

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 169**

Citations Affected: IC 27-2-15.

Synopsis: Insurance proceeds set aside. Proposed conference committee report to ESB 169. Applies the law concerning insurance proceeds escrow deposits (law) to all cities and towns, phased in over three years. Defines "department" and "final settlement" for purposes of the law. Specifies requirements for application of the law. Requires the department of insurance to maintain a list of municipalities electing governance under the law and sets a one time fee for electing municipalities. Specifies maximum amounts to be set aside and costs for which the proceeds may be used by a municipality. Repeals a definition made obsolete by the bill. **(This conference committee report: (1) adds a definition of "department"; (2) requires adoption of an ordinance by a municipality electing to be governed or to cease being governed by the law; (3) requires maintenance of the list of electing municipalities by the department of insurance rather than the state fire marshal; (4) removes a requirement for notice to insurers of changes to the list; (5) removes a provision specifying that effective dates of changes to the list must be at least 30 days after insurers receive the notice; (6) changes the annual fee to a one time fee; and (7) adds the department and the commissioner and employees of the department to the list of persons immune from civil or criminal liability in connection with good faith performance of duties under the law.)**

Effective: July 1, 2013.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 169 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert:
- 2 SECTION 1. IC 27-2-15-2 IS REPEALED [EFFECTIVE JULY 1,
- 3 2013]. **Sec. 2. As used in this chapter, "city" refers to a first class or**
- 4 **second class city, as classified under IC 36-4-1-1.**
- 5 SECTION 2. IC 27-2-15-2.5 IS ADDED TO THE INDIANA CODE
- 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2013]: **Sec. 2.5. As used in this chapter, "department" refers to**
- 8 **the department of insurance created by IC 27-1-1-1.**
- 9 SECTION 3. IC 27-2-15-3.2 IS ADDED TO THE INDIANA CODE
- 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 11 1, 2013]: **Sec. 3.2. (a) As used in this chapter, "final settlement"**
- 12 **means a determination:**
- 13 **(1) of the amount owed to an insured:**
- 14 **(A) under the building coverage part of an insurance policy**
- 15 **issued by an insurer; and**
- 16 **(B) for damage to or loss of a building or other structure**
- 17 **caused by fire or explosion; and**
- 18 **(2) made by any of the following means:**
- 19 **(A) Acceptance of a proof of loss by the insurer.**
- 20 **(B) Execution of a release by the named insured.**
- 21 **(C) Acceptance of an arbitration award by the named**
- 22 **insured and the insurer.**

1 **(D) Judgment of a court of competent jurisdiction.**

2 **(b) The term "final settlement" does not apply to damage or loss**
 3 **related to contents, personal property, or another loss that is not**
 4 **covered under the building coverage part of an insurance policy.**

5 SECTION 4. IC 27-2-15-4.2 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2013]: **Sec. 4.2. As used in this chapter, "municipality" has the**
 8 **meaning set forth in IC 36-1-2-11.**

9 SECTION 5. IC 27-2-15-4.3 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2013]: **Sec. 4.3. (a) This chapter applies to damage to or loss of**
 12 **a building or structure caused by fire or explosion only if all of the**
 13 **following are true:**

14 **(1) The municipality in which the building or structure is**
 15 **located is included on the list maintained by the department**
 16 **under section 4.4(b) of this chapter.**

17 **(2) The fire or explosion occurs on or after the effective date**
 18 **specified by the department for the municipality under section**
 19 **4.4(b) of this chapter.**

20 **(3) The amount of the final settlement concerning the damage**
 21 **or loss exceeds seventy-five percent (75%) of available**
 22 **insurance proceeds.**

23 **(4) If the insurer, in good faith, withheld payment under an**
 24 **insurance policy due to:**

25 **(A) suspected arson;**

26 **(B) suspected fraud; or**

27 **(C) another question concerning coverage;**

28 **the reason for withholding payment has been resolved and**
 29 **final settlement concerning the damage or loss has occurred.**

30 SECTION 6. IC 27-2-15-4.4 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2013]: **Sec. 4.4. (a) A municipality may elect to be governed by**
 33 **this chapter by submitting to the department a written request.**

34 **The request must:**

35 **(1) be approved by adoption of an ordinance by the**
 36 **municipality's legislative body; and**

37 **(2) contain contact information for the specific individual who**
 38 **will act on behalf of the enforcement authority with respect to**
 39 **this chapter.**

40 **(b) The department shall:**

41 **(1) maintain a list of all municipalities that submit a request**
 42 **under subsection (a), including the contact information**
 43 **required by subsection (a)(2);**

44 **(2) specify the effective date of each addition of a municipality**
 45 **to the list; and**

46 **(3) publish the list on an Internet web site.**

47 **(c) A municipality that made an election under subsection (a)**
 48 **may elect to cease being governed by this chapter and may be**
 49 **removed from the list maintained under subsection (b) as follows:**

50 **(1) The municipality shall submit to the department a written**
 51 **request, approved by adoption of an ordinance by the**

1 municipality's legislative body, to cease being governed by
2 this chapter and to be removed from the list.

