SENATE BILL No. 158

DIGEST OF INTRODUCED BILL

Citations Affected: IC 15-4-10.

Synopsis: Corn checkoffs. Makes changes to the corn marketing law, including: (1) changing definitions; (2) changing the duration of time the corn marketing council has to take action; (3) allowing the council to use funds in the corn marketing account regardless of the balance of the account (currently, funds may be spent only if there is a balance in excess of $500,000); and (4) changing the per bushel assessment from $0.005 to 0.5% of the net market price. Makes conforming changes. Provides that producers must apply for refunds within 180 days instead of 60 days. Provides that 30% of the money collected by the corn marketing council from July 1, 2007, to June 30, 2010, must be distributed to the department of agriculture to be used for grants for economic development to businesses that use corn. Creates the corn venture fund for the economic development grants. Appropriates the money in the fund.

Effective: July 1, 2007.

Gard

January 11, 2007, read first time and referred to Committee on Economic Development and Technology.

C o p y

Introduced

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 158

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

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

SECTION 1. IC 15-4-10-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.5. As used in this chapter, "consumer information" means information that will assist consumers and other persons in making evaluations and decisions regarding the:**

(1) purchase;

(2) preparation; and

(3) use;

of corn or corn products.

SECTION 2. IC 15-4-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. **(a)** As used in this chapter, "first purchaser" means a person who is engaged in Indiana in the business of buying grain from producers. **The term refers to a person buying or otherwise acquiring corn from:**

(1) the producer of the corn; or

(2) the Commodity Credit Corporation, if the corn is pledged as collateral for a loan issued under a price support loan

program administered by the Commodity Credit Corporation.

(b) The term does not include a buyer of grain who buys less than fifty thousand (50,000) bushels of grain annually for the buyer's own use as seed or feed.

SECTION 3. IC 15-4-10-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.7. As used in this chapter, "industry information" means:**

(1) information and programs that lead to the development of new markets, new marketing strategies, or increased efficiency for; and

(2) activities to enhance the image of;

the corn industry.

SECTION 4. IC 15-4-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. As used in this chapter, "marketing year" means the twelve (12) month period beginning ~~September~~ **October** 1 and ending the following ~~August 31.~~ **September 30.**

SECTION 5. IC 15-4-10-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8.5. As used in this chapter, "net market price" means the sale price received by a producer for corn after adjustments for any premium or discount based on grading or quality factors.**

SECTION 6. IC 15-4-10-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.5. (a) As used in this chapter, "promotion" means any action, including:**

(1) paid advertising;

(2) technical assistance; and

(3) trade servicing activities;

to enhance the image or desirability of corn or corn products in domestic and foreign markets.

(b) The term also means any activity designed to communicate to:

(1) consumers;

(2) importers;

(3) processors;

(4) wholesalers;

(5) retailers; and

(6) government officials;

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other information relating to the positive attributes or the benefits of importation, use, or distribution of corn and corn products.

SECTION 7. IC 15-4-10-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.7. As used in this chapter, "research" means any type of study to advance the:**

(1) image;
(2) desirability;
(3) marketability;
(4) production;
(5) product development;
(6) quality; or
(7) functional or nutritional value;

of corn or corn products, including any research activity designed to identify and analyze barriers to export sales of corn or corn products.

SECTION 8. IC 15-4-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) The Indiana corn marketing council is established. The council is a public body corporate and politic, and though it is separate from the state, the exercise by the council of its powers constitutes an essential governmental function. The council may sue and be sued and plead and be impleaded.

(b) The council shall be composed of fifteen (15) members. The elected members from districts listed under section 16(a) of this chapter must be:

(1) registered as voters in Indiana;
(2) at least eighteen (18) years of age; and
(3) producers.

(c) Each elected member of the council must reside in the district identified in section 16(a) of this chapter from which the member was elected.

(d) Each member of the council is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties. ~~as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency. However,~~ Council members are not entitled to any salary or per diem.

SECTION 9. IC 15-4-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) If an elected member of the council ceases to meet one (1) or more of the qualifications set forth in section 12(b) of this chapter, the member's

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term of office terminates and the member's office becomes vacant.

