



January 21, 2011

## SENATE BILL No. 60

DIGEST OF SB 60 (Updated January 20, 2011 9:25 am - DI 87)

**Citations Affected:** IC 5-14; IC 8-22; IC 36-1.

**Synopsis:** Local government issues. Provides that executive sessions may be held under the open door law to train members of a board of aviation commissioners or an airport authority board with an outside consultant about the performance of the role of the members as public officials. Specifies that the statutes governing public work projects by political subdivisions apply to contracts by a board of aviation commissioners or a airport authority board. Provides that an airport authority board may provide aviation services to public use airports within or outside Indiana either directly or through an affiliate entity established by the board. Provides that for purposes of the local public works statutes, if a bid opening is delayed because of circumstances that make it impractical or impossible to open bids at the time or place designated in the bid notice, the board or officer of the political subdivision having the power to award contracts for public work shall make every reasonable effort to provide knowledge of the change to known interested bidders as soon as the need for the change becomes apparent.

**Effective:** July 1, 2011.

**Lawson C, Arnold**

January 5, 2011, read first time and referred to Committee on Local Government.  
January 20, 2011, amended, reported favorably — Do Pass.

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SB 60—LS 6258/DI 73+



January 21, 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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## SENATE BILL No. 60

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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 5-14-1.5-6.1, AS AMENDED BY P.L.120-2008,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 6.1. (a) As used in this section, "public official"  
4 means a person:  
5 (1) who is a member of a governing body of a public agency; or  
6 (2) whose tenure and compensation are fixed by law and who  
7 executes an oath.  
8 (b) Executive sessions may be held only in the following instances:  
9 (1) Where authorized by federal or state statute.  
10 (2) For discussion of strategy with respect to any of the following:  
11 (A) Collective bargaining.  
12 (B) Initiation of litigation or litigation that is either pending or  
13 has been threatened specifically in writing.  
14 (C) The implementation of security systems.  
15 (D) The purchase or lease of real property by the governing  
16 body up to the time a contract or option to purchase or lease is  
17 executed by the parties.

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1           However, all such strategy discussions must be necessary for  
 2           competitive or bargaining reasons and may not include  
 3           competitive or bargaining adversaries.  
 4           (3) For discussion of the assessment, design, and implementation  
 5           of school safety and security measures, plans, and systems.  
 6           (4) Interviews and negotiations with industrial or commercial  
 7           prospects or agents of industrial or commercial prospects by the  
 8           Indiana economic development corporation, the office of tourism  
 9           development, the Indiana finance authority, the ports of Indiana,  
 10          an economic development commission, the Indiana state  
 11          department of agriculture, a local economic development  
 12          organization (as defined in IC 5-28-11-2(3)), or a governing body  
 13          of a political subdivision.  
 14          (5) To receive information about and interview prospective  
 15          employees.  
 16          (6) With respect to any individual over whom the governing body  
 17          has jurisdiction:  
 18                (A) to receive information concerning the individual's alleged  
 19                misconduct; and  
 20                (B) to discuss, before a determination, the individual's status  
 21                as an employee, a student, or an independent contractor who  
 22                is:  
 23                    (i) a physician; or  
 24                    (ii) a school bus driver.  
 25          (7) For discussion of records classified as confidential by state or  
 26          federal statute.  
 27          (8) To discuss before a placement decision an individual student's  
 28          abilities, past performance, behavior, and needs.  
 29          (9) To discuss a job performance evaluation of individual  
 30          employees. This subdivision does not apply to a discussion of the  
 31          salary, compensation, or benefits of employees during a budget  
 32          process.  
 33          (10) When considering the appointment of a public official, to do  
 34          the following:  
 35                (A) Develop a list of prospective appointees.  
 36                (B) Consider applications.  
 37                (C) Make one (1) initial exclusion of prospective appointees  
 38                from further consideration.  
 39          Notwithstanding IC 5-14-3-4(b)(12), a governing body may  
 40          release and shall make available for inspection and copying in  
 41          accordance with IC 5-14-3-3 identifying information concerning  
 42          prospective appointees not initially excluded from further

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1 consideration. An initial exclusion of prospective appointees from  
2 further consideration may not reduce the number of prospective  
3 appointees to fewer than three (3) unless there are fewer than  
4 three (3) prospective appointees. Interviews of prospective  
5 appointees must be conducted at a meeting that is open to the  
6 public.

