

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 409

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AN ACT to amend the Indiana Code concerning education.

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

SECTION 1. IC 20-29-6-6.1, AS ADDED BY P.L.213-2015, SECTION 188, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6.1. (a) After ratification of a contract under section 6 of this chapter, a school employer shall submit the ratified collective bargaining agreement, including the compensation model developed under IC 20-28-9-1.5, to the board.

(b) The board shall appoint a staff member or an ad hoc panel member to review each submitted collective bargaining agreement and to make a written recommendation concerning the collective bargaining agreement's compliance with this chapter, including a penalty for any noncompliance. The review must be completed before ~~March 30~~ **May 31** of the year in which the current collective bargaining agreement expires.

(c) Not later than fifteen (15) days after a recommendation has been made under subsection (b), one (1) or both parties to a collective bargaining agreement may appeal to the board, in writing, the decision made in the recommendation. If the board does not receive an appeal not later than fifteen (15) days after issuing a recommendation, the recommendation becomes the final order of the board.

(d) If the board receives a timely appeal, the board may make a decision on the recommendation with or without oral argument. The board may request that the parties submit briefs. The board must issue

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a ruling on the appeal not later than thirty (30) days after the last of the following occurs:

- (1) The appeal is received.
- (2) Briefs are received.
- (3) Oral arguments are held.
- (e) IC 4-21.5 does not apply to a review under subsection (b) or (d).
- (f) If, following the review of a collective bargaining agreement, the board finds the collective bargaining agreement does not comply with this chapter, the board shall issue an order that may include one (1) or more of the following items:
  - (1) Ordering the parties to cease and desist from all identified areas of noncompliance.
  - (2) Preventing the parties from ratifying any subsequent collective bargaining agreements until the parties receive written approval from the board or the board's agent.
  - (3) Requiring other action as deemed appropriate by the board as authorized by state law.
- (g) The board may send the board's compliance findings to other state agencies as necessary.
- (h) After a school employer has submitted a collective bargaining agreement under subsection (a), the school employer and an exclusive representative may not enter into a new collective bargaining agreement containing the noncompliant provision until the school employer has received either:
  - (1) the board's order regarding the compliance of the submitted collective bargaining agreement with this chapter; or
  - (2) other written approval from the board or an agent of the board.
- (i) If any provision of the collective bargaining agreement is found not to be compliant with this chapter, the provision that is found to be noncompliant with this chapter shall not affect other provisions of the collective bargaining agreement that can be given effect without the noncompliant provision, and to this end the provisions of collective bargaining agreement are severable.
- (j) The board:
  - (1) shall adopt rules under IC 4-22; and
  - (2) may adopt emergency rules in the manner provided under IC 4-22-2-37.1;
 as necessary to implement this section.

SECTION 2. IC 20-29-6-12, AS AMENDED BY P.L.229-2011, SECTION 178, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. Formal collective bargaining between a school corporation and the exclusive representative shall not

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begin before:

- (1) ~~August~~ + **September 15** in the first year of the state budget biennium; or
- (2) ~~August~~ + **September 15** in the second year of the state budget biennium if the parties agreed to a one (1) year contract during the first year of the state budget biennium or the contract provides for renegotiating certain financial items the second year of a two (2) year contract.

Informal negotiations may be held before ~~August~~ + **September 15**.

SECTION 3. IC 20-29-6-12.5, AS AMENDED BY P.L.213-2015, SECTION 190, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12.5. (a) Before ~~August~~ + **September 15** of the first year of the state budget biennium, the department shall provide the parties with an estimate of the general fund revenue available for bargaining in the school corporation from the school funding formula.

(b) Within thirty (30) days after the date of the fall count of ADM of the school year in the first year of the state budget biennium, the department shall provide the parties with a certification of estimated general fund revenue available for bargaining from the school funding formula. **If the parties do not receive a certified estimate from the department within thirty (30) days after the fall count of ADM, the parties may use the school corporation's estimate of the general fund revenue available based on the school corporation's fall count of ADM for purposes of collective bargaining. However, if the parties subsequently receive the certification of estimated general fund revenue available for bargaining before an impasse is declared, the parties shall use the certified general fund revenue from the school funding formula for purposes of collective bargaining.**

(c) A school employer that has passed a general fund operating referendum under IC 20-46-1 must have that amount certified by the department of local government finance.

(d) The school corporation must obtain the certification **described in subsection (c)** before the conclusion of bargaining. ~~These certifications~~ **The certifications or estimate described in subsection (b)** must be the basis for determinations throughout impasse proceedings under this chapter.

SECTION 4. IC 20-29-6-16, AS AMENDED BY P.L.239-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in



IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) Upon the expiration of the current contract that is in effect, except for performance stipends and additions to base salary provided under IC 20-43-10-3, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed. ~~unless continuation would put the school employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an employer's expenditures when the expenditures exceed the current year actual general fund revenue.~~

(c) The only parts of the contract that must continue under this section are the items contained in the contract and listed in section 4 of this chapter.

(d) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter.

SECTION 5. IC 20-29-6-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 16.5. The board shall amend 560 IAC 2-2-13(d) to provide that a petition for representation filed under 560 IAC 2-2-3(c) shall not be dismissed if the petition is filed:**

**(1) after January 14 and before February 16 of the calendar year of the expiration of the collective bargaining agreement;**  
or

**(2) during a period not to exceed thirty (30) days, as determined by the board, in the calendar year of the expiration of the collective bargaining agreement.**

SECTION 6. IC 20-29-8-7, AS AMENDED BY P.L.219-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) When a factfinder is requested or required under IC 20-29-6, the board shall appoint a factfinder. ~~from the staff or panel established under section 6 of this chapter.~~

(b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.



## (c) The factfinder:

- (1) may restrict the factfinder's findings to those issues that the factfinder determines significant;
- (2) must restrict the findings to the items listed in IC 20-29-6-4; and
- (3) may not impose terms beyond those proposed by the parties in their last, best offers.

## (d) The factfinder may use evidence furnished to the factfinder by:

- (1) the parties;
- (2) the board;
- (3) the board's staff; or
- (4) any other state agency.

(e) The factfinder shall conduct the factfinding hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside. The public hearing may begin not earlier than ~~October 1~~ **November 15** in the first year of the state budget biennium and must be concluded by ~~December 31 of the same year.~~ **February 15 of the calendar year after the start of formal collective bargaining.**

(f) The factfinding process may not exceed thirty (30) days from beginning to end, and not more than two (2) of those days may be used for public testimony, which may be taken at the discretion of the factfinder. During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

(g) The factfinder shall make a recommendation as to the settlement of the disputes over which the factfinder has jurisdiction.

## (h) The factfinder shall:

- (1) make the investigation, hearing, and findings as expeditiously as the circumstances permit; and
- (2) deliver the findings to the parties and to the board.

(i) The board, after receiving the findings and recommendations, may make additional findings and recommendations to the parties based on information in:

- (1) the report; or
- (2) the board's own possession.



The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4.

(j) At any time within five (5) days after the findings and recommendations are delivered to the board, the board may make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through news media and other means the board considers effective.

(k) The board shall make the findings and recommendations described in subsection (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

\_\_\_\_\_  
Governor of the State of Indiana

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

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