

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR EHB 1216**

**Citations Affected:** IC 5-16-7.

**Synopsis:** Public works projects. PROPOSED CONFERENCE COMMITTEE REPORT for EHB 1216. Provides that the state president of the Associated Builders and Contractors of Indiana appoints a member of a common construction wage committee currently appointed by the governor. Raises the threshold for the application of the common construction wage statute from \$150,000 to \$250,000 for contracts awarded after December 31, 2011, and before January 1, 2013, and to \$350,000 for contracts awarded after December 31, 2012. Provides that a committee must consider any written reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council or the Associated Builders and Contractors of Indiana when making a determination of the common construction wage for a public works project. Provides that a public works project may not be artificially divided to avoid application of the common construction wage statute. Urges the legislative council to assign the following topics to a study committee during the 2011 legislative interim: (1) The use of an agreement with a labor organization on public works projects covered by a public works statute. (2) Job classifications used in a common construction wage determination. Makes technical changes. **(This conference committee report restores language that provides that the awarding agency appoints a representative of industry to a common construction wage committee and provides that the state president of the Associated Builders and Contractors instead of the governor appoints a third member of a committee. This conference committee report removes language that a common construction wage committee's determination may not address matters other than those specifically described in the statute. This conference committee report also resolves conflicts with SEA 418 from the 2011 Session.)**

**Effective:** July 1, 2011.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1216 respectfully reports that said two committees have conferred and agreed as follows to wit:*

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

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-16-7-1, AS AMENDED BY SEA 418-2011,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2011]: Sec. 1. (a) Any firm, individual, partnership, limited
- 5 liability company, or corporation that is awarded a contract by the state,
- 6 a political subdivision, or a municipal corporation for the construction
- 7 of a public work, and any subcontractor of the construction, shall pay
- 8 for each class of work described in subsection (c)(1) on the project a
- 9 scale of wages that may not be less than the common construction
- 10 wage.
- 11 (b) For the purpose of ascertaining what the common construction
- 12 wage is in the county, the awarding governmental agency, before
- 13 advertising for the contract, shall set up a committee of five (5) persons
- 14 as follows:
- 15 (1) One (1) person representing labor, to be named by the
- 16 president of the state federation of labor.
- 17 (2) One (1) person representing industry, to be named by the
- 18 awarding agency.
- 19 (3) A third member to be named by the ~~governor~~ **state president**
- 20 **of the Associated Builders and Contractors.**
- 21 (4) One (1) taxpayer who pays the tax that will be the funding
- 22 source for the project and resides in the county where the project

- 1 is located. The owner of the project shall make the appointment  
2 under this subdivision.
- 3 (5) One (1) taxpayer who pays the tax that will be the funding  
4 source for the project and resides in the county where the project  
5 is located. The legislative body (as defined in IC 36-1-2-9) for the  
6 county where the project is located shall make the appointment  
7 under this subdivision.
- 8 (c) As soon as appointed, the committee shall meet in the county  
9 where the project is located and determine in writing the following:
- 10 (1) A classification of the labor to be employed in the  
11 performance of the contract for the project, divided into the  
12 following three (3) classes:
- 13 (A) Skilled labor.  
14 (B) Semiskilled labor.  
15 (C) Unskilled labor.
- 16 (2) The wage per hour to be paid each of the classes.
- 17 The committee is not required to consider information not presented to  
18 the committee at the meeting. IC 5-14-1.5 (open door law) applies to  
19 a meeting of the committee.
- 20 (d) The rate of wages determined by the committee under subsection  
21 (c) applies to any contract for which the awarding government agency  
22 lets not later than three (3) months after the date the committee  
23 determines the rate of wages. The committee shall establish wages for  
24 all classifications of work that may be employed on projects subject to  
25 contracts let by the awarding agency for three (3) months after the date  
26 the committee determines the rate of wages. If an awarding agency  
27 advertises for a contract that includes classifications that are not listed  
28 on the existing wage scale, the awarding agency shall form a new  
29 committee under subsection (b) to determine the classifications and  
30 wages on the contract.
- 31 (e) If the awarding government agency lets for a contract later than  
32 three (3) months after the committee determines the rate of wages, the  
33 awarding government agency shall form a new committee under  
34 subsection (b) to determine a rate of wages for the contract. The rate of  
35 wages determined under this subsection applies to any contract for  
36 which the awarding government agency lets not later than three (3)  
37 months after the rate of wages is determined under this subsection.
- 38 (f) The rate of wages determined under subsection (c) shall not be  
39 less than the common construction wage for each of the three (3)  
40 classes of wages described in subsection (c) that are currently being  
41 paid in the county where the project is located.
- 42 (g) ~~The provisions of This chapter shall~~ **does** not apply to contracts  
43 let by the Indiana department of transportation for the construction of  
44 highways, streets, and bridges. IC 8-23-9 applies to state highway  
45 projects.
- 46 (h) A determination under subsection (c) shall be made and filed  
47 with the awarding agency at least two (2) weeks prior to the date fixed  
48 for the letting, and a copy of the determination shall be furnished upon  
49 request to any person desiring to bid on the contract. The schedule is  
50 open to the inspection of the public.
- 51 (i) If the committee appointed under subsection (b) fails to act and

1 to file a determination under subsection (c) at or before the time  
2 required under subsection (h), the awarding agency shall make the  
3 determination, and its finding shall be final.

