



April 5, 2011

ENGROSSED
SENATE BILL No. 214

DIGEST OF SB 214 (Updated April 3, 2011 9:58 am - DI 107)

Citations Affected: IC 4-6.

Synopsis: State use of contingency fee counsel. Requires an agency to make certain determinations before entering into a contingency fee contract with a private attorney, and requires the attorney general to publish certain information concerning contingency fee contracts on the attorney general's web site.

Effective: July 1, 2011.

Bray, Young R Michael, Randolph
(HOUSE SPONSOR — FOLEY)

January 5, 2011, read first time and referred to Committee on Judiciary.
February 14, 2011, amended, reported favorably — Do Pass.
February 15, 2011, read second time, ordered engrossed.
February 16, 2011, engrossed.
February 17, 2011, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Judiciary.
April 4, 2011, reported — Do Pass.

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ES 214—LS 7101/DI 106+



April 5, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED SENATE BILL No. 214



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 4-6-3-2.5 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2011]: **Sec. 2.5. (a) As used in this section, "agency" means a**
- 4 **state agency or a body corporate and politic.**
- 5 **(b) An agency may not enter into a contingency fee contract**
- 6 **with a private attorney unless the agency makes a written**
- 7 **determination before entering into the contract that contingency**
- 8 **fee representation is cost effective and in the public interest. The**
- 9 **written determination must include the specific findings described**
- 10 **in subsection (c).**
- 11 **(c) The written determination described in subsection (b) must**
- 12 **include a consideration of the following factors:**
- 13 **(1) Whether the agency has sufficient and appropriate legal**
- 14 **and financial resources to handle the matter.**
- 15 **(2) The time and labor required to conduct the litigation.**
- 16 **(3) The novelty, complexity, and difficulty of the questions**
- 17 **involved in the litigation.**

ES 214—LS 7101/DI 106+



1 (4) The expertise and experience required to perform the
 2 attorney services properly.
 3 (5) The geographic area where the attorney services are to be
 4 provided.
 5 (d) If the agency makes the determination described in
 6 subsection (a), the attorney general shall request proposals from
 7 private attorneys wishing to provide services on a contingency fee
 8 basis, unless the agency determines in writing that requesting
 9 proposals is not feasible under the circumstances.
 10 (e) A private attorney who enters into a contingency fee contract
 11 with the agency shall maintain detailed contemporaneous time
 12 records for the attorneys and paralegals working on the matter in
 13 increments of not greater than one-tenth (1/10) of an hour and
 14 shall, upon request, promptly provide these records to the attorney
 15 general.
 16 (f) The agency may not enter into a contingency fee contract
 17 that provides for the private attorney to receive an aggregate
 18 contingency fee that exceeds the sum of the following:
 19 (1) Twenty-five percent (25%) of any recovery that exceeds
 20 two million dollars (\$2,000,000) and that is not more than ten
 21 million dollars (\$10,000,000).
 22 (2) Twenty percent (20%) of any part of a recovery of more
 23 than ten million dollars (\$10,000,000) and not more than
 24 fifteen million dollars (\$15,000,000).
 25 (3) Fifteen percent (15%) of any part of a recovery of more
 26 than fifteen million dollars (\$15,000,000) and not more than
 27 twenty million dollars (\$20,000,000).
 28 (4) Ten percent (10%) of any part of a recovery of more than
 29 twenty million dollars (\$20,000,000) and not more than
 30 twenty-five million dollars (\$25,000,000).
 31 (5) Five percent (5%) of any part of a recovery of more than
 32 twenty-five million dollars (\$25,000,000).
 33 An aggregate contingency fee may not exceed fifty million dollars
 34 (\$50,000,000), excluding reasonable costs and expenses, regardless
 35 of the number of lawsuits filed or the number of private attorneys
 36 retained to achieve the recovery.
 37 (g) Copies of any executed contingency fee contract and the
 38 agency's written determination to enter into a contingency fee
 39 contract with the private attorney shall be provided to the attorney
 40 general and posted on the attorney general's web site for public
 41 inspection not later than five (5) business days after the date the
 42 contract is executed and must remain posted on the web site for the

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1 duration of the contingency fee contract, including any extensions
2 to the original contract. Any payment of contingency fees shall be
3 posted on the attorney general's web site not later than fifteen (15)
4 days after the payment of the contingency fees to the private
5 attorney, and must remain posted on the web site for at least one
6 (1) year.

7 (h) Every agency that has hired or employed a private attorney
8 on a contingency fee basis in the calendar year shall submit a
9 report describing the use of contingency fee contracts with private
10 attorneys to the attorney general before October 1 of each year.
11 The report must include the following:

12 (1) A description of all new contingency fee contracts entered
13 into during the year and all previously executed contingency
14 fee contracts that remain current during any part of the year.

15 The report must include, for each contract:

16 (A) the name of the private attorney with whom the
17 department has contracted, including the name of the
18 attorney's law firm;

19 (B) the nature and status of the legal matter;

20 (C) the name of the parties to the legal matter;

21 (D) the amount of any recovery; and

22 (E) the amount of any contingency fee paid.

23 (2) A copy of all written determinations made under
24 subsection (a) during the year.

25 The attorney general shall compile the reports and submit a
26 comprehensive report to the legislative council before November
27 1 of each year. The report must be in an electronic format under
28 IC 5-14-6.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 214, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, after "(a)" insert "**As used in this section, "agency" means a state agency or a body corporate and politic.**

(b)".

Page 1, line 3, delete "The attorney general" and insert "**An agency**".

Page 1, line 5, delete "attorney general" and insert "**agency**".

Page 1, line 8, delete "(b)" and insert "**(c)**".

Page 1, line 9, delete "(b)" and insert "**(c)**".

Page 1, line 9, delete "(a)" and insert "**(b)**".

Page 1, line 11, delete "office of the attorney general" and insert "**agency**".

Page 2, line 4, delete "(c)" and insert "**(d)**".

Page 2, line 4, delete "attorney general" and insert "**agency**".

Page 2, line 7, delete "attorney general" and insert "**agency**".

Page 2, line 9, delete "(d)" and insert "**(e)**".

Page 2, line 10, delete "attorney general" and insert "**agency**".

Page 2, line 15, delete "(e)" and insert "**(f)**".

Page 2, line 15, delete "attorney general" and insert "**agency**".

Page 2, line 18, delete "up to" and insert "**that exceeds two million dollars (\$2,000,000) and that is not more than**".

Page 2, line 35, delete "(f)" and insert "**(g)**".

Page 2, line 36, delete "attorney general's" and insert "**agency's**".

Page 2, line 37, after "be" insert "**provided to the attorney general and**".

Page 3, line 4, delete "(g) The attorney general" and insert "**(h) Every agency that has hired or employed a private attorney on a contingency fee basis in the calendar year**".

Page 3, line 6, delete "legislative council" and insert "**attorney general**".

Page 3, line 6, delete "November" and insert "**October**".

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Page 3, line 21, after "The" insert "**attorney general shall compile the reports and submit a comprehensive report to the legislative council before November 1 of each year. The**".

and when so amended that said bill do pass.

(Reference is to SB 214 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 214, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FOLEY, Chair

Committee Vote: yeas 10, nays 1.

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