

Comments from Chief Assistant Attorney General Bill Griffin on S.252, Sec. 21

This is to follow up on your message below and the brief conversation in the committee room yesterday. We discussed the report described in section 21 of S.252, and I indicated that the Attorney General's Office does not have the legal or technical expertise that would be needed to prepare this report.

Section 21 provides that:

On or before October 1, 2014, the Office of the Attorney General, in consultation with the Vermont Information Technology Leaders, shall report to the House Committees on Health Care, on Commerce and Economic Development, and on Ways and Means and the Senate Committees on Health and Welfare, on Economic Development, Housing and General Affairs, and on Finance regarding the need for intellectual property protection with respect to Vermont's Health Information Exchange and other health information technology initiatives, including the potential for receiving patent, copyright, or trademark protection for health information technology functions, the estimated costs of obtaining intellectual property protection, and projected revenues to the State from protecting intellectual property assets or licensing protected interests to third parties.

The State does not routinely apply for patents, copyrights or trademarks, and the Attorney General's Office does not have lawyers on staff who have expertise in patent, copyright or trademark law. Therefore, in order to do a meaningful assessment of the potential for obtaining legal protection for intellectual property, the Attorney General would have to contract with a law firm with expertise in this area. It is difficult to estimate the cost of a contract or contracts for these legal services but hourly rates would be \$250 or more and the number of hours would be substantial. The Attorney General's Office does not have an appropriation to contract for these services

Also, the technical research needed to prepare the report could be expensive and burdensome. For example, technical research would be needed to determine what part of an intellectual property asset is owned by the State and what part is owned by other parties. The other parties would include contractors who develop technology for the State but in the process contribute their own intellectual property or intellectual property licensed to the contractor by others. The Attorney General's Office does not have the staff or resources to do this technical research.

Another consideration is that some health information technology initiatives have been funded by federal grants. Those grants may impose terms and conditions that limit the State's ownership interests. For example, it is my understanding that a condition of the grants used to develop the Health Care Exchange obligates Vermont to share some or all of the work product paid for with those grant funds. Legal and technical research would have to be done to determine which (if any) of this intellectual property could be licensed by Vermont.

Finally, if the State obtained legal protection for intellectual property, some state agency or agencies would have to monitor infringement and enforce the intellectual property rights. Any

study of the revenue potential would have to account for monitoring and enforcement expenses. That would be difficult to estimate.

Section 15 of S. 252 provides that the Department of Financial Regulation will prepare a report on legal and financial considerations involved in the event that a private health insurer ceases doing business in Vermont. The Department is directed to consult with the Attorney General on this report. The Attorney General's Office has the resources needed to consult with DFR on the Section 15 report.

Please share this message with the House Health Care Committee.

Thank you.

Bill Griffin
Chief Assistant Attorney General