



Reprinted
February 18, 2011

SENATE BILL No. 441

DIGEST OF SB 441 (Updated February 17, 2011 4:21 pm - DI 87)

Citations Affected: IC 4-13.6; IC 5-11; IC 5-16; IC 36-1.

Synopsis: Public works projects cost thresholds. Increases the cost of projects that the department of natural resources may perform without awarding a public works contract from \$75,000 to \$150,000. Increases the cost of projects that some political subdivisions may perform without awarding a public works contract from \$100,000 to \$150,000. Requires that the public works division include as part of a public works contract provisions for retaining parts of certain payments if the estimated cost of the public works project is more than \$1,000,000. (Current law requires the provisions to be included if the estimated cost of the public works project is more than \$150,000.) Specifies notice and public meeting requirements that must be satisfied before a public work project with an estimated cost of more than \$100,000 may be performed by the workforce of a municipality, county, state agency, or state educational institution. Adds requirements for examination reports prepared by the state board of accounts concerning public work projects performed by the workforce of a municipality, county, state agency, or state educational institution. Provides that a state higher educational institution can maintain or repair a building without awarding a contract if the estimated cost of the project is less than \$200,000. Allows Purdue University, on agricultural or forestry land used by it for educational or research purposes, award contracts without advertising for bids if the cost of work is estimated to be less than \$200,000 (instead of \$50,000). Allows a board of aviation commissioners or an airport authority board to perform public work using their own workforce if the project is estimated to cost less than \$150,000 (instead of less than \$50,000).

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Effective: July 1, 2011.

Hershman, Mishler, Hume

January 12, 2011, read first time and referred to Committee on Local Government.
February 10, 2011, amended, reported favorably — Do Pass.
February 17, 2011, read second time, amended, ordered engrossed.

SB 441—LS 6752/DI 87+



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. 441

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 4-13.6-5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as
3 provided by this chapter and IC 16-33-4-10, if the estimated cost of a
4 public works project is at least ~~seventy-five thousand dollars (\$75,000)~~,
5 **one hundred fifty thousand dollars (\$150,000)**, the division shall
6 award a contract for the project based on competitive bids.
7 (b) If the estimated cost of a public works project is at least
8 ~~seventy-five thousand dollars (\$75,000)~~, **one hundred fifty thousand**
9 **dollars (\$150,000)**, the division shall develop contract documents for
10 a public works contract and keep the contract documents on file in its
11 offices so that they may be inspected by contractors and members of
12 the public.
13 (c) The division shall advertise for bids under section 8 of this
14 chapter. The director shall award a contract under IC 4-13.6-6.
15 (d) A contractor shall submit under oath a financial statement as a
16 part of the bid. The director may waive filing of the financial statement.
17 (e) After bids are opened but before a contract is awarded, the

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1 director may require a contractor to submit a statement of the
2 contractor's experience, a proposed plan of performing the work, and
3 a listing of the equipment that is available to the contractor for
4 performance of the work.

5 (f) The statements required by this section shall be submitted on
6 forms approved by the state board of accounts. The forms shall be
7 based, so far as applicable, on standard questionnaires and financial
8 statements for contractors used in investigating the qualifications of
9 contractors on public construction work.

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

11 (1) the estimated cost of the public works project is one hundred
12 fifty thousand dollars (\$150,000) or more and the contractor is not
13 qualified under chapter 4 of this article;

14 (2) the estimated cost of the public works project is less than one
15 hundred fifty thousand dollars (\$150,000) and the director makes
16 a written determination, based upon information provided under
17 subsections (d) and (e), that the contractor is not qualified to
18 perform the public works contract;

19 (3) the contractor has failed to perform a previous contract with
20 the state satisfactorily and has submitted the bid during a period
21 of suspension imposed by the director (the failure of the
22 contractor to perform a contract satisfactorily must be based upon
23 a written determination by the director);

24 (4) the contractor has not complied with a rule adopted under this
25 article and the rule specifies that failure to comply with it is a
26 ground for rejection of a bid; or

27 (5) the contractor has not complied with any requirement under
28 section 2.5 of this chapter.

