

Adopted	Rejected
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MINORITY COMMITTEE REPORT

MR. SPEAKER:

*A minority of your Committee on Employment, Labor and Pensions, which met on February 15, 2011, to consider House Bill 1538, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 taxation and to make an appropriation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-13.6-6-2.8 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE UPON PASSAGE]: **Sec. 2.8. (a) As used in this section,**
- 8 **"resident of Indiana" means a person who is at least eighteen (18)**
- 9 **years of age and is one (1) of the following:**
- 10 **(1) A person who has registered a motor vehicle in Indiana.**
- 11 **(2) A person who is registered to vote in Indiana.**
- 12 **(3) A person who has a child enrolled in an elementary or a**
- 13 **secondary school located in Indiana.**
- 14 **(4) A person who derives more than one-half (1/2) of the**

1 person's gross income (as defined in Section 61 of the Internal
2 Revenue Code) from sources in Indiana, according to the
3 provisions applicable to determining the source of adjusted
4 gross income that are set forth in IC 6-3-2-2. However, a
5 person who would otherwise be considered a resident of
6 Indiana under this subdivision is not a resident of Indiana if
7 a preponderance of the evidence concerning the factors set
8 forth in subdivisions (1) through (3) proves that the person is
9 not a resident of Indiana.

10 (b) Except as provided in subsection (f), a contract for a public
11 works project may not be awarded to a contractor who does not:

- 12 (1) employ residents of Indiana as at least eighty percent
13 (80%) of the employees who work on the contract; and
14 (2) enter into subcontracts only with subcontractors who
15 employ residents of Indiana as at least eighty percent (80%)
16 of the employees who work on the subcontract.

17 (c) Except as provided in subsection (f), before August 15 of
18 2012, and each year thereafter, the division shall file with the
19 legislative council a report for the preceding year stating:

- 20 (1) for each contractor awarded a contract under this
21 chapter; and
22 (2) for each subcontractor with which a contractor referred
23 to in subdivision (1) enters into a contract in connection with
24 a contract awarded under this chapter;

25 the percentage of the employees of the contractor or subcontractor
26 who work on the contract and are residents of Indiana. The report
27 to the legislative council must be in an electronic format under
28 IC 5-14-6.

29 (d) Except as provided in subsection (f), a contract awarded
30 under this chapter for a public works project is terminated if the
31 division determines that the contractor has failed to:

- 32 (1) employ residents of Indiana as at least eighty percent
33 (80%) of the employees who work on the contract; and
34 (2) enter into subcontracts only with subcontractors who
35 employ residents of Indiana as at least eighty percent (80%)
36 of the employees who work on the subcontract.

37 (e) Except as provided in subsection (f), a contractor or
38 subcontractor who fails to employ residents of Indiana as at least

1 **eighty percent (80%) of the employees who work on the contract**
 2 **or subcontract commits a Class B infraction for each nonresident**
 3 **of Indiana employed in excess of the number of nonresident**
 4 **employees permitted by this section.**

5 **(f) If:**

6 **(1) a contract or subcontract subject to this section is funded**
 7 **in whole or in part with federal funds; and**

8 **(2) imposing the requirements of this section would cause the**
 9 **state to lose the federal funds for the contract, as determined**
 10 **by the federal agency providing the funds;**

11 **subsections (b) through (e) do not apply.**

12 **(g) If an agency of the federal government makes a**
 13 **determination under subsection (f) that causes a contract to be**
 14 **exempted from the requirements of subsections (b) through (e), this**
 15 **section is meant to express the view of the general assembly that**
 16 **expanding employment opportunities for Indiana residents**
 17 **remains a vital part of the state's economy.**

18 **(h) A contract exempted from the requirements of subsections**
 19 **(b) through (e) may not reference the employment of Indiana**
 20 **residents. The division may not consider the number of**
 21 **employment opportunities for Indiana residents when doing any of**
 22 **the following with respect to a project subject to a contract that is**
 23 **exempted from the requirements of subsections (b) through (e):**

24 **(1) Issuing a request for proposals.**

25 **(2) Issuing a bulletin inviting bids for the contract.**

26 **(3) Prequalifying a contractor for the contract.**

27 **(4) Evaluating a bid for the contract.**

28 **(i) This section does not apply to contracts entered into to**
 29 **perform work:**

30 **(1) resulting from an emergency; or**

31 **(2) performed by an artisan or by someone in a speciality area**
 32 **in which there is a limited number of persons able to perform**
 33 **the work.**

34 **SECTION 2. IC 5-16-1-7.5 IS ADDED TO THE INDIANA CODE**
 35 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 36 **UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "resident of**
 37 **Indiana" means a person who is at least eighteen (18) years of age**
 38 **and is one (1) of the following:**

1 **(1) A person who has registered a motor vehicle in Indiana.**

2 **(2) A person who is registered to vote in Indiana.**

3 **(3) A person who has a child enrolled in an elementary or a**
 4 **secondary school located in Indiana.**

