

# SENATE BILL No. 464

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6; IC 10-4-1; IC 34-30-2-37.

**Synopsis:** Construction industry disaster volunteer program. Establishes the construction industry disaster volunteer program. Provides immunity from civil liability to a construction industry professional and the construction industry professional's employer for services provided by the construction industry professional as a participant in the program during a disaster. Authorizes reimbursement for certain expenses incurred by a construction industry professional while participating in the program during an emergency.

**Effective:** Upon passage.

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## Merritt

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January 14, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 112th General Assembly (2002)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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# SENATE BILL No. 464



A BILL FOR AN ACT to amend the Indiana Code concerning state police, civil defense, and military affairs.

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

1 SECTION 1. IC 4-6-2-1.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) Whenever  
3 any state governmental official, ~~or~~ employee, (whether elected or  
4 appointed), **or construction industry professional (as defined in**  
5 **IC 10-4-1-3(6)) participating in the construction industry disaster**  
6 **volunteer program established under IC 10-4-1-30** is made a party  
7 to a suit, and the attorney general determines that said suit has arisen  
8 out of an act which such official or employee in good faith believed to  
9 be within the scope of his duties as prescribed by statute or duly  
10 adopted regulation, the attorney general shall defend such person  
11 throughout such action.

12 (b) Whenever a teacher (as defined in IC 20-6.1-1-8) is made a party  
13 to a civil suit, and the attorney general determines that the suit has  
14 arisen out of an act that the teacher in good faith believed was within  
15 the scope of the teacher's duties in enforcing discipline policies  
16 developed under IC 20-8.1-5-2(e), the attorney general shall defend the  
17 teacher throughout the action.



1 (c) A determination by the attorney general under subsection (a) or  
 2 (b) shall not be admitted as evidence in the trial of any such civil action  
 3 for damages.

4 (d) Nothing in this chapter shall be construed to deprive any such  
 5 person of his right to select counsel of his own choice at his own  
 6 expense.

7 SECTION 2. IC 4-6-4-1 IS AMENDED TO READ AS FOLLOWS  
 8 [EFFECTIVE UPON PASSAGE]: Sec. 1. Whenever any such action,  
 9 counter-claim, petition, or cross-complaint is filed in any court in this  
 10 state in which the state of Indiana or any board, bureau, commission,  
 11 department, division, agency, or officer or employee in his capacity as  
 12 an employee of the state of Indiana, **or any construction industry**  
 13 **professional (as defined in IC 10-4-1-3(6)) participating in the**  
 14 **construction industry disaster volunteer program established by**  
 15 **IC 10-4-1-30**, is a party and the attorney general is required or  
 16 authorized to appear or defend, or when the attorney general is entitled  
 17 to be heard, a copy of the complaint, cross-complaint, petition, bill, or  
 18 pleading shall be served on the attorney general and such action,  
 19 cross-action, or proceeding shall not be deemed to be commenced as  
 20 to the state or ~~any such the~~ board, bureau, commission, department,  
 21 division, agency, or officer or employee in his capacity as an employee  
 22 of the state of Indiana, **or as to the construction industry**  
 23 **professional**, until such service. Whenever the attorney general has  
 24 appeared in any suit, action, or proceeding, copies of all motions,  
 25 demurrers, petitions, and pleadings filed therein shall be served upon  
 26 the attorney general by the party filing the same; provided, further, that  
 27 the clerk of the court shall cause to be served upon the attorney general  
 28 a copy of the ruling made by the court upon such motions, demurrers,  
 29 petitions, and pleadings, and such ruling shall not be deemed effective  
 30 in any manner as against the attorney general, ~~or~~ as against the state of  
 31 Indiana or ~~any the~~ board, bureau, commission, department, division,  
 32 agency, or officer or employee in his capacity as an employee of the  
 33 state of Indiana, **or as against the construction industry professional**  
 34 unless and until such copy shall be served upon the attorney general or  
 35 any deputy attorney general as provided in section 2 of this chapter;  
 36 provided, further, that in any action in which the attorney general is  
 37 required or authorized to appear or defend or entitled to be heard, in  
 38 which action some matter or thing occurs upon which occurrence time  
 39 begins to run, the running of such time shall be suspended as to the  
 40 attorney general until such service is had upon the attorney general or  
 41 any deputy attorney general as provided in section 2 of this chapter;  
 42 provided, further, that whenever any claim filed for and on behalf of

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1 the state of Indiana or any board, bureau, commission, department,  
 2 division, agency, officer, or institution of the state of Indiana in any  
 3 estate or guardianship pending in any court having probate jurisdiction  
 4 in the state of Indiana is not allowed and the clerk of the court,  
 5 administrator, administratrix, executor, executrix, or guardian transfers  
 6 such claim to the trial docket, said claim shall not be disposed of nor  
 7 shall any disposition made of such claim be deemed to be a final  
 8 adjudication unless and until due notice of the trial date of such claim  
 9 shall be served on the attorney general or any deputy attorney general  
 10 as provided in section 2 of this chapter at least ten (10) days prior to the  
 11 date set for trial of said claim.

