



January 18, 2008

SENATE BILL No. 231

DIGEST OF SB 231 (Updated January 17, 2008 10:54 am - DI 73)

Citations Affected: IC 4-33; IC 5-11.

Synopsis: Oversight of public money. Provides that the gaming commission has continuing jurisdiction over riverboat economic development agreements and incentive payments, regardless of the date of the development agreement. Establishes reporting requirements for the recipients of incentive payments under the agreements. Provides that: (1) a contributing municipality shall after June 30, 2008, contractually require, as a condition of providing public money to a municipal benefit entity that is not required to be audited annually by the state board of accounts, that the municipal benefit entity must be audited by an independent accounting firm acceptable to the contributing municipality; (2) a municipal benefit entity must provide the results of an independent audit to the contributing municipality and, in the case of a municipal benefit entity that receives money under a gaming development agreement, to the gaming commission; (3) a municipal benefit entity shall pay the costs of an independent audit; and (4) the providing of an independent audit by a municipal benefit entity does not result in the municipal benefit entity being considered a public agency for purposes of the open door law or the public records law. Provides that a contributing municipality shall after June 30, 2008, contractually require, as a condition of providing public money to a municipal benefit entity, that the members of the governing body or chief executive officer of the municipal benefit entity shall annually file a verified written certification with each contributing municipality stating that a written statement of accounts has been prepared. Requires

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Effective: July 1, 2008.

Mrvan, Meeks

January 8, 2008, read first time and referred to Committee on Appropriations.
 January 17, 2008, reported favorably — Do Pass.

SB 231—LS 6725/DI 73+



Digest Continued

the fiscal body of a contributing municipality to review the amount of public money attributable to: (1) the municipality; (2) an agreement entered into by the municipality; or (3) an enterprise zone business; that is used as compensation to or reimbursement of expenditures of a member of the governing body or chief executive officer of a municipal benefit entity. Provides that examinations of public entities by the state board of accounts shall be conducted on a schedule determined by the board, except as specifically required by Indiana law. (Current law requires certain entities to be examined on an annual basis and other entities to be examined on a biennial basis.) Specifies that examinations of certain entities must be conducted at least biennially.

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January 18, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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SENATE BILL No. 231

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

1 SECTION 1. IC 4-33-2-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 6.5. "Development agreement" means an agreement**
4 **that:**

5 (1) **is between:**

6 (A) **the holder of an owner's license or operating agent**
7 **contract; and**

8 (B) **either:**

9 (i) **a person; or**

10 (ii) **a unit of local government; and**

11 (2) **sets forth the holder's financial commitments to support**
12 **economic development in a unit or a geographic region.**

13 SECTION 2. IC 4-33-2-19 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2008]: **Sec. 19. "Incentive payment" means any payment that a**

SB 231—LS 6725/DI 73+



1 holder of an owner's license or an operating agent contract is
2 required to make under a development agreement.

3 SECTION 3. IC 4-33-4-22.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2008]: **Sec. 22.5. (a) The commission has continuing jurisdiction
6 over development agreements and incentive payments, regardless
7 of the date of the development agreement. The commission may
8 verify and ensure that development agreements, incentive
9 payments, and disbursements of incentive payment money
10 received:**

- 11 (1) comport with the purposes of this article; and
- 12 (2) do not adversely affect the integrity of the riverboat
13 gambling industry in Indiana.

14 (b) **The commission may not, under the commission's continuing
15 jurisdiction over development agreements, redirect an otherwise
16 lawful payment of money under the development agreement.**

17 SECTION 4. IC 4-33-4-23, AS ADDED BY P.L.199-2005,
18 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2008]: **Sec. 23. (a) An operating agent or a person holding an
20 owner's license must report annually to the commission the following:**

- 21 (1) The total dollar amounts and recipients of incentive payments
22 made.
- 23 (2) Any other items related to the payments described in
24 subdivision ~~(1)~~ **an incentive payment** that the commission may
25 require.

26 (b) **The commission shall prescribe, with respect to ~~the~~ a report
27 required by ~~subsection (a)~~: **this section:****

- 28 (1) the format of the report;
- 29 (2) the deadline by which the report must be filed; and
- 30 (3) the manner in which the report must be maintained and filed.

