



Reprinted
February 1, 2011

SENATE BILL No. 107

DIGEST OF SB 107 (Updated January 31, 2011 2:52 pm - DI 110)

Citations Affected: IC 4-20.5; IC 14-21.

Synopsis: Disposal of state owned real estate. Provides that the department of administration (department) may sell real property owned by the state by use of a request for proposals. Requires certain documentation to be kept if the department negotiates a sale of state owned real property with a potential buyer. Provides that the department may dispose of state owned real property involved in a dispute by exchanging the state owned real property for property of like value, regardless of the value of the state owned real property to be transferred. (Under current law, such an exchange may not be made if the value of the state owned real property exceeds \$10,000.) Provides that state owned real property may also be exchanged for other real property to improve the state's ability to manage state property or to improve access to state property. Requires the division of historic preservation and archeology of the department of natural resources to notify the department of the results of its review of the state owned real property proposed for disposition not later than 30 days after receiving notice from the department of the intent to dispose of the state owned real property.

Effective: July 1, 2011.

Charbonneau, Lanane

January 5, 2011, read first time and referred to Committee on Public Policy.
January 27, 2011, amended, reported favorably — Do Pass.
January 31, 2011, read second time, amended, ordered engrossed.

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SB 107—LS 6231/DI 14+



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. 107

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

- 1 SECTION 1. IC 4-20.5-7-10.7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.7. ~~(a) This section~~
3 ~~does not apply if the value of the state property is more than ten~~
4 ~~thousand dollars (\$10,000).~~
5 ~~(b)~~ **(a)** The department may transfer state property to a person in
6 exchange for property of like value transferred by the person to the
7 state:
8 (1) to:
9 **(A)** settle a dispute relating to either or both of the properties;
10 **or**
11 **(B) improve:**
12 **(i) the state's ability to manage state property; or**
13 **(ii) access to state property; and**
14 (2) without offering to transfer the state property:
15 **(A)** to state agencies, state educational institutions, or a
16 political subdivision under this chapter; or
17 **(B)** after a sale of the property under this chapter.



1 (c) (b) The department must establish that properties exchanged
2 under this section are of like value through appraisals or other means
3 approved by the commissioner.

4 SECTION 2. IC 4-20.5-7-11 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The department
6 may sell the property through either any of the following:

- 7 (1) Competitive bids.
- 8 (2) By auction.
- 9 (3) **By request for proposals.**

10 (b) **The department may enter into negotiations under this**
11 **section with the respondent who has made the highest offer only if**
12 **the negotiations are documented. The negotiation documentation**
13 **must include the following:**

- 14 (1) **A log of the date and time of each meeting with a**
15 **respondent. The log must include the identity of the**
16 **respondent.**
- 17 (2) **A description of the nature of all communications with**
18 **each respondent.**
- 19 (3) **Subject to subsection (d), a copy of all written**
20 **communications, including electronic communications, with**
21 **each respondent.**

22 (c) **Except as provided in subsection (d), the contents of the**
23 **contract file concerning a sale under this section are subject to**
24 **public inspection.**

25 (d) **Proprietary information included with a response, including**
26 **trade secrets, manufacturing processes, and financial information**
27 **that was not required to be made available for public inspection by**
28 **the terms of the invitation for bids, live auction, or request for**
29 **proposals, is not subject to public inspection.**

30 (e) **The negotiation documentation is subject to public inspection**
31 **under this section only after the transfer of the property.**

32 SECTION 3. IC 14-21-1-14, AS AMENDED BY P.L.2-2007,
33 SECTION 171, IS AMENDED TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) This section does not apply
35 to real property that is owned by a state educational institution.

36 (b) The Indiana department of administration shall notify the
37 division of a proposed transfer of real property owned by the state at
38 the earliest planning stage and ~~no~~ **not** later than ninety (90) days before
39 the date of the proposed transfer.

- 40 (c) The division shall:
- 41 (1) inspect the property; and
- 42 (2) notify the Indiana department of administration of the location

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1 of each historic site or historic structure on the property;
 2 **not later than thirty (30) days after receiving notice under**
 3 **subsection (b). If the division does not notify the Indiana**
 4 **department of administration under subdivision (2) within thirty**
 5 **(30) days after receiving notice under subsection (b), the Indiana**
 6 **department of administration may proceed with the proposed**
 7 **transfer.**

8 (d) Real property owned by the state may not be sold or transferred
 9 until the division has stated in writing that the property does not, to the
 10 best of the division's knowledge, contain a historic site or historic
 11 structure.

12 ~~(e)~~ (d) If the Indiana department of administration receives notice
 13 **under subsection (c)(2)** of a historic site or historic structure on the
 14 property, the Indiana department of administration shall reserve control
 15 of the appropriate historic property by means of a covenant or an
 16 easement contained in the transferring instrument.

17 ~~(f)~~ (e) The ~~division of state museums and historic sites department~~
 18 shall administer property **of which control is** reserved under
 19 subsection ~~(e)~~: (d).

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COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 107, 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 1, between the enacting clause and line one, begin a new paragraph and insert:

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

- (1) IC 5-16-3.
- (2) IC 5-16-6.
- (3) IC 5-16-7, if the estimated cost of the public works project is at least ~~twenty-five thousand dollars (\$25,000)~~; **one hundred fifty thousand dollars (\$150,000)**.
- (4) IC 5-16-8.
- (5) IC 5-16-9.

