

# HOUSE BILL No. 1095

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-14.

**Synopsis:** Living wage for state agency contracts. Requires a contracting vendor awarded a contract by a state agency, the general assembly, or the judiciary to pay its employees at not less than a certain rate (referred to as the "living wage") beginning July 1, 2008. Sets a living wage initial rate, and provides for annual adjustments of the living wage. Provides certain penalties for noncompliance with the requirement to pay the living wage. Establishes the living wage advisory committee to review and evaluate the effectiveness of the living wage in creating and retaining living wage jobs.

**Effective:** July 1, 2008.

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### Hoy, Koch

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January 14, 2008, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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# HOUSE BILL No. 1095



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

- 1 SECTION 1. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2008]:
- 4 **Chapter 14. Living Wage for State Contracted Employees**
- 5 **Sec. 1. The following definitions apply throughout this chapter:**
- 6 (1) "Contracting agency" means any of the following:
- 7 (A) A state agency (as defined in IC 4-13-1-1(b)).
- 8 (B) The general assembly.
- 9 (C) The judiciary.
- 10 **The term does not include a state educational institution.**
- 11 (2) "Covered employee" means an individual who:
- 12 (A) is employed by a covered vendor; and
- 13 (B) directly expends or would directly expend the
- 14 individual's time on a service contract with a contracting
- 15 agency or on a service subcontract.
- 16 (3) "Covered vendor" means any of the following that is
- 17 awarded a service contract or service subcontract after June



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**30, 2008:**

- (A) a for-profit employer that employs at least twenty-five (25) full-time equivalent employees; or**
- (B) a nonprofit employer that employs at least one hundred (100) full-time equivalent employees.**
- (4) "Department" refers to the department of labor.**
- (5) "Federal income poverty level" has the meaning set forth in IC 5-28-18-1.**
- (6) "Full time" means at least forty (40) hours of employment in a week.**
- (7) "Full-time equivalent employee", for purposes of subdivision (3), means the number of employee work hours that equal one (1) full-time employment position, regardless of whether those hours are worked by one (1) employee or by more than one (1) employee.**
- (8) "Inmate" has the meaning set forth in IC 11-8-4-2.**
- (9) "Institution" has the meaning set forth in IC 11-8-4-2.**
- (10) "Living wage" means the rate established under section 4 of this chapter as the minimum hourly wage rate that must be paid to a covered employee by a covered vendor.**
- (11) "Person" has the meaning set forth in IC 1-1-4-5(17) and includes:**
  - (A) an agent;**
  - (B) an employee; and**
  - (C) a representative;****of a person.**
- (12) "Service contract" means a single contract that:**
  - (A) is awarded to a covered vendor by a contracting agency; and**
  - (B) provides for compensation of at least one hundred thousand dollars (\$100,000) for the furnishing of services.**
- (13) "Service subcontract" means a subcontract that:**
  - (A) is awarded to a covered vendor; and**
  - (B) provides for the payment of at least twenty-five thousand dollars (\$25,000) in funds from the service contract.**
- (14) "Vendor agreement" means a written agreement that is:**
  - (A) entered into by the state, through a contracting agency, and a covered vendor; and**
  - (B) executed at the time a service contract with the state or a subcontract with a covered vendor is signed.**

**Sec. 2. (a) Except as provided in subsection (b), this chapter**

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- 1 applies to all covered vendors.
- 2 (b) Covered vendors entering into the following types of service
- 3 contracts and service subcontracts are exempt from this chapter:
- 4 (1) A construction contract awarded by the state that is
- 5 subject to the common construction wage (as defined in
- 6 IC 5-16-7-4(1)).
- 7 (2) A contract awarded to work-study or cooperative
- 8 educational programs, if the contract is for a stipend to a
- 9 student in the program.
- 10 (3) A contract awarded by the department of correction, if
- 11 contracted employees are inmates of institutions.
- 12 (4) A contract awarded by the department of education, if
- 13 contracted employees are paid a stipend for:
- 14 (A) proctoring;
- 15 (B) grading;
- 16 (C) supervising; or
- 17 (D) recording;
- 18 examinations.
- 19 (5) Contracts awarded to vendors that provide:
- 20 (A) services to the state; and
- 21 (B) a stipend or wage to trainees as part of a job training
- 22 program, if the trainees do not replace current state
- 23 funded positions.
- 24 (c) The prospective covered vendor seeking an exemption under
- 25 subsection (b) must submit an affidavit to the department and to
- 26 the contracting agency that:
- 27 (1) is on a form approved by the department and provided by
- 28 the contracting agency;
- 29 (2) is signed by a principal officer of the prospective covered
- 30 vendor; and
- 31 (3) states that at least one (1) of the exemptions in subsection
- 32 (b) applies to the prospective covered vendor;
- 33 in order for a prospective covered vendor to be considered for the
- 34 granting of an exemption by the department from the
- 35 requirements of this chapter.
- 36 (d) The department may grant general exemptions if the
- 37 application of this chapter to a particular service contract or
- 38 subcontract would violate a specific state or federal statute, rule,
- 39 regulation, or constitutional provision. All requests submitted by
- 40 a prospective covered vendor for a general exemption must include
- 41 the following:
- 42 (1) The service contract or subcontract to which this chapter

