

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred Senate Bill 152, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between lines 13 and 14, begin a new paragraph and insert:
- 2 "SECTION 3. IC 5-11-1-26 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. (a) If a state office,
- 4 municipality, or other entity has authority to contract for the
- 5 construction, reconstruction, alteration, repair, improvement, or
- 6 maintenance of a public work, the state board of accounts shall include
- 7 in each examination report concerning the state office, municipality, or
- 8 entity:
- 9 (1) an opinion concerning whether the state office, municipality,
- 10 or entity has complied with IC 5-16-8; and
- 11 (2) a brief description of each instance in which the state office,
- 12 municipality, or entity has exercised its authority under
- 13 IC 5-16-8-2(b) or IC 5-16-8-4.
- 14 **(b) If a municipality or a county performs a public work by**
- 15 **means of its own workforce under IC 36-1-12-3 or IC 36-1-12-3.1,**

1 the state board of accounts shall include the following in each
2 examination report concerning the municipality or county:

3 (1) An opinion concerning whether the municipality or county
4 has complied with IC 36-1-12-3 or IC 36-1-12-3.1 for each
5 public work performed by the entity's own workforce.

6 (2) A brief description of each public work that the
7 municipality or county has performed with its own workforce
8 under IC 36-1-12-3 or IC 36-1-12-3.1, including a calculation
9 of the actual cost of each public work pursuant to
10 IC 36-1-12-3.1(d).

11 (3) An opinion concerning whether the municipality or county
12 has complied with IC 36-1-12-19 in calculating the actual
13 costs of a public work project performed under IC 36-1-12-3
14 or IC 36-1-12-3.1.

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

19 Page 2, line 30, strike "fifty thousand dollars (\$50,000)," and insert
20 "seventy-five thousand dollars (\$75,000),".

21 Page 3, line 8, delete "the workforce is" and insert ":

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

24 (2) for a public work project whose cost is estimated to be
25 more than one hundred thousand dollars (\$100,000), the
26 board:

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

28 (i) describes the public work that the board intends to
29 perform with its own workforce; and

30 (ii) sets forth the projected cost of each component of the
31 public work as described in subsection (d); and

32 (B) determines at a public meeting that it is in the public
33 interest to perform the public work with the board's own
34 workforce."

35 Page 3, delete line 9.

36 Page 3, after line 17, begin a new paragraph and insert:

37 "(e) A public work project performed by a board's own
38 workforce shall be inspected and accepted as complete in the same

1 **manner as a public work project performed pursuant to a contract**
 2 **awarded after receiving bids.**

3 SECTION 6. IC 36-1-12-14 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) This section
 5 applies to public work contracts in excess of one hundred thousand
 6 dollars (\$100,000) for projects other than highways, roads, streets,
 7 alleys, bridges, and appurtenant structures situated on streets, alleys,
 8 and dedicated highway rights-of-way. This section also applies to a
 9 lessor corporation qualifying under IC 21-5-11 or IC 21-5-12 or any
 10 other lease-back arrangement containing an option to purchase,
 11 notwithstanding the statutory provisions governing those leases.

12 (b) A board that enters into a contract for public work, and a
 13 contractor who subcontracts parts of that contract, shall include in their
 14 respective contracts provisions for the retainage of portions of
 15 payments by the board to contractors, by contractors to subcontractors,
 16 and for the payment of subcontractors. ~~Either the board or~~ **At the**
 17 **discretion of the** contractor, ~~or both, shall place~~ the retainage **shall**
 18 **either be held by the board or be placed** in an escrow account, with
 19 a bank, savings and loan institution, or the state as the escrow agent.
 20 The escrow agent shall be selected by mutual agreement between board
 21 and contractor or contractor and subcontractor under a written
 22 agreement among the bank or savings and loan institution and:

- 23 (1) the board and the contractor; or
 24 (2) the subcontractor and the contractor.

25 **The board shall not be required to pay interest on the amounts of**
 26 **retainage that it holds under this section.**

27 (c) To determine the amount of retainage to be withheld, the board
 28 shall:

- 29 (1) withhold no more than ten percent (10%) of the dollar value
 30 of all work satisfactorily completed until the public work is fifty
 31 percent (50%) completed, and nothing further after that; or
 32 (2) withhold no more than five percent (5%) of the dollar value of
 33 all work satisfactorily completed until the public work is
 34 substantially completed.

