
SENATE BILL No. 241

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 10-14-3; IC 34-30-2-37.

Synopsis: Construction industry disaster volunteer program. Establishes the construction industry disaster volunteer program (program). Provides immunity from civil liability to a construction industry professional and the construction industry professional's employer for services provided by the construction industry professional as a participant in the program during a disaster. Authorizes reimbursement for certain expenses incurred by a construction industry professional while participating in the program during an emergency. Makes technical corrections.

Effective: Upon passage.

Merritt

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 241



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

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

1 SECTION 1. IC 4-6-2-1.5, AS AMENDED BY P.L.78-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1.5. (a) Whenever any state governmental
4 official or employee, whether elected or appointed, **or a construction**
5 **industry professional (as defined in IC 10-14-3-0.5) participating**
6 **in the construction industry disaster volunteer program established**
7 **by IC 10-14-3-33.5** is made a party to a suit, and the attorney general
8 determines that said suit has arisen out of an act which such official, ~~or~~
9 employee, **or construction industry professional** in good faith
10 believed to be within the scope of the official's, ~~or~~ employee's, **or**
11 **construction industry professional's** duties as prescribed by statute
12 or duly adopted regulation, the attorney general shall defend such
13 person throughout such action.

14 (b) Whenever a teacher (as defined in IC 20-18-2-22) is made a
15 party to a civil suit, and the attorney general determines that the suit
16 has arisen out of an act that the teacher in good faith believed was
17 within the scope of the teacher's duties in enforcing discipline policies



1 developed under IC 20-33-8-12, the attorney general shall defend the
2 teacher throughout the action.

3 (c) Whenever a school corporation (as defined in IC 20-26-2-4) is
4 made a party to a civil suit and the attorney general determines that the
5 suit has arisen out of an act authorized under IC 20-30-5-0.5 or
6 IC 20-30-5-4.5, the attorney general shall defend the school corporation
7 throughout the action.

8 (d) A determination by the attorney general under subsection (a),
9 (b), or (c) shall not be admitted as evidence in the trial of any such civil
10 action for damages.

11 (e) Nothing in this chapter shall be construed to deprive any such
12 person of the person's right to select counsel of the person's own choice
13 at the person's own expense.

14 SECTION 2. IC 4-6-4-1 IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE UPON PASSAGE]: Sec. 1. Whenever any such action,
16 counter-claim, petition, or cross-complaint is filed in any court in this
17 state in which the state of Indiana or any board, bureau, commission,
18 department, division, agency, or officer or employee in his capacity as
19 an employee of the state of Indiana, **or a construction industry**
20 **professional (as defined in IC 10-14-3-0.5) participating in the**
21 **construction industry disaster volunteer program established by**
22 **IC 10-14-3-33.5**, is a party and the attorney general is required or
23 authorized to appear or defend, or when the attorney general is entitled
24 to be heard, a copy of the complaint, cross-complaint, petition, bill, or
25 pleading shall be served on the attorney general and such action,
26 cross-action, or proceeding shall not be deemed to be commenced as
27 to the state or ~~any such~~ **the** board, bureau, commission, department,
28 division, agency, or officer or employee in ~~his~~ **the individual's**
29 capacity as an employee of the state of Indiana, **or as to the**
30 **construction industry professional**, until such service. Whenever the
31 attorney general has appeared in any suit, action, or proceeding, copies
32 of all motions, demurrers, petitions, and pleadings filed therein shall be
33 served upon the attorney general by the party filing the same; provided,
34 further, that the clerk of the court shall cause to be served upon the
35 attorney general a copy of the ruling made by the court upon such
36 motions, demurrers, petitions, and pleadings, and such ruling shall not
37 be deemed effective in any manner as against the attorney general, ~~or~~
38 as against the state of Indiana or ~~any~~ **the** board, bureau, commission,
39 department, division, agency, or officer or employee in ~~his~~ **the**
40 **individual's** capacity as an employee of the state of Indiana, **or as**
41 **against the construction industry professional** unless and until such
42 copy shall be served upon the attorney general or any deputy attorney

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1 general as provided in section 2 of this chapter; provided, further, that
 2 in any action in which the attorney general is required or authorized to
 3 appear or defend or entitled to be heard, in which action some matter
 4 or thing occurs upon which occurrence time begins to run, the running
 5 of such time shall be suspended as to the attorney general until such
 6 service is had upon the attorney general or any deputy attorney general
 7 as provided in section 2 of this chapter; provided, further, that
 8 whenever any claim filed for and on behalf of the state of Indiana or
 9 any board, bureau, commission, department, division, agency, officer,
 10 or institution of the state of Indiana in any estate or guardianship
 11 pending in any court having probate jurisdiction in the state of Indiana
 12 is not allowed and the clerk of the court, administrator, administratrix,
 13 executor, executrix, or guardian transfers such claim to the trial docket,
 14 said claim shall not be disposed of nor shall any disposition made of
 15 such claim be deemed to be a final adjudication unless and until due
 16 notice of the trial date of such claim shall be served on the attorney
 17 general or any deputy attorney general as provided in section 2 of this
 18 chapter at least ten (10) days prior to the date set for trial of said claim.

