

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Local Government, to which was referred Senate Bill No. 441, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 4-13.6-5-2 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as
5 provided by this chapter and IC 16-33-4-10, if the estimated cost of a
6 public works project is at least ~~seventy-five thousand dollars (\$75,000)~~,
7 **one hundred fifty thousand dollars (\$150,000)**, the division shall
8 award a contract for the project based on competitive bids.
9 (b) If the estimated cost of a public works project is at least
10 ~~seventy-five thousand dollars (\$75,000)~~, **one hundred fifty thousand**
11 **dollars (\$150,000)**, the division shall develop contract documents for
12 a public works contract and keep the contract documents on file in its
13 offices so that they may be inspected by contractors and members of
14 the public.
15 (c) The division shall advertise for bids under section 8 of this
16 chapter. The director shall award a contract under IC 4-13.6-6.
17 (d) A contractor shall submit under oath a financial statement as a
18 part of the bid. The director may waive filing of the financial statement.
19 (e) After bids are opened but before a contract is awarded, the
20 director may require a contractor to submit a statement of the

1 contractor's experience, a proposed plan of performing the work, and
2 a listing of the equipment that is available to the contractor for
3 performance of the work.

4 (f) The statements required by this section shall be submitted on
5 forms approved by the state board of accounts. The forms shall be
6 based, so far as applicable, on standard questionnaires and financial
7 statements for contractors used in investigating the qualifications of
8 contractors on public construction work.

9 (g) The division shall reject the bid of a contractor if:

10 (1) the estimated cost of the public works project is one hundred
11 fifty thousand dollars (\$150,000) or more and the contractor is not
12 qualified under chapter 4 of this article;

13 (2) the estimated cost of the public works project is less than one
14 hundred fifty thousand dollars (\$150,000) and the director makes
15 a written determination, based upon information provided under
16 subsections (d) and (e), that the contractor is not qualified to
17 perform the public works contract;

18 (3) the contractor has failed to perform a previous contract with
19 the state satisfactorily and has submitted the bid during a period
20 of suspension imposed by the director (the failure of the
21 contractor to perform a contract satisfactorily must be based upon
22 a written determination by the director);

23 (4) the contractor has not complied with a rule adopted under this
24 article and the rule specifies that failure to comply with it is a
25 ground for rejection of a bid; or

26 (5) the contractor has not complied with any requirement under
27 section 2.5 of this chapter.

28 (h) The division shall keep a record of all bids. The state board of
29 accounts shall approve the form of this record, and the record must
30 include at least the following information:

31 (1) The name of each contractor.

32 (2) The amount bid by each contractor.

33 (3) The name of the contractor making the lowest bid.

34 (4) The name of the contractor to whom the contract was
35 awarded.

36 (5) The reason the contract was awarded to a contractor other than
37 the lowest bidder, if applicable.

38 (6) Purchase order numbers.

1 SECTION 2. IC 4-13.6-5-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) If the estimated
 3 cost of a public works project is less than ~~seventy-five thousand dollars~~
 4 ~~(\$75,000)~~; **one hundred fifty thousand dollars (\$150,000)**, the
 5 division may award a public works contract either under section 2 of
 6 this chapter or under this section, at the discretion of the director.

7 (b) If the director awards a contract under this section, the division
 8 shall invite quotations from at least three (3) contractors known to the
 9 division to deal in the work required to be done. However, if fewer than
 10 three (3) contractors are known to the division to be qualified to
 11 perform the work, the division shall invite quotations from as many
 12 contractors as are known to be qualified to perform the work. Failure
 13 to receive three (3) quotations shall not prevent an award from being
 14 made.

15 (c) The division may authorize the governmental body for which the
 16 public work is to be performed to invite quotations, but award of a
 17 contract based upon those quotations is the responsibility of the
 18 division.

19 (d) Quotations given by a contractor under this section must be in
 20 writing and sealed in an envelope, shall be considered firm, and may
 21 be the basis upon which the division awards a public works contract.