3 (2) The department shall:

- 4 (A) amend the list by removing the municipality;
- 5 (B) specify on the amended list the effective date of the
- 6 municipality's removal from the list; and
- 7 (C) publish the amended list on the Internet web site
- 8 described in subsection (b)(3).

9 (d) A municipality that is governed by this chapter shall remit
10 to the department a one (1) time fee of one hundred dollars (\$100).

11 SECTION 7. IC 27-2-15-4.5, AS AMENDED BY P.L.119-2012,
12 SECTION 159, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2013]: Sec. 4.5. (a) As used in this section;
14 "city" refers to either of the following:

15 (1) A city having a population of more than eighty thousand
16 (80,000) but less than eighty thousand four hundred (80,400):

17 (2) A city having a population of more than eighty thousand five
18 hundred (80,500) but less than one hundred thousand (100,000):

19 (b) (a) An insurer that:

20 (1) issued an insurance policy covering that:

21 (A) covers a building or other structure that is:

22 (1) (i) located in a city, municipality governed by this
23 chapter; and

24 (2) (ii) damaged by a fire or explosion; and

25 (B) is in effect at the time that the fire or explosion occurs;
26 and

27 (2) receives notice of a claim for the damage by the named
28 insured;

29 shall, not more than fifteen (15) days after a final settlement is
30 reached, notify the enforcement authority of the city municipality
31 about the existence of the policy. However, an insurer is not required
32 to notify the enforcement authority under this section if the policy
33 issued by the insurer is not in effect at the time of the fire or explosion
34 that damages the building or structure:

35 (c) The insurer shall provide the notice required under this section
36 if the enforcement authority makes a request for the notice within
37 twenty (20) days after the damage occurs.

38 (d) (b) The notice to an enforcement authority required by this
39 section subsection (a) must:

40 (1) be in writing;

41 (2) identify the insurer and state the insurer's address; and

42 (3) identify the building or structure and state the location of the
43 building or structure. and

44 (4) disclose the nature and extent of the coverage of the building
45 or structure provided by the policy.

46 (e) An insurer shall provide notice to the enforcement authority
47 under this section within ten (10) days after the insurer is notified
48 under subsection (c) of the damaging of the building or structure by fire
49 or explosion:

50 (f) (c) The commissioner may take action under IC 27-1-3-10 and

1 IC 27-1-3-19 against an insurer that violates this section.

2 SECTION 8. IC 27-2-15-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) **This section does**
4 **not apply to damage or loss to a building or structure described in**
5 **section 4.5 of this chapter if:**

6 ~~(1)~~ a fire or explosion damages a building or other structure
7 located in a city; and

8 ~~(2)~~ **(1) not more than fifteen (15) days after final settlement**
9 **has occurred concerning the building or structure, the named**
10 **insured files with the insurer evidence of a contract to repair**
11 **the building or structure; and**

12 **(2) upon receipt of the evidence of a contract to repair, the**
13 **insurer notifies the municipality that this section does not**
14 **apply due to the existence of the evidence.**

15 **(b) If:**

16 **(1) the requirements of subsection (a) are not met; and**

17 **(2) the enforcement authority of the city a municipality that**
18 **receives notice from an insurer under section 4.5(a) of this**
19 **chapter certifies to an the insurer that issued a policy covering**
20 **the building or structure the amount of demolition or**
21 **rehabilitation expenses that the city municipality anticipates**
22 **incurring or has incurred under IC 36-7-9 in connection with the**
23 **building or structure;**

24 the insurer shall remit to the ~~city~~ **municipality** or the enforcement
25 authority the amount determined under subsection ~~(c)~~: **(d)**.

26 ~~(b)~~ **(c)** To require the remittance of money under this section, an
27 enforcement authority must:

28 (1) provide the certification under subsection ~~(a)~~ **(b)** within ~~thirty~~
29 ~~(30)~~ **fifteen (15) days after the fire or explosion that damages the**
30 **building or structure; enforcement authority receives notice**
31 **under section 4.5(a) of this chapter; and**

32 (2) comply with subsection ~~(c)~~: **(d)**.

