board must comply with the following procedure:

- 1 (1) The board shall prepare general plans and specifications
2 describing the kind of public work required, but shall avoid
3 specifications which might unduly limit competition. If the
4 project involves the resurfacing (as defined by IC 8-14-2-1) of a
5 road, street, or bridge, the specifications must show how the
6 weight or volume of the materials will be accurately measured
7 and verified.
- 8 (2) The board shall file the plans and specifications in a place
9 reasonably accessible to the public, which shall be specified in the
10 notice required by subdivision (3).
- 11 (3) Upon the filing of the plans and specifications, the board shall
12 publish notice in accordance with IC 5-3-1 calling for sealed
13 proposals for the public work needed.
- 14 (4) The notice must specify the place where the plans and
15 specifications are on file and the date fixed for receiving bids.
- 16 (5) The period of time between the date of the first publication
17 and the date of receiving bids shall be governed by the size of the
18 contemplated project in the discretion of the board. The period of
19 time between the date of the first publication and receiving bids
20 may not be more than:
- 21 (A) six (6) weeks if the estimated cost of the public works
22 project is less than twenty-five million dollars (\$25,000,000);
23 and
- 24 (B) ten (10) weeks if the estimated cost of the public works
25 project is at least twenty-five million dollars (\$25,000,000).
- 26 (6) If the cost of a project is one hundred thousand dollars
27 (\$100,000) or more, the board shall require the bidder to submit
28 a financial statement, a statement of experience, a proposed plan
29 or plans for performing the public work, and the equipment that
30 the bidder has available for the performance of the public work.
31 The statement shall be submitted on forms prescribed by the state
32 board of accounts.
- 33 (7) The board may not require a bidder to submit a bid before the
34 meeting at which bids are to be received. The meeting for
35 receiving bids must be open to the public. All bids received shall
36 be opened publicly and read aloud at the time and place
37 designated and not before.
- 38 (8) Except as provided in subsection (c) **or section 22 of this**
39 **chapter**, the board shall:
- 40 (A) award the contract for public work or improvements to the
41 lowest responsible and responsive bidder; or
42 (B) reject all bids submitted.
- 43 (9) If the board awards the contract to a bidder other than the
44 lowest bidder, the board must state in the minutes or memoranda,
45 at the time the award is made, the factors used to determine which
46 bidder is the lowest responsible and responsive bidder and to

- 1 justify the award. The board shall keep a copy of the minutes or
 2 memoranda available for public inspection.
- 3 (10) In determining whether a bidder is responsive, the board may
 4 consider the following factors:
- 5 (A) Whether the bidder has submitted a bid or quote that
 6 conforms in all material respects to the specifications.
- 7 (B) Whether the bidder has submitted a bid that complies
 8 specifically with the invitation to bid and the instructions to
 9 bidders.
- 10 (C) Whether the bidder has complied with all applicable
 11 statutes, ordinances, resolutions, or rules pertaining to the
 12 award of a public contract.
- 13 (11) In determining whether a bidder is a responsible bidder, the
 14 board may consider the following factors:
- 15 (A) The ability and capacity of the bidder to perform the work.
 16 (B) The integrity, character, and reputation of the bidder.
 17 (C) The competence and experience of the bidder.
- 18 (12) The board shall require the bidder to submit an affidavit:
 19 (A) that the bidder has not entered into a combination or
 20 agreement:
 21 (i) relative to the price to be bid by a person;
 22 (ii) to prevent a person from bidding; or
 23 (iii) to induce a person to refrain from bidding; and
 24 (B) that the bidder's bid is made without reference to any other
 25 bid.
- 26 (c) Notwithstanding subsection (b)(8), a county may award sand,
 27 gravel, asphalt paving materials, or crushed stone contracts to more
 28 than one (1) responsible and responsive bidder if the specifications
 29 allow for bids to be based upon service to specific geographic areas and
 30 the contracts are awarded by geographic area. The geographic areas do
 31 not need to be described in the specifications.
- 32 SECTION 5. IC 36-1-12-4.7, AS AMENDED BY P.L.195-2007,
 33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2011]: Sec. 4.7. (a) This section applies whenever a public
 35 work project is estimated to cost:
- 36 (1) at least twenty-five thousand dollars (\$25,000) and less than
 37 one hundred thousand dollars (\$100,000) in:
- 38 (A) a consolidated city, second class city, or third class city
 39 with a population of fifteen thousand (15,000) or more;
 40 (B) a county containing a consolidated city or second class
 41 city; or
 42 (C) a regional water or sewage district established under
 43 IC 13-26; or
- 44 (2) at least twenty-five thousand dollars (\$25,000) and less than
 45 fifty thousand dollars (\$50,000) in a political subdivision or
 46 agency not described in subdivision (1).

