

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1116

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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 5-14-1.5-6.1, AS AMENDED BY HEA 1115-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6.1. (a) As used in this section, "public official" means a person:

- (1) who is a member of a governing body of a public agency; or
- (2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
  - (A) Collective bargaining.
  - (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.
  - (C) The implementation of security systems.
  - (D) ~~The purchase or lease of~~ A real property **transaction**

**including:**

- (i) a purchase;
- (ii) a lease as lessor;
- (iii) a lease as lessee;
- (iv) a transfer;
- (v) an exchange; or

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**(vi) a sale;**

by the governing body up to the time a contract or option ~~to purchase or lease~~ is executed by the parties. **This clause does not affect a political subdivision's duty to comply with any other statute that governs the conduct of the real property transaction, including IC 36-1-10 or IC 36-1-11.**

(E) School consolidation.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by:

(A) the Indiana economic development corporation;

(B) the office of tourism development (before July 1, 2020) or the Indiana destination development corporation (after June 30, 2020);

(C) the Indiana finance authority;

(D) the ports of Indiana;

(E) an economic development commission;

(F) the Indiana state department of agriculture;

(G) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or

(H) a governing body of a political subdivision.

However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or



(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this subdivision.

(15) For discussion by the governing body of a state educational institution of:

(A) the assessment of; or

(B) negotiation with another entity concerning;



the establishment of a collaborative relationship or venture to advance the research, engagement, or education mission of the state educational institution. However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 2. IC 6-1.1-18-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. Notwithstanding the other provisions of this chapter, the fiscal officer of a political subdivision may appropriate funds received from ~~an insurance company~~ **a person (as defined in IC 6-1.1-1-10)** if:

- (1) the funds are received as a result of damage to property of the political subdivision; and
- (2) the funds are appropriated for the purpose of repairing or replacing the damaged property.

However, this section applies only if the funds are in fact expended to repair or replace the property within the twelve (12) month period after they are received.

SECTION 3. IC 8-1.5-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

- (1) the municipal works board;
- (2) a board consisting of the members of the municipal legislative body;
- (3) a utility service board established under subsection (f) or established before January 1, 1983, under IC 8-1-2-100



(repealed); or

(4) the board of directors of a department of waterworks established under IC 8-1.5-4.

The legislative body of a third class city also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a third class city's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the third class city's municipally owned utilities to a board described in this subsection.

(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of a third class city's storm water facilities to a board described in subsection (a) the third class city has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

(d) Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

(e) Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of \_\_\_\_\_ adopt an ordinance providing for the appointment of a utility service board to operate \_\_\_\_\_ (Insert name of utility here)?"

(f) If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. ~~Not more than two-thirds (2/3) of the members may be of the same political party.~~ All members must be residents of the area served by the board. The ordinance must provide for:

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(1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;

(2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;

(3) the salaries, if any, to be paid to the members; and

(4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

(g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections (c) through (e).

SECTION 4. IC 8-1.5-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) This section applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) Except as provided in subsections (f) and (g), the board consists of three (3) directors. The executive of the municipality shall appoint the directors. ~~not more than two (2) of whom may be of the same political party.~~

(d) Except as provided in subsections (f) and (g), the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

(g) If a third class city:

(1) has a board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a); and

(2) has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities;



the members of the board that controls the city's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).

(h) A member of the board of directors of the department of storm water management who:

- (1) is appointed under subsection (f); or
- (2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the third class city's municipally owned utilities;

is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

SECTION 5. IC 36-1-12-4, AS AMENDED BY HEA 1019-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) This section applies whenever the cost of a public work project will be at least one hundred fifty thousand dollars (\$150,000).

(b) The board must comply with the following procedure:

- (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
- (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
- (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed. **If the board receives electronic bids as set forth in subsection (d), the board shall also provide electronic access to the notice of the bid solicitation through the computer gateway administered under IC 4-13.1-2-2(a)(5) by the office of technology.**
- (4) The notice must specify the place where the plans and



specifications are on file and the date fixed for receiving bids.

(5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of time between the date of the first publication and receiving bids may not be more than:

(A) six (6) weeks if the estimated cost of the public works project is less than twenty-five million dollars (\$25,000,000); and

(B) ten (10) weeks if the estimated cost of the public works project is at least twenty-five million dollars (\$25,000,000).

(6) The board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.

(7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before. Notwithstanding any other law, bids may be opened after the time designated if both of the following apply:

(A) The board makes a written determination that it is in the best interest of the board to delay the opening.

(B) The day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening.

(8) Except as provided in subsection (c), the board shall:

(A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or

(B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

(10) In determining whether a bidder is responsive, the board may consider the following factors:

(A) Whether the bidder has submitted a bid or quote that





conforms in all material respects to the specifications.

(B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.

(C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

(A) The ability and capacity of the bidder to perform the work.

(B) The integrity, character, and reputation of the bidder.

(C) The competence and experience of the bidder.

