

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1286

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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 36-9-30-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. **(a) Except as provided in subsection (b)**, this chapter applies to all units except townships.

**(b) Section 5.3 of this chapter applies only to:**

**(1) cities that are not consolidated cities; and**

**(2) towns.**

SECTION 2. IC 36-9-30-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 5. (a) A unit may contract with persons for the collection or disposal of solid waste. The contract may provide that persons contracted with have the exclusive right to collect or dispose of solid waste under section 4 of this chapter.

(b) A unit may contract with any business or institution for the collection and disposal of industrial, commercial, or institutional solid waste. All fees collected by the unit shall be deposited in the treasury of the unit for the administration, operation, and maintenance of the solid waste collection and disposal project.

(c) A unit may contract for the use of privately owned solid waste disposal facilities.

(d) **This subsection applies** if a contract executed under subsection (a) or (b) will yield a gross revenue to a contractor (other than a governmental entity) of at least twenty-five thousand dollars (\$25,000)

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during the time it is in effect. ~~then the A unit:~~

- (1) must comply with IC 36-1-12-4 in awarding the contract if the unit is a county; and**
  - (2) may comply with either:**
    - (A) IC 36-1-12-4; or**
    - (B) section 5.3 of this chapter;**
- in awarding the contract if the unit is a municipality other than a consolidated city.**

**(e) A unit entering into a contract under subsection (d)(1) shall require the bidder to submit a financial statement, a statement of experience, the bidder's proposed plan or plans for performing the contract, and the equipment that the bidder has available for the performance of the contract. The statement shall be submitted on forms prescribed by the state board of accounts. IC 36-1-12-4(b)(6) does not apply to this subsection.**

~~(e)~~ **(f) A unit may contract under this section with private persons that operate facilities that combine significant elements of recycling or production of refuse derived fuel.**

**SECTION 3. IC 36-9-30-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 5.3. (a) This section applies only to a municipality that is not a consolidated city.**

**(b) As used in this section, "board" refers to:**

- (1) the:**
  - (A) board of public works; or**
  - (B) board of public works and safety;**
- in the case of a city; or**
- (2) the town council, in the case of a town.**

**(c) Notwithstanding any statute relating to the length, duration, and terms of contracts and agreements, the board of a municipality may enter into any contract or agreement with any person upon such terms and conditions as may be agreed upon for the collection and disposal of solid waste.**

**(d) Before or after the expiration or termination of the term or duration of a contract or agreement entered into under subsection (c), the board of a municipality, in accordance with this section, may from time to time enter into amended, extended, supplemental, new, or further contracts or agreements with:**

- (1) the same person with whom the board entered into the contract or agreement under subsection (c); or**
- (2) any other person;**

**for any purpose referred to in this section.**



(e) Overall cost, including construction costs, tipping fees, and reductions in costs resulting from the sale of byproducts, should in all cases be a major criterion in the selection of contractors for an award of contracts for the collection and disposal of solid waste under this section. The board of a municipality:

(1) shall consider:

(A) the highly complex and innovative nature of byproduct recovery technology;

(B) the variety of waste collection and disposal technology available;

(C) the desirability of flexibility for the development of these complex facilities; and

(D) the economic and technical utility of contracts for byproduct recovery projects that include in their scope various combinations of design, construction, operations, management, or maintenance responsibilities over prolonged periods; and

(2) shall recognize that in some instances it may be beneficial to the municipality to award a contract on the basis of factors other than cost alone, such as:

(A) facility design;

(B) system reliability;

(C) energy efficiency; and

(D) compatibility with source separation, other recycling systems, and environmental protection.

(f) Notwithstanding any other statute, a contract for the collection and disposal of solid waste that is entered into between a board on behalf of a municipality and any person under this section may be awarded by the board under either of the following procedures:

(1) Public bidding in compliance with IC 36-1-12.

(2) Compliance with subsections (g) through (q).

(g) A board proceeding under subsection (f)(2) to enter into a contract for the collection and disposal of solid waste may require any person seeking to enter into the contract with the municipality to be prequalified as a proposer by submitting to the board:

(1) information relating to the experience of the proposer;

(2) the basis on which the proposer purports to be qualified to carry out all work required by the proposed contract; and

(3) the financial condition of the proposer.

(h) Before issuing a request for proposals under this section, a board shall:



- (1) adopt a proposed request for proposals; and
- (2) publish a public notice concerning the request for proposals.

If the board has established a prequalification requirement under subsection (g), the public notice published under subdivision (2) may include the criteria according to which proposers may be selected.

(i) The public notice published by a board under subsection (h)(2) must:

- (1) include the intent to issue a request for proposals; and
- (2) designate times and places where the proposed request for proposals may be viewed by the general public.

(j) After the publication of a public notice under subsection (h)(2), the board shall allow a period of at least thirty (30) days for the submission of:

- (1) comments on the proposed request for proposals; and
- (2) qualifications from persons seeking to be prequalified as a proposer, if the board has established a prequalification requirement under subsection (g).

Comments submitted under subdivision (1) may address the scope or contents of the proposed request for proposals.

(k) After the period allowed under subsection (j), the board shall:

- (1) select proposers; and
- (2) adopt a request for proposals.

The board shall notify each proposer that is selected of the selection, inform the proposer of the date and place established for the submission of proposals, and deliver to the proposer a copy of the request for proposals.

(l) A request for proposals adopted under subsection (k)(2) must include:

- (1) a clear identification and specification of all elements of cost that would become charges to the municipality, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for proposals for the full term of the proposed contract for the collection and disposal of solid waste, including such appropriate matters as:
  - (A) proposals for project staffing;
  - (B) implementation of all work tasks;
  - (C) carrying out of all responsibility required by the proposed contract; and



- (D) the cost of planning, design, construction, operation, management, or maintenance of any facility, and the cost of processing or disposal of solid waste; and
- (2) a clear identification and specification of any revenues that would accrue to the municipality from the sale of any byproducts or from any other source; and
- (3) such other information as the board may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(m) The board may prescribe the form and content of proposals submitted in response to its request for proposals. The information submitted by a proposer must be sufficiently detailed to permit the board to evaluate the proposal fairly and equitably. In addition, the board, in the request for proposals, may set maximum allowable cost limits that the board determines to be appropriate.

(n) The board may not receive proposals until at least thirty (30) days after the proposers are selected and notified of their selection under subsection (k). The board:

- (1) shall evaluate the proposals it receives as to net cost or revenues; and
- (2) may, in a manner consistent with provisions set forth in the request for proposals, evaluate the proposals on the basis of additional factors such as:
  - (A) the technical evaluation of facility design;
  - (B) net energy efficiency;
  - (C) environmental protection;
  - (D) overall system reliability; and
  - (E) the financial condition of the proposer.

(o) The board, on behalf of the municipality, may negotiate with any responsible proposer. After giving public notice including the date, time, and place of the hearing, the board shall hold a public hearing at which the public may submit comments on the contract to be awarded. After the public hearing, the board shall make a contract award to the responsible proposer selected under this section based on a determination by the board that the selected proposal is the most responsive to the needs of the municipality.

(p) The contract award:

- (1) must be in the form of a resolution; and
- (2) must include particularized findings relative to the factors to be evaluated under this section, indicating that the award:
  - (A) meets the municipality's needs; and
  - (B) is in the public interest.



**(q) An action to contest:**

**(1) the validity of the contract awarded; or**

**(2) the procedure by which the contract was awarded;**

**must be initiated within thirty (30) days after the contract is awarded under subsection (o). An action to contest the contract, regardless of the cause, may not be initiated more than thirty (30) days after the contract is awarded under subsection (o).**



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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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