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

32 (1) The name of each contractor.

33 (2) The amount bid by each contractor.

34 (3) The name of the contractor making the lowest bid.

35 (4) The name of the contractor to whom the contract was
36 awarded.

37 (5) The reason the contract was awarded to a contractor other than
38 the lowest bidder, if applicable.

39 (6) Purchase order numbers.

40 SECTION 2. IC 4-13.6-5-3 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) If the estimated
42 cost of a public works project is less than ~~seventy-five thousand dollars~~

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1 (~~\$75,000~~), **one hundred fifty thousand dollars (\$150,000)**, the
2 division may award a public works contract either under section 2 of
3 this chapter or under this section, at the discretion of the director.

4 (b) If the director awards a contract under this section, the division
5 shall invite quotations from at least three (3) contractors known to the
6 division to deal in the work required to be done. However, if fewer than
7 three (3) contractors are known to the division to be qualified to
8 perform the work, the division shall invite quotations from as many
9 contractors as are known to be qualified to perform the work. Failure
10 to receive three (3) quotations shall not prevent an award from being
11 made.

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

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

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

22 SECTION 3. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005,
23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2011]: Sec. 4. (a) If the estimated cost of a public works
25 project is less than ~~seventy-five thousand dollars (\$75,000)~~, **one**
26 **hundred fifty thousand dollars (\$150,000)**, the division may perform
27 the public work without awarding a public works contract under
28 section 2 of this chapter. In performing the public work, the division
29 may authorize use of equipment owned, rented, or leased by the state,
30 may authorize purchase of materials in the manner provided by law,
31 and may authorize performance of the public work using employees of
32 the state.

33 **(b) The workforce of a state agency may perform a public work**
34 **described in subsection (a) only if:**

35 **(1) the workforce, through demonstrated skills, training, or**
36 **expertise, is capable of performing the public work; and**

37 **(2) for a public work project under subsection (a) whose cost**
38 **is estimated to be more than one hundred thousand dollars**

39 **(\$100,000), the agency shall:**

40 **(A) publish a notice under IC 5-3-1 that:**

41 **(i) describes the public work that the agency intends to**
42 **perform with its own workforce; and**

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1 (ii) sets forth the projected cost of each component of the
 2 public work as described in subsection (a); and
 3 (B) determine at a public meeting that it is in the public
 4 interest to perform the public work with the agency's own
 5 workforce.

6 A public work project performed by an agency's own workforce
 7 must be inspected and accepted as complete in the same manner as
 8 a public work project performed under a contract awarded after
 9 receiving bids.

10 (c) If a public works project involves a structure, an
 11 improvement, or a facility under the control of an agency, the
 12 agency may not artificially divide the project to bring any part of
 13 the project under this section.

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

- 19 (1) the department of natural resources uses equipment owned or
- 20 leased by it; and
- 21 (2) the division of engineering of the department of natural
- 22 resources estimates the cost of the public works project will be
- 23 less than ~~seventy-five~~ **one hundred fifty** thousand dollars
- 24 ~~(\$75,000)~~; **(\$150,000)**.

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

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

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

41 SECTION 4. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006,
 42 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 2. (a) If the estimated cost of a public works
 2 project is ~~one hundred fifty thousand dollars (\$150,000)~~ **one million**
 3 **dollars (\$1,000,000)** or more, the division shall include as part of the
 4 public works contract provisions for the retainage of portions of
 5 payments by the division to the contractor, by the contractor to
 6 subcontractors, and for the payment of subcontractors and suppliers by
 7 the contractor. The contract must provide that the division may
 8 withhold from the contractor sufficient funds from the contract price to
 9 pay subcontractors and suppliers as provided in section 4 of this
 10 chapter.

