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# SENATE BILL No. 214

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-3-2.5.

**Synopsis:** State use of contingency fee counsel. Requires the attorney general 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.

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January 5, 2011, read first time and referred to Committee on Judiciary.

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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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## 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) The attorney general may not enter into a  
4 contingency fee contract with a private attorney unless the  
5 attorney general makes a written determination before entering  
6 into the contract that contingency fee representation is cost  
7 effective and in the public interest. The written determination must  
8 include the specific findings described in subsection (b).**

9 **(b) The written determination described in subsection (a) must  
10 include a consideration of the following factors:**

- 11 **(1) Whether the office of the attorney general has sufficient  
12 and appropriate legal and financial resources to handle the  
13 matter.**
- 14 **(2) The time and labor required to conduct the litigation.**
- 15 **(3) The novelty, complexity, and difficulty of the questions  
16 involved in the litigation.**
- 17 **(4) The expertise and experience required to perform the**



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attorney services properly.

(5) The geographic area where the attorney services are to be provided.

(c) If the attorney general makes the determination described in subsection (a), the attorney general shall request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the attorney general determines in writing that requesting proposals is not feasible under the circumstances.

(d) A private attorney who enters into a contingency fee contract with the attorney general shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of not greater than one-tenth (1/10) of an hour and shall, upon request, promptly provide these records to the attorney general.

(e) The attorney general may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee that exceeds the sum of the following:

- (1) Twenty-five percent (25%) of any recovery up to ten million dollars (\$10,000,000).
- (2) Twenty percent (20%) of any part of a recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).
- (3) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).
- (4) Ten percent (10%) of any part of a recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000).
- (5) Five percent (5%) of any part of a recovery of more than twenty-five million dollars (\$25,000,000).

An aggregate contingency fee may not exceed fifty million dollars (\$50,000,000), excluding reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(f) Copies of any executed contingency fee contract and the attorney general's written determination to enter into a contingency fee contract with the private attorney shall be posted on the attorney general's web site for public inspection not later than five (5) business days after the date the contract is executed and must remain posted on the web site for the duration of the contingency fee contract, including any extensions to the original contract. Any payment of contingency fees shall be posted on the

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1 attorney general's web site not later than fifteen (15) days after the  
 2 payment of the contingency fees to the private attorney, and must  
 3 remain posted on the web site for at least one (1) year.  
 4 (g) The attorney general shall submit a report describing the use  
 5 of contingency fee contracts with private attorneys to the  
 6 legislative council before November 1 of each year. The report  
 7 must include the following:  
 8 (1) A description of all new contingency fee contracts entered  
 9 into during the year and all previously executed contingency  
 10 fee contracts that remain current during any part of the year.  
 11 The report must include, for each contract:  
 12 (A) the name of the private attorney with whom the  
 13 department has contracted, including the name of the  
 14 attorney's law firm;  
 15 (B) the nature and status of the legal matter;  
 16 (C) the name of the parties to the legal matter;  
 17 (D) the amount of any recovery; and  
 18 (E) the amount of any contingency fee paid.  
 19 (2) A copy of all written determinations made under  
 20 subsection (a) during the year.  
 21 The report must be in an electronic format under IC 5-14-6.

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