7 (11) To train school board members with an outside consultant  
8 about the performance of the role of the members as public  
9 officials.

10 (12) To prepare or score examinations used in issuing licenses,  
11 certificates, permits, or registrations under IC 25.

12 (13) To discuss information and intelligence intended to prevent,  
13 mitigate, or respond to the threat of terrorism.

14 **(14) To train members of a board of aviation commissioners**  
15 **appointed under IC 8-22-2 or members of an airport**  
16 **authority board appointed under IC 8-22-3 with an outside**  
17 **consultant about the performance of the role of the members**  
18 **as public officials.**

19 (c) A final action must be taken at a meeting open to the public.

20 (d) Public notice of executive sessions must state the subject matter  
21 by specific reference to the enumerated instance or instances for which  
22 executive sessions may be held under subsection (b). The requirements  
23 stated in section 4 of this chapter for memoranda and minutes being  
24 made available to the public is modified as to executive sessions in that  
25 the memoranda and minutes must identify the subject matter  
26 considered by specific reference to the enumerated instance or  
27 instances for which public notice was given. The governing body shall  
28 certify by a statement in the memoranda and minutes of the governing  
29 body that no subject matter was discussed in the executive session  
30 other than the subject matter specified in the public notice.

31 (e) A governing body may not conduct an executive session during  
32 a meeting, except as otherwise permitted by applicable statute. A  
33 meeting may not be recessed and reconvened with the intent of  
34 circumventing this subsection.

35 SECTION 2. IC 8-22-2-6 IS AMENDED TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2011]: Sec. 6. For all contracts for  
37 improvements and purchases, other than those for professional services  
38 and those for the acquisition of land, structures, easements, and  
39 rights-of-way, IC 5-22, and IC 36-1-9.5, and IC 36-1-12 apply. In case  
40 of an emergency being declared by the board, the board may purchase  
41 necessary materials under IC 5-22-10 without advertising for bids.

42 SECTION 3. IC 8-22-3-11, AS AMENDED BY P.L.182-2009(ss),

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1 SECTION 268, IS AMENDED TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2011]: Sec. 11. The board may do all acts  
 3 necessary or reasonably incident to carrying out the purposes of this  
 4 chapter, including the following:

5 (1) As a municipal corporation, to sue and be sued in its own  
 6 name.

7 (2) To have all the powers and duties conferred by statute upon  
 8 boards of aviation commissioners. The board supersedes all  
 9 boards of aviation commissioners within the district. The board  
 10 has exclusive jurisdiction within the district.

11 (3) To protect all property owned or managed by the board.

12 (4) To adopt an annual budget and levy taxes in accordance with  
 13 this chapter.

14 (A) The board may not levy taxes on property in excess of the  
 15 following rate schedule, except as provided in sections 17 and  
 16 25 of this chapter:

Total Assessed Property Valuation	Rate Per \$100 Of Assessed Valuation
\$300 million or less	\$0.10
More than \$300 million	
but not more than \$450 million	\$0.0833
More than \$450 million	
but not more than \$600 million	\$0.0667
More than \$600 million	
but not more than \$900 million	\$0.05
More than \$900 million	\$0.0333

27 (B) Clause (A) does not apply to an authority that was  
 28 established under IC 19-6-2 or IC 19-6-3 (before their repeal  
 29 on April 1, 1980).

30 (C) The board of an authority that was established under  
 31 IC 19-6-3 (before its repeal on April 1, 1980) may levy taxes  
 32 on property not in excess of six and sixty-seven hundredths  
 33 cents (\$0.0667) on each one hundred dollars (\$100) of  
 34 assessed valuation.

35 (5) To incur indebtedness in the name of the authority in  
 36 accordance with this chapter.

37 (6) To adopt administrative procedures, rules, and regulations.

