

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WITHDRAWN	Noes _____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

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1183 be amended to read as follows:

- 1 Page 4, after line 1, begin a new paragraph and insert:
- 2 "SECTION 3. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: **Sec. 4.1. "Incentive granted by the corporation"**
- 5 **includes any benefit, grant, loan, loan guarantee, money, tax**
- 6 **deduction, tax credit, or other thing of value referred to in:**
- 7 **(1) this article; or**
- 8 **(2) another Indiana statute that authorizes the corporation,**
- 9 **including the board, to award or approve the award of any**
- 10 **benefit, grant, loan, money, tax credit, or other thing of value.**
- 11 SECTION 4. IC 5-28-6-5, AS ADDED BY P.L.110-2010,
- 12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13 UPON PASSAGE]: Sec. 5. The corporation shall designate an
- 14 employee to serve as a compliance officer whose duties are to
- 15 determine and report to the corporation whether each person that
- 16 receives ~~a job creation an~~ incentive granted by the corporation or
- 17 another agency or instrumentality of the state (excluding any political
- 18 subdivision or other unit of local government) complies with the terms
- 19 and conditions of the person's incentive agreement.
- 20 SECTION 5. IC 5-28-6-6, AS ADDED BY P.L.110-2010,
- 21 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 UPON PASSAGE]: Sec. 6. The corporation shall require an applicant
- 23 for ~~a job creation an~~ incentive to be granted by the corporation after
- 24 March 31, 2010, to enter into an agreement with the corporation as a

1 condition of receiving the incentive. Subject to IC 5-28-28-8, the  
2 agreement must include the following requirements:

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

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

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

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

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

34 SECTION 6. IC 5-28-28-1, AS ADDED BY P.L.222-2007,  
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 UPON PASSAGE]: Sec. 1. This chapter applies to grants, loans, and  
37 tax credits:

- 38 (1) applied for; and
- 39 (2) awarded;

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

43 SECTION 7. IC 5-28-28-7, AS AMENDED BY P.L.110-2010,  
44 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
45 UPON PASSAGE]: Sec. 7. (a) If, in the course of compiling  
46 information to complete a report required by section 5 of this chapter

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

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

9 (1) whether there was good cause for the noncompliance; and

10 (2) whether the recipient is in default.

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

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

19 (1) the grant or loan has been disbursed on a pro rata basis; and

20 (2) in the judgment of the corporation, the recipient's performance  
 21 in relation to the recipient's performance goals equals or exceeds  
 22 the ratio of the amount of the recipient's actual benefit from the  
 23 grant or loan to the total amount of the grant or loan originally  
 24 contemplated in the grant or loan award.

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

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

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

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

1           SECTION 10. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE UPON  
2           PASSAGE].  
3           SECTION 11. **An emergency is declared for this act.**  
4           Re-number all SECTIONS consecutively.  
            (Reference is to HB 1183 as printed January 25, 2011.)

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Representative Pelath