35 If upon substantial completion of the public work minor items remain
 36 uncompleted, an amount computed under subsection (f) ~~of this section~~
 37 shall be withheld until those items are completed.

38 (d) The escrow agreement must contain the following provisions:

- 1 (1) The escrow agent shall invest all escrowed principal in
2 obligations selected by the escrow agent.
- 3 (2) The escrow agent shall hold the escrowed principal and
4 income until receipt of notice from the board and the contractor,
5 or the contractor and the subcontractor, specifying the part of the
6 escrowed principal to be released from the escrow and the person
7 to whom that portion is to be released. After receipt of the notice,
8 the escrow agent shall remit the designated part of escrowed
9 principal and the same proportion of then escrowed income to the
10 person specified in the notice.
- 11 (3) The escrow agent shall be compensated for the agent's
12 services. The parties may agree on a reasonable fee comparable
13 with fees being charged for the handling of escrow accounts of
14 similar size and duration. The fee shall be paid from the escrowed
15 income.

16 The escrow agreement may include other terms and conditions
17 consistent with this subsection, including provisions authorizing the
18 escrow agent to commingle the escrowed funds with funds held in
19 other escrow accounts and limiting the liability of the escrow agent.

20 (e) The contractor shall furnish the board with a performance bond
21 equal to the contract price. If acceptable to the board, the performance
22 bond may provide for incremental bonding in the form of multiple or
23 chronological bonds that, when taken as a whole, equal the contract
24 price. The surety on the performance bond may not be released until
25 one (1) year after the date of the board's final settlement with the
26 contractor. The performance bond must specify that:

- 27 (1) a modification, omission, or addition to the terms and
28 conditions of the public work contract, plans, specifications,
29 drawings, or profile;
- 30 (2) a defect in the public work contract; or
- 31 (3) a defect in the proceedings preliminary to the letting and
32 awarding of the public work contract;

33 does not discharge the surety.

34 (f) The **board or escrow agent shall pay the** contractor ~~shall be~~
35 ~~paid in full, including all escrowed principal and escrowed income, by~~
36 ~~the board and escrow agent,~~ within sixty-one (61) days after the date of
37 substantial completion, subject to sections 11 and 12 of this chapter.

38 **Payment by the escrow agent shall include all escrowed principal**

1 **and escrowed income.** If within sixty-one (61) days after the date of
 2 substantial completion there remain uncompleted minor items, an
 3 amount equal to two hundred percent (200%) of the value of each item
 4 as determined by the architect-engineer shall be withheld until the item
 5 is completed. Required warranties begin not later than the date of
 6 substantial completion.

7 (g) Actions against a surety on a performance bond must be brought
 8 within one (1) year after the date of the board's final settlement with the
 9 contractor.

10 (h) This subsection applies to public work contracts of less than two
 11 hundred fifty thousand dollars (\$250,000). The board may waive the
 12 performance bond requirement of subsection (e) and accept from a
 13 contractor an irrevocable letter of credit for an equivalent amount from
 14 an Indiana financial institution approved by the department of financial
 15 institutions instead of a performance bond. Subsections (e) through (g)
 16 apply to a letter of credit submitted under this subsection.

17 SECTION 7. IC 36-1-12-22 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2002]: **Sec. 22. (a) For purposes of this section, the "actual cost"
 20 of a public work project includes:**

21 (1) **the actual cost of materials, labor equipment, and rental
 22 used in;**

23 (2) **a reasonable rate for trucks and heavy equipment that are
 24 owned by the municipality or county and are used in; and**

25 (3) **other expenses incidental to;**

26 **the performance of the project.**

27 (b) **For purposes of this section, the "excess cost" of a public
 28 work project is the amount by which the actual cost of a public
 29 work project performed by a municipality or county with its own
 30 workforce under section 3 or 3.1 of this chapter exceeds one
 31 hundred five percent (105%) of the amount permitted under
 32 section 3.1(b) of this chapter.**

33 (c) **The state board of accounts shall calculate the excess costs
 34 incurred by a municipality or a county pursuant to its examination
 35 under IC 5-11-1-26.**

36 (d) **The auditor shall withhold from the distribution of motor
 37 vehicle highway account funds an amount equaling the sum of the
 38 excess costs incurred by a municipality or a county in the**

- 1 **preceding fiscal year."**
- 2 Renumber all SECTIONS consecutively.
 (Reference is to SB 152 as printed January 18, 2002.)

and when so amended that said bill do pass.

Representative Kuzman