22 (e) The division shall award a contract to the lowest responsible and
 23 responsive contractor and in accordance with any requirement imposed
 24 under section 2.5 of this chapter."

25 Page 1, line 4, strike "seventy-five thousand dollars (\$75,000)," and
 26 insert "**one hundred fifty thousand dollars (\$150,000)**,".

27 Page 2, delete lines 21 through 42, begin a new paragraph and
 28 insert:

29 "SECTION 4. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006,
 30 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2011]: Sec. 2. (a) If the estimated cost of a public works
 32 project is ~~one hundred fifty thousand dollars (\$150,000)~~ **one million**
 33 **dollars (\$1,000,000)** or more, the division shall include as part of the
 34 public works contract provisions for the retainage of portions of
 35 payments by the division to the contractor, by the contractor to
 36 subcontractors, and for the payment of subcontractors and suppliers by
 37 the contractor. The contract must provide that the division may
 38 withhold from the contractor sufficient funds from the contract price to

1 pay subcontractors and suppliers as provided in section 4 of this
2 chapter.

3 (b) A public works contract and contracts between contractors and
4 subcontractors, if portions of the public works contract are
5 subcontracted, may include a provision that at the time any retainage
6 is withheld, the division or the contractor, as the case may be, may
7 place the retainage in an escrow account, as mutually agreed, with:

- 8 (1) a bank;
- 9 (2) a savings and loan institution;
- 10 (3) the state of Indiana; or
- 11 (4) an instrumentality of the state of Indiana;

12 as escrow agent. The parties to the contract shall select the escrow
13 agent by mutual agreement. The parties to the agreement shall enter
14 into a written agreement with the escrow agent.

15 (c) The escrow agreement must provide the following:

16 (1) The escrow agent shall promptly invest all escrowed principal
17 in the obligations that the escrow agent selects, in its discretion.

18 (2) The escrow agent shall hold the escrowed principal and
19 income until it receives notice from both of the other parties to the
20 escrow agreement specifying the percentage of the escrowed
21 principal to be released from the escrow and the persons to whom
22 this percentage is to be released. When it receives this notice, the
23 escrow agent shall promptly pay the designated percentage of
24 escrowed principal and the same percentage of the accumulated
25 escrowed income to the persons designated in the notice.

26 (3) The escrow agent shall be compensated for its services as the
27 parties may agree. The compensation shall be a commercially
28 reasonable fee commensurate with fees being charged at the time
29 the escrow fund is established for the handling of escrow accounts
30 of like size and duration. The fee must be paid from the escrowed
31 income of the escrow account.

32 (d) The escrow agreement may include other terms and conditions
33 that are not inconsistent with subsection (c). Additional provisions may
34 include provisions authorizing the escrow agent to commingle the
35 escrowed funds held under other escrow agreements and provisions
36 limiting the liability of the escrow agent.

37 SECTION 5. IC 5-11-1-26 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) If a state office,

1 municipality, or other entity has authority to contract for the
 2 construction, reconstruction, alteration, repair, improvement, or
 3 maintenance of a public work, the state board of accounts shall include
 4 in each examination report concerning the state office, municipality, or
 5 entity:

6 (1) an opinion concerning whether the state office, municipality,
 7 or entity has complied with IC 5-16-8; and

8 (2) a brief description of each instance in which the state office,
 9 municipality, or entity has exercised its authority under
 10 IC 5-16-8-2(b) or IC 5-16-8-4.

11 **(b) If a municipality or a county performs a public work by**
 12 **means of its own workforce under IC 36-1-12-3, the state board of**
 13 **accounts shall include the following in each examination report**
 14 **concerning the municipality or county:**

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

18 **(2) A brief description of each public work that the**
 19 **municipality or county has performed with its own workforce**
 20 **under IC 36-1-12-3, including a calculation of the actual cost**
 21 **of each public work pursuant to IC 36-1-12-3.**

