



March 12, 2019

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# ENGROSSED HOUSE BILL No. 1019

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DIGEST OF HB 1019 (Updated March 7, 2019 11:23 am - DI 133)

**Citations Affected:** IC 36-1; IC 36-9.

**Synopsis:** Public construction. Increases, from \$100,000 to \$150,000, the ceiling under which a board of aviation commissioners or an airport authority board may perform certain public construction projects with its own workforce. Increases, from \$75,000 to \$150,000 the ceiling under which a county drainage board may obtain quotes rather than advertise for bids for certain projects under the drainage law.

**Effective:** July 1, 2019.

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**Pressel, Engleman, Smith V,  
Karickhoff**

(SENATE SPONSOR — BOHACEK)

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January 3, 2019, read first time and referred to Committee on Local Government.  
January 14, 2019, reported — Do Pass.  
January 17, 2019, read second time, ordered engrossed. Engrossed.  
January 22, 2019, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

February 27, 2019, read first time and referred to Committee on Local Government.  
March 11, 2019, reported favorably — Do Pass.

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EH 1019—LS 6251/DI 75





March 12, 2019

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.

## ENGROSSED HOUSE BILL No. 1019

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-1-12-3, AS AMENDED BY P.L.213-2015,  
2 SECTION 263, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The board may purchase or  
4 lease materials in the manner provided in IC 5-22 and perform any  
5 public work, by means of its own workforce, without awarding a  
6 contract whenever the cost of that public work project is estimated to  
7 be less than two hundred fifty thousand dollars (\$250,000). Before a  
8 board may perform any work under this section by means of its own  
9 workforce, the political subdivision or agency must have a group of  
10 employees on its staff who are capable of performing the construction,  
11 maintenance, and repair applicable to that work. For purposes of this  
12 subsection, the cost of a public work project 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. The

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1 workforce of a municipality or county may perform a public work  
2 described in subsection (a) only if:

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

5 (2) for a public work project under subsection (a) whose cost is  
6 estimated to be more than one hundred thousand dollars  
7 (\$100,000), the board:

8 (A) publishes a notice under IC 5-3-1 that:

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

11 (ii) sets forth the projected cost of each component of the  
12 public work as described in subsection (a); and

13 (B) determines at a public meeting that it is in the public  
14 interest to perform the public work with the board's own  
15 workforce.

16 A public work project performed by a board's own workforce must be  
17 inspected and accepted as complete in the same manner as a public  
18 work project performed under a contract awarded after receiving bids.

19 (c) When the project involves the rental of equipment with an  
20 operator furnished by the owner, or the installation or application of  
21 materials by the supplier of the materials, the project is considered to  
22 be a public work project and subject to this chapter. However, an  
23 annual contract may be awarded for equipment rental and materials to  
24 be installed or applied during a calendar or fiscal year if the proposed  
25 project or projects are described in the bid specifications.

26 (d) A board of aviation commissioners or an airport authority board  
27 may purchase or lease materials in the manner provided in IC 5-22 and  
28 perform any public work by means of its own workforce and owned or  
29 leased equipment, in the construction, maintenance, and repair of any  
30 airport roadway, runway, taxiway, or aircraft parking apron whenever  
31 the cost of that public work project is estimated to be less than one  
32 hundred **fifty** thousand dollars (~~\$100,000~~) **(\$150,000)**.

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

41 (f) If a public works project involves a structure, an improvement,  
42 or a facility under the control of a department (as defined in



1 IC 4-3-19-2(2)), the department may not artificially divide the project  
2 to bring any part of the project under this section.

3 SECTION 2. IC 36-1-12-4, AS AMENDED BY P.L.67-2012,  
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2019]: Sec. 4. (a) This section applies whenever the cost of a  
6 public work project will be

7 ~~(1) except as provided in subdivision (2);~~ at least one hundred  
8 fifty thousand dollars (\$150,000). ~~or~~

9 ~~(2) in the case of a board of aviation commissioners or an airport~~  
10 ~~authority board; at least one hundred thousand dollars (\$100,000);~~

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

12 (1) The board shall prepare general plans and specifications  
13 describing the kind of public work required, but shall avoid  
14 specifications which might unduly limit competition. If the  
15 project involves the resurfacing (as defined by IC 8-14-2-1) of a  
16 road, street, or bridge, the specifications must show how the  
17 weight or volume of the materials will be accurately measured  
18 and verified.

19 (2) The board shall file the plans and specifications in a place  
20 reasonably accessible to the public, which shall be specified in the  
21 notice required by subdivision (3).

22 (3) Upon the filing of the plans and specifications, the board shall  
23 publish notice in accordance with IC 5-3-1 calling for sealed  
24 proposals for the public work needed.

25 (4) The notice must specify the place where the plans and  
26 specifications are on file and the date fixed for receiving bids.