12 SECTION 3. IC 10-4-1-3 IS AMENDED TO READ AS FOLLOWS  
 13 [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter:

14 (1) "Emergency management" means the preparation for and the  
 15 coordination of all emergency functions, other than functions for  
 16 which military forces or other federal agencies are primarily  
 17 responsible, to prevent, minimize, and repair injury and damage  
 18 resulting from disasters. These functions include, without  
 19 limitation, firefighting services, police services, medical and  
 20 health services, rescue, engineering, warning services,  
 21 communications, radiological, chemical and other special  
 22 weapons defense, evacuation of persons from stricken areas,  
 23 emergency welfare services, emergency transportation, plant  
 24 protection, temporary restoration of public utility services, and  
 25 other functions related to civilian protection, together with all  
 26 other activities necessary or incidental to the preparation for and  
 27 coordination of the foregoing functions.

28 (2) "Political subdivision" has the meaning set forth in  
 29 IC 36-1-2-13.

30 (3) "Disaster" means occurrence or imminent threat of widespread  
 31 or severe damage, injury, or loss of life or property resulting from  
 32 any natural or manmade cause, including but not limited to fire,  
 33 flood, earthquake, wind, storm, wave action, oil spill, other water  
 34 contamination requiring emergency action to avert danger or  
 35 damage, air contamination, drought, explosion, riot, or hostile  
 36 military or paramilitary action.

37 (4) "Energy" means coal, petroleum or other liquid fuels, natural  
 38 or synfuel gas, or electricity.

39 (5) "Energy emergency" means an existing or projected shortfall  
 40 of at least eight percent (8%) of motor fuel or of other energy  
 41 sources which threatens to seriously disrupt or diminish energy  
 42 supplies to the extent that life, health, or property may be

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1 jeopardized.

2 **(6) "Construction industry professional" means:**

3 **(A) an architect;**

4 **(B) a professional engineer;**

5 **(C) a construction industry contractor;**

6 **(D) a construction industry equipment dealer; or**

7 **(E) any other person engaged in the construction industry.**

8 **(7) "Program" refers to the construction industry disaster**  
 9 **volunteer program established by section 30 of this chapter.**

10 **(8) "Emergency management worker" includes any:**

11 **(A) volunteer other than a person participating in the**  
 12 **program; or**

13 **(B) full-time or part-time paid or auxiliary employee of:**

14 **(i) the state;**

15 **(ii) another state, territory, possession, or the District**  
 16 **of Columbia;**

17 **(iii) the federal government;**

18 **(iv) any political subdivision of an entity referred to in**  
 19 **items (i) through (iii); or**

20 **(v) any agency or organization;**

21 **who performs emergency management services at any place**  
 22 **in Indiana subject to the order or control of, or pursuant to a**  
 23 **request of, the state or any political subdivision of the state.**

24 SECTION 4. IC 10-4-1-8 IS AMENDED TO READ AS FOLLOWS  
 25 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) All functions under this  
 26 chapter and all other activities relating to emergency management are  
 27 governmental functions.

28 **(b) Neither:**

29 **(1) the state; nor**

30 **(2) any political subdivision of the state; nor**

31 **(3) any other agencies of the state or political subdivision of the**  
 32 **state; nor**

33 **(4) except in cases of willful misconduct, gross negligence, or bad**  
 34 **faith, any:**

35 **(A) construction industry professional who is participating**  
 36 **in the program;**

37 **(B) person employing a construction industry professional**  
 38 **who is participating in the program; or**

39 **(C) emergency management worker;**

40 complying with or reasonably attempting to comply with this  
 41 chapter or any order or rule adopted under this chapter or under  
 42 any ordinance relating to blackout or other precautionary

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1 measures enacted by any political subdivision of the state;  
 2 shall be liable for the death of or injury to persons or for damage to  
 3 property as a result of any ~~such~~ activity **referred to in subdivision (4).**

4 **(c)** This section shall not affect the right of any person to receive:

5 (1) benefits to which the person would otherwise be entitled  
 6 under:

7 (A) this chapter;

8 (B) the worker's compensation law (IC 22-3-2 through  
 9 IC 22-3-6); or

10 (C) any pension law; or

11 (2) any benefits or compensation under any federal law.

12 ~~(b)~~ **(d)** Any requirement for a license to practice any professional,  
 13 mechanical, or other skill shall not apply to any authorized emergency  
 14 management worker who shall, in the course of performing duties as  
 15 such, practice such professional, mechanical, or other skill during a  
 16 disaster emergency.

