CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 60

Citations Affected: IC 5-14-1.5-6.1; IC 8-22; IC 36-1-12-4.

Synopsis: Local government issues. CONFERENCE COMMITTEE REPORT FOR ESB 60. Provides that one executive session per calendar year 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 an 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, bids may be opened after the time designated if: (1) the political subdivision makes a written determination that it is in the best interest of the political subdivision to delay the opening; and (2) the day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening. Changes the membership of the board of the Indianapolis airport authority. Reduces the number of members appointed by the mayor of the consolidated city from six members to five members. Provides for the majority leader of the city-county council to appoint a member currently appointed by the county commissioners from one of the townships in which the airport is located. Increases the number of voting members by one member. Provides that the term of office of the member appointed by the county commissioners expires January 1, 2012. Provides that the appointment by the majority leader of the county legislative body is effective January 1, 2012. Provides that the individual appointed by the county commissioners and whose term expires January 1, 2012, may be reappointed by any public official who has appointment authority after December 31, 2011. **(This conference committee report does the following: (1) Eliminates an appointment to the airport authority board by the minority leader of the county legislative body of a county having a consolidated city. (2) Requires the majority leader of the county legislative body to make the appointment from either Decatur Township or Wayne Township. (3) Reduces the number of members appointed to the airport authority board by the mayor of the consolidated city from six members to five members. (4) Increases the number of voting members by one member.)**

Effective: July 1, 2011; January 1, 2012.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 60 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-14-1.5-6.1, AS AMENDED BY P.L.120-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.

(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation

of school safety and security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, the ports of Indiana, an economic development commission, the Indiana state department of agriculture, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

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

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

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

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this subdivision.

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

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

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

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

SECTION 3. IC 8-22-3-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 4.1. (a) This section applies only to the board of an airport authority established for a county having a consolidated city.

(b) The board consists of members appointed as follows:

(1) The mayor of the consolidated city shall appoint ~~six (6)~~ **five (5)** members. Each member appointed under this subdivision must be a resident of the county having the consolidated city.

(2) The ~~board of commissioners~~ **majority leader of the legislative body** of the county having the consolidated city shall appoint one (1) member. The member appointed under this subdivision must be a resident of the county having the consolidated city.

(3) The county executive of each Indiana county that fulfills all of the following requirements shall each appoint one (1) member:

(A) The county is adjacent to the county having the consolidated city.

(B) The county has a population of:

(i) more than one hundred thousand (100,000) but less than one hundred five thousand (105,000);

(ii) more than fifty-five thousand (55,000) but less than sixty-five thousand (65,000); or

(iii) more than one hundred eighty thousand (180,000) but less than one hundred eighty-two thousand seven hundred ninety (182,790).

(C) The authority owns real property in the county.

The county executive of a county represented on the board under this subdivision may not appoint an advisory member under section 4(e) of this chapter.

Not more than ~~four (4)~~ **three (3)** members appointed under ~~subdivisions~~ **subdivision** (1) ~~and (2)~~ may be members of the same political party.

(c) ~~At least one (1)~~ **The** member of the board appointed under subsection ~~(b)(1)~~ **(b)(2)** must also be a resident of a township that:

(1) is located in the county having the consolidated city; and

(2) has a population of:

(A) less than twenty-five thousand (25,000); or

(B) more than one hundred thirty-three thousand (133,000) but less than one hundred fifty thousand (150,000).

(d) A member of the board appointed under subsection ~~(b)(3)~~ **(b)(3)(B)(i)** must be a resident of a township:

(1) located in the county making the appointment; and

(2) having a population of more than twenty thousand (20,000) but less than twenty-five thousand (25,000).

(e) The county executive of a county that is not otherwise represented on the board and that is located not more than one thousand two hundred (1,200) feet from a certified air carrier airport that is owned or operated by the authority may appoint one (1) advisory member to the board. An advisory member appointed under this subsection:

(1) must be a resident of:

(A) the county making the appointment; and

(B) one (1) of the two (2) townships in the county located nearest to the airport;

(2) may not vote on any matter before the board;

(3) serves at the pleasure of the appointing authority; and

(4) serves without compensation or payment for expenses.