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

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

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

23 (c) The escrow agreement must provide the following:

- 24 (1) The escrow agent shall promptly invest all escrowed principal
 25 in the obligations that the escrow agent selects, in its discretion.
 26 (2) The escrow agent shall hold the escrowed principal and
 27 income until it receives notice from both of the other parties to the
 28 escrow agreement specifying the percentage of the escrowed
 29 principal to be released from the escrow and the persons to whom
 30 this percentage is to be released. When it receives this notice, the
 31 escrow agent shall promptly pay the designated percentage of
 32 escrowed principal and the same percentage of the accumulated
 33 escrowed income to the persons designated in the notice.
 34 (3) The escrow agent shall be compensated for its services as the
 35 parties may agree. The compensation shall be a commercially
 36 reasonable fee commensurate with fees being charged at the time
 37 the escrow fund is established for the handling of escrow accounts
 38 of like size and duration. The fee must be paid from the escrowed
 39 income of the escrow account.

40 (d) The escrow agreement may include other terms and conditions
 41 that are not inconsistent with subsection (c). Additional provisions may
 42 include provisions authorizing the escrow agent to commingle the

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1 escrowed funds held under other escrow agreements and provisions
2 limiting the liability of the escrow agent.

3 SECTION 5. IC 5-11-1-26 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) If a state office,
5 municipality, or other entity has authority to contract for the
6 construction, reconstruction, alteration, repair, improvement, or
7 maintenance of a public work, the state board of accounts shall include
8 in each examination report concerning the state office, municipality, or
9 entity:

- 10 (1) an opinion concerning whether the state office, municipality,
- 11 or entity has complied with IC 5-16-8; and
- 12 (2) a brief description of each instance in which the state office,
- 13 municipality, or entity has exercised its authority under
- 14 IC 5-16-8-2(b) or IC 5-16-8-4.

15 **(b) If a municipality or a county performs a public work by**
16 **means of its own workforce under IC 36-1-12-3, the state board of**
17 **accounts shall include the following in each examination report**
18 **concerning the municipality or county:**

- 19 (1) **An opinion concerning whether the municipality or county**
- 20 **has complied with IC 36-1-12-3 for each public work**
- 21 **performed by the entity's own workforce.**
- 22 (2) **A brief description of each public work that the**
- 23 **municipality or county has performed with its own workforce**
- 24 **under IC 36-1-12-3, including a calculation of the actual cost**
- 25 **of each public work pursuant to IC 36-1-12-3.**
- 26 (3) **An opinion concerning whether the municipality or county**
- 27 **has complied with IC 36-1-12-19 in calculating the actual**
- 28 **costs of a public work project performed under IC 36-1-12-3.**

29 **(c) If a state agency performs a public work by means of its own**
30 **workforce under IC 4-13.6-5-4, the state board of accounts shall**
31 **include the following in each examination report concerning the**
32 **agency:**

- 33 (1) **An opinion concerning whether the agency has complied**
- 34 **with IC 4-13.6-5-4 for each public work performed by the**
- 35 **agency's own workforce.**
- 36 (2) **A brief description of each public work that the agency has**
- 37 **performed with its own workforce under IC 4-13.6-5-4,**
- 38 **including a calculation of the actual cost of each public work**
- 39 **under IC 4-13.6-5-4.**
- 40 (3) **An opinion concerning whether the agency has complied**
- 41 **with IC 4-13.6-5-4(c) in calculating the actual costs of a public**
- 42 **work project performed under IC 4-13.6-5-4.**

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1 **(d) If a state educational institution performs a public work by**
 2 **means of its own workforce under IC 5-16-1-1.5, the state board of**
 3 **accounts shall include the following in each examination report**
 4 **concerning the state educational institution:**

5 **(1) An opinion concerning whether the state educational**
 6 **institution has complied with IC 5-16-1-1.5 for each public**
 7 **work performed by the state educational institution's own**
 8 **workforce.**

9 **(2) A brief description of each public work that the state**
 10 **educational institution has performed with its own workforce**
 11 **under IC 5-16-1-1.5, including a calculation of the actual cost**
 12 **of each public work under IC 5-16-1-1.5.**