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

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

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

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



- 1 (7) The board may not require a bidder to submit a bid before the  
 2 meeting at which bids are to be received. The meeting for  
 3 receiving bids must be open to the public. All bids received shall  
 4 be opened publicly and read aloud at the time and place  
 5 designated and not before. Notwithstanding any other law, bids  
 6 may be opened after the time designated if both of the following  
 7 apply:
- 8 (A) The board makes a written determination that it is in the  
 9 best interest of the board to delay the opening.
  - 10 (B) The day, time, and place of the rescheduled opening are  
 11 announced at the day, time, and place of the originally  
 12 scheduled opening.
- 13 (8) Except as provided in subsection (c), the board shall:
- 14 (A) award the contract for public work or improvements to the  
 15 lowest responsible and responsive bidder; or
  - 16 (B) reject all bids submitted.
- 17 (9) If the board awards the contract to a bidder other than the  
 18 lowest bidder, the board must state in the minutes or memoranda,  
 19 at the time the award is made, the factors used to determine which  
 20 bidder is the lowest responsible and responsive bidder and to  
 21 justify the award. The board shall keep a copy of the minutes or  
 22 memoranda available for public inspection.
- 23 (10) In determining whether a bidder is responsive, the board may  
 24 consider the following factors:
- 25 (A) Whether the bidder has submitted a bid or quote that  
 26 conforms in all material respects to the specifications.
  - 27 (B) Whether the bidder has submitted a bid that complies  
 28 specifically with the invitation to bid and the instructions to  
 29 bidders.
  - 30 (C) Whether the bidder has complied with all applicable  
 31 statutes, ordinances, resolutions, or rules pertaining to the  
 32 award of a public contract.
- 33 (11) In determining whether a bidder is a responsible bidder, the  
 34 board may consider the following factors:
- 35 (A) The ability and capacity of the bidder to perform the work.
  - 36 (B) The integrity, character, and reputation of the bidder.
  - 37 (C) The competence and experience of the bidder.
- 38 (12) The board shall require the bidder to submit an affidavit:
- 39 (A) that the bidder has not entered into a combination or  
 40 agreement:
    - 41 (i) relative to the price to be bid by a person;
    - 42 (ii) to prevent a person from bidding; or



1 (iii) to induce a person to refrain from bidding; and  
 2 (B) that the bidder's bid is made without reference to any other  
 3 bid.

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

10 SECTION 3. IC 36-1-12-4.7, AS AMENDED BY P.L.67-2012,  
 11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2019]: Sec. 4.7. (a) This section applies whenever a public  
 13 work project is estimated to cost

14 ~~(1) except as provided in subdivision (2);~~ at least fifty thousand  
 15 dollars (\$50,000) and less than one hundred fifty thousand dollars  
 16 (\$150,000). ~~or~~

17 ~~(2) in the case of a board of aviation commissioners or an airport~~  
 18 ~~authority board, at least fifty thousand dollars (\$50,000) and less~~  
 19 ~~than one hundred thousand dollars (\$100,000).~~

20 (b) The board must proceed under the following provisions:

21 (1) The board shall invite quotes from at least three (3) persons  
 22 known to deal in the class of work proposed to be done by mailing  
 23 them a notice stating that plans and specifications are on file in a  
 24 specified office. The notice must be mailed not less than seven (7)  
 25 days before the time fixed for receiving quotes.

26 (2) The board may not require a person to submit a quote before  
 27 the meeting at which quotes are to be received. The meeting for  
 28 receiving quotes must be open to the public. All quotes received  
 29 shall be opened publicly and read aloud at the time and place  
 30 designated and not before.

31 (3) The board shall award the contract for the public work to the  
 32 lowest responsible and responsive quoter.

33 (4) The board may reject all quotes submitted.

34 SECTION 4. IC 36-9-27-79.1 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 79.1. Notwithstanding  
 36 sections 77 and 78 of this chapter, the following provisions apply  
 37 whenever the board estimates that the amount of the contracts to be let  
 38 is not more than ~~seventy-five~~ **one hundred fifty** thousand dollars  
 39 ~~(\$75,000);~~ **(\$150,000):**

40 (1) The board need not advertise in the manner provided by  
 41 section 78 of this chapter. If the board does not advertise, it shall  
 42 mail written invitations for bids to at least three (3) persons



1           believed to be interested in bidding on the work. The invitations  
2           shall be mailed at least seven (7) days before the date the board  
3           will receive bids, and must state the nature of the contracts to be  
4           let and the date, time, and place bids will be received.  
5           (2) The board may authorize the county surveyor to contract for  
6           the work in the name of the board.  
7           (3) The contracts may be for a stated sum or may be for a variable  
8           sum based on per unit prices or on the hiring of labor and the  
9           purchase of material.  
10          (4) The contracts shall be let in accordance with the statutes  
11          governing public purchase, including IC 5-22.  
12          (5) The board may for good cause waive any requirement for the  
13          furnishing by the bidder of a bid bond or surety and the furnishing  
14          by a successful bidder of a performance bond.





COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1019, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1019 as introduced.)

ZENT

Committee Vote: Yeas 10, Nays 0

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1019, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1019 as printed January 15, 2019.)

BUCK, Chairperson

Committee Vote: Yeas 8, Nays 1