38 (7) To acquire property, real, personal, or mixed, by deed,  
 39 purchase, lease, condemnation, or otherwise and dispose of it for  
 40 use or in connection with or for administrative purposes of the  
 41 airport; to receive gifts, donations, bequests, and public trusts and  
 42 to agree to conditions and terms accompanying them and to bind

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- 1 the authority to carry them out; to receive and administer federal  
2 or state aid; and to erect buildings or structures that may be  
3 needed to administer and carry out this chapter.
- 4 (8) To determine matters of policy regarding internal organization  
5 and operating procedures not specifically provided for otherwise.
- 6 (9) To adopt a schedule of reasonable charges and to collect them  
7 from all users of facilities and services within the district.
- 8 (10) To purchase supplies, materials, and equipment to carry out  
9 the duties and functions of the board in accordance with  
10 procedures adopted by the board.
- 11 (11) To employ personnel that are necessary to carry out the  
12 duties, functions, and powers of the board.
- 13 (12) To establish an employee pension plan. The board may, upon  
14 due investigation, authorize and begin a fair and reasonable  
15 pension or retirement plan and program for personnel, the cost to  
16 be borne by either the authority or by the employee or by both, as  
17 the board determines. If the authority was established under  
18 IC 19-6-2 (before its repeal on April 1, 1980), the entire cost must  
19 be borne by the authority, and ordinances creating the plan or  
20 making changes in it must be approved by the mayor of the city.  
21 The plan may be administered and funded by a trust fund or by  
22 insurance purchased from an insurance company licensed to do  
23 business in Indiana or by a combination of them. The board may  
24 also include in the plan provisions for life insurance, disability  
25 insurance, or both.
- 26 (13) To sell surplus real or personal property in accordance with  
27 law. If the board negotiates an agreement to sell trees situated in  
28 woods or forest areas owned by the board, the trees are considered  
29 to be personal property of the board for severance or sale.
- 30 (14) To adopt and use a seal.
- 31 (15) To acquire, establish, construct, improve, equip, maintain,  
32 control, lease, and regulate municipal airports, landing fields, and  
33 other air navigation facilities, either inside or outside the district;  
34 to acquire by lease (with or without the option to purchase)  
35 airports, landing fields, or navigation facilities, and any structures,  
36 equipment, or related improvements; and to erect, install,  
37 construct, and maintain at the airport or airports facilities for the  
38 servicing of aircraft and for the comfort and accommodation of air  
39 travelers and the public. The Indiana department of transportation  
40 must grant its approval before land may be purchased for the  
41 establishment of an airport or landing field and before an airport  
42 or landing field may be established.

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(16) To fix and determine exclusively the uses to which the airport lands may be put. All uses must be necessary or desirable to the airport or the aviation industry and must be compatible with the uses of the surrounding lands as far as practicable.

(17) To elect a secretary from its membership, or to employ a secretary, an airport director, superintendents, managers, a treasurer, engineers, surveyors, attorneys, clerks, guards, mechanics, laborers, and all employees the board considers expedient, and to prescribe and assign their respective duties and authorities and to fix and regulate the compensation to be paid to the persons employed by it in accordance with the authority's appropriations. All employees shall be selected irrespective of their political affiliations.

(18) To make all rules and regulations, consistent with laws regarding air commerce, for the management and control of its airports, landing fields, air navigation facilities, and other property under its control.

(19) To acquire by lease the use of an airport or landing field for aircraft pending the acquisition and improvement of an airport or landing field.

(20) To manage and operate airports, landing fields, and other air navigation facilities acquired or maintained by an authority; to lease all or part of an airport, landing field, or any buildings or other structures, and to fix, charge, and collect rentals, tolls, fees, and charges to be paid for the use of the whole or a part of the airports, landing fields, or other air navigation facilities by aircraft landing there and for the servicing of the aircraft; to construct public recreational facilities that will not interfere with air operational facilities; to fix, charge, and collect fees for public admissions and privileges; and to make contracts for the operation and management of the airports, landing fields, and other air navigation facilities; and to provide for the use, management, and operation of the air navigation facilities through lessees, its own employees, or otherwise. Contracts or leases for the maintenance, operation, or use of the airport or any part of it may be made for a term not exceeding fifteen (15) years and may be extended for similar terms of years, except that any parcels of the land of the airport may be leased for any use connected with the operation and convenience of the airport for an initial term not exceeding forty (40) years and may be extended for a period not to exceed ten (10) years. If a person whose character, experience, and financial responsibility have been determined satisfactory by the