13 **(3) An opinion concerning whether the state educational**
 14 **institution has complied with IC 5-16-1-1.5 in calculating the**
 15 **actual costs of a public work project performed under**
 16 **IC 5-16-1-1.5.**

17 ~~(b)~~ **(e) The state board of accounts may exercise any of its powers**
 18 **under this chapter concerning public accounts to carry out this section,**
 19 **including the power to require a uniform system of accounting or the**
 20 **use of forms prescribed by the state board of accounts.**

21 **SECTION 6. IC 5-16-1-1.5 IS AMENDED TO READ AS**
 22 **FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.5. (a) The governing**
 23 **board of any state educational institution, acting on behalf of said**
 24 **institution, may purchase materials in the manner provided by law and**
 25 **perform any work by means of its own employees and owned or leased**
 26 **equipment in the construction, rehabilitation, extension, maintenance,**
 27 **or repair of any building, structure, improvement, or facility of said**
 28 **institutions, without awarding a contract therefor, whenever the cost of**
 29 **such work shall be estimated to be less than fifty thousand dollars**
 30 **~~(\$50,000).~~ two hundred thousand dollars (\$200,000).**

31 **(b) The workforce of a state educational institution may**
 32 **perform a public work described in subsection (a) only if:**

33 **(1) the workforce, through demonstrated skills, training, or**
 34 **expertise, is capable of performing the public work; and**

35 **(2) for a public work project under subsection (a) whose cost**
 36 **is estimated to be more than one hundred thousand dollars**
 37 **(\$100,000), the state educational institution shall:**

38 **(A) publish a notice under IC 5-3-1 that:**

39 **(i) describes the public work that the state educational**
 40 **institution intends to perform with its own workforce;**

41 **and**

42 **(ii) sets forth the projected cost of each component of the**

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1 public work as described in subsection (a); and
2 (B) determine at a public meeting that it is in the public
3 interest to perform the public work with the state
4 educational institution's own workforce.

5 A public work project performed by a state educational
6 institution's own workforce must be inspected and accepted as
7 complete in the same manner as a public work project performed
8 under a contract awarded after receiving bids.

9 (c) If a public work project involves a structure, an
10 improvement, or a facility under the control of a state educational
11 institution, the state educational institution may not artificially
12 divide the project to bring any part of the project under this
13 section.

14 SECTION 7. IC 5-16-1-1.7 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.7. On agricultural or
16 forestry land owned or occupied by Purdue University and used by it
17 for educational or research purposes, the trustees of the university may,
18 upon a declaration of necessity recorded in its minutes, award contracts
19 without advertising for bids or otherwise satisfying the requirements of
20 this chapter, if the cost of work is estimated to be less than ~~fifty two~~
21 ~~hundred~~ thousand dollars ~~(\$50,000)~~. **(\$200,000)**. However, bids shall
22 be invited from at least three (3) or more persons, firms, limited
23 liability companies, or corporations known to deal in the work required
24 to be done. The minutes of the board shall show the names of those
25 invited to bid.

26 SECTION 8. IC 5-16-1-1.9, AS AMENDED BY P.L.2-2007,
27 SECTION 103, IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2011]: Sec. 1.9. Notwithstanding this article, a
29 state educational institution may award a contract for any construction
30 or repair work to any building, structure, or improvement of the
31 institution without advertising for bids and meeting other contract
32 awarding requirements of this article whenever the estimated cost of
33 the project is less than ~~fifty two hundred~~ thousand dollars ~~(\$50,000)~~.
34 **(\$200,000)**. However, in awarding any contract under this section the
35 state educational institution must do the following:

- 36 (1) Invite bids from at least three (3) persons, firms, limited
37 liability companies, or corporations known to deal in the work
38 required to be done.
39 (2) Give notice of the project if the estimated cost of the project
40 is more than twenty-five thousand dollars (\$25,000). If required,
41 notice must include a description of the work to be done and be
42 given in at least one (1) newspaper of general circulation printed

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and published in the county in which the work is to be done.