4 (j) It shall be a condition of a contract awarded under this chapter  
5 that the successful bidder and all subcontractors shall comply strictly  
6 with the determination made under this section.

7 (k) ~~The provisions of~~ This chapter ~~do~~ **does** not apply to public  
8 projects in ~~this state~~ **Indiana** that would otherwise be subject to ~~the~~  
9 ~~provisions of~~ this chapter that are to be paid for in whole or in part with  
10 funds granted by the federal government, unless the department of the  
11 federal government making the grant ~~shall consent~~ **consents** in writing  
12 that ~~the provisions of~~ this chapter ~~are~~ **is** applicable to the project.

13 (l) Notwithstanding any other law, ~~the provisions of~~ this chapter  
14 ~~apply~~ **applies** to projects that will be:

15 (1) owned entirely; or

16 (2) leased with an option to purchase;

17 by the state or a political subdivision (as defined in IC 36-1-2-13).

18 (m) Notwithstanding any other law, this chapter does not apply to  
19 projects in which the actual construction costs ~~are~~ less than ~~one~~  
20 ~~hundred fifty thousand dollars (\$150,000):~~ **the following:**

21 **(1) For contracts awarded after December 31, 2011, and**  
22 **before January 1, 2013, two hundred fifty thousand dollars**  
23 **(\$250,000).**

24 **(2) For contracts awarded after December 31, 2012, three**  
25 **hundred fifty thousand dollars (\$350,000).**

26 SECTION 2. IC 5-16-7-4, AS AMENDED BY SEA 418-2011,  
27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2011]: Sec. 4. The **following** definitions ~~in this section~~ apply  
29 throughout this chapter:

30 (1) "Common construction wage" means a scale of wages for each  
31 class of work described in section 1(c)(1) of this chapter that is  
32 not less than the common construction wage of all construction  
33 wages being paid in the county where a project is located, as  
34 determined by the committee described in section 1(b) of this  
35 chapter after having considered **the following:**

36 **(A) Any reports with respect to wage scales submitted by**  
37 **the Indiana State Building and Construction Trades**  
38 **Council.**

39 **(B) Any reports with respect to wage scales submitted by**  
40 **the Associated Builders and Contractors of Indiana.**

41 **(C) Any other** information submitted by any person to the  
42 committee established under section 1(b) of this chapter.

43 (2) "State" ~~of Indiana~~ includes any officer, board, commission,  
44 or other agency authorized by law to award contracts for the  
45 performance of public work on behalf of the state, ~~excepting~~  
46 ~~except~~ as otherwise provided in this chapter.

47 (3) "Municipal corporation" includes any county, city, town, ~~or~~  
48 school corporation, ~~as well as~~ **or** any officer, board, commission,  
49 or other agency authorized by law to award contracts for the  
50 performance of public work on behalf of ~~any such a~~ municipal  
51 corporation. The term also includes a redevelopment commission

1 established under IC 36-7-14-3.

2 (4) "Public work" includes any public building, highway, street,  
3 alley, bridge, sewer, drain, improvement, or any other work of any  
4 nature or character ~~whatsoever~~ ~~which~~ ~~that~~ is paid for out of  
5 public funds, ~~excepting~~ ~~except~~ as otherwise provided in this  
6 chapter.

7 SECTION 3. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2011]: **Sec. 6. (a) A public work project may not be artificially  
10 divided into two (2) or more projects to avoid the application of  
11 this chapter.**

12 **(b) A bidder, quoter, or other person who is a party to a public  
13 work contract who knowingly violates this section commits a Class  
14 A infraction and may not be a party to, or benefit from, a public  
15 work contract for two (2) years after the date of the adjudication.**

16 **(c) An officer or employee of the state or a municipal  
17 corporation who knowingly violates this section commits a Class A  
18 infraction.**

19 SECTION 4. [EFFECTIVE JULY 1, 2011] **(a) As used in this  
20 SECTION, "legislative council" refers to the legislative council  
21 established by IC 2-5-1.1-1.**

22 **(b) As used in this SECTION, "public works statute" refers to  
23 any of the following:**

- 24 **(1) IC 4-13.6.**
- 25 **(2) IC 5-16.**
- 26 **(3) IC 8-10-1.**
- 27 **(4) IC 8-23-9.**
- 28 **(5) IC 36-1-12.**

29 **(c) As used in this SECTION, "study committee" means either  
30 of the following:**

- 31 **(1) A statutory committee established under IC 2-5.**
- 32 **(2) An interim study committee.**

33 **(d) The legislative council is urged to assign the following topics  
34 to a study committee during the 2011 legislative interim:**

- 35 **(1) The use of an agreement with a labor organization on  
36 public works projects covered by a public works statute.**
- 37 **(2) Job classifications used in a common construction wage  
38 determination.**

39 **(e) If a topic described in subsection (d) is assigned to a study  
40 committee, the study committee shall determine whether legislation  
41 should be enacted to address the topic and, if so, the study  
42 committee shall recommend proposed legislation.**

43 **(f) This SECTION expires December 31, 2011.**

(Reference is to EHB 1216 as reprinted April 19, 2011.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1216**

**S**igned by:

---

Representative Davis  
Chairperson

---

Senator Walker

---

Representative Torr

---

Senator Boots

**House Conferees**

**Senate Conferees**