33 However, it is not necessary for the enforcement authority to provide
34 the certification within thirty (30) days after the fire or explosion if the
35 insurer fails to provide notice to the enforcement authority under
36 section 4.5 of this chapter within ten (10) days after the fire or
37 explosion.

38 ~~(c)~~ **(d)** The amount that must be remitted to the ~~city~~ **municipality**
39 or the enforcement ~~agency~~ **authority** under subsection ~~(a)~~ **(b)** is the
40 lesser of:

41 (1) ~~fifteen ten~~ percent ~~(15%)~~ **(10%)** of the available insurance
42 proceeds, if any; or

43 (2) an amount equal to the amount certified; or

44 **(3) the following:**

45 **(A) Seven thousand dollars (\$7,000) for a residential**
46 **building or structure.**

47 **(B) Fifteen thousand dollars (\$15,000) for a nonresidential**
48 **building or structure.**

49 **For purposes of this subsection, "a residential building or**
50 **structure" means real property consisting of not more than four**

1 **(4) residential units, one (1) of which is the principal place of**
 2 **residence of the named insured.**

3 ~~(d)~~ **(e)** The amount remitted under this section shall be placed by
 4 **the enforcement authority** in an interest bearing escrow account to be
 5 administered by the enforcement authority and the ~~city~~ **municipality**.
 6 The insured shall be notified by the enforcement authority of the
 7 actions taken under this section.

8 SECTION 9. IC 27-2-15-6 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. **(a)** Upon a judgment
 10 being rendered under IC 36-7-9-13(c) or IC 36-7-9-13(d), the ~~city~~
 11 **municipality** is entitled to the available insurance proceeds set aside
 12 **only:**

13 **(1)** to the extent of the costs set forth in IC 36-7-9-12; **and**

14 **(2) for demolition and rehabilitation expenses certified under**
 15 **section 5(b) of this chapter.**

16 **Available insurance proceeds set aside under section 5 of this**
 17 **chapter may not be used to pay the costs of fire service, police**
 18 **service, or any other service provided in the normal course of the**
 19 **municipality's business.**

20 **(b)** All claims by the ~~city~~ **municipality** against the available
 21 insurance proceeds must be made within one (1) year after the date of
 22 the fire or explosion or within one (1) year after the final outcome of a
 23 case or appeal initiated under IC 36-7-9, whichever is later. Proceeds
 24 in the escrow account that are not claimed in this manner shall be paid
 25 to the insured.

26 SECTION 10. IC 27-2-15-9 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. The **department,**
 28 **the commissioner and employees of the department,** the state fire
 29 marshal, a deputy fire marshal, an enforcement authority, or an officer
 30 of a ~~city~~ **municipality** complying with this chapter or attempting in
 31 good faith to comply with this chapter is immune from civil and
 32 criminal liability in connection with actions taken under this chapter.

33 SECTION 11. IC 27-2-15-11 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2013]: Sec. 11. **(a)** **The definitions in**
 36 **IC 36-1-2 apply throughout this section.**

37 **(b)** **As used in this section, "third class city" means a third class**
 38 **city as classified under IC 36-4-1-1.**

39 **(c)** **The amendments to this chapter made by SEA 169-2013**
 40 **apply as follows:**

41 **(1)** **After June 30, 2013, only to third class cities.**

42 **(2)** **After June 30, 2014, only to towns and third class cities.**

43 **(3)** **After June 30, 2015, to all municipalities.**

44 **(d)** **Before the date that applies to a municipality under**
 45 **subsection (c), the law that applies to the municipality is this**
 46 **chapter as if it had not been amended by SEA 169-2013.**

47 **(e)** **This section expires July 1, 2015.**

48 SECTION 12. IC 34-30-2-111 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 111. IC 27-2-15-9
 50 (Concerning **the department of insurance, the commissioners and**
 51 **employees of the department of insurance,** the state fire marshal, a

1 deputy fire marshal, an enforcement authority, or an officer of a ~~city~~
2 **municipality** for compliance with the statute concerning the set aside
3 of insurance proceeds in arson cases).

(Reference is to ESB 169 as printed March 22, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 169

Signed by:

Senator Head
Chairperson

Representative Lehman

Senator Mrvan

Representative Harris

Senate Conferees

House Conferees