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- would otherwise apply.
- (2) The conflicting statutory, regulatory, or constitutional provision that makes compliance with this chapter unlawful, and a copy of each provision.
- (3) An explanation of:
  - (A) why compliance with this chapter would violate the cited provision; and
  - (B) the consequences that would result if the violation would occur.

A general exemption request shall be submitted directly to the department, and a copy of the request shall be submitted to the contracting agency.

(e) A contracting agency shall monitor and, when considered necessary, recommend to the department individual or group exemptions in cases where compliance with this chapter would cause undue economic hardship to a covered vendor or prospective covered vendor. An exemption under this subsection is subject to the department's approval after a public hearing in compliance with IC 5-14-1.5 on the exemption recommendation has been held.

A hardship exemption recommendation must include the following:

- (1) The service contract or service subcontract to which this chapter applies.
- (2) The lower wage to be paid by the covered vendor.
- (3) A detailed explanation of how the payment of a living wage would cause undue economic hardship to the covered vendor. The explanation must include supporting financial statements.

(f) The department shall determine whether an exemption from the requirements of this chapter shall be granted upon submission of:

- (1) an affidavit from a prospective vendor as set forth in subsection (c);
- (2) a general exemption request from a prospective vendor as set forth in subsection (d); or
- (3) a recommendation from the contracting department after a public hearing on the exemption recommendation has been held, in accordance with subsection (e);

and shall inform the covered vendor or prospective covered vendor of the department's determination.

Sec. 3. A contracting agency engaged in the awarding of contracts shall provide an explanation in writing, in a form prepared by the department, of the requirements of this chapter in all requests for bids for service contracts with the state. A person

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1 who signs a service contract with the state shall forward a copy of  
2 the requirements to a person submitting a bid for a subcontract on  
3 the service contract.

4 Sec. 4. (a) A covered vendor shall pay not less than the living  
5 wage to covered employees.

6 (b) The living wage shall be:

- 7 (1) calculated on an hourly basis; and
- 8 (2) after June 30, 2008, at least nine dollars and ninety-three  
9 cents (\$9.93).

10 Before July 1 of each year after 2008, the department shall  
11 recalculate the living wage according to subsection (c).

12 (c) The department shall recalculate the living wage before July  
13 1 of each year after 2008 to provide that the living wage equals the  
14 highest of the following:

- 15 (1) The hourly rate that, at forty (40) hours of work a week  
16 for fifty-two (52) weeks a year, would equal the federal  
17 income poverty level for a family of four (4) individuals.
- 18 (2) The living wage in effect before the recalculation under  
19 this subsection, adjusted in proportion to the increase, as of  
20 the immediately preceding December 31 over the year earlier  
21 level, of the annual average Consumer Price Index for All  
22 Urban Consumers, as published by the Bureau of Labor  
23 Statistics of the United States Department of Labor.
- 24 (3) Adjustment to one hundred ten percent (110%) of the  
25 federal minimum wage in effect at the time of the  
26 recalculation under this subsection.

27 Sec. 5. A covered vendor has the following duties:

28 (1) With respect to maintenance of payroll records, a covered  
29 vendor shall maintain payrolls of each covered employee and  
30 related basic records for three (3) years. The basic records  
31 must include:

- 32 (A) the name and address of each covered employee;
- 33 (B) each covered employee's job title and classification;
- 34 (C) the number of hours worked each day by each covered  
35 employee;
- 36 (D) each covered employee's:
  - 37 (i) gross wages;
  - 38 (ii) deductions made; and
  - 39 (iii) actual wages paid;
- 40 (E) a record of fringe benefit payments, including:
  - 41 (i) contributions to approved plans, funds, or programs;
  - 42 (ii) additional cash payments; or

