

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1007 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE
4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: **Sec. 4.1. "Incentive granted by the corporation"**
6 **includes any benefit, grant, loan, loan guarantee, money, tax**
7 **deduction, tax credit, or other thing of value referred to in:**
8 **(1) this article; or**
9 **(2) another Indiana statute that authorizes the corporation,**
10 **including the board, to award or approve the award of any**
11 **benefit, grant, loan, money, tax credit, or other thing of value.**
12 SECTION 2. IC 5-28-6-5, AS ADDED BY P.L.110-2010,
13 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]: Sec. 5. The corporation shall designate an
15 employee to serve as a compliance officer whose duties are to
16 determine and report to the corporation whether each person that
17 receives ~~a job creation~~ **an** incentive granted by the corporation or
18 another agency or instrumentality of the state (excluding any political
19 subdivision or other unit of local government) complies with the terms
20 and conditions of the person's incentive agreement.
21 SECTION 3. IC 5-28-6-6, AS ADDED BY P.L.110-2010,
22 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]: Sec. 6. The corporation shall require an applicant
24 for ~~a job creation~~ **an** incentive to be granted by the corporation after

1 March 31, 2010, to enter into an agreement with the corporation as a
 2 condition of receiving the incentive. Subject to IC 5-28-28-8, the
 3 agreement must include the following requirements:

4 (1) ~~The~~ **That a specific** number of individuals ~~that are expected~~
 5 ~~to will~~ be employed by the applicant **as of a specified date each**
 6 **year.**

7 (2) A requirement that the applicant will file with the compliance
 8 officer an annual compliance report detailing the applicant's
 9 compliance, or progress toward compliance, with subdivision (1).

10 (3) ~~A provision that notifies the applicant that the applicant is~~
 11 ~~subject to a determination of the corporation under this~~
 12 ~~subdivision. The corporation, after a finding~~ **That the applicant**
 13 **will pay back to the state the proportionate share of any**
 14 **incentive that has already been received by the applicant if** the
 15 applicant is **found to be** employing fewer individuals than the
 16 applicant agreed to employ under subdivision (1). ~~subject to any~~
 17 ~~confidentiality laws, shall hold a hearing to determine if the~~
 18 ~~applicant shall be required to pay back to the state a part of the~~
 19 ~~incentive granted to the applicant under the agreement. The~~
 20 ~~penalty imposed must be a matter of public record and must~~
 21 ~~reflect in a fair and balanced way the amount of incentive~~
 22 ~~received. The amount required to be paid back is the~~
 23 **percentage of the total incentive that equals the ratio that the**
 24 **deficiency in the number of individuals employed bears to the**
 25 **number of individuals the applicant agreed under subdivision**
 26 **(1) to employ.**

27 (4) A requirement that the applicant will pay back to the state the
 28 **entire** incentive that has been received by the applicant if the
 29 applicant moves, ~~or~~ closes, **or transfers employment positions**
 30 **out of Indiana.**

31 **Except as provided in IC 5-28-28-8, the corporation may not**
 32 **provide an incentive granted by the corporation to a person that is**
 33 **being required to pay back any part of an incentive to the state,**
 34 **until the date the person has repaid the incentive to the state.**

35 SECTION 4. IC 5-28-28-1, AS ADDED BY P.L.222-2007,
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: Sec. 1. This chapter applies to grants, loans, and
 38 tax credits:

39 (1) applied for; and

40 (2) awarded;

41 after June 30, 2007. **However, sections 8 and 9 of this chapter apply**
 42 **to any incentive granted by the corporation before, on, or after**
 43 **June 30, 2007.**

44 SECTION 5. IC 5-28-28-7, AS AMENDED BY P.L.110-2010,
 45 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 46 UPON PASSAGE]: Sec. 7. (a) If, in the course of compiling

1 information to complete a report required by section 5 of this chapter
 2 or upon the receipt of any other information concerning noncompliance
 3 with the terms and conditions of an incentive granted by the
 4 corporation, the corporation determines that a recipient of an incentive
 5 awarded by the corporation has not complied with the representations
 6 that the recipient made in obtaining the incentive, the corporation shall
 7 take the actions required under subsections (b) and (d).

8 (b) If the incentive is a grant or loan awarded before April 1, 2010,
 9 the corporation shall determine:

- 10 (1) whether there was good cause for the noncompliance; and
 11 (2) whether the recipient is in default.