31 (c) **A recipient of an incentive payment shall annually report to
32 the commission a verified accounting of:**

- 33 (1) the incentive payment received by the recipient; and
- 34 (2) any disbursements of incentive payment money received.

35 (d) **A report required under subsection (c) must include:**

- 36 (1) the legal name of the recipient of each disbursement;
- 37 (2) the date, amount, and purpose of each disbursement; and
- 38 (3) any other information required by the commission.

39 (e) **Upon request of the commission, a recipient of an incentive
40 payment shall furnish to the commission sufficient documentation
41 to prove the validity of a transaction described in a report required
42 under subsection (c).**

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1 (f) A report submitted under subsection (c) must be made
 2 available electronically through the computer gateway
 3 administered by the office of technology established by
 4 IC 4-13.1-2-1.

5 SECTION 5. IC 5-11-1-25 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) **Except as**
 7 **specifically required or provided by another law**, examinations
 8 under this chapter shall be conducted ~~annually for the following:~~

9 ~~(1) The state;~~

10 ~~(2) Cities;~~

11 ~~(3) Counties;~~

12 ~~(4) Towns with a population greater than five thousand (5,000);~~

13 ~~(5) Public hospitals;~~

14 **on a schedule determined by the state board of accounts. The state**
 15 **board of accounts may not establish an audit schedule for the**
 16 **examination of an entity that is inconsistent with any federal audit**
 17 **guidelines that govern the entity.**

18 (b) Subject to section 9 of this chapter, examinations under this
 19 chapter shall be conducted **at least biennially for:**

20 (1) ~~municipalities; schools that require a federal audit;~~

21 (2) **towns with a population of less than five thousand (5,000)**
 22 **that require a federal audit; and**

23 ~~(3) all other entities that require a federal audit and are not~~
 24 ~~listed in audited annually on the schedule determined by the~~
 25 ~~state board of accounts under subsection (a).~~

26 SECTION 6. IC 5-11-20 IS ADDED TO THE INDIANA CODE AS
 27 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2008]:

29 **Chapter 20. Management and Use of Public Money by**
 30 **Municipal Benefit Entities**

31 **Sec. 1. This chapter applies only to a municipal benefit entity in**
 32 **a year in which the municipal benefit entity receives or holds**
 33 **public money.**

34 **Sec. 2. As used in this chapter, "contributing municipality"**
 35 **means a municipality that:**

36 (1) **gave public money to a municipal benefit entity;**

37 (2) **entered into an agreement under which a municipal**
 38 **benefit entity receives public money; or**

39 (3) **is a city, town, or county where a zone business (as defined**
 40 **in IC 5-28-15-3) received a benefit that resulted in a fee or**
 41 **assistance that was paid to a municipal benefit entity.**

42 **Sec. 3. As used in this chapter, "local economic development**

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1 organization" has the meaning set forth in IC 5-28-11-2.
 2 Sec. 4. (a) As used in this chapter, "municipal benefit entity"
 3 refers to any of the following:
 4 (1) An instrumentality of a municipality.
 5 (2) A local economic development organization that is
 6 maintained in whole or in part at public expense.
 7 (3) A nonprofit corporation or charitable trust that:
 8 (A) is not described in subdivision (1) or (2);
 9 (B) has a principal purpose of making grants to unrelated
 10 organizations or institutions or to individuals for scientific,
 11 educational, cultural, or other governmental and
 12 municipal purposes; and
 13 (C) is:
 14 (i) maintained in whole or in part at public expense; or
 15 (ii) supported in whole or in part by appropriations,
 16 public funds, taxation, or other public money.
 17 (b) The term does not include the state, a municipality, or a
 18 public foundation for a nonpublic school (as defined in
 19 IC 20-18-2-12), state educational institution, or private
 20 postsecondary educational institution.
 21 Sec. 5. As used in this chapter, "public money" means the
 22 following:
 23 (1) Appropriations by the state or a municipality.
 24 (2) Public funds.
 25 (3) Taxes and other sources of public funds.
 26 (4) Anything of value derived from any of the following
 27 sources to the extent the amount would not otherwise qualify
 28 as public money under subdivisions (1) through (3):
 29 (A) An interest in a grant, gift, donation, endowment,
 30 bequest, or trust that is transferred by a municipality.
 31 (B) An agreement to share tax revenue received by a
 32 county or city under IC 4-33-12-6 or IC 4-33-13.
 33 (C) An agreement with a municipality to share or
 34 designate the recipient of any payment from:
 35 (i) a licensed owner (as defined in IC 4-33-2-13);
 36 (ii) an operating agent (as defined in IC 4-33-2-14.5); or
 37 (iii) a shareholder, partner, or member of a licensed
 38 owner (as defined in IC 4-33-2-13) or an operating agent
 39 (as defined in IC 4-33-2-14.5).
 40 (D) Other funds not generated from a tax.
 41 (E) Assistance or fees described in IC 5-28-15-5.
 42 Sec. 6. (a) A contributing municipality shall after June 30, 2008,