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- (iii) both amounts under items (i) and (ii); and
- (F) any other data that may be required by the contracting agency from time to time.
- (2) With respect to examination of payrolls, a covered vendor shall permit a representative of the department to:
  - (A) observe work being performed upon the work site;
  - (B) interview employees, including those who are not covered employees; and
  - (C) examine the books and records relating to the payrolls being investigated.
- (3) Before July 31 of each year, a covered vendor shall provide an annual report to the department of the employment activities of the covered vendor, including the job positions charged to the contract and the wage ranges of those positions.
- (4) A covered vendor shall inform its covered employees earning an amount as determined by the department of their rights in applying for and potentially receiving the federal earned income tax credit. The department shall assist covered vendors with implementation of this section.

Sec. 6. A service contract or service subcontract between a contracting agency and the covered vendor must include the following:

- (1) The name of the program or project under which the contract or subcontract is being awarded.
- (2) The name, address, and phone number of a local contact representing the covered vendor.
- (3) A written commitment by a representative of the covered vendor to:
  - (A) pay all covered employees not less than the living wage, subject to adjustment each July 1; and
  - (B) comply with this chapter.
- (4) A workforce profile of covered employees paid for by the service contract or subcontract, including the employees' job titles with wage ranges.
- (5) For service contracts, a list of all service subcontracts either awarded or that will be awarded to vendors with funds from the service contract. A covered vendor awarded a service contract shall notify the contracting agency within three (3) working days after signing the service subcontract.

Sec. 7. (a) An individual who is:

- (1) a covered employee; or

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1           (2) an applicant for a position to be filled by a covered  
 2           employee;  
 3           who believes that the employer is not complying with the  
 4           requirements of this chapter may file a complaint with the  
 5           department. Complaints by covered employees of alleged violations  
 6           may be made under this section at any time. Written or oral  
 7           statements made by an individual are confidential and may not be  
 8           disclosed to the covered vendor without the consent of the  
 9           individual. The department shall provide a copy of the complaint  
 10          to each covered vendor against whom a complaint is made within  
 11          five (5) business days after the complaint is filed.

12          (b) The department or its designees shall investigate each  
 13          complaint of noncompliance by a covered vendor. Investigations  
 14          may include routine reviews, spot checks, and investigations  
 15          following complaints. The department shall examine all payrolls  
 16          promptly for compliance upon receiving a complaint in  
 17          furtherance of an investigation.

18          (c) If considered necessary for the enforcement of this chapter,  
 19          the department may issue subpoenas to compel the:

- 20           (1) attendance and testimony of witnesses; and
- 21           (2) production of books, papers, records, and documents
- 22           relating to payroll records necessary for:
  - 23           (A) hearings;
  - 24           (B) investigations; or
  - 25           (C) proceedings.

26          The department may apply to a circuit or superior court in the  
 27          county where the subpoena was served to enforce the subpoena.

28          (d) If a covered vendor discharges, reduces the compensation of,  
 29          or discriminates against any covered employee or another  
 30          individual for:

- 31           (1) making a complaint to the department or otherwise
- 32           asserting the individual's rights under this chapter;
- 33           (2) participating in any proceedings under this chapter; or
- 34           (3) using any civil remedies to enforce the individual's rights
- 35           under this chapter;

36          the covered vendor is in violation of this chapter. The department  
 37          shall investigate an allegation of retaliation or discrimination  
 38          described in this subsection. If the allegation is found to be true, the  
 39          department shall order appropriate relief to the employee or  
 40          individual and assess penalties against the covered vendor, which  
 41          may include suspension of the covered vendor's contract or  
 42          ordering the service contractor to suspend the covered vendor's

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**subcontract.**

**Sec. 8. (a) If the department determines after investigation that a covered vendor has failed to pay the living wage rate or has otherwise violated this chapter, the department may impose any or all of the following penalties or remedies on the covered vendor:**

- (1) A civil penalty not to exceed three hundred dollars (\$300) for each affected covered employee for each day that the covered vendor is in violation of this chapter.**
- (2) The filing of a complaint with the pertinent federal agency.**
- (3) Wage restitution for each affected employee.**
- (4) Suspension of ongoing contract and subcontract payments.**
- (5) Ineligibility to bid for future contracts.**
- (6) Any other action considered appropriate by the department.**

**(b) A person on whom a penalty has been imposed by the department under subsection (a) may request a hearing before the department under IC 4-21.5-3.**

**(c) Judicial review of an adverse decision in a hearing held under this section shall be in accordance with IC 4-21.5-5.**