19 SECTION 3. IC 10-14-3-0.5 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 21 UPON PASSAGE]: **Sec. 0.5. As used in this chapter, "construction
 22 industry professional" means:**

- 23 (1) an architect;
- 24 (2) a professional engineer;
- 25 (3) a construction industry contractor;
- 26 (4) a construction industry equipment dealer; or
- 27 (5) another person engaged in the construction industry.

28 SECTION 4. IC 10-14-3-3, AS AMENDED BY P.L.134-2008,
 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: **Sec. 3. As used in this chapter, "emergency
 31 management worker" includes any full-time or part-time paid,
 32 volunteer (other than an individual participating in the construction
 33 industry disaster volunteer program established by section 33.5 of
 34 this chapter), or auxiliary employee of:**

- 35 (1) the state;
- 36 (2) other:
 - 37 (A) states;
 - 38 (B) territories; or
 - 39 (C) possessions;
- 40 (3) the District of Columbia;
- 41 (4) the federal government;
- 42 (5) any neighboring country;

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1 (6) any political subdivision of an entity described in subdivisions
 2 (1) through (5); or
 3 (7) any agency or organization;
 4 performing emergency management services at any place in Indiana
 5 subject to the order or control of, or under a request of, the state
 6 government or any political subdivision of the state. The term includes
 7 a volunteer health practitioner registered under IC 10-14-3.5.

8 SECTION 5. IC 10-14-3-15 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) Any
 10 function under this chapter and any other activity relating to emergency
 11 management is a governmental function.

- 12 **(b) Neither:**
 13 **(1)** the state;
 14 **(2)** any political subdivision;
 15 **(3)** any other agencies of the state or political subdivision of the
 16 state; ~~or~~ **nor**
 17 **(4)** except in cases of willful misconduct, gross negligence, or bad
 18 faith, any:
 19 **(A)** emergency management worker;
 20 **(B) construction industry professional who is participating**
 21 **in the construction industry disaster volunteer program;**
 22 **or**
 23 **(C) person employing a construction industry professional**
 24 **who is participating in the construction industry disaster**
 25 **volunteer program;**

26 complying with or reasonably attempting to comply with this chapter
 27 or any order or rule adopted under this chapter, or under any ordinance
 28 relating to blackout or other precautionary measures enacted by any
 29 political subdivision of the state, is ~~not~~ liable for the death of or injury
 30 to persons or for damage to property as a result of any such activity **or**
 31 **function referred to in subsection (a).**

- 32 **(c)** This section does not affect the right of any person to receive:
 33 (1) benefits to which the person would otherwise be entitled
 34 under:
 35 (A) this chapter;
 36 (B) the worker's compensation law (IC 22-3-2 through
 37 IC 22-3-6); or
 38 (C) any pension law; or
 39 (2) any benefits or compensation under any federal law.
 40 ~~(b)~~ **(d)** Any requirement for a license to practice any professional,
 41 mechanical, or other skill does not apply to any authorized emergency
 42 management worker who, in the course of performing duties as an

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1 emergency management worker, practices a professional, mechanical,
 2 or other skill during a disaster emergency.

3 ~~(c)~~ (e) A volunteer working as an authorized emergency
 4 management worker may be covered by the medical treatment and
 5 burial expense provisions of the worker's compensation law (IC 22-3-2
 6 through IC 22-3-6) and the worker's occupational diseases law (IC
 7 22-3-7). If compensability of the injury is an issue, the administrative
 8 procedures of IC 22-3-2 through IC 22-3-7 shall be used to determine
 9 the issue.

10 SECTION 6. IC 10-14-3-27 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) A person
 12 who:

13 (1) advocates a change by force or violence in the constitutional
 14 form of the government of the United States or the overthrow of
 15 any government in the United States by force or violence; or
 16 (2) has been convicted of or is under indictment or information
 17 charging a subversive act against the United States;

18 may not be employed or associated in any capacity in any emergency
 19 management organization established under this chapter.

