

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 2001 General Assembly.

SENATE ENROLLED ACT No. 152

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-3-19-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 23. A person who believes that a department has violated IC 8-23-9, IC 8-23-11, ~~or~~ IC 36-1-12-3, **or IC 36-1-12-3.1** may file a written complaint with the board. The complaint must set forth the alleged violation.

SECTION 2. IC 4-3-19-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. The opinion issued under section 27 of this chapter must:

- (1) state whether the department has violated IC 8-23-9, IC 8-23-11, ~~or~~ IC 36-1-12-3, **or IC 36-1-12-3.1**; and
- (2) be forwarded to the person who filed the complaint and the department not later than sixty (60) days after the hearing is conducted.

SECTION 3. IC 5-11-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: 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



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(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 or IC 36-1-12-3.1, 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 or IC 36-1-12-3.1 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 or IC 36-1-12-3.1, including a calculation of the actual cost of each public work pursuant to IC 36-1-12-3.1(d).

(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 or IC 36-1-12-3.1.

~~(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 4. IC 36-1-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) **Except as provided in section 3.1 of this chapter**, 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 thousand dollars (\$100,000). 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 the actual cost of materials, labor, equipment, rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project.

(b) 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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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) 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) 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)~~; **seventy-five thousand dollars (\$75,000)**, 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) 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.

SECTION 5. IC 36-1-12-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 3.1. (a) This section applies to a municipality or a county.**

(b) The board may purchase or lease materials in the manner provided in IC 5-22 and perform a public work, by means of the board's own workforce, in the construction, maintenance, and repair of a highway, a street, an alley, a road, or a bridge within the jurisdiction of the municipality or county without awarding a contract if the cost of the public work project is estimated to be less than one hundred fifty thousand dollars (\$150,000).

(c) The workforce of a municipality or county may perform a public work described in subsection (b) 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 whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the board:**

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



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- (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 (d); and
- (B) determines at a public meeting that it is in the public interest to perform the public work with the board's own workforce.

(d) For purposes of this section, the cost of a public work project includes:

- (1) the actual cost of materials, labor, equipment, and rental used in;
- (2) a reasonable rate for trucks and heavy equipment that are owned by the municipality or county and are used in; and
- (3) other expenses incidental to;

the performance of the project.

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

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

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

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

The board shall not be required to pay interest on the amounts of

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retainage that it holds under this section.

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

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

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

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

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

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

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

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;



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(2) a defect in the public work contract; or
(3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;
does not discharge the surety.

(f) The **board or escrow agent shall pay the contractor** ~~shall be paid in full, including all escrowed principal and escrowed income, by the board and escrow agent,~~ within sixty-one (61) days after the date of substantial completion, subject to sections 11 and 12 of this chapter. **Payment by the escrow agent shall include all escrowed principal and escrowed income.** If within sixty-one (61) days after the date of substantial completion there remain uncompleted minor items, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed. Required warranties begin not later than the date of substantial completion.

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

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

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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