

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1121, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 3, between lines 25 and 26, begin a new paragraph and insert:
2 "SECTION 3. IC 5-14-3-4.4 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 JANUARY 1, 2010]: **Sec. 4.4. (a) Except as provided in subsection
5 (b), records relating to negotiations between:**
6 **(1) persons required to prepare an annual report under
7 IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e); and
8 (2) industrial, research, or commercial prospects;**
9 **are exempted from section 3 of this chapter at the discretion of the
10 person required to prepare the annual report if the records are
11 created while negotiations are in progress.**
12 **(b) Records relating to a development agreement payment (as
13 defined in IC 23-1-20-6.2) made by a person specified under
14 subsection (a)(1) to an industrial, a research, or a commercial
15 prospect shall be available for inspection and copying under
16 section 3 of this chapter after negotiations with that prospect have
17 terminated.**
18 **(c) Subject to subsection (b), the exemption from disclosure
19 under subsection (a) applies to the attorney general if the attorney
20 general requests to inspect an annual report under IC 23-1-53-1(d),**

1 **IC 23-17-27-6(d), or IC 30-4-5-12(f).**

2 SECTION 4. IC 23-1-20-6.1 IS ADDED TO THE INDIANA CODE
3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
4 JANUARY 1, 2010]: **Sec. 6.1. "Development agreement" means an
5 agreement that:**

6 **(1) is between:**

7 **(A) the direct or indirect holder of an owner's license
8 issued under IC 4-33 or an operating agent contract (as
9 defined in IC 4-33-2-14.6); and**

10 **(B) either:**

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

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

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

15 SECTION 5. IC 23-1-20-6.2 IS ADDED TO THE INDIANA CODE
16 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
17 JANUARY 1, 2010]: **Sec. 6.2. "Development agreement payment"
18 means any payment that a direct or indirect holder of:**

19 **(1) an owner's license under IC 4-33; or**

20 **(2) an operating agent contract (as defined in IC 4-33-2-14.6);
21 is required to make under a development agreement.**

22 SECTION 6. IC 23-1-53-1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1. (a)** On written
24 request of any shareholder, a corporation shall prepare and mail to the
25 shareholder annual financial statements, which may be consolidated or
26 combined statements of the corporation and one (1) or more of its
27 subsidiaries, as appropriate, that include a balance sheet as of the end
28 of the fiscal year most recently completed, an income statement for that
29 year, and a statement of changes in shareholders' equity for that year
30 unless that information appears elsewhere in the financial statements.
31 If financial statements are prepared for the corporation on the basis of
32 generally accepted accounting principles, the annual financial
33 statements must also be prepared on that basis.

34 **(b)** If the annual financial statements are reported upon by a public
35 accountant, the public accountant's report must accompany them. If
36 not, the statements must be accompanied by a statement of the
37 president or the person responsible for the corporation's accounting
38 records:

- 1 (1) stating the person's reasonable belief whether the statements
 2 were prepared on the basis of generally accepted accounting
 3 principles and, if not, describing the basis of preparation; and
 4 (2) describing any respects in which the statements were not
 5 prepared on a basis of accounting consistent with the statements
 6 prepared for the preceding year.

7 **(c) If a corporation is a recipient of a local development**
 8 **agreement payment, the corporation shall prepare an annual**
 9 **report containing the following information before February 1 of**
 10 **each year:**

11 (1) **A verified accounting of all accounts associated with local**
 12 **development agreement payments received in the preceding**
 13 **calendar year.**

14 (2) **An itemized list of all disbursements of local development**
 15 **agreement payments made to any person exceeding five**
 16 **thousand dollars (\$5,000) in the aggregate during the**
 17 **preceding calendar year. The itemized list must include:**

- 18 (A) **the legal name of the recipient of a disbursement;**
 19 (B) **the date of each disbursement;**
 20 (C) **the amount of each disbursement; and**
 21 (D) **the purpose of each disbursement.**

22 **(d) The principal officer of a corporation subject to subsection**
 23 **(c) shall annually file with the attorney general a verified written**
 24 **certification before March 1 stating that an annual report has been**
 25 **prepared showing at least the items listed in subsection (c). The**
 26 **certification must state that the annual report is available to the**
 27 **attorney general upon request.**