(f) A member of the board holds office for four (4) years and until the member's successor is appointed and qualified.

(g) If a vacancy occurs in the board, the authority that appointed the member that vacated the board shall appoint an individual to serve for the remainder of the unexpired term.

(h) A board member may be reappointed to successive terms.

(i) A board member may be impeached under the procedure provided for the impeachment of county officers.

(j) A board member appointed under subsection (b)(3) may not vote on a matter before the board relating to imposing, increasing, or decreasing property taxes in the county having the consolidated city.

SECTION 4. IC 8-22-3-11, AS AMENDED BY P.L.182-2009(ss), SECTION 268, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. The board may do all acts necessary or reasonably incident to carrying out the purposes of this chapter, including the following:

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

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

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

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

(A) The board may not levy taxes on property in excess of the following rate schedule, except as provided in sections 17 and 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

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

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

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

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

(7) To acquire property, real, personal, or mixed, by deed, purchase, lease, condemnation, or otherwise and dispose of it for use or in connection with or for administrative purposes of the airport; to receive gifts, donations, bequests, and public trusts and to agree to conditions and terms accompanying them and to bind the authority to carry them out; to receive and administer federal or state aid; and to erect buildings or structures that may be needed to administer and carry out this chapter.

(8) To determine matters of policy regarding internal organization and operating procedures not specifically provided for otherwise.

(9) To adopt a schedule of reasonable charges and to collect them from all users of facilities and services within the district.

(10) To purchase supplies, materials, and equipment to carry out the duties and functions of the board in accordance with procedures adopted by the board.

(11) To employ personnel that are necessary to carry out the duties, functions, and powers of the board.

(12) To establish an employee pension plan. The board may, upon

due investigation, authorize and begin a fair and reasonable pension or retirement plan and program for personnel, the cost to be borne by either the authority or by the employee or by both, as the board determines. If the authority was established under IC 19-6-2 (before its repeal on April 1, 1980), the entire cost must be borne by the authority, and ordinances creating the plan or making changes in it must be approved by the mayor of the city. The plan may be administered and funded by a trust fund or by insurance purchased from an insurance company licensed to do business in Indiana or by a combination of them. The board may also include in the plan provisions for life insurance, disability insurance, or both.

(13) To sell surplus real or personal property in accordance with law. If the board negotiates an agreement to sell trees situated in woods or forest areas owned by the board, the trees are considered to be personal property of the board for severance or sale.

(14) To adopt and use a seal.

(15) To acquire, establish, construct, improve, equip, maintain, control, lease, and regulate municipal airports, landing fields, and other air navigation facilities, either inside or outside the district; to acquire by lease (with or without the option to purchase) airports, landing fields, or navigation facilities, and any structures, equipment, or related improvements; and to erect, install, construct, and maintain at the airport or airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and the public. The Indiana department of transportation must grant its approval before land may be purchased for the establishment of an airport or landing field and before an airport or landing field may be established.

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

(A) with a person:

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

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

(B) to use, plan, design, acquire, construct, reconstruct, improve, extend, expand, lease, operate, repair, manage, maintain, or finance all or any part of the airport and its landing fields, air navigation facilities, and other buildings and structures for a period not to exceed ninety-nine (99) years. However, the board must pass an ordinance to enter into such a lease, management agreement, or other contract. All contracts, leases, and management agreements are subject to restrictions and conditions that the board prescribes. The authority may lease its property and facilities for any commercial or industrial use it considers necessary and proper, including the use of providing airport motel facilities. A lease,

management agreement, or other contract entered into under this section or any other provision of this chapter may be entered into without complying with IC 5-23.