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1 contractually require, as a condition of providing public money to
2 a municipal benefit entity that is not required to be audited
3 annually by the state board of accounts, that the municipal benefit
4 entity must be audited by an independent accounting firm
5 acceptable to the contributing municipality.

6 (b) A municipal benefit entity must provide the results of an
7 audit by an independent accounting firm under this section to the
8 contributing municipality and, in the case of a municipal benefit
9 entity that receives money described in section 5(4)(C) of this
10 chapter, to the Indiana gaming commission.

11 (c) A municipal benefit entity shall pay the costs of an audit
12 required by this section.

13 (d) The providing of an audit under this section by a municipal
14 benefit entity may not result in the municipal benefit entity being
15 considered a public agency for purposes of IC 5-14-1.5-2(a) or
16 IC 5-14-3-2(l).

17 Sec. 7. A contributing municipality shall after June 30, 2008,
18 contractually require, as a condition of providing public money to
19 a municipal benefit entity, that:

- 20 (1) the members of the governing body; or
- 21 (2) if the municipal benefit entity is not governed by a board,
22 the chief executive officer;

23 of the municipal benefit entity shall annually file a verified written
24 certification with each contributing municipality stating that a
25 written statement of accounts has been prepared showing at least
26 the items listed in section 8 of this chapter. The certification must
27 state that the statement of accounts is available to the contributing
28 municipality and any member of the public upon request. A
29 municipal benefit entity may not be exempted from these
30 requirements by a provision in articles of incorporation, bylaws, a
31 will, a trust agreement or other organizing agreement, an
32 indenture, or another governing instrument. This section does not
33 apply to an organization that is not required to file a federal
34 information return under Section 6033(a)(3)(A) of the Internal
35 Revenue Code. The written statement of accounts must be signed
36 under penalty of perjury by each of the individuals described in
37 subdivision (1) or (2), as appropriate.

38 Sec. 8. A verified written statement of accounts under section 7
39 of this chapter must show the following:

- 40 (1) The period covered by the account.
- 41 (2) The amount of public money held by the municipal benefit
42 entity according to:

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- (A) the last preceding written statement of accounts; or
- (B) the original amount received if there is no preceding statement.
- (3) An itemized schedule of all public money received and disbursed, distributed, or otherwise disposed of during the period.
- (4) The balance of all public money remaining at the close of the period, a description of how the public money was invested, and both the inventory and current market values of all the investments.
- (5) A statement that the municipal benefit entity has been administered according to all laws and any articles of incorporation, bylaws, wills, trust agreements or other organizing agreements, indentures, and other governing instruments governing the municipal benefit entity.
- (6) A statement that all public money was held, invested, and expended according to all laws and other conditions applicable to receipt of the public money.
- (7) The business addresses, if any, or the residence addresses of all the members of the governing board for the municipal benefit entity.
- (8) The compensation received in the period by:
 - (A) each member of the governing board; or
 - (B) if the municipal benefit entity is not governed by a board, the chief executive officer; of the municipal benefit entity.

Sec. 9. The fiscal body of a contributing municipality shall review the amount of public money attributable to the municipality, an agreement entered into by the municipality, or a zone business (as defined in IC 5-28-15-3) in a district or zone established by the municipality that is used as compensation to or reimbursement of expenditures of:

- (1) a member of the governing body; or
- (2) if the municipal benefit entity is not governed by a board, the chief executive officer; of a municipal benefit entity.

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SENATE MOTION

Madam President: I move that Senator Meeks be added as coauthor of Senate Bill 231.

MRVAN

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 231, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 231 as introduced.)

MEEKS, Chairperson

Committee Vote: Yeas 11, Nays 0.

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