17 ~~(c)~~ As used in this section, "emergency management worker" shall  
 18 include any full or part-time paid, volunteer, or auxiliary employee of  
 19 this state, or other states, territories, possessions, or the District of  
 20 Columbia, or the federal government, or any neighboring country, or  
 21 of any political subdivision of those entities, or of any agency or  
 22 organization performing emergency management services at any place  
 23 in this state subject to the order or control of, or pursuant to a request  
 24 of, the state government or any political subdivision of the state.

25 ~~(d)~~ **(e)** A volunteer working as an authorized emergency  
 26 management worker may be covered by the medical treatment and  
 27 burial expense provisions of the worker's compensation law (IC 22-3-2  
 28 through IC 22-3-6) and the worker's occupational diseases law (IC  
 29 22-3-7). If compensability of the injury is an issue, the administrative  
 30 procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used  
 31 to determine the issue.

32 SECTION 5. IC 10-4-1-20 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. (a) **Subsection**  
 34 **(c) does not apply to a construction industry professional who is**  
 35 **participating in the program.**

36 **(b)** No person shall be employed or associated in any capacity in  
 37 any emergency management organization established under this  
 38 chapter who:

39 (1) advocates a change by force or violence in the constitutional  
 40 form of the government of the United States or the overthrow of  
 41 any government in the United States by force or violence; or

42 (2) has been convicted of or is under indictment or information

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charging any subversive act against the United States.  
~~(b)~~ (c) Each individual who is appointed to serve in an organization for emergency management shall, before entering upon the individual's duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Indiana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the (name of emergency management organization) I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

~~(e)~~ (d) For the purposes of this section, the director and the county emergency management directors:

- (1) shall be authorized to administer the oath provided in subsection ~~(b)~~ (c) to emergency management and disaster personnel; and
- (2) may delegate that authority to designated deputies and assistants as may be approved by the director.

SECTION 6. IC 10-4-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) Each person within this state shall conduct himself, keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this chapter are exceeded in a particular case and then only to the extent that the claimant may not have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of it, except under statute, local law or

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1 ordinance.

2 (c) Compensation for property shall be paid only if the property was  
3 commandeered or otherwise used in coping with a disaster emergency  
4 and:

5 (1) its use or destruction was ordered by the governor or a  
6 member of the disaster emergency forces of this state; or

7 (2) **the property was volunteered as a part of the construction  
8 industry disaster volunteer program.**

9 (d) Any person claiming compensation for the use, damage, loss, or  
10 destruction of property under this chapter shall make a claim for it,  
11 which claim shall be filed and adjudicated as provided in IC ~~1971~~,  
12 32-11.

13 (e) Nothing in this section applies to or authorizes compensation for  
14 the destruction or damaging of standing timber or other property in  
15 order to provide a fire break or to the release of waters or the breach of  
16 impoundments in order to reduce pressure or other danger from actual  
17 or threatened flood.

18 SECTION 7. IC 10-4-1-30 IS ADDED TO THE INDIANA CODE  
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
20 UPON PASSAGE]: **Sec. 30. (a) The construction industry disaster  
21 volunteer program is established.**

22 **(b) The department shall establish and administer the program.**

23 **(c) The program consists of construction industry professionals  
24 who have volunteered their:**

25 **(1) personal services; or**

26 **(2) equipment, manned and unmanned;**

27 **or both, to assist the department at the time of a disaster.**

28 **(d) A construction industry professional who has volunteered  
29 for the program shall provide personal services or equipment, or  
30 both, upon terms and conditions specified by the director and  
31 agreed to by the construction industry professional.**

32 **(e) A construction industry professional participating in the  
33 program is entitled to receive reimbursement of expenses actually  
34 incurred for:**

35 **(1) actual and necessary travel;**

36 **(2) subsistence;**

37 **(3) maintenance expenses; and**

38 **(4) other expenses as approved by the director;**

39 **while engaged in duties during a disaster.**

40 **(f) Section 8(a) of this chapter applies to a construction industry  
41 professional who is participating in the program.**

42 **(g) The department shall adopt rules under IC 4-22-2 to**

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**implement this section.**

SECTION 8. IC 34-30-2-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. IC 10-4-1-8 (Concerning the state, political subdivisions, ~~and~~ emergency management workers, **and construction industry professionals** for injury, death, or property damage).

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) **Notwithstanding IC 10-4-1-30(g), as added by this act, the state police department shall carry out the duties imposed upon it by IC 10-4-1-30, as added by this act, under interim written guidelines approved by the director.**

(b) **This SECTION expires on the earlier of the following:**

(1) **The date rules are adopted under IC 10-4-1-30(g).**

(2) **June 30, 2003.**

SECTION 10. **An emergency is declared for this act.**

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