

HOUSE BILL No. 1158

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-13.

Synopsis: Fair and open competition for public works projects. Provides that a public agency may not do any of the following: (1) Require a potential bidder on a public works project to provide any information that the potential bidder considers confidential or proprietary as a requirement for the public agency finding the bidder to be a responsive or responsible bidder. (2) By rule, ordinance, or any other action relating to contracts for public works projects for which competitive bids are required impose any requirement that directly or indirectly restricts potential bidders to any predetermined class of bidders defined by experience on similar projects, size of company, union membership, or any other criteria. (3) 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.

Miller D

January 7, 2019, read first time and referred to Committee on Employment, Labor and Pensions.



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 BILL No. 1158

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 5-16-13-10.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 10.2. (a) A public agency may**
4 **not require a potential bidder on a public works project to provide**
5 **any information that the potential bidder considers confidential or**
6 **proprietary as a requirement for the public agency finding the**
7 **bidder to be a responsive or responsible bidder.**

8 (b) **This section does not prohibit a public agency from**
9 **obtaining information from the lowest responsive bidder to**
10 **determine the bidder's responsibility relating to the bidder's**
11 **experience, number of employees, and ability to finance the cost of**
12 **the public works project.**

13 SECTION 2. IC 5-16-13-10.4 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE UPON PASSAGE]: **Sec. 10.4. A public agency may not**
16 **by rule, ordinance, or any other action relating to contracts for**
17 **public works projects for which competitive bids are required**



1 impose any requirement that directly or indirectly restricts
 2 potential bidders to any predetermined class of bidders defined by
 3 experience on similar projects, size of company, union
 4 membership, or any other criteria.

5 SECTION 3. IC 5-16-13-10.6 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE UPON PASSAGE]: **Sec. 10.6. (a)** A public agency
 8 awarding a contract for a public works project may not in the bid
 9 specifications, project agreements, or other contract documents do
 10 any of the following:

11 (1) Require a bidder, offeror, or contractor in any contractor
 12 tier to enter into or adhere to an agreement with a labor
 13 organization relating to the public works project or any other
 14 public works project.

15 (2) Prohibit a bidder, offeror, or contractor in any contractor
 16 tier from entering into or adhering to an agreement with a
 17 labor organization relating to the public works project or any
 18 other public works project.

19 (3) Discriminate against a bidder, offeror, or contractor in
 20 any contractor tier for any of the following:

21 (A) Becoming or remaining a signatory to an agreement
 22 with a labor organization relating to the public works
 23 project or any other public works project.

24 (B) Refusing to become or remain a signatory to an
 25 agreement with a labor organization relating to the public
 26 works project or any other public works project.

27 (C) Adhering or refusing to adhere to an agreement with
 28 a labor organization relating to the public works project or
 29 any other public works project.

30 (b) A public agency may not award a grant, tax abatement, or
 31 tax credit that is conditioned upon a requirement that the person
 32 awarded the grant, tax abatement, or tax credit include a term
 33 described in subsection (a) in a contract document for any public
 34 works project that is the subject of the grant, tax abatement, or tax
 35 credit.

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

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

41 (A) being or becoming a party or adhering to an agreement
 42 with a labor organization is not a condition for award of



- 1 the contract, grant, tax abatement, or tax credit; and
 2 **(B) the public agency does not discriminate against a**
 3 **private owner, bidder, or contractor in the awarding of**
 4 **that contract, grant, tax abatement, or tax credit based**
 5 **upon the private owner's, bidder's, or contractor's status**
 6 **as being or becoming, or the willingness or refusal to**
 7 **become, a party to an agreement with a labor organization.**
 8 **(2) Prohibit a contractor in any contractor tier from**
 9 **voluntarily entering into or complying with an agreement**
 10 **entered into with a labor organization in regard to a contract**
 11 **with a public agency or funded in whole or in part from a**
 12 **grant, tax abatement, or tax credit from a public agency.**
 13 **(3) Prohibit employers or other parties from entering into**
 14 **agreements or engaging in any other activity protected by the**
 15 **federal National Labor Relations Act (29 U.S.C. 151 et seq.).**
 16 **(4) Interfere with labor relations of parties that are not**
 17 **regulated under the federal National Labor Relations Act (29**
 18 **U.S.C. 151 et seq.).**
 19 **(d) A public agency may exempt a particular project, contract**
 20 **in any contractor tier, grant, tax abatement, or tax credit from the**
 21 **requirements of any or all of the provisions of this section if the**
 22 **public agency finds, after public notice and hearing, that special**
 23 **circumstances require an exemption to avert an imminent threat**
 24 **to public health or safety. A finding of special circumstances under**
 25 **this subsection may not be based on the possibility or presence of**
 26 **a labor dispute concerning:**
 27 **(1) the use of contractors at any contractor tier who are not**
 28 **signatories to, or otherwise do not adhere to, agreements with**
 29 **one (1) or more labor organizations; or**
 30 **(2) employees on the project who are not members of, or**
 31 **affiliated with, a labor organization.**
 32 **SECTION 4. An emergency is declared for this act.**