SECTION 2. IC 4-13.6-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided by this chapter and IC 16-33-4-10, if the estimated cost of a public works project is at least ~~seventy-five thousand dollars (\$75,000)~~; **one hundred fifty thousand dollars (\$150,000)**, the division shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a public works project is at least ~~seventy-five thousand dollars (\$75,000)~~; **one hundred fifty thousand dollars (\$150,000)**, the division shall develop contract documents for a public works contract and keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The division shall advertise for bids under section 8 of this chapter. The director shall award a contract under IC 4-13.6-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid. The director may waive filing of the financial statement.

(e) After bids are opened but before a contract is awarded, the director may require a contractor to submit a statement of the contractor's experience, a proposed plan of performing the work, and a listing of the equipment that is available to the contractor for performance of the work.

(f) The statements required by this section shall be submitted on forms approved by the state board of accounts. The forms shall be based, so far as applicable, on standard questionnaires and financial

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statements for contractors used in investigating the qualifications of contractors on public construction work.

(g) The division shall reject the bid of a contractor if:

- (1) the estimated cost of the public works project is one hundred fifty thousand dollars (\$150,000) or more and the contractor is not qualified under chapter 4 of this article;
- (2) the estimated cost of the public works project is less than one hundred fifty thousand dollars (\$150,000) and the director makes a written determination, based upon information provided under subsections (d) and (e), that the contractor is not qualified to perform the public works contract;
- (3) the contractor has failed to perform a previous contract with the state satisfactorily and has submitted the bid during a period of suspension imposed by the director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the director);
- (4) the contractor has not complied with a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or
- (5) the contractor has not complied with any requirement under section 2.5 of this chapter.

(h) The division shall keep a record of all bids. The state board of accounts shall approve the form of this record, and the record must include at least the following information:

- (1) The name of each contractor.
- (2) The amount bid by each contractor.
- (3) The name of the contractor making the lowest bid.
- (4) The name of the contractor to whom the contract was awarded.
- (5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.
- (6) Purchase order numbers.

SECTION 3. IC 4-13.6-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) If the estimated cost of a public works project is less than ~~seventy-five thousand dollars (\$75,000)~~, **one hundred fifty thousand dollars (\$150,000)**, the division may award a public works contract either under section 2 of this chapter or under this section, at the discretion of the director.

(b) If the director awards a contract under this section, the division shall invite quotations from at least three (3) contractors known to the division to deal in the work required to be done. However, if fewer than three (3) contractors are known to the division to be qualified to

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perform the work, the division shall invite quotations from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division may authorize the governmental body for which the public work is to be performed to invite quotations, but award of a contract based upon those quotations is the responsibility of the division.

(d) Quotations given by a contractor under this section must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the division awards a public works contract.

(e) The division shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirement imposed under section 2.5 of this chapter.

SECTION 4. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If the estimated cost of a public works project is less than ~~seventy-five thousand dollars (\$75,000)~~, **one hundred fifty thousand dollars (\$150,000)**, the division may perform the public work without awarding a public works contract under section 2 of this chapter. In performing the public work, the division may authorize use of equipment owned, rented, or leased by the state, may authorize purchase of materials in the manner provided by law, and may authorize performance of the public work using employees of the state.

(b) If a public works project involves a structure, improvement, or facility under the control of the department of natural resources, the department of natural resources may purchase materials for the project in the manner provided by law and without a contract being awarded, and may use its employees to perform the labor and supervision, if:

- (1) the department of natural resources uses equipment owned or leased by it; and
- (2) the division of engineering of the department of natural resources estimates the cost of the public works project will be less than ~~seventy-five thousand dollars (\$75,000)~~. **one hundred fifty thousand dollars (\$150,000)**.

(c) If a public works project involves a structure, improvement, or facility under the control of the department of correction, the department of correction may purchase materials for the project in the manner provided by law and use inmates in the custody of the department of correction to perform the labor and use its own employees for supervisory purposes, without awarding a contract, if:

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- (1) the department of correction uses equipment owned or leased by it; and
- (2) the estimated cost of the public works project using employee or inmate labor is less than the greater of:
 - (A) fifty thousand dollars (\$50,000); or
 - (B) the project cost limitation set by IC 4-13-2-11.1.

All public works projects covered by this subsection must comply with the remaining provisions of this article, and all plans and specifications for the public works project must be approved by a licensed architect or engineer.

SECTION 5. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) If the estimated cost of a public works project is ~~one hundred fifty thousand dollars (\$150,000)~~ **one million dollars (\$1,000,000)** or more, the division shall include as part of the public works contract provisions for the retainage of portions of payments by the division to the contractor, by the contractor to subcontractors, and for the payment of subcontractors and suppliers by the contractor. The contract must provide that the division may withhold from the contractor sufficient funds from the contract price to pay subcontractors and suppliers as provided in section 4 of this chapter.

(b) A public works contract and contracts between contractors and subcontractors, if portions of the public works contract are subcontracted, may include a provision that at the time any retainage is withheld, the division or the contractor, as the case may be, may place the retainage in an escrow account, as mutually agreed, with:

- (1) a bank;
- (2) a savings and loan institution;
- (3) the state of Indiana; or
- (4) an instrumentality of the state of Indiana;

as escrow agent. The parties to the contract shall select the escrow agent by mutual agreement. The parties to the agreement shall enter into a written agreement with the escrow agent.

(c) The escrow agreement must provide the following:

- (1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.
- (2) The escrow agent shall hold the escrowed principal and income until it receives notice from both of the other parties to the escrow agreement specifying the percentage of the escrowed principal to be released from the escrow and the persons to whom this percentage is to be released. When it receives this notice, the

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escrow agent shall promptly pay the designated percentage of escrowed principal and the same percentage of the accumulated escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions that are not inconsistent with subsection (c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 107 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 107 be amended to read as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 32.

Renumber all SECTIONS consecutively.

(Reference is to SB 107 as printed January 28, 2011.)

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