

HOUSE BILL No. 1234

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-15.

Synopsis: Fair and open competition for public works projects. Provides that a public agency may not do any of the following: (1) Impose by rule, ordinance, or other action, or in the bid specifications or contract documents for a public works project, a requirement inconsistent with, in addition to, or more stringent or restrictive than certain statutory prequalification or any other requirement of an applicable public works statute. (2) Award a public works contract to a contractor under a contract award standard other than the contract award standard of the applicable public works statute. (3) Require a potential bidder on a public works project to provide any information other than the applicable financial information required by the prequalification statutes or as prescribed by the state board of accounts under the applicable public works statute. (4) By rule, ordinance, or any other action relating to contracts for public works projects, create or impose any prequalification processes that are additional to or inconsistent with those established by the prequalification statute or impose any requirements that directly or indirectly restrict potential bidders or proposers to any predetermined class of bidders defined by labor affiliation or membership or minimum training requirements inconsistent with, or more restrictive than, those required by certain public works statutes. (5) Take certain actions based on a bidder's, offeror's, or contractor's entering into, refusing to enter into, adhering to, or refusing to adhere to an agreement with a labor organization.

Effective: Upon passage.

Torr, Miller D

January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1234

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 5-16-15 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 15. Requirements for Public Agencies on Public Works**
5 **Projects**

6 **Sec. 1. (a) This chapter applies only to a public works contract**
7 **awarded after June 30, 2021.**

8 **(b) The requirements described in this chapter are in addition**
9 **to requirements for public agencies stated in the applicable public**
10 **works statute. The provisions of an applicable public works statute**
11 **shall be construed consistently with this chapter, but to the extent**
12 **an applicable public works statute is inconsistent with this chapter,**
13 **the provisions of this chapter govern.**

14 **(c) A provision of an invitation for bids, request for proposals,**
15 **or a public works contract inconsistent with this chapter is void.**

16 **Sec. 2. As used in this chapter, "applicable public works statute"**
17 **refers to whichever of the following statutes is applicable to the**



1 public works project of the public agency:

2 (1) IC 4-13.6.

3 (2) This article.

4 (3) IC 5-23-4 (build, operate, transfer, and public-private
5 agreements).

6 (4) IC 5-30 (design-build).

7 (5) IC 5-32 (employment of construction manager as
8 constructor).

9 (6) IC 36-1-12.

10 (7) Any other statute applicable to the public works projects
11 of the public agency.

12 Sec. 3. As used in this chapter, "contractor" refers generally to
13 a contractor in any contractor tier.

14 Sec. 4. As used in this chapter, "contractor tier" has the
15 meaning set forth in IC 5-16-13-4.

16 Sec. 5. As used in this chapter, "public agency" has the meaning
17 set forth in IC 5-30-1-11.

18 Sec. 6. As used in this chapter, "public works project" refers to
19 a construction project governed by an applicable public works
20 statute.

21 Sec. 7. (a) A public agency may not impose:

22 (1) by rule, ordinance, or other action; or

23 (2) in the bid specifications or contract documents for a public
24 works project;

25 a requirement inconsistent with, in addition to, or more stringent
26 or restrictive than the prequalification requirements of
27 IC 5-16-13-10(c) or any other requirement of an applicable public
28 works statute.

29 (b) A public agency may not award a public works contract to
30 a contractor under a contract award standard other than the
31 contract award standard of the applicable public works statute.

32 Sec. 8. (a) A public agency may not require a potential bidder on
33 a public works project to provide any information other than the
34 applicable financial information required by the prequalification
35 process of IC 5-16-13 or as prescribed by the state board of
36 accounts under the applicable public works statute.

37 (b) This section does not prohibit a public agency from
38 obtaining information from the lowest responsive bidder required
39 by the state board of accounts under the applicable public works
40 statute to determine the bidder's responsibility relating to the
41 bidder's experience, number of employees, and ability to finance
42 the cost of the public works project.