(b) When an elected council member's office becomes vacant before the expiration of the member's term of office, the council shall fill the vacancy by appointing a replacement member who meets the qualifications set forth in section 12(b) of this chapter. The appointee shall serve for the remainder of the unexpired term.

~~(c) When the office of a council member appointed under section 16(c) of this chapter to represent first purchaser organizations becomes vacant before the expiration of the member's term of office, the director shall fill the vacancy by appointing a replacement member who represents a first purchaser organization. The appointee shall serve for the remainder of the unexpired term.~~

~~(d)~~ **(c)** When an appointed council member's office representing the senate becomes vacant before the expiration of the member's term of office, the president pro tempore of the senate shall fill the vacancy by appointing a replacement member who represents the senate and is a member of the same political party as the appointed council member who vacated the office. When an appointed council member's office representing the house of representatives becomes vacant before the expiration of the member's term of office, the speaker of the house of representatives shall fill the vacancy by appointing a replacement member who represents the house of representatives and is a member of the same political party as the appointed council member who vacated the office. An appointee under this subsection shall serve for the remainder of the unexpired term.

SECTION 10. IC 15-4-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. (a) One (1) council member shall be elected from each of the following districts:

DISTRICT 1. The counties of Lake, Newton, Jasper, Benton, Porter, LaPorte, Starke, White, and Pulaski.

DISTRICT 2. The counties of St. Joseph, Elkhart, Marshall, Kosciusko, Fulton, Carroll, Cass, Miami, and Wabash.

DISTRICT 3. The counties of LaGrange, Steuben, Noble, Dekalb, Whitley, Allen, Huntington, Wells, and Adams.

DISTRICT 4. The counties of Montgomery, Fountain, Warren, Tippecanoe, Vermillion, Parke, Putnam, Vigo, Clay, and Owen.

DISTRICT 5. The counties of Clinton, Boone, Tipton, Howard, Grant, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Rush, Bartholomew, and Decatur.

DISTRICT 6. The counties of Blackford, Jay, Delaware, Henry, Randolph, Wayne, Fayette, and Union.

DISTRICT 7. The counties of Sullivan, Greene, Knox, Daviess,

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Martin, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, and Spencer.

DISTRICT 8. The counties of Monroe, Brown, Lawrence, Jackson, Orange, Washington, Perry, Crawford, Harrison, and Floyd.

DISTRICT 9. The counties of Franklin, Jennings, Jefferson, Ripley, Dearborn, Ohio, Clark, Switzerland, and Scott.

~~DISTRICT 10. All counties in Indiana.~~

~~(b) The dean of the school of agriculture at Purdue University or the dean's designee shall serve as an ex officio member of the council.~~

~~(c) The director shall appoint two (2) representatives of first purchaser organizations to serve as members of the council.~~

(b) Six (6) council members shall be elected to represent all counties in Indiana.

~~(d)~~ **(c)** The president pro tempore of the senate shall appoint one (1) member of the senate to serve as a member of the council. The speaker of the house of representatives shall appoint one (1) member of the house of representatives to serve as a member of the council. The members appointed under this subsection are ex officio members of the council. These appointed members shall at all times be members of different political parties. Notwithstanding any other law, the members appointed under this section are entitled to receive the per diem of members of the general assembly for time spent in attendance at the meetings of the council. Per diem of these members shall be paid by the council. ~~upon approval of the director~~.

SECTION 11. IC 15-4-10-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. An election of a council member shall be held in a district in the year in which the term of the district's council member is to expire. Between ~~April~~ **January** 1 and ~~April~~ **March** 15 of that year, the council shall notify the producers of the district of the impending election by publishing one (1) notice in a statewide agricultural publication and by making information available to the news media in the district.

SECTION 12. IC 15-4-10-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) The ballot for the election of a district council member must bear the name of each producer who:

(1) meets the qualifications set forth in section 12(b) of this chapter; and

(2) files with the ~~director,~~ **council,** before June 16 of the year of the election, a petition in support of candidacy signed by ten (10) other producers who reside in the district.

