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SENATE BILL No. 330

Proposed Changes to introduced printing by AM033001

DIGEST OF PROPOSED AMENDMENT

Exclusion of tier 1 contractors. Provides that the bill does not apply to a tier 1 contractor (a prime or general contractor).

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 5-16-13-12.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2023]: Sec. 12.5. (a) This section applies to a
4 contractor in a ~~ny~~ contractor tier on a public works project , not
5 including a tier 1 contractor.

6 (b) This section applies only to a public works contract entered
7 into after June 30, 2023.

8 (c) As used in this section, "department" refers to the
9 department of labor created by IC 22-1-1-1.

10 (d) As used in this section, "Form WH-347" refers to the
11 weekly report of wages and hours of individuals employed on
12 construction projects prescribed by the Wage and Hour Division
13 of the United States Department of Labor.

14 (e) As used in this section, "report" refers to either of the
15 following:

16 (1) Form WH-347.

17 (2) A form prescribed by the department that is the
18 equivalent of Form WH-347.

19 (f) Each week, a contractor shall complete and maintain in its
20 files a report.

21 (g) At the request of any of the following, a contractor shall

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1 produce the report for inspection and verification:

2 (1) The public agency that has contracted for the public
3 works project.

4 (2) The department.

5 (h) The department shall prescribe a form that is the
6 equivalent of Form WH-347. The form must require that an agent
7 of the contractor completing the form certify the information on
8 the form under the penalties for perjury. The department may
9 provide that payroll records normally maintained by a contractor
10 satisfy the requirement of this section if those records contain the
11 information required under this section.

12 SECTION 2. IC 22-2-19 IS ADDED TO THE INDIANA CODE
13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2023]:

15 **Chapter 19. Wage Reporting on Tax Advantaged Construction**
16 **Projects**

17 **Sec. 1.** This chapter applies to a tax advantaged construction
18 project funded in whole or in part through a tax advantage granted
19 after June 30, 2023.

20 **Sec. 2.** As used in this chapter, "contractor" refers generally
21 to a contractor in a ~~any~~ contractor tier], not including a tier 1
22 contractor].

23 **Sec. 3.** As used in this chapter, "contractor tier" has the
24 meaning set forth in IC 5-16-13-4.

25 **Sec. 4.** As used in this chapter, "construction" includes any of
26 the following:

- 27 (1) The alteration of a structure.
- 28 (2) The building of a structure.
- 29 (3) The reconstruction of a structure.
- 30 (4) The renovation of a structure.
- 31 (5) The expansion of a structure.
- 32 (6) The demolition of a structure.
- 33 (7) The improvement of a structure.
- 34 (8) The repair of a structure.
- 35 (9) The maintenance of a structure.

36 **Sec. 5.** As used in this chapter, "department" refers to the
37 department of labor created by IC 22-1-1-1.

38 **Sec. 6.** As used in this chapter, "Form WH-347" refers to the
39 weekly report of wages and hours of individuals employed on
40 construction projects prescribed by the Wage and Hour Division
41 of the United States Department of Labor.

42 **Sec. 7.** As used in this chapter, "political subdivision" has the



meaning set forth in IC 36-1-2-13.

Sec. 8. As used in this chapter, "public entity" refers to any of the following:

- (1) The state.
- (2) A political subdivision.
- (3) An instrumentality of the state or a political subdivision (including a nonprofit corporation).
- (4) A body corporate and politic established by law.
- (5) An entity for a tax increment financing area described in section 10(1) of this chapter.

Sec. 9. As used in this chapter, "tax advantage" refers to any of the benefits described in section 10 of this chapter granted by a public entity.

Sec. 10. As used in this chapter, "tax advantaged construction" refers to the following:

(1) Construction in a geographic area including:

- (A) an economic development area;
- (B) a sports development area;
- (C) a community revitalization area;
- (D) a certified technology park;
- (E) a tax increment financing district; and
- (F) other similar areas or districts;

designated by a public entity as an allocation area or in which tax increment property tax, adjusted gross income tax, or gross retail and use tax revenue is dedicated to provide improvements or to retire bonds issued to pay for improvements.

(2) Construction for which an exemption, deduction, credit, preferential rate, or other tax benefit is granted under IC 6-1.1-12.1, IC 6-1.1-12.4, IC 6-1.1-12.5, IC 6-1.1-12.6, or IC 6-3.1.

(3) Construction financed in any part with the proceeds of bonds exempt from state taxation or issued by a public entity.

(4) Construction in an enterprise zone (IC 5-28-15).

(5) A rail project (as defined in IC 5-1.3-2-14 or IC 8-5-15-1).

Sec. 11. As used in this section, "report" refers to either of the following:

- (1) Form WH-347.
- (2) A form prescribed by the department that is the equivalent of Form WH-347.

Sec. 12. Any agreement between a person and public entity



granting a tax advantage must provide that:

(1) the tax advantage is conditioned on and subject to the provisions of this chapter;

(2) all construction contracts at every contractor tier:

(A) entered into; and

(B) financed in whole or in part through the tax advantage;

must provide that the provisions and requirements of this chapter are incorporated into the contract.

Sec. 13. Each week, a contractor shall complete and maintain in its files a report.

Sec. 14. At the request of any of the following, a contractor shall produce the report for inspection and verification:

(1) The public entity that has:

(A) contracted directly for the tax advantaged construction; or

(B) granted the tax advantage through which the tax advantaged construction is financed in whole or in part.

(2) The department.

Sec. 15. (a) If a public entity suspects that a violation of section 13 of this chapter has occurred, the public entity shall require the contractor to remedy the violation not later than thirty (30) days after the public entity notifies the contractor of the violation. The notification to the contractor must be signed by the chief executive officer of the public entity and sent by a method that enables the public entity to verify receipt of the notice by the contractor.

(b) During the thirty (30) day period described in subsection (a), the contractor may continue to work on the construction project. If the contractor fails to remedy the violation within the thirty (30) day period, the public entity shall find the contractor not responsible and determine the length of time the contractor is considered not responsible by the public entity.

(c) In making the determination of the length of time a contractor is not responsible under subsection (b), the public entity shall consider the severity of the violation. The period during which a contractor is considered not responsible:

(1) may not exceed forty-eight (48) months; and

(2) begins on the date of substantial completion of the construction project.

Sec. 16. The department shall prescribe a form that is the equivalent of Form WH-347. The form must require that an agent of the contractor completing the form certify the information on



1 the form under the penalties for perjury. The department may
2 provide that payroll records normally maintained by a contractor
3 satisfy the requirement of this chapter if those records contain the
4 information required under this chapter.
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