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1 board offers to erect a permanent structure that facilitates and is  
 2 consistent with the operation, use, and purpose of the airport on  
 3 land belonging to the airport, a lease may be entered into for a  
 4 period not to exceed ninety-nine (99) years. However, the board  
 5 must pass an ordinance to enter into such a lease. The board may  
 6 not grant an exclusive right for the use of a landing area under its  
 7 jurisdiction. However, this does not prevent the making of leases  
 8 in accordance with other provisions of this chapter. All contracts,  
 9 and leases, are subject to restrictions and conditions that the board  
 10 prescribes. The authority may lease its property and facilities for  
 11 any commercial or industrial use it considers necessary and  
 12 proper, including the use of providing airport motel facilities. For  
 13 the airport authority established by the city of Gary, the board  
 14 may approve a lease, management agreement, or other contract:

15 (A) with a person:

16 (i) who is selected by the board using the procedures under  
 17 IC 36-1-9.5; and

18 (ii) whose character, experience, and financial responsibility  
 19 have been determined satisfactory by the board; and

20 (B) to use, plan, design, acquire, construct, reconstruct,  
 21 improve, extend, expand, lease, operate, repair, manage,  
 22 maintain, or finance all or any part of the airport and its  
 23 landing fields, air navigation facilities, and other buildings and  
 24 structures for a period not to exceed ninety-nine (99) years.  
 25 However, the board must pass an ordinance to enter into such  
 26 a lease, management agreement, or other contract. All  
 27 contracts, leases, and management agreements are subject to  
 28 restrictions and conditions that the board prescribes. The  
 29 authority may lease its property and facilities for any  
 30 commercial or industrial use it considers necessary and proper,  
 31 including the use of providing airport motel facilities. A lease,  
 32 management agreement, or other contract entered into under  
 33 this section or any other provision of this chapter may be  
 34 entered into without complying with IC 5-23.

35 (21) To sell machinery, equipment, or material that is not required  
 36 for aviation purposes. The proceeds shall be deposited with the  
 37 treasurer of the authority.

38 (22) To negotiate and execute contracts for sale or purchase,  
 39 lease, personal services, materials, supplies, equipment, or any  
 40 other transaction or business relative to an airport under the  
 41 board's control and operation. However, whenever the board  
 42 determines to sell part or all of aviation lands, buildings, or

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1 improvements owned by the authority, the sale must be in  
 2 accordance with law.  
 3 (23) To vacate all or parts of roads, highways, streets, or alleys,  
 4 whether inside or outside the district, in the manner provided by  
 5 statute.  
 6 (24) To annex lands to itself if the lands are owned by the  
 7 authority or are streets, roads, or other public ways.  
 8 (25) To approve any state, county, city, or other highway, road,  
 9 street or other public way, railroad, power line, or other  
 10 right-of-way to be laid out or opened across an airport or in such  
 11 proximity as to affect the safe operation of the airport.  
 12 (26) To construct drainage and sanitary sewers with connections  
 13 and outlets as are necessary for the proper drainage and  
 14 maintenance of an airport or landing field acquired or maintained  
 15 under this chapter, including the necessary buildings and  
 16 improvements and for the public use of them in the same manner  
 17 that the authority may construct sewers and drains. However, with  
 18 respect to the construction of drains and sanitary sewers beyond  
 19 the boundaries of the airport or landing field, the board shall  
 20 proceed in the same manner as private owners of property and  
 21 may institute proceedings and negotiate with the departments,  
 22 bodies, and officers of an eligible entity to secure the proper  
 23 orders and approvals; and to order a public utility or public  
 24 service corporation or other person to remove or to install in  
 25 underground conduits wires, cables, and power lines passing  
 26 through or over the airport or landing field or along the borders or  
 27 within a reasonable distance that may be determined to be  
 28 necessary for the safety of operations, upon payment to the utility  
 29 or other person of due compensation for the expense of the  
 30 removal or reinstallation. The board must consent before any  
 31 franchise may be granted by state or local authorities for the  
 32 construction of or maintenance of railway, telephone, telegraph,  
 33 electric power, pipe, or conduit line upon, over, or through land  
 34 under the control of the board or within a reasonable distance of  
 35 land that is necessary for the safety of operation. The board must  
 36 also consent before overhead electric power lines carrying a  
 37 voltage of more than four thousand four hundred (4,400) volts and  
 38 having poles, standards, or supports over thirty (30) feet in height  
 39 within one-half (1/2) mile of a landing area acquired or  
 40 maintained under this chapter may be installed.  
 41 (27) To contract with any other state agency or instrumentality or  
 42 any political subdivision for the rendition of services, the rental