12 If in the judgment of the corporation there is not good cause for any
 13 noncompliance discovered under subsection (a), the corporation may
 14 seek a refund or arrange other methods of reclaiming the grant or loan
 15 from the recipient. If the corporation does seek a refund or otherwise
 16 reclaims a grant or loan from the recipient under this section, the
 17 amount of the refund or reclaimed part must be in proportion to the
 18 degree of default by the recipient as determined by the corporation.

19 (c) Subsection (b) does not apply to a recipient of a grant or loan if:

- 20 (1) the grant or loan has been disbursed on a pro rata basis; and
 21 (2) in the judgment of the corporation, the recipient's performance
 22 in relation to the recipient's performance goals equals or exceeds
 23 the ratio of the amount of the recipient's actual benefit from the
 24 grant or loan to the total amount of the grant or loan originally
 25 contemplated in the grant or loan award.

26 (d) If the incentive granted by the corporation was awarded after
 27 March 31, 2010, **subject to section 8 of this chapter**, the corporation
 28 shall seek a refund or arrange other methods of reclaiming the value of
 29 the incentive granted by the corporation from the recipient. The amount
 30 of the refund or reclaimed part must be in proportion to the degree of
 31 default by the recipient as determined by the corporation. **If the**
 32 **noncompliance is a failure to meet a requirement related to**
 33 **employment levels, the amount reclaimed must be a percentage of**
 34 **the incentive that equals the deficiency in the number of**
 35 **individuals employed as compared to the number of individuals the**
 36 **recipient agreed to employ.**

37 SECTION 6. IC 5-28-28-8, AS ADDED BY P.L.110-2010,
 38 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 UPON PASSAGE]: Sec. 8. (a) As used in this section, "recapture
 40 provision" means language that requires the recipient of an incentive
 41 to repay some part of the incentive.

42 (b) The corporation may waive or modify a recapture provision of
 43 this article or an agreement made with a person to whom the
 44 corporation has awarded an incentive if the corporation determines that
 45 the recipient of an incentive awarded by the corporation has failed to
 46 meet a condition for receiving the incentive because of circumstances

- 1 beyond the recipient's control, including:
 2 (1) natural disaster;
 3 (2) unforeseen industry trends;
 4 (3) lack of available labor force; **or**
 5 (4) loss of a major supplier or market. ~~or~~
 6 (5) another circumstance beyond the recipient's control, as
 7 determined by the corporation.
- 8 SECTION 7. IC 5-28-28-9, AS ADDED BY P.L.110-2010,
 9 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 9. ~~(a)~~ Beginning in 2010, the economic
 11 incentives and compliance report required under section 5 of this
 12 chapter must include an annual report containing summary statistics on
 13 the effectiveness of and compliance with all incentives granted by the
 14 corporation. The report required by this section must: ~~describe:~~
 15 ~~(1) the overall compliance with the terms and conditions of~~
 16 ~~incentives provided; and~~
 17 ~~(2) penalties imposed for failure to comply with the terms and~~
 18 ~~conditions of incentives provided.~~
 19 The report must also be submitted to the general assembly in an
 20 electronic format under IC 5-14-6.
- 21 ~~(b) Upon request, the corporation shall make available:~~
 22 ~~(1) information **include a section** specifying each person's~~
 23 ~~compliance with its incentive agreement and any incentive that~~
 24 ~~had to be reduced or paid back as a result of noncompliance with~~
 25 ~~an incentive agreement;~~
 26 ~~(2) information stating, **state,** for each incentive recipient, the~~
 27 ~~total incentive provided for each job created, computed from the~~
 28 ~~date the incentive is granted through June 30 of the year of the~~
 29 ~~report; **and**~~
 30 ~~(3) information concerning all waivers or modifications under~~
 31 ~~section 8 of this chapter; and~~
 32 ~~(4) information describing all hearings and determinations under~~
 33 ~~IC 5-28-6-6.~~
 34 ~~(3) also be submitted to the general assembly in an electronic~~
 35 ~~format under IC 5-14-6."~~

- 1 Page 24, after line 23, begin a new paragraph and insert:
- 2 "SECTION 17. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE UPON
- 3 PASSAGE].
- 4 SECTION 18. **An emergency is declared for this act.**
- 5 Renumber all SECTIONS consecutively.
(Reference is to HB 1007 as printed February 1, 2011.)

Representative Pelath