28 SECTION 7. IC 23-17-2-15.1 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.1. "Development**
 31 **agreement" means an agreement that:**

32 **(1) is between:**

33 **(A) the direct or indirect holder of an owner's license**
 34 **issued under IC 4-33 or an operating agent contract (as**
 35 **defined in IC 4-33-2-14.6); and**

36 **(B) either:**

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

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

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

3 SECTION 8. IC 23-17-2-15.2 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.2. "Development**
 6 **agreement payment" means any payment that a direct or indirect**
 7 **holder of:**

8 **(1) an owner's license under IC 4-33; or**

9 **(2) an operating agent contract (as defined in IC 4-33-2-14.6);**
 10 **is required to make under a development agreement.**

11 SECTION 9. IC 23-17-27-6 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. (a) Except as
 13 provided in articles of incorporation or bylaws of a religious
 14 corporation, a corporation upon written demand from a member shall
 15 furnish the member the corporation's latest annual financial statements,
 16 which may be consolidated or combined statements of the corporation
 17 and the corporation's subsidiaries or affiliates, as appropriate, that
 18 include a balance sheet as of the end of the fiscal year and statement of
 19 operations for that year. If financial statements are prepared for the
 20 corporation on the basis of generally accepted accounting principles,
 21 the annual financial statements must also be prepared on that basis.

22 (b) If annual financial statements are reported upon by a certified
 23 public accountant, the accountant's report must accompany the
 24 statements. If annual financial statements are not reported upon by a
 25 certified public accountant, the statements must be accompanied by the
 26 statement of the president or the person responsible for the
 27 corporation's financial accounting records that does the following:

28 (1) States the president's or other person's reasonable belief as to
 29 whether the statements were prepared on the basis of generally
 30 accepted accounting principles and, if not, describes the basis of
 31 preparation.

32 (2) Describes any respects in which the statements were not
 33 prepared on a basis of accounting consistent with the statements
 34 prepared for the preceding year.

35 **(c) If a corporation is a recipient of a local development**
 36 **agreement payment, the corporation shall prepare an annual**
 37 **report containing the following information before February 1 of**
 38 **each year:**

1 **(1) A verified accounting of all accounts associated with local**
 2 **development agreement payments received in the preceding**
 3 **calendar year.**

4 **(2) An itemized list of all disbursements of local development**
 5 **agreement payments made to any person exceeding five**
 6 **thousand dollars (\$5,000) in the aggregate during the**
 7 **preceding calendar year. The itemized list must include:**

8 **(A) the legal name of the recipient of a disbursement;**

9 **(B) the date of each disbursement;**

10 **(C) the amount of each disbursement; and**

11 **(D) the purpose of each disbursement.**

12 **(d) The principal officer of a corporation subject to subsection**
 13 **(c) shall annually file with the attorney general a verified written**
 14 **certification before March 1 stating that an annual report has been**
 15 **prepared showing at least the items listed in subsection (c). The**
 16 **certification must state that the annual report is available to the**
 17 **attorney general upon request."**

18 Page 7, line 34, delete "the following".

19 Page 7, line 35, after "(A)" delete "A" and insert "a".

20 Page 7, line 36, delete "." and insert "; and".

21 Page 7, line 37, delete "Either:" and insert "either:".

22 Page 9, between lines 2 and 3, begin a new paragraph and insert:

23 "SECTION 15. IC 30-4-1-2, AS AMENDED BY P.L.61-2008,
 24 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 2010]: Sec. 2. As used in this article:

26 (1) "Adult" means any person eighteen (18) years of age or older.

27 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 28 descendant, brother, sister, spouse of a brother or sister,
 29 employee, director, officer, partner, joint venturer, a corporation
 30 subject to common control with the trustee, a shareholder, or
 31 corporation who controls the trustee or a corporation controlled
 32 by the trustee other than as a fiduciary, an attorney, or an agent.

33 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

34 (4) "Breach of trust" means a violation by the trustee of any duty
 35 which is owed to the settlor or beneficiary.