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

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

29 SECTION 6. IC 5-16-1-1.5 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.5. The governing
 31 board of any state educational institution, acting on behalf of said
 32 institution, may purchase materials in the manner provided by law and
 33 perform any work by means of its own employees and owned or leased
 34 equipment in the construction, rehabilitation, extension, maintenance,
 35 or repair of any building, structure, improvement, or facility of said
 36 institutions, without awarding a contract therefor, whenever the cost of
 37 such work shall be estimated to be less than ~~fifty thousand dollars~~
 38 ~~(\$50,000): two hundred thousand dollars (\$200,000).~~

1 SECTION 7. IC 36-1-12-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The board may
 3 purchase or lease materials in the manner provided in IC 5-22 and
 4 perform any public work, by means of its own workforce, without
 5 awarding a contract whenever the cost of that public work project is
 6 estimated to be less than one hundred **fifty** thousand dollars
 7 ~~(\$100,000): (\$150,000)~~. Before a board may perform any work under
 8 this section by means of its own workforce, the political subdivision or
 9 agency must have a group of employees on its staff who are capable of
 10 performing the construction, maintenance, and repair applicable to that
 11 work. For purposes of this subsection, the cost of a public work project
 12 includes:

- 13 (1) the actual cost of materials, labor, equipment, **and** rental;
- 14 (2) a reasonable rate for use of trucks and heavy equipment
 15 owned; and
- 16 (3) all other expenses incidental to the performance of the project.

17 **(b) This subsection applies only to a municipality or a county.**
 18 **The workforce of a municipality or county may perform a public**
 19 **work described in subsection (a) only if:**

- 20 (1) **the workforce, through demonstrated skills, training, or**
 21 **expertise, is capable of performing the public work; and**
- 22 (2) **for a public work project under subsection (a) whose cost**
 23 **is estimated to be more than one hundred thousand dollars**
 24 **(\$100,000), the board shall:**

25 **(A) publish a notice pursuant to IC 5-3-1 that:**

- 26 **(i) describes the public work that the board intends to**
 27 **perform with its own workforce; and**
- 28 **(ii) sets forth the projected cost of each component of the**
 29 **public work as described in subsection (a); and**

30 **(B) determine at a public meeting that it is in the public**
 31 **interest to perform the public work with the board's own**
 32 **workforce.**

33 **A public work project performed by a board's own workforce must**
 34 **be inspected and accepted as complete in the same manner as a**
 35 **public work project performed pursuant to a contract awarded**
 36 **after receiving bids.**

37 ~~(b)~~ (c) When the project involves the rental of equipment with an
 38 operator furnished by the owner, or the installation or application of

1 materials by the supplier of the materials, the project is considered to
 2 be a public work project and subject to this chapter. However, an
 3 annual contract may be awarded for equipment rental and materials to
 4 be installed or applied during a calendar or fiscal year if the proposed
 5 project or projects are described in the bid specifications.

6 ~~(c)~~ (d) A board of aviation commissioners or an airport authority
 7 board may purchase or lease materials in the manner provided in
 8 IC 5-22 and perform any public work by means of its own workforce
 9 and owned or leased equipment, in the construction, maintenance, and
 10 repair of any airport roadway, runway, taxiway, or aircraft parking
 11 apron whenever the cost of that public work project is estimated to be
 12 less than fifty thousand dollars (\$50,000).

13 ~~(d)~~ (e) Municipal and county hospitals must comply with this
 14 chapter for all contracts for public work that are financed in whole or
 15 in part with cumulative building fund revenue, as provided in section
 16 1(c) of this chapter. However, if the cost of the public work is
 17 estimated to be less than fifty thousand dollars (\$50,000), as reflected
 18 in the board minutes, the hospital board may have the public work done
 19 without receiving bids, by purchasing the materials and performing the
 20 work by means of its own workforce and owned or leased equipment.

21 ~~(e)~~ (f) If a public works project involves a structure, an
 22 improvement, or a facility under the control of a department (as defined
 23 in IC 4-3-19-2(2)), the department may not artificially divide the
 24 project to bring any part of the project under this section."

25 Delete page 3.

26 Renumber all SECTIONS consecutively.
 (Reference is to SB 441 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Lawson C

Chairperson