1 **Sec. 9. A public agency may not by rule, ordinance, or any other**
 2 **action relating to contracts for public works projects do any of the**
 3 **following, regardless of whether work on the public works project**
 4 **is contracted through competitive bids or through any other**
 5 **method authorized by the applicable public works statute:**

6 **(1) Create or impose any prequalification processes that are**
 7 **additional to or inconsistent with those established by**
 8 **IC 5-16-13.**

9 **(2) Impose any requirements that directly or indirectly**
 10 **restrict potential bidders or proposers to any predetermined**
 11 **class of bidders defined by any of the following:**

12 **(A) Labor affiliation or membership.**

13 **(B) Minimum training requirements inconsistent with, or**
 14 **more restrictive than those required in IC 5-16-13.**

15 **Sec. 10. (a) A public agency awarding a contract for a public**
 16 **works project may not in the bid specifications, project**
 17 **agreements, or other contract documents do any of the following:**

18 **(1) Require a bidder, offeror, or contractor in any contractor**
 19 **tier to enter into or adhere to an agreement with a labor**
 20 **organization relating to the public works project or any other**
 21 **public works project.**

22 **(2) Prohibit a bidder, offeror, or contractor in any contractor**
 23 **tier from entering into or adhering to an agreement with a**
 24 **labor organization relating to the public works project or any**
 25 **other public works project.**

26 **(3) Discriminate against a bidder, offeror, or contractor in**
 27 **any contractor tier for any of the following:**

28 **(A) Becoming or remaining a signatory to an agreement**
 29 **with a labor organization relating to the public works**
 30 **project or any other public works project.**

31 **(B) Refusing to become or remain a signatory to an**
 32 **agreement with a labor organization relating to the public**
 33 **works project or any other public works project.**

34 **(C) Adhering or refusing to adhere to an agreement with**
 35 **a labor organization relating to the public works project or**
 36 **any other public works project.**

37 **(b) A public agency may not award a grant, tax abatement, or**
 38 **tax credit that is conditioned upon a requirement that the person**
 39 **awarded the grant, tax abatement, or tax credit include a term**
 40 **described in subsection (a) in a contract document for any public**
 41 **works project that is the subject of the grant, tax abatement, or tax**
 42 **credit.**



1 (c) This section does not do any of the following:

2 (1) Prohibit a public agency from awarding a contract, grant,
3 tax abatement, or tax credit to a private owner, bidder, or
4 contractor in any contractor tier who enters into or who is a
5 party to an agreement with a labor organization, if:

6 (A) being or becoming a party or adhering to an agreement
7 with a labor organization is not a condition for award of
8 the contract, grant, tax abatement, or tax credit; and

9 (B) the public agency does not discriminate against a
10 private owner, bidder, or contractor in the awarding of
11 that contract, grant, tax abatement, or tax credit based
12 upon the private owner's, bidder's, or contractor's status
13 as being or becoming, or the willingness or refusal to
14 become, a party to an agreement with a labor organization.

15 (2) Prohibit a contractor in any contractor tier from
16 voluntarily entering into or complying with an agreement
17 entered into with a labor organization in regard to a contract
18 with a public agency or funded in whole or in part from a
19 grant, tax abatement, or tax credit from a public agency.

20 (3) Prohibit employers or other parties from entering into
21 agreements or engaging in any other activity protected by the
22 federal National Labor Relations Act (29 U.S.C. 151 et seq.).

23 (4) Interfere with labor relations of parties that are not
24 regulated under the federal National Labor Relations Act (29
25 U.S.C. 151 et seq.).

26 (d) A public agency may exempt a particular project, contract
27 in any contractor tier, grant, tax abatement, or tax credit from the
28 requirements of any or all of the provisions of this section if the
29 public agency finds, after public notice and public hearing, that
30 special circumstances require an exemption to avert an imminent
31 threat to public health or safety. A finding of special circumstances
32 under this subsection may not be based on the possibility or
33 presence of a labor dispute concerning:

34 (1) the use of contractors at any contractor tier who are not
35 signatories to, or otherwise do not adhere to, agreements with
36 one (1) or more labor organizations; or

37 (2) employees on the project who are not members of, or
38 affiliated with, a labor organization.

39 SECTION 2. An emergency is declared for the act.