36 (5) "Charitable trust" means a trust in which all the beneficiaries
 37 are the general public or organizations, including trusts,
 38 corporations, and associations, and that is organized and operated

- 1 wholly for religious, charitable, scientific, public safety testing,
2 literary, or educational purposes. The term does not include
3 charitable remainder trusts, charitable lead trusts, pooled income
4 funds, or any other form of split-interest charitable trust that has
5 at least one (1) noncharitable beneficiary.
- 6 (6) "Court" means a court having jurisdiction over trust matters.
- 7 (7) "Income", except as otherwise stated in a trust agreement, has
8 the meaning set forth in IC 30-2-14-4.
- 9 (8) "Income beneficiary" has the meaning set forth in
10 IC 30-2-14-5.
- 11 (9) "Inventory value" means the cost of property to the settlor or
12 the trustee at the time of acquisition or the market value of the
13 property at the time it is delivered to the trustee, or the value of
14 the property as finally determined for purposes of an estate or
15 inheritance tax.
- 16 (10) "Minor" means any person under the age of eighteen (18)
17 years.
- 18 (11) "Person" has the meaning set forth in IC 30-2-14-9.
- 19 (12) "Personal representative" means an executor or administrator
20 of a decedent's or absentee's estate, guardian of the person or
21 estate, guardian ad litem or other court appointed representative,
22 next friend, parent or custodian of a minor, attorney in fact, or
23 custodian of an incapacitated person (as defined in
24 IC 29-3-1-7.5).
- 25 (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- 26 (14) "Qualified beneficiary" means:
- 27 (A) a beneficiary who, on the date the beneficiary's
28 qualification is determined:
- 29 (i) is a distributee or permissible distributee of trust income
30 or principal;
- 31 (ii) would be a distributee or permissible distributee of trust
32 income or principal if the interest of the distributee
33 described in item (i) terminated on that date;
- 34 (iii) would be a distributee or permissible distributee of trust
35 income or principal if the trust terminated on that date;
- 36 (iv) has sent the trustee a request for notice;
- 37 (v) is a charitable organization expressly designated to
38 receive distributions under the terms of a charitable trust;

- 1 (vi) is a person appointed to enforce a trust for the care of an
2 animal under IC 30-4-2-18; or
3 (vii) is a person appointed to enforce a trust for a
4 noncharitable purpose under IC 30-4-2-19; or
5 (B) the attorney general, if the trust is a charitable trust having
6 its principal place of administration in Indiana.
- 7 (15) "Remainderman" means a beneficiary entitled to principal,
8 including income which has been accumulated and added to the
9 principal.
- 10 (16) "Settlor" means a person who establishes a trust including
11 the testator of a will under which a trust is created.
- 12 (17) "Trust estate" means the trust property and the income
13 derived from its use.
- 14 (18) "Trust for a benevolent public purpose" means a charitable
15 trust (as defined in subdivision (5)), a split-interest trust (as
16 defined in Section 4947 of the Internal Revenue Code), a
17 perpetual care fund or an endowment care fund established under
18 IC 23-14-48-2, a prepaid funeral plan or funeral trust established
19 under IC 30-2-9, a funeral trust established under IC 30-2-10, a
20 trust or an escrow account created from payments of funeral,
21 burial services, or merchandise in advance of need described in
22 IC 30-2-13, and any other form of split-interest charitable trust
23 that has both charitable and noncharitable beneficiaries, including
24 but not limited to charitable remainder trusts, charitable lead
25 trusts, and charitable pooled income funds.
- 26 (19) "Trust property" means property either placed in trust or
27 purchased or otherwise acquired by the trustee for the trust
28 regardless of whether the trust property is titled in the name of the
29 trustee or the name of the trust.
- 30 (20) "Trustee" has the meaning set forth in IC 30-2-14-13.
- 31 **(21) "Development agreement" means an agreement that:**
32 **(A) is between:**
33 **(i) the direct or indirect holder of an owner's license**
34 **issued under IC 4-33 or an operating agent contract (as**
35 **defined in IC 4-33-2-14.6); and**
36 **(ii) either a person or a unit of local government; and**
37 **(B) sets forth the holder's financial commitments to**
38 **support economic development in a unit or a geographic**