5 **(4) A person who derives more than one-half (1/2) of the**
 6 **person's gross income (as defined in Section 61 of the Internal**
 7 **Revenue Code) from sources in Indiana, according to the**
 8 **provisions applicable to determining the source of adjusted**
 9 **gross income that are set forth in IC 6-3-2-2. However, a**
 10 **person who would otherwise be considered a resident of**
 11 **Indiana under this subdivision is not a resident of Indiana if**
 12 **a preponderance of the evidence concerning the factors set**
 13 **forth in subdivisions (1) through (3) proves that the person is**
 14 **not a resident of Indiana.**

15 **(b) Except as provided in subsection (f), a contract for a public**
 16 **works project under this chapter may not be awarded to a**
 17 **contractor who does not:**

18 **(1) employ residents of Indiana as at least eighty percent**
 19 **(80%) of the employees who work on the contract; and**

20 **(2) enter into subcontracts only with subcontractors who**
 21 **employ residents of Indiana as at least eighty percent (80%)**
 22 **of the employees who work on the subcontract.**

23 **(c) Except as provided in subsection (f), before August 15 of**
 24 **2012, and each year thereafter, any state agency entering into**
 25 **contracts under this chapter shall file with the legislative council**
 26 **a report for the preceding year stating:**

27 **(1) for each contractor awarded a contract under this**
 28 **chapter; and**

29 **(2) for each subcontractor with which a contractor referred**
 30 **to in subdivision (1) enters into a contract in connection with**
 31 **a contract awarded under this chapter;**

32 **the percentage of the employees of the contractor or subcontractor**
 33 **who work on the contract and are residents of Indiana. The report**
 34 **to the legislative council must be in an electronic format under**
 35 **IC 5-14-6.**

36 **(d) Except as provided in subsection (f), a contract awarded**
 37 **under this chapter for a public works project is terminated if the**
 38 **state or commission determines that the contractor has failed to:**

- 1 **(1) employ residents of Indiana as at least eighty percent**
 2 **(80%) of the employees who work on the contract; and**
 3 **(2) enter into subcontracts only with subcontractors who**
 4 **employ residents of Indiana as at least eighty percent (80%)**
 5 **of the employees who work on the subcontract.**

6 **(e) Except as provided in subsection (f), a contractor or**
 7 **subcontractor who fails to employ residents of Indiana as at least**
 8 **eighty percent (80%) of the employees who work on the contract**
 9 **or subcontract commits a Class B infraction for each nonresident**
 10 **of Indiana employed in excess of the number of nonresident**
 11 **employees permitted by this section.**

12 **(f) If:**

- 13 **(1) a contract or subcontract subject to this section is funded**
 14 **in whole or in part with federal funds; and**
 15 **(2) imposing the requirements of this section would cause the**
 16 **state to lose the federal funds for the contract, as determined**
 17 **by the federal agency providing the funds;**
 18 **subsections (b) through (e) do not apply.**

19 **(g) If an agency of the federal government makes a**
 20 **determination under subsection (f) that causes a contract to be**
 21 **exempted from the requirements of subsections (b) through (e), this**
 22 **section is meant to express the view of the general assembly that**
 23 **expanding employment opportunities for Indiana residents**
 24 **remains a vital part of the state's economy.**

25 **(h) A contract exempted from the requirements of subsections**
 26 **(b) through (e) may not reference the employment of Indiana**
 27 **residents. The state or a commission may not consider the number**
 28 **of employment opportunities for Indiana residents when doing any**
 29 **of the following with respect to a project subject to a contract that**
 30 **is exempted from the requirements of subsections (b) through (e):**

- 31 **(1) Issuing a request for proposals.**
 32 **(2) Issuing a bulletin inviting bids for the contract.**
 33 **(3) Prequalifying a contractor for the contract.**
 34 **(4) Evaluating a bid for the contract.**

35 **(i) This section does not apply to contracts entered into to**
 36 **perform work:**

- 37 **(1) resulting from an emergency; or**
 38 **(2) performed by an artisan or by someone in a speciality area**

1 **in which there is a limited number of persons able to perform**
 2 **the work.**

3 SECTION 3. 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 4. 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 5. 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
 25 March 31, 2010, to enter into an agreement with the corporation as a
 26 condition of receiving the incentive. Subject to IC 5-28-28-8, the
 27 agreement must include the following requirements:

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

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

34 (3) ~~A provision that notifies the applicant that the applicant is~~
 35 ~~subject to a determination of the corporation under this~~
 36 ~~subdivision. The corporation, after a finding That the applicant~~
 37 **will pay back to the state the proportionate share of any**
 38 **incentive that has already been received by the applicant if the**

1 applicant is **found to be** employing fewer individuals than the
 2 applicant agreed to employ under subdivision (1). ~~subject to any~~
 3 ~~confidentiality laws, shall hold a hearing to determine if the~~
 4 applicant shall be required to pay back to the state a part of the
 5 incentive granted to the applicant under the agreement. The
 6 penalty imposed must be a matter of public record and must
 7 reflect in a fair and balanced way the amount of incentive
 8 received. **The amount required to be paid back is the**
 9 **percentage of the total incentive that equals the ratio that the**
 10 **deficiency in the number of individuals employed bears to the**
 11 **number of individuals the applicant agreed under subdivision**
 12 **(1) to employ.**