(3) Award the contract to the lowest and best bidder.

SECTION 9. IC 36-1-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than one hundred **fifty** thousand dollars (~~(\$100,000)~~ **(\$150,000)**). Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes:

- (1) the actual cost of materials, labor, equipment, **and** rental;
- (2) a reasonable rate for use of trucks and heavy equipment owned; and
- (3) all other expenses incidental to the performance of the project.

(b) This subsection applies only to a municipality or a county. The workforce of a municipality or county may perform a public work described in subsection (a) only if:

- (1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and
- (2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the board shall:

- (A) publish a notice pursuant to IC 5-3-1 that:**
 - (i) describes the public work that the board intends to perform with its own workforce; and
 - (ii) sets forth the projected cost of each component of the public work as described in subsection (a); and
- (B) determine at a public meeting that it is in the public interest to perform the public work with the board's own workforce.**

A public work project performed by a board's own workforce must be inspected and accepted as complete in the same manner as a public work project performed pursuant to a contract awarded after receiving bids.

~~(b)~~ (c) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an

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1 annual contract may be awarded for equipment rental and materials to
 2 be installed or applied during a calendar or fiscal year if the proposed
 3 project or projects are described in the bid specifications.
 4 ~~(c)~~ (d) A board of aviation commissioners or an airport authority
 5 board may purchase or lease materials in the manner provided in
 6 IC 5-22 and perform any public work by means of its own workforce
 7 and owned or leased equipment, in the construction, maintenance, and
 8 repair of any airport roadway, runway, taxiway, or aircraft parking
 9 apron whenever the cost of that public work project is estimated to be
 10 less than **one hundred** fifty thousand dollars ~~(\$50,000)~~ **(\$150,000)**.
 11 ~~(d)~~ (e) Municipal and county hospitals must comply with this
 12 chapter for all contracts for public work that are financed in whole or
 13 in part with cumulative building fund revenue, as provided in section
 14 1(c) of this chapter. However, if the cost of the public work is
 15 estimated to be less than fifty thousand dollars (\$50,000), as reflected
 16 in the board minutes, the hospital board may have the public work done
 17 without receiving bids, by purchasing the materials and performing the
 18 work by means of its own workforce and owned or leased equipment.
 19 ~~(e)~~ (f) If a public works project involves a structure, an
 20 improvement, or a facility under the control of a department (as defined
 21 in IC 4-3-19-2(2)), the department may not artificially divide the
 22 project to bring any part of the project under this section.

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 441, 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 1, begin a new paragraph and insert:

"SECTION 1. 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 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;

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- (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 2. 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 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.

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(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."

Page 1, line 4, strike "seventy-five thousand dollars (\$75,000)," and insert "**one hundred fifty thousand dollars (\$150,000)**,".

Page 2, delete lines 21 through 42, begin a new paragraph and insert:

"SECTION 4. 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 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.

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(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.

SECTION 5. IC 5-11-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) If a state office, municipality, or other entity has authority to contract for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public work, the state board of accounts shall include in each examination report concerning the state office, municipality, or entity:

- (1) an opinion concerning whether the state office, municipality, or entity has complied with IC 5-16-8; and
- (2) a brief description of each instance in which the state office, municipality, or entity has exercised its authority under IC 5-16-8-2(b) or IC 5-16-8-4.

(b) If a municipality or a county performs a public work by means of its own workforce under IC 36-1-12-3, the state board of accounts shall include the following in each examination report concerning the municipality or county:

- (1) An opinion concerning whether the municipality or county has complied with IC 36-1-12-3 for each public work performed by the entity's own workforce.**
- (2) A brief description of each public work that the municipality or county has performed with its own workforce under IC 36-1-12-3, including a calculation of the actual cost of each public work pursuant to IC 36-1-12-3.**
- (3) An opinion concerning whether the municipality or county has complied with IC 36-1-12-19 in calculating the actual costs of a public work project performed under IC 36-1-12-3.**

~~(b)~~ (c) The state board of accounts may exercise any of its powers under this chapter concerning public accounts to carry out this section, including the power to require a uniform system of accounting or the use of forms prescribed by the state board of accounts.