1 **region.**
 2 **(22) "Development agreement payment" means any payment**
 3 **that a direct or indirect holder of:**
 4 **(A) an owner's license under IC 4-33; or**
 5 **(B) an operating agent contract (as defined in**
 6 **IC 4-33-2-14.6);**
 7 **is required to make under a development agreement.**

8 SECTION 16. IC 30-4-5-12 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 12. (Accounting
 10 by Trustees)

11 (a) Unless the terms of the trust provide otherwise or unless waived
 12 in writing by an adult, competent beneficiary, the trustee shall deliver
 13 a written statement of accounts to each income beneficiary or his
 14 personal representative annually. The statement shall contain at least:

15 (1) all receipts and disbursements since the last statement; and
 16 (2) all items of trust property held by the trustee on the date of the
 17 statement at their inventory value.

18 (b) This subsection applies to a charitable trust with assets of at least
 19 five hundred thousand dollars (\$500,000). The trustee of a charitable
 20 trust shall annually file a verified written certification with the attorney
 21 general stating that a written statement of accounts has been prepared
 22 showing at least the items listed in section 13(a) of this chapter. The
 23 certification must state that the statement of accounts is available to the
 24 attorney general and any member of the general public upon request.
 25 A charitable trust may not be exempted from this requirement by a
 26 provision in a will, trust agreement, indenture, or other governing
 27 instrument. This subsection does not prevent a trustee from docketing
 28 a charitable trust to finalize a written statement of account or any other
 29 lawful purpose in the manner provided in this article. However, this
 30 subsection does not apply to an organization that is not required to file
 31 a federal information return under Section 6033(a)(2)(A)(i) or Section
 32 6033(a)(2)(A)(ii) of the Internal Revenue Code.

33 (c) Upon petition by the settlor, a beneficiary or his personal
 34 representative, a person designated by the settlor to have advisory or
 35 supervisory powers over the trust, or any other person having an
 36 interest in the administration or the benefits of the trust, including the
 37 attorney general in the case of a trust for a benevolent public purpose,
 38 the court may direct the trustee to file a verified written statement of

1 accounts showing the items listed in section 13(a) of this chapter. The
 2 petition may be filed at any time, provided, however, that the court will
 3 not, in the absence of good cause shown, require the trustee to file a
 4 statement more than once a year.

5 (d) If the court's jurisdiction is of a continuing nature as provided in
 6 IC 30-4-6-2, the trustee shall file a verified written statement of
 7 accounts containing the items shown in section 13(a) of this chapter
 8 with the court biennially, and the court may, on its own motion, require
 9 the trustee to file such a statement at any other time provided there is
 10 good cause for requiring a statement to be filed.

11 **(e) If a charitable trust or trust for a benevolent public purpose**
 12 **is a recipient of a local development agreement payment, the**
 13 **trustee shall prepare an annual report containing the following**
 14 **information before February 1 of each year:**

15 **(1) A verified accounting of all accounts associated with local**
 16 **development agreement payments received in the preceding**
 17 **calendar year.**

18 **(2) An itemized list of all disbursements of local development**
 19 **agreement payments made to any person exceeding five**
 20 **thousand dollars (\$5,000) in the aggregate during the**
 21 **preceding calendar year. The itemized list must include:**

22 **(A) the legal name of the recipient of a disbursement;**

23 **(B) the date of each disbursement;**

24 **(C) the amount of each disbursement; and**

25 **(D) the purpose of each disbursement.**

26 **(f) The trustee of a trust subject to subsection (e) shall annually**
 27 **file with the attorney general a verified written certification before**
 28 **March 1 stating that an annual report has been prepared showing**
 29 **at least the items listed in subsection (e). The certification must**
 30 **state that the annual report is available to the attorney general**
 31 **upon request."**

32 Page 18, line 32, after "person;" delete "or".

33 Page 18, line 34, after "information;" insert "or

34 **(3) a combination of persons described under subdivisions**
 35 **(1) and (2)."**

- 1 Page 18, delete lines 35 through 36.
- 2 Renumber all SECTIONS consecutively.
(Reference is to HB 1121 as printed February 6, 2009.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 1.

Steele

Chairperson