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or use of equipment or facilities, or the joint purchase and use of equipment or facilities that are necessary for the operation, maintenance, or construction of an airport operated under this chapter.

(28) To provide air transportation in furtherance of the duties and responsibilities of the board.

(29) To promote or encourage aviation-related trade or commerce at the airports that it operates.

**(30) To provide aviation services to public use airports within or outside Indiana either directly or through an affiliate entity established by the board.**

SECTION 4. IC 8-22-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. For all contracts for improvements and purchases, other than those for professional services and those for the acquisition of land, easements, and rights-of-way, IC 5-22, ~~and~~ IC 36-1-9.5, **and IC 36-1-12** apply.

SECTION 5. IC 36-1-12-4, AS AMENDED BY P.L.113-2010, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:

- (1) at least seventy-five thousand dollars (\$75,000) in:
  - (A) a consolidated city or second class city;
  - (B) a county containing a consolidated city or second class city; or
  - (C) a regional water or sewage district established under IC 13-26; or
- (2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).

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

- (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
- (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
- (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.

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- (4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.
- (5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of time between the date of the first publication and receiving bids may not be more than:
  - (A) six (6) weeks if the estimated cost of the public works project is less than twenty-five million dollars (\$25,000,000); and
  - (B) ten (10) weeks if the estimated cost of the public works project is at least twenty-five million dollars (\$25,000,000).
- (6) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.
- (7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before. **If a bid opening is delayed because of circumstances that make it impractical or impossible to open bids at the time or place designated in the bid notice, the board shall make every reasonable effort to provide notice of the change to known interested bidders as soon as the need for the change becomes apparent to the board.**
- (8) Except as provided in subsection (c), the board shall:
  - (A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or
  - (B) reject all bids submitted.
- (9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.
- (10) In determining whether a bidder is responsive, the board may consider the following factors:
  - (A) Whether the bidder has submitted a bid or quote that

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- 1 conforms in all material respects to the specifications.
- 2 (B) Whether the bidder has submitted a bid that complies
- 3 specifically with the invitation to bid and the instructions to
- 4 bidders.
- 5 (C) Whether the bidder has complied with all applicable
- 6 statutes, ordinances, resolutions, or rules pertaining to the
- 7 award of a public contract.
- 8 (11) In determining whether a bidder is a responsible bidder, the
- 9 board may consider the following factors:
- 10 (A) The ability and capacity of the bidder to perform the work.
- 11 (B) The integrity, character, and reputation of the bidder.
- 12 (C) The competence and experience of the bidder.
- 13 (12) The board shall require the bidder to submit an affidavit:
- 14 (A) that the bidder has not entered into a combination or
- 15 agreement:
- 16 (i) relative to the price to be bid by a person;
- 17 (ii) to prevent a person from bidding; or
- 18 (iii) to induce a person to refrain from bidding; and
- 19 (B) that the bidder's bid is made without reference to any other
- 20 bid.
- 21 (c) Notwithstanding subsection (b)(8), a county may award sand,
- 22 gravel, asphalt paving materials, or crushed stone contracts to more
- 23 than one (1) responsible and responsive bidder if the specifications
- 24 allow for bids to be based upon service to specific geographic areas and
- 25 the contracts are awarded by geographic area. The geographic areas do
- 26 not need to be described in the specifications.

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 60, 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 8, line 36, reset in roman "overhead electric power lines carrying a".

Page 8, reset in roman line 37.

Page 8, line 38, reset in roman "having poles, standards, or supports".

Page 8, line 38, delete "any temporary or".

Page 8, line 39, delete "permanent structure".

and when so amended that said bill do pass.

(Reference is to SB 60 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 10, Nays 0.

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