**(d) A remedy set forth in this chapter is not intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right granted under this chapter in a court of law. This chapter may not be construed to limit a covered employee's right to bring a common law action for wrongful termination.**

**SECTION 2. [EFFECTIVE JULY 1, 2008] (a) As used in this SECTION, "committee" means the living wage advisory committee established by this SECTION.**

**(b) As used in this SECTION, "department" means the department of labor created by IC 22-1-1-1.**

**(c) There is established the living wage advisory committee. The committee shall:**

- (1) review and evaluate the effectiveness of IC 22-2-14, as added by this act, in creating and retaining living wage jobs in Indiana;**
- (2) review and evaluate the implementation and enforcement of IC 22-2-14, as added by this act; and**
- (3) submit to the legislative council and to the governor:**
  - (A) a preliminary report not later than December 1, 2008;**
  - (B) an annual report not later than December 1, 2009;**
  - (C) an annual report not later than December 1, 2010; and**
  - (D) a final report not later than December 1, 2011, which must include recommendations and including specific**

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- 1 findings as to how the living wage law has affected
- 2 Indiana's economy.
- 3 The report to the legislative council must be in an electronic
- 4 format under IC 5-14-6.
- 5 (d) The governor shall appoint five (5) members to the
- 6 committee as follows:
- 7 (1) One (1) member representing a labor union.
- 8 (2) One (1) member representing a living wage advocacy
- 9 organization.
- 10 (3) One (1) member representing a community based
- 11 organization operating solely within Indiana.
- 12 (4) One (1) member representing the Indiana Chamber of
- 13 Commerce.
- 14 (5) One (1) member representing small business in Indiana.
- 15 (e) The governor may remove a member of the committee at any
- 16 time.
- 17 (f) If a vacancy on the committee occurs, the governor shall
- 18 appoint an individual representing the same interest as the prior
- 19 member to fill the vacancy.
- 20 (g) The committee shall elect a chairperson and a secretary
- 21 from its members. The affirmative votes of a majority of the voting
- 22 members appointed to the committee are required for the
- 23 committee to take action on any measure, including preliminary,
- 24 annual, and final reports.
- 25 (h) The committee may study other topics:
- 26 (1) as assigned by the governor;
- 27 (2) as assigned by the legislative council; or
- 28 (3) as directed by the commission's chairperson.
- 29 (i) The department shall provide staff and administrative
- 30 support for the committee.
- 31 (j) Except as provided in subsection (m), expenses incurred
- 32 under this chapter shall be paid from funds appropriated to the
- 33 department.
- 34 (k) Each member of the committee who is not a state employee
- 35 is entitled to the minimum salary per diem provided by
- 36 IC 4-10-11-2.1(b). The member is also entitled to reimbursement
- 37 for traveling expenses as provided under IC 4-13-1-4 and other
- 38 expenses actually incurred in connection with the member's duties
- 39 as provided in the state policies and procedures established by the
- 40 Indiana department of administration and approved by the budget
- 41 agency.
- 42 (l) Each member of the committee who is a state employee but

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1 who is not a member of the general assembly is entitled to  
2 reimbursement for traveling expenses as provided under  
3 IC 4-13-1-4 and other expenses actually incurred in connection  
4 with the member's duties as provided in the state policies and  
5 procedures established by the Indiana department of  
6 administration and approved by the budget agency.

7 (m) Each member of the commission who is a member of the  
8 general assembly is entitled to receive the same per diem, mileage,  
9 and travel allowances paid to legislative members of interim study  
10 committees established by the legislative council. Per diem,  
11 mileage, and travel allowances paid under this subsection shall be  
12 paid from appropriations made to the legislative council or the  
13 legislative services agency.

14 (n) The committee shall meet at least quarterly.

15 (o) This SECTION expires July 1, 2012.

16 SECTION 3. [EFFECTIVE JULY 1, 2008] (a) Notwithstanding  
17 IC 22-2-14-5(3), as added by this act, a covered vendor is not  
18 required to provide an annual report by July 31, 2008, to the  
19 department of labor concerning the employment activities of the  
20 covered vendor.

21 (b) A covered vendor is required under IC 22-2-14-5(3), as  
22 added by this act, to provide an annual report to the department  
23 of labor of the employment activities of the covered vendor before  
24 July 31, 2009. The report must cover the period beginning with the  
25 first date of the contract through the date of the submission of the  
26 annual report to the department of labor.

27 (c) This SECTION expires December 31, 2009.

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