- 1 (b) The board must proceed under the following provisions:
 2 (1) The board shall invite quotes from at least three (3) persons
 3 known to deal in the class of work proposed to be done by mailing
 4 them a notice stating that plans and specifications are on file in a
 5 specified office. The notice must be mailed not less than seven (7)
 6 days before the time fixed for receiving quotes.
 7 (2) The board may not require a person to submit a quote before
 8 the meeting at which quotes are to be received. The meeting for
 9 receiving quotes must be open to the public. All quotes received
 10 shall be opened publicly and read aloud at the time and place
 11 designated and not before.
 12 (3) **Except as permitted in section 22 of this chapter**, the board
 13 shall award the contract for the public work to the lowest
 14 responsible and responsive quoter.
 15 (4) The board may reject all quotes submitted.
- 16 SECTION 6. IC 36-1-12-5, AS AMENDED BY P.L.195-2007,
 17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2011]: Sec. 5. (a) This section applies whenever a public work
 19 project is estimated to cost less than fifty thousand dollars (\$50,000).
 20 Except as provided in subsection (g) for local boards of aviation
 21 commissioners and local airport authorities, if a contract is to be
 22 awarded, the board may proceed under section 4 of this chapter or
 23 under subsection (b) or (c).
- 24 (b) The board must proceed under the following provisions:
 25 (1) The board shall invite quotes from at least three (3) persons
 26 known to deal in the class of work proposed to be done by mailing
 27 them a notice stating that plans and specifications are on file in a
 28 specified office. The notice must be mailed not less than seven (7)
 29 days before the time fixed for receiving quotes.
 30 (2) The board may not require a person to submit a quote before
 31 the meeting at which quotes are to be received. The meeting for
 32 receiving quotes must be open to the public. All quotes received
 33 shall be opened publicly and read aloud at the time and place
 34 designated and not before.
 35 (3) **Except as permitted in section 22 of this chapter**, the board
 36 shall award the contract for the public work to the lowest
 37 responsible and responsive quoter.
 38 (4) The board may reject all quotes submitted.
 39 (5) If the board rejects all quotes under subdivision (4), ~~of this~~
 40 ~~section~~, the board may negotiate and enter into agreements for the
 41 work in the open market without inviting or receiving quotes if
 42 the board establishes in writing the reasons for rejecting the
 43 quotes.
 44 (c) The board may not proceed under subsection (b) for the
 45 resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge,
 46 unless:

1 (1) the weight or volume of the materials in the project is capable
2 of accurate measurement and verification; and

3 (2) the specifications define the geographic points at which the
4 project begins and ends.

5 (d) For the purposes of this section, if contiguous sections of a road,
6 street, or bridge are to be resurfaced in a calendar year, all of the work
7 shall be considered to comprise a single public work project.

8 (e) The board may purchase or lease supplies in the manner
9 provided in IC 5-22 and perform the public work by means of its own
10 workforce without awarding a public work contract.

11 (f) Before the board may perform any work under this section by
12 means of its own workforce, the political subdivision or agency must
13 have a group of employees on its staff who are capable of performing
14 the construction, maintenance, and repair applicable to that work.

15 (g) This subsection applies to local boards of aviation
16 commissioners operating under IC 8-22-2 and local airport authorities
17 operating under IC 8-22-3. If the contract is to be awarded by a board
18 to which this subsection applies, or to a designee of the board under
19 subsection (h), the board or its designee may proceed under section 4
20 of this chapter or under the following provisions. The board or its
21 designee may invite quotes from at least three (3) persons known to
22 deal in the class of work proposed to be done by mailing the persons a
23 copy of the plans and specifications for the work not less than seven (7)
24 days before the time fixed for receiving quotes. If the board or its
25 designee receives a satisfactory quote, the board or its designee shall
26 award the contract to the lowest responsible and responsive quoter for
27 the class of work required, **except as permitted in section 22 of this**
28 **chapter**. The board or its designee may reject all quotes submitted and,
29 if no valid quotes are received for the class of work, contract for the
30 work without further invitations for quotes.

31 (h) The board may delegate its authority to award a contract for a
32 public works project that is estimated to cost less than fifty thousand
33 dollars (\$50,000) to the airport personnel in charge of airport public
34 works projects.

35 (i) Quotes for public works projects costing less than twenty-five
36 thousand dollars (\$25,000) may be obtained by soliciting at least three
37 (3) quotes by telephone or facsimile transmission. The seven (7) day
38 waiting period required by subsection (b)(1) does not apply to quotes
39 solicited under this subsection.

40 SECTION 7. IC 36-1-12-22 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2011]: **Sec. 22. (a) The definitions in IC 5-22-15, including the**
43 **definitions in IC 5-22-15-20.9, apply in this section.**

44 **(b) The procedures described in IC 5-22-15 for determining**
45 **adjusted offers, price preference percentage, and total adjusted**
46 **offers apply in this section.**

1 (c) The price preferences stated in IC 5-22-15-20.9 apply in this
2 section.

3 (d) Notwithstanding provisions of this chapter that require the
4 award of a contract to the lowest responsive and responsible bidder
5 or the lowest responsive and responsible quoter, but subject to
6 subsection (e), a contract shall be awarded to the lowest responsive
7 and responsible local Indiana business that claims the preference
8 provided by this section.

9 (e) Notwithstanding subsection (d), a contract shall be awarded
10 to the lowest responsive and responsible bidder or quoter,
11 regardless of the preference provided in this section, if the lowest
12 responsive and responsible bidder or quoter is a local Indiana
13 business.

14 (f) A bidder or quoter that wants to claim the preference under
15 this section must claim the preference in the same manner that a
16 business claims the preference under IC 5-22-15-20.9(f)."

17 Re-number all SECTIONS consecutively.

(Reference is to EHB 1183 as printed March 9, 2011.)

Senator PAUL