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(b) The ~~director~~ **council** shall provide petition forms upon request and shall make forms available at cooperative extension service offices, ~~located in the district.~~ **through electronic means, or through any other means specified by the council.** The ~~director shall determine the~~ position of names on the ballot ~~by drawing lots and shall provide the producers who have qualified to have their names on the ballot with advance notice of the time and place of the drawing.~~ **must reflect the order in which petitions are received by the council.**

(c) No names other than the names of the producers who have qualified under this subsection may be printed on the ballot by the ~~director.~~ **council.** A name may not be written in on the ballot by a producer.

SECTION 13. IC 15-4-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) For ~~the~~ purposes of the election of a district council member, the ~~director~~ **council** shall provide an absentee ballot to every producer who:

(1) resides outside Indiana or expects to be absent from the district in which the producer resides on the day of the election;

(2) requests an absentee ballot from the ~~director~~ **council** no more than thirty (30) days before the election; and

(3) files with the ~~director~~ **council** a notarized affidavit swearing or affirming that the producer is eligible to vote in the election.

(b) A producer's absentee ballot is not valid unless the ~~director~~ **council** receives the ballot and the affidavit from the producer at least two (2) working days before the election.

SECTION 14. IC 15-4-10-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 21. The election of a district council member shall be conducted by the council in August:

(1) at voting places located within the district; **or**

(2) by any other reasonable manner as determined by the council.

The winner of an election takes office on the following ~~September~~ **October** 1.

SECTION 15. IC 15-4-10-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. ~~(a)~~ The council shall do the following:

(1) Elect a ~~chairman, vice chairman,~~ **president, vice president,** secretary, treasurer, and other officers the council considers necessary.

(2) Employ personnel and contract for services that are necessary for the proper implementation of this chapter.

(3) Bond the treasurer and such other persons as necessary to

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ensure adequate protection of funds received and administered by the council.

(4) Authorize the expenditure of funds and the contracting of expenditures to conduct proper activities under this chapter.

(5) Annually establish priorities and prepare and approve a budget consistent with the estimated resources of the council and the scope of this chapter.

(6) Annually publish an activities and financial report and present this report to the director.

(7) Procure and evaluate data and information necessary for the proper implementation of this chapter.

(8) Formulate and execute assessment procedures and methods of collection.

(9) Receive and investigate, or cause to be investigated, complaints and violations of this chapter and take necessary action within its authority.

(10) Adopt bylaws and operating procedures governing operations of the council.

~~(10)~~ **(11)** Take any other action necessary for the proper implementation of this chapter.

~~(b) Seven (7) affirmative votes are required for the council to take action.~~

SECTION 16. IC 15-4-10-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. The council shall meet at least ~~once in each of the following periods:~~

~~(1) January, February, and March.~~

~~(2) April, May, and June.~~

~~(3) July, August, and September.~~

~~(4) October, November, and December.~~

three (3) times in each marketing year at the call of the president.

SECTION 17. IC 15-4-10-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money it receives under this chapter, including ~~assessments, gifts, and grants,~~ **any gifts or grants that are given for the express purpose of implementing this chapter,** in ~~any~~ **the same** way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for the purpose of market development, **promotion, research, industry information, and consumer information.**

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(d) The council may not use money received, collected, or accrued under this chapter for any purpose other than the implementation of this chapter.

SECTION 18. IC 15-4-10-24.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24.5. (a) The Indiana corn market development account is established within the state general fund for the purpose of ~~market development.~~ **implementing this chapter.** The account shall be administered by the council. The account consists of:

(1) assessments the council receives under this chapter;
(2) gifts; and
(3) grants.

(b) The expenses of administering this chapter shall be paid from money in the account. ~~If the balance of the account is not more than five hundred thousand dollars ($500,000) in a fiscal year, the council may expend not more than twenty-five percent (25%) of the balance for administrative expenses. If the account has a balance of more than five hundred thousand dollars ($500,000) in a fiscal year, the council may spend an additional amount of not more than ten percent (10%) of the balance over five hundred thousand dollars ($500,000) for administrative expenses.~~

(c) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(d) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the account is continually appropriated to the council for purposes of this chapter.