SECTION 6. IC 5-16-1-1.5 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.5. The governing board of any state educational institution, acting on behalf of said institution, may purchase materials in the manner provided by law and perform any work by means of its own employees and owned or leased equipment in the construction, rehabilitation, extension, maintenance, or repair of any building, structure, improvement, or facility of said institutions, without awarding a contract therefor, whenever the cost of such work shall be estimated to be less than ~~fifty thousand dollars (\$50,000)~~: **two hundred thousand dollars (\$200,000)**.

SECTION 7. IC 36-1-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than one hundred ~~fifty~~ thousand dollars (~~\$100,000~~): **(\$150,000)**. Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes:

- (1) the actual cost of materials, labor, equipment, **and** rental;
- (2) a reasonable rate for use of trucks and heavy equipment owned; and
- (3) all other expenses incidental to the performance of the project.

(b) This subsection applies only to a municipality or a county. The workforce of a municipality or county may perform a public work described in subsection (a) only if:

- (1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and
- (2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the board shall:

(A) publish a notice pursuant to IC 5-3-1 that:

- (i) describes the public work that the board intends to perform with its own workforce; and
- (ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

(B) determine at a public meeting that it is in the public interest to perform the public work with the board's own workforce.

A public work project performed by a board's own workforce must

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be inspected and accepted as complete in the same manner as a public work project performed pursuant to a contract awarded after receiving bids.

~~(b)~~ (c) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications.

~~(c)~~ (d) A board of aviation commissioners or an airport authority board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work by means of its own workforce and owned or leased equipment, in the construction, maintenance, and repair of any airport roadway, runway, taxiway, or aircraft parking apron whenever the cost of that public work project is estimated to be less than fifty thousand dollars (\$50,000).

~~(d)~~ (e) Municipal and county hospitals must comply with this chapter for all contracts for public work that are financed in whole or in part with cumulative building fund revenue, as provided in section 1(c) of this chapter. However, if the cost of the public work is estimated to be less than fifty thousand dollars (\$50,000), as reflected in the board minutes, the hospital board may have the public work done without receiving bids, by purchasing the materials and performing the work by means of its own workforce and owned or leased equipment.

~~(e)~~ (f) If a public works project involves a structure, an improvement, or a facility under the control of a department (as defined in IC 4-3-19-2(2)), the department may not artificially divide the project to bring any part of the project under this section."

Delete page 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 441 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 441 be amended to read as follows:

Page 7, line 27, after "than" insert "**one hundred**".

Page 7, line 27, strike "\$50,000." and insert "**(\$150,000)**".

(Reference is to SB 441 as printed February 11, 2011.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 441 be amended to read as follows:

Page 6, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 5. IC 5-16-1-1.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.7. On agricultural or forestry land owned or occupied by Purdue University and used by it for educational or research purposes, the trustees of the university may, upon a declaration of necessity recorded in its minutes, award contracts without advertising for bids or otherwise satisfying the requirements of this chapter, if the cost of work is estimated to be less than **fifty two hundred** thousand dollars ~~(\$50,000)~~ **(\$200,000)**. However, bids shall be invited from at least three (3) or more persons, firms, limited liability companies, or corporations known to deal in the work required to be done. The minutes of the board shall show the names of those invited to bid.