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

(22) To negotiate and execute contracts for sale or purchase, lease, personal services, materials, supplies, equipment, or any other transaction or business relative to an airport under the board's control and operation. However, whenever the board determines to sell part or all of aviation lands, buildings, or improvements owned by the authority, the sale must be in accordance with law.

(23) To vacate all or parts of roads, highways, streets, or alleys, whether inside or outside the district, in the manner provided by statute.

(24) To annex lands to itself if the lands are owned by the authority or are streets, roads, or other public ways.

(25) To approve any state, county, city, or other highway, road, street or other public way, railroad, power line, or other right-of-way to be laid out or opened across an airport or in such proximity as to affect the safe operation of the airport.

(26) To construct drainage and sanitary sewers with connections and outlets as are necessary for the proper drainage and maintenance of an airport or landing field acquired or maintained under this chapter, including the necessary buildings and improvements and for the public use of them in the same manner that the authority may construct sewers and drains. However, with respect to the construction of drains and sanitary sewers beyond the boundaries of the airport or landing field, the board shall proceed in the same manner as private owners of property and may institute proceedings and negotiate with the departments, bodies, and officers of an eligible entity to secure the proper orders and approvals; and to order a public utility or public service corporation or other person to remove or to install in underground conduits wires, cables, and power lines passing through or over the airport or landing field or along the borders or within a reasonable distance that may be determined to be necessary for the safety of operations, upon payment to the utility or other person of due compensation for the expense of the removal or reinstallation. The board must consent before any franchise may be granted by state or local authorities for the construction of or maintenance of railway, telephone, telegraph, electric power, pipe, or conduit line upon, over, or through land under the control of the board or within a reasonable distance of land that is necessary for the safety of operation. The board must also consent before overhead electric power lines carrying a voltage of more than four thousand four hundred (4,400) volts and having poles, standards, or supports over thirty (30) feet in height within one-half (1/2) mile of a landing area acquired or maintained under this chapter may be installed.

(27) To contract with any other state agency or instrumentality or any political subdivision for the rendition of services, the rental 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 5. 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 6. 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.

(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. **Notwithstanding any other law, bids may be opened after the time designated if both of the following apply:**

(A) The board makes a written determination that it is in the best interest of the board to delay the opening.

(B) The day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening.

(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 conforms in all material respects to the specifications.

(B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.

(C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

(A) The ability and capacity of the bidder to perform the work.

(B) The integrity, character, and reputation of the bidder.

(C) The competence and experience of the bidder.

(12) The board shall require the bidder to submit an affidavit:

(A) that the bidder has not entered into a combination or

agreement:

(i) relative to the price to be bid by a person;

(ii) to prevent a person from bidding; or

(iii) to induce a person to refrain from bidding; and

(B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

SECTION 7. [EFFECTIVE JULY 1, 2011] **(a) As used in this SECTION, "authority" refers to an airport authority established under IC 8-22-3-4.1, as amended by this act.**

(b) As used in this SECTION, "appointee of the board of commissioners" refers to the individual appointed to the board of the authority under IC 8-22-3-4.1(b)(2), as in effect before July 1, 2011.

(c) Notwithstanding IC 8-22-3-4.1, as in effect before July 1, 2011, and as amended by this act, the term of the appointee of the board of commissioners expires January 1, 2012.

(d) The appointment to the board of the authority by the majority leader of the legislative body of the county having the consolidated city under IC 8-22-3-4.1(b)(2), as amended by this act, is effective January 1, 2012.

(e) After December 31, 2011, the appointee of the board of commissioners may be reappointed to the board of the authority under IC 8-22-3-4.1, as amended by this act, by any public official who has the power to make an appointment under IC 8-22-3-4.1, as amended by this act.

(f) This SECTION expires January 1, 2013.

(Reference is to ESB 60 as reprinted April 12, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 60

Signed by:

Senator Lawson C Chairperson	Representative Soliday
Senator Boots	Representative Behning
Senate Conferees	**House Conferees**