(12) The board shall require the bidder to submit an affidavit:

(A) that the bidder has not entered into a combination or agreement:

(i) relative to the price to be bid by a person;

(ii) to prevent a person from bidding; or

(iii) to induce a person to refrain from bidding; and

(B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

**(d) Notwithstanding subsection (b), a board may receive electronic bids for the public work if:**

**(1) the solicitation for bids indicates the procedure for transmitting the electronic bid to the board; and**

**(2) the board receives the bid on a facsimile machine or system with a security feature that protects the content of an electronic bid with the same degree of protection as the content of a bid that is not transmitted by a facsimile machine.**

**(e) A board may select a vendor to provide an electronic platform to accommodate the electronic bidding process.**

SECTION 6. IC 36-7-9-4, AS AMENDED BY P.L.66-2014, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

(1) in an impaired structural condition that makes it unsafe to a person or property;



- (2) a fire hazard;
- (3) a hazard to the public health;
- (4) a public nuisance;
- (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
- (6) vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

(b) For purposes of this chapter:

- (1) an unsafe building; and
- (2) the tract of real property on which the unsafe building is located;

are considered unsafe premises.

(c) For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

- (1) a fire hazard;
- (2) a hazard to public health;
- (3) a public nuisance; or
- (4) dangerous to a person or property because of a violation of a statute or an ordinance.

(b) For purposes of this chapter, the following are considered unsafe premises:

- (1) An unsafe building and the tract of real property on which the unsafe building is located.
- (2) A tract of real property, not including land used for production agriculture, that does not contain a building or structure or contains a building or structure that is not considered an unsafe building, if the tract of real property is:
  - (A) a fire hazard;
  - (B) a hazard to public health;
  - (C) a public nuisance; or
  - (D) dangerous to a person or property because of a violation of a statute or an ordinance.

SECTION 7. IC 36-7-9-25, AS AMENDED BY P.L.194-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 25. (a) Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:



- (1) sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;
- (2) delivering a copy of the order or statement personally to the person to be notified;
- (3) leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified and sending by first class mail a copy of the order or statement to the last known address of the person to be notified; or
- (4) sending a copy of the order or statement by first class mail to the last known address of the person to be notified.

If a notice described in subdivision (1) is returned undelivered, a copy of the order or statement must be given in accordance with subdivision (2), (3), or (4).

(b) If service is not obtained by a means described in subsection (a) and the hearing authority concludes that a reasonable effort has been made to obtain service, service may be made by publishing a notice of the order or statement in accordance with IC 5-3-1 in the county where the unsafe premises are located. However, publication ~~may be made on consecutive days.~~ **must be made two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before an event described in subsection (a).** If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of section 5(b) of this chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority. The hearing authority may make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a) on the basis of information provided by the department (or, in the case of a consolidated city, the enforcement authority). The hearing authority is not required to make the determination at a hearing. The hearing authority must make the determination in writing.

(c) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that the person has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.

(d) The date when notice of the order or statement is considered given is as follows:



(1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at the person's dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(e) A person with a property interest in an unsafe premises who does not:

(1) record an instrument reflecting the interest in the recorder's office of the county where the unsafe premises is located; or

(2) if an instrument reflecting the interest is not recorded, provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name and address and the location of the unsafe premises;

is considered to consent to reasonable action taken under this chapter for which notice would be required and relinquish a claim to notice under this chapter.

(f) The department (or, in the case of a consolidated city, the enforcement authority) may, for the sake of administrative convenience, publish notice under subsection (b) at the same time notice is attempted under subsection (a). If published notice is given as described in subsection (b), the hearing authority shall subsequently make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a).

SECTION 8. IC 36-9-27-79.1 AS AMENDED BY HEA 1019-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 79.1. Notwithstanding sections 77 and 78 of this chapter, the following provisions apply whenever the board estimates that the amount of the contracts to be let is not more than one hundred fifty thousand dollars (\$150,000):

(1) The board need not advertise in the manner provided by section 78 of this chapter. If the board does not advertise, it shall mail **or send by electronic means** written invitations for bids to at least three (3) persons believed to be interested in bidding on the work. The invitations shall be mailed **or sent by electronic means** at least seven (7) days before the date the board will receive bids, and must state the nature of the contracts to be let and the date, time, and place bids will be received.

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(2) The board may authorize the county surveyor to contract for the work in the name of the board.

(3) The contracts may be for a stated sum or may be for a variable sum based on per unit prices or on the hiring of labor and the purchase of material.

(4) The contracts shall be let in accordance with the statutes governing public purchase, including IC 5-22.

(5) The board may for good cause waive any requirement for the furnishing by the bidder of a bid bond or surety and the furnishing by a successful bidder of a performance bond.

SECTION 9. IC 36-9-41-4, AS AMENDED BY P.L.182-2009(ss), SECTION 453, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. A political subdivision borrowing money under section 3 of this chapter shall execute and deliver to the financial institution the negotiable note of the political subdivision for the sum borrowed. The note must bear interest, with both principal and interest payable in equal or approximately equal installments ~~on January 1 and July 1 each year~~ over a period not exceeding ten (10) years.

SECTION 10. IC 36-9-41-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. ~~(a) The first installment of principal and interest on a note executed under this chapter is due on the next January 1 or July 1 following the first tax collection for which it is possible for the political subdivision to levy a tax under subsection (b):~~

~~(b) (a)~~ The political subdivision shall appropriate an amount for and levy a tax each year sufficient to pay the political subdivision's obligation under the note according to its terms.

~~(c) (b)~~ An obligation of a political subdivision under a note executed under this chapter is a valid and binding obligation of the political subdivision, notwithstanding any tax limitation, debt limitation, bonding limitation, borrowing limitation, or other statute to the contrary.



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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