

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.

## SENATE ENROLLED ACT No. 214

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AN ACT to amend the Indiana Code concerning state and local administration.

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

SECTION 1. IC 4-6-3-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. (a) As used in this section, "agency" means a state agency or a body corporate and politic.**

**(b) An agency may not enter into a contingency fee contract with a private attorney unless the agency makes a written determination before entering into the contract that contingency fee representation is cost effective and in the public interest. The written determination must include the specific findings described in subsection (c).**

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

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.**
- (2) The time and labor required to conduct the litigation.**
- (3) The novelty, complexity, and difficulty of the questions involved in the litigation.**
- (4) The expertise and experience required to perform the attorney services properly.**
- (5) The geographic area where the attorney services are to be provided.**



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

(e) After the agency has made the determination in subsection (b) and selected a private attorney, but before the agency and the attorney enter into a contract to provide services on a contingency fee basis, the inspector general shall make a determination in writing that entering into the contract would not violate the code of ethics or violate any statute or agency rule concerning conflict of interest. An agency may not enter into a contingency fee contract with a private attorney unless the inspector general has made a written determination under this subsection.

(f) A private attorney who enters into a contingency fee contract with the agency 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.

(g) The agency 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 that exceeds two million dollars (\$2,000,000) and that is not more than 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.

(h) Copies of any executed contingency fee contract, the

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inspector general's written determination, and the agency's written determination to enter into a contingency fee contract with the private attorney shall be provided to the attorney general and, unless the attorney general determines that disclosing the contingency fee contract while the action is pending is not in the best interests of the state, the contract 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 attorney general's web site not later than fifteen (15) days after the payment of the contingency fees to the private attorney, and must remain posted on the web site for at least one (1) year. If the attorney general determines that disclosing the contingency fee contract is not in the best interests of the state under this subsection, the contract shall be posted on the attorney general's web site not later than fifteen (15) days after the action is concluded.

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

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

The report must include, for each contract:

- (A) the name of the private attorney with whom the department has contracted, including the name of the attorney's law firm;
- (B) the nature and status of the legal matter;
- (C) the name of the parties to the legal matter;
- (D) the amount of any recovery; and
- (E) the amount of any contingency fee paid.

(2) A copy of all written determinations made under this section during the year.

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

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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