SECTION 19. IC 15-4-10-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. (a) Obligations incurred by the council and other liabilities and claims against the council may be enforced only against the assets of the council in the same manner as if it were a corporation. No liabilities for the debts or actions of the council may arise against:

(1) the state;
(2) any political subdivision (as defined in IC 34-6-2-110); or
(3) any member, officer, employee, or agent of the council in an individual capacity.

(b) The members and employees of the council may not be held responsible individually in any way to any person for errors in judgment, mistakes, or other acts either of commission or omission, as

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principal, agent, or employee, except for their own individual acts that result in the violation of any law.

(c) No employee **or contractor** of the council may be held responsible individually for ~~the~~ **any** act or omission of ~~any~~ **the council or a** member of the council.

(d) Any liability of the members of the council is several and not joint. A member of the council may not be held liable for the default of any other member.

SECTION 20. IC 15-4-10-26, AS AMENDED BY P.L.1-2006, SECTION 247, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) An assessment of one-half ~~cent ($0.005)~~ **of one percent (0.5%) of the net market price** per bushel ~~is permitted~~ **shall be collected** on all corn sold in Indiana. The assessment may be imposed and collected on a quantity of corn only once and shall be collected by the first purchaser. ~~if the producer exercises the option under subsection (b) to be included in the assessment. An assessment shall not be conducted on the producer without the producer's written consent.~~ The rate of the assessment imposed by this section may be ~~increased~~ **changed** only by the general assembly.

~~(b) In conjunction with the producer's first settlement with the first purchaser following June 30, 2001, the first purchaser shall make available to the producer the forms granting the producer the option to be included in the assessment and inform the producer of the option to be included. If the producer desires to be included in the assessment, the producer shall complete and sign a form, in writing, indicating the producer's desire to be included in the assessment permitted by subsection (a). It is a producer's obligation to return enrollment forms to a first purchaser. The first purchaser shall keep a record of each producer's desire to be included in the assessment, as indicated on the completed forms. Forms completed by a producer shall remain in effect until repealed in writing by the producer and delivered to the first purchaser. The initial enrollment by producers who want to participate in the corn marketing program must occur from July 1, 2001, through August 31, 2001. Corn market development assessments collected by a first purchaser begin on September 15, 2001. A change in participation by a producer to be included in the assessment or to discontinue the assessment does not take effect until July 1 following the producer's election to change. The department of agriculture shall prescribe the forms to be used under this subsection and distribute the forms to the first purchaser prior to July 1, 2001. The council shall reimburse the department of agriculture for the costs of preparation and~~

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~~distribution of the forms required by this subsection from the funds the council receives under this chapter. Auditing fees collected from this program and all other programs by the Indiana grain buyers and warehouse licensing agency revert to the office of agriculture account to cover administrative costs.~~

~~(c) If the producer indicates the desire to be included in the assessment permitted under subsection (a) by following the procedure described in subsection (b),~~ **(b)** The first purchaser of a quantity of corn shall deduct the assessment on the corn from the sum of money to be paid to the producer based on the sale of the corn. A first purchaser shall accumulate assessments collected under this subsection throughout each of the following periods:

(1) January, February, and March.

(2) April, May, and June.

(3) July, August, and September.

(4) October, November, and December.

~~(d)~~ **(c)** At the end of each period, the first purchaser shall remit to the council all assessments collected during the period. A first purchaser who remits all assessments collected during a period within ~~fifteen (15)~~ **thirty (30)** days after the end of the period is entitled to retain three percent (3%) of the total of the assessments as a handling fee.

SECTION 21. IC 15-4-10-26.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 26.5. (a) If a producer has sold corn and the state assessment was deducted from the sale price of the corn, the producer may secure a refund equal to the amount deducted upon filing a written application.**

(b) A producer's application for a refund under this section must be made to the council within one hundred eighty (180) days after the state assessment is deducted from the sale price of the producer's corn.

(c) The council shall provide application forms to a first purchaser for purposes of this section upon request. The first purchaser shall make an application form available to each producer who requests an application form.