SECTION 6. IC 5-16-1-1.9, AS AMENDED BY P.L.2-2007, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.9. Notwithstanding this article, a state educational institution may award a contract for any construction or repair work to any building, structure, or improvement of the institution without advertising for bids and meeting other contract awarding requirements of this article whenever the estimated cost of the project is less than **fifty two hundred** thousand dollars ~~(\$50,000)~~ **(\$200,000)**. However, in awarding any contract under this section the state educational institution must do the following:

- (1) Invite bids from at least three (3) persons, firms, limited liability companies, or corporations known to deal in the work required to be done.
- (2) Give notice of the project if the estimated cost of the project



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is more than twenty-five thousand dollars (\$25,000). If required, notice must include a description of the work to be done and be given in at least one (1) newspaper of general circulation printed and published in the county in which the work is to be done.

(3) Award the contract to the lowest and best bidder."

Renumber all SECTIONS consecutively.

(Reference is to SB 441 as printed February 11, 2011.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 441 be amended to read as follows:

Page 3, between lines 32 and 33, begin a new paragraph and insert:

"(b) The workforce of a state agency may perform a public work described in subsection (a) only if:

- (1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and**
- (2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the agency shall:**

(A) publish a notice under IC 5-3-1 that:

- (i) describes the public work that the agency intends to perform with its own workforce; and**
- (ii) sets forth the projected cost of each component of the public work as described in subsection (a); and**

(B) determine at a public meeting that it is in the public interest to perform the public work with the agency's own workforce.

A public work project performed by an agency's own workforce must be inspected and accepted as complete in the same manner as a public work project performed under a contract awarded after receiving bids.

(c) If a public works project involves a structure, an improvement, or a facility under the control of an agency, the agency may not artificially divide the project to bring any part of the project under this section."

Page 3, line 33, strike "(b)" and insert "(c)".

Page 4, line 2, strike "(c)" and insert "(d)".

Page 6, between lines 5 and 6, begin a new paragraph and insert:

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"(c) If a state agency performs a public work by means of its own workforce under IC 4-13.6-5-4, the state board of accounts shall include the following in each examination report concerning the agency:

- (1) An opinion concerning whether the agency has complied with IC 4-13.6-5-4 for each public work performed by the agency's own workforce.
- (2) A brief description of each public work that the agency has performed with its own workforce under IC 4-13.6-5-4, including a calculation of the actual cost of each public work under IC 4-13.6-5-4.
- (3) An opinion concerning whether the agency has complied with IC 4-13.6-5-4(c) in calculating the actual costs of a public work project performed under IC 4-13.6-5-4.

(d) If a state educational institution performs a public work by means of its own workforce under IC 5-16-1-1.5, the state board of accounts shall include the following in each examination report concerning the state educational institution:

- (1) An opinion concerning whether the state educational institution has complied with IC 5-16-1-1.5 for each public work performed by the state educational institution's own workforce.
- (2) A brief description of each public work that the state educational institution has performed with its own workforce under IC 5-16-1-1.5, including a calculation of the actual cost of each public work under IC 5-16-1-1.5.
- (3) An opinion concerning whether the state educational institution has complied with IC 5-16-1-1.5 in calculating the actual costs of a public work project performed under IC 5-16-1-1.5."

Page 6, line 6, delete "(c)" and insert "(e)".

Page 6, line 11, after "1.5." insert "(a)".

Page 6, between lines 19 and 20, begin a new paragraph and insert:

"(b) The workforce of a state educational institution may perform a public work described in subsection (a) only if:

- (1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and
- (2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the state educational institution shall:

(A) publish a notice under IC 5-3-1 that:

- (i) describes the public work that the state educational

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**institution intends to perform with its own workforce;
and
(ii) sets forth the projected cost of each component of the
public work as described in subsection (a); and
(B) determine at a public meeting that it is in the public
interest to perform the public work with the state
educational institution's own workforce.**

**A public work project performed by a state educational
institution's own workforce must be inspected and accepted as
complete in the same manner as a public work project performed
under a contract awarded after receiving bids.**

**(c) If a public work project involves a structure, an
improvement, or a facility under the control of a state educational
institution, the state educational institution may not artificially
divide the project to bring any part of the project under this
section."**

(Reference is to SB 441 as printed February 11, 2011.)

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