20 (b) **This subsection does not apply to a construction industry**
 21 **professional who is participating in the construction industry**
 22 **disaster volunteer program.** An individual who is appointed to serve
 23 in an organization for emergency management shall, before entering
 24 upon the individual's duties, take a written oath before a person
 25 authorized to administer oaths in Indiana. The oath must be
 26 substantially as follows:

27 "I, _____, solemnly swear (or affirm)
 28 that I will support and defend the Constitution of the United
 29 States and the Constitution of the State of Indiana against all
 30 enemies, foreign and domestic; that I will bear true faith and
 31 allegiance to the same; that I take this obligation freely, without
 32 mental reservation or purpose of evasion; and that I will well and
 33 faithfully discharge the duties upon which I am about to enter. I
 34 further swear (or affirm) that I do not advocate, nor am I a
 35 member of a political party or organization that advocates, the
 36 overthrow of the government of the United States or of Indiana by
 37 force or violence; and that during the time I am a member of the
 38 (name of emergency management organization), I will neither
 39 advocate nor become a member of a political party or
 40 organization that advocates the overthrow of the government of
 41 the United States or of Indiana by force or violence."
 42 (c) For purposes of this section, the director and the county

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1 emergency management directors:
 2 (1) may administer the oath provided in subsection (b) to
 3 emergency management and disaster personnel; and
 4 (2) may delegate that authority to designated deputies and
 5 assistants approved by the director.
 6 SECTION 7. IC 10-14-3-31 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31. (a) A person in
 8 Indiana shall conduct himself or herself and keep and manage his or
 9 her affairs and property in ways that will reasonably assist and will not
 10 unreasonably detract from the ability of the state and the public to
 11 successfully meet disaster emergencies. This obligation includes
 12 appropriate personal service and use or restriction on the use of
 13 property in time of disaster emergency. Compensation for services or
 14 for the taking or use of property may be made only to the extent:
 15 (1) that obligations recognized in this chapter are exceeded in a
 16 particular case; and
 17 (2) that the claimant has not volunteered the claimant's services
 18 or property without compensation.
 19 (b) Personal services may not be compensated by the state or any
 20 subdivision or agency of the state except under statute, local law, or
 21 ordinance.
 22 (c) Compensation for property may be paid only if the property was
 23 commandeered or otherwise used in coping with a disaster emergency
 24 and:
 25 (1) its use or destruction was ordered by the governor or a
 26 member of the disaster emergency forces of Indiana; **or**
 27 **(2) the property was volunteered as a part of the construction**
 28 **industry disaster volunteer program.**
 29 (d) Any person claiming compensation for the use, damage, loss, or
 30 destruction of property under this chapter must make a claim for it. The
 31 claim must be filed and shall be adjudicated as provided in IC 32-24.
 32 (e) This section does not apply to or authorize compensation for the
 33 destruction or damaging of standing timber or other property in order
 34 to provide a fire break or to the release of waters or the breach of
 35 impoundments in order to reduce pressure or other danger from actual
 36 or threatened flood.
 37 SECTION 8. IC 10-14-3-33.5 IS ADDED TO THE INDIANA
 38 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 39 **[EFFECTIVE UPON PASSAGE]: Sec. 33.5. (a) The construction**
 40 **industry disaster volunteer program is established.**
 41 **(b) The agency shall establish and administer the construction**
 42 **industry disaster volunteer program.**

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1 (c) The construction industry disaster volunteer program
 2 consists of construction industry professionals who have
 3 volunteered their:

- 4 (1) personal services;
 5 (2) equipment, manned and unmanned; or
 6 (3) personal services and equipment, manned and unmanned;
 7 to assist the agency at the time of a disaster.

8 (d) A construction industry professional who has volunteered
 9 for the construction industry disaster volunteer program shall
 10 provide personal services or equipment, or both, upon terms and
 11 conditions specified by the director and agreed to by the
 12 construction industry professional.

13 (e) A construction industry professional participating in the
 14 construction industry disaster volunteer program is entitled to
 15 receive reimbursement of expenses actually incurred for:

- 16 (1) actual and necessary travel;
 17 (2) subsistence;
 18 (3) maintenance expenses; and
 19 (4) other expenses as approved by the director;
 20 while engaged in duties during a disaster.

21 (f) Section 15(a) of this chapter applies to a construction
 22 industry professional who is participating in the program.

23 (g) The agency shall adopt rules under IC 4-22-2 to implement
 24 this section.

25 SECTION 9. IC 34-30-2-37 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. IC 10-14-3-15
 27 (Concerning the state, political subdivisions, and emergency
 28 management workers, and construction industry professionals for
 29 injury, death, or property damage).

30 SECTION 10. [EFFECTIVE UPON PASSAGE] (a)
 31 Notwithstanding IC 10-14-3-33.5(g), as added by this act, the
 32 department of homeland security shall carry out the duties
 33 imposed upon it by IC 10-14-3-33.5(g), as added by this act, under
 34 interim written guidelines approved by the executive director of
 35 the department of homeland security.

36 (b) This SECTION expires on the earlier of the following:

- 37 (1) The date rules are adopted under IC 10-14-3-33.5(g).
 38 (2) June 30, 2010.

39 SECTION 11. An emergency is declared for this act.

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