(d) Proof that an assessment has been deducted from the sale price of the producer's corn must be attached to each application for a refund submitted under this section by a producer. The proof that an assessment was deducted may be in the form of a duplicate or certified copy of the purchase invoice or settlement sheet from the first purchaser.

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(e) If a refund is due under this section, the council shall remit the refund to the producer not later than thirty (30) days after the date the producer's application is received.

SECTION 22. IC 15-4-10-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) A first purchaser shall keep detailed records of all assessments collected and remitted under this chapter **for at least five (5) years.**

(b) Upon request, a first purchaser shall supply the council with any information from records kept under subsection (a).

SECTION 23. IC 15-4-10-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 30. (a) If a first purchaser fails to remit the assessments collected during a period defined in section 26 of this chapter within ~~forty-five (45)~~ **thirty (30)** days after the end of the period, the council shall contact the first purchaser and allow the first purchaser to present comments to the council concerning:

(1) the status and amount of the assessments due; and

(2) any reasons why the council should not bring legal action against the first purchaser.

(b) After allowing a first purchaser the opportunity to present comments, the council:

(1) ~~shall~~ **may** adjust the amount of the assessments due, if the first purchaser's comments reveal that the council's figure is inaccurate; ~~and~~

(2) may assess a penalty against the first purchaser; ~~of no more than ten percent (10%) of the amount of any assessments not remitted within forty-five (45) days after the end of the period.~~

(3) shall:

(A) assess a fee for an unpaid assessment due the council, from a person responsible for remitting assessments, at the rate of two percent (2%) of the amount of the unpaid assessment each month, beginning with the day following the date the assessment was due under this subsection; and

(B) if there is any remaining amount due after the assessment of the fee under clause (A), assess a fee at the same rate on the corresponding day of each month thereafter until the entire amount of the unpaid assessment is paid;

(4) shall compute the amounts payable on unpaid assessments under this section monthly and include any unpaid late charges previously applied under this section; and

(5) shall determine the date of a payment for purposes of this

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subsection by the postmark applied to the remitting envelope.

(c) If a first purchaser fails to remit assessments after being allowed to present comments under subsection (a) or to pay any penalty assessed under subsection (b), the council may bring a civil action against the first purchaser in the circuit, superior, or municipal court of any county. The action shall be tried and a judgment rendered as in any other proceeding for the collection of a debt. In an action under this subsection, the council may obtain:

(1) a judgment in the amount of all unremitted assessments and any unpaid penalty; and

(2) an award of the costs of bringing the action.

SECTION 24. IC 15-4-10-32 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 32. (a) Proceeds of the checkoff assessment collected by the council under this chapter may not be used to influence legislation or governmental action or policy.**

(b) Proceeds of the assessment collected under this chapter may be used to communicate information relating to the:

(1) conduct;

(2) implementation; or

(3) results;

of promotion, research, consumer information, or industry information activities to appropriate government officials.

(c) Proceeds of the assessment collected under this chapter may be used for action designed to market corn or corn products directly to a foreign government or a political subdivision of a foreign government.

SECTION 25. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "fund" means the corn venture fund established by subsection (c).**

(b) Notwithstanding IC 15-4-10-24, as amended by this act, for the period beginning July 1, 2007, and ending June 30, 2010, thirty percent (30%) of the money collected by the Indiana corn marketing council under IC 15-4-10-26, as amended by this act, shall be distributed to the corn venture fund established by subsection (c) to be used to provide economic development incentive grants to businesses that use corn.

(c) The corn venture fund is established to provide grants as an economic development incentive to businesses that use corn. The fund shall be administered by the department of agriculture. In making grants, the department of agriculture shall consult with the Indiana economic development corporation.

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(d) The expenses of administering the fund shall be paid from money in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if there is a balance in the fund on December 31, 2010, the money reverts to the Indiana corn market development account established by IC 15-4-10-24.5.

(g) Money in the fund is continually appropriated to the department of agriculture for purposes of this SECTION.

(h) This SECTION expires December 31, 2010.

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