

HOUSE BILL No. 1209

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1-12.5.

Synopsis: Enforcement of guaranteed savings contracts. Provides that, for all guaranteed savings contracts, the governing body must provide the attorney general a copy of the executed guaranteed savings contract, preproject energy costs and documentation of stipulated project costs and capital expenditures. Provides that the attorney general shall review all guaranteed savings contracts and supporting documentation every three years. Provides that the attorney general may bring an action to enforce the terms of a guaranteed savings contract and recover the amount owed under the guaranteed savings contract. Provides that a court may award: (1) treble damages; or (2) \$25,000; whichever is greater, if the court finds that the qualified provider willfully or knowingly failed to comply with the terms of the contract. Allows for the attorney general to refer the case to the local prosecuting attorney if the attorney general suspects criminal activity.

Effective: July 1, 2018.

Friend, Karickhoff

January 9, 2018, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1209



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-1-12.5-10, AS AMENDED BY P.L.233-2015,
2 SECTION 331, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2018]: Sec. 10. The governing body shall:
4 (1) provide to the **attorney general and the** director of the
5 department of local government finance not more than sixty (60)
6 days after the date of execution of the guaranteed savings
7 contract:
8 (A) a copy of the executed guaranteed savings contract;
9 (B) the:
10 (i) energy or water consumption costs;
11 (ii) wastewater usage costs; and
12 (iii) billable revenues, if any;
13 before the date of execution of the guaranteed savings
14 contract; and
15 (C) the documentation using industry engineering standards
16 for:
17 (i) stipulated savings; and



- 1 (ii) related capital expenditures; and
 2 (2) annually report to the **attorney general and the** director of
 3 the department of local government finance, in accordance with
 4 procedures established by the department, the savings resulting in
 5 the previous year from the guaranteed savings contract or utility
 6 efficiency program.
- 7 SECTION 2. IC 36-1-12.5-12, AS AMENDED BY P.L.233-2015,
 8 SECTION 332, IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2018]: Sec. 12. (a) An improvement that is not
 10 causally connected to a conservation measure may be included in a
 11 guaranteed savings contract if:
- 12 (1) the total value of the improvement does not exceed fifteen
 13 percent (15%) of the total value of the guaranteed savings
 14 contract; and
 15 (2) either:
- 16 (A) the improvement is necessary to conform to a law, a rule,
 17 or an ordinance; or
 18 (B) an analysis within the guaranteed savings contract
 19 demonstrates that:
- 20 (i) there is an economic advantage to the political
 21 subdivision in implementing an improvement as part of the
 22 guaranteed savings contract; and
 23 (ii) the savings justification for the improvement is
 24 documented by industry engineering standards.
- 25 (b) The information required under subsection (a) must be reported
 26 to the **attorney general and the** director of the department of local
 27 government finance.
- 28 SECTION 3. IC 36-1-12.5-13 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2018]: **Sec. 13. (a) In 2018 and every three (3)**
 31 **years thereafter, the attorney general shall review all executed**
 32 **guaranteed savings contracts and supporting documentation the**
 33 **attorney general receives under sections 10 and 11 of this chapter**
 34 **to confirm that the savings guaranteed under each contract is**
 35 **accruing to the school corporation, public library, library**
 36 **described in IC 36-12-7-8, political subdivision that operates a**
 37 **municipal water or wastewater utility, or other subdivision (as**
 38 **applicable).**
- 39 (b) Upon request of the attorney general, the office of energy
 40 development established by IC 4-3-23-3 and the department of
 41 environmental management established by IC 13-13-1-1 shall assist
 42 the attorney general in carrying out the duties of the attorney



1 **general under subsection (a).**

2 SECTION 4. IC 36-1-12.5-14 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2018]: **Sec. 14. (a) Upon:**

5 (1) **request by a governing body; or**

6 (2) **review of a guaranteed savings contract under section 13**
7 **of this chapter;**

8 **the attorney general may bring a suit in the name of the state of**
9 **Indiana to enforce the terms of the guaranteed savings contract**
10 **and recover the amount owed under the guaranteed savings**
11 **contract.**

12 (b) **If the court finds that the qualified provider willfully or**
13 **knowingly failed to comply with the terms of the guaranteed**
14 **savings contract, the court may increase the award of damages to:**

15 (1) **an amount not to exceed three (3) times the amount of**
16 **actual damages; or**

17 (2) **twenty-five thousand dollars (\$25,000);**

18 **whichever is greater.**

19 (c) **The attorney general shall refer any information concerning**
20 **suspected criminal activity discovered in carrying out the attorney**
21 **general's duties under this chapter to the prosecuting attorney of**
22 **the county in which the suspected criminal activity occurred.**