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

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

21 SECTION 6. IC 5-28-17-5, AS ADDED BY P.L.110-2010,
 22 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2011]: Sec. 5. The board shall designate an employee in the
 24 small business division to be the small business ombudsman. The small
 25 business ombudsman serves at the pleasure of the board. The
 26 corporation shall provide staff support to the small business
 27 ombudsman. The small business ombudsman shall carry out the
 28 following duties:

29 (1) Work with state agencies to permit increased enforcement
 30 flexibility and the ability to grant common sense exemptions for
 31 first time offenders of state rules and policies, including,
 32 notwithstanding any other law, policies for the compromise of
 33 interest and penalties related to a listed tax (as defined in
 34 IC 6-8.1-1-1) and other taxes and fees collected or administered
 35 by a state agency.

36 (2) Work with state agencies to seek ways to consolidate forms
 37 and eliminate the duplication of paperwork, harmonize data, and
 38 coordinate due dates.

- 1 (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform
2 cost benefit analyses.
- 3 (4) Work with state agencies to monitor any outdated, ineffective,
4 or overly burdensome information requests from state agencies to
5 small businesses.
- 6 (5) Carry out the duties specified under IC 4-22-2-28 and
7 IC 4-22-2.1 to review proposed rules and participate in
8 rulemaking actions that affect small businesses.
- 9 (6) Coordinate with the ombudsmen designated under
10 IC 13-28-3-2 and the office of voluntary compliance established
11 by IC 13-28-1-1 to coordinate the provision of services required
12 under IC 4-22-2-28.1 and IC 13-28-3.
- 13 (7) Prepare written and electronic information for periodic
14 distribution to small businesses describing the small business
15 services provided by coordinators (as defined in IC 4-3-22-16)
16 and work with the office of technology established by
17 IC 4-13.1-2-1 to place information concerning the availability of
18 these services on state Internet web sites that the small business
19 ombudsman or a state agency determines are most likely to be
20 visited by small business owners and managers.
- 21 (8) Assist in training agency coordinators that will be assigned to
22 rules under IC 4-22-2-28.1(e).
- 23 (9) Investigate and attempt to resolve any matter regarding
24 compliance by a small business with a law, rule, or policy
25 administered by a state agency, either as a party to a proceeding
26 or as a mediator.
- 27 **(10) Assure that at least thirty-three percent (33%) of all job**
28 **creation incentives awarded or for which a business becomes**
29 **eligible after June 30, 2011, are granted to small businesses**
30 **with not more than fifty (50) employees. The ombudsman**
31 **shall establish reporting requirements for the corporation and**
32 **all other agencies and instrumentalities of the state (excluding**
33 **any political subdivision or other unit of local government) to**
34 **determine compliance with this subdivision. The ombudsman**
35 **may disapprove any proposed award to the extent necessary**
36 **to allocate job creation incentives to small businesses. A job**
37 **creation incentive that is disapproved by the ombudsman is**
38 **void.**

1 State agencies shall cooperate with the small business ombudsman to
 2 carry out the purpose of this section. The department of state revenue
 3 and the department of workforce development shall establish a program
 4 to distribute the information described in subdivision (7) to small
 5 businesses that are required to file returns or information with these
 6 state agencies. State agencies, **including the department of state**
 7 **revenue**, shall **share information and otherwise** cooperate with the
 8 small business ombudsman to carry out the purpose of this section. The
 9 department of state revenue and the department of workforce
 10 development shall establish a program to distribute the information
 11 described in subdivision (7) to small businesses that are required to file
 12 returns or information with these state agencies.

13 SECTION 7. IC 5-28-28-1, AS ADDED BY P.L.222-2007,
 14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 1. This chapter applies to grants, loans, and
 16 tax credits:

17 (1) applied for; and

18 (2) awarded;

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

22 SECTION 8. IC 5-28-28-7, AS AMENDED BY P.L.110-2010,
 23 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 7. (a) If, in the course of compiling
 25 information to complete a report required by section 5 of this chapter
 26 or upon the receipt of any other information concerning noncompliance
 27 with the terms and conditions of an incentive granted by the
 28 corporation, the corporation determines that a recipient of an incentive
 29 awarded by the corporation has not complied with the representations
 30 that the recipient made in obtaining the incentive, the corporation shall
 31 take the actions required under subsections (b) and (d).

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

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

35 (2) whether the recipient is in default.

36 If in the judgment of the corporation there is not good cause for any
 37 noncompliance discovered under subsection (a), the corporation may
 38 seek a refund or arrange other methods of reclaiming the grant or loan

1 from the recipient. If the corporation does seek a refund or otherwise
 2 reclaims a grant or loan from the recipient under this section, the
 3 amount of the refund or reclaimed part must be in proportion to the
 4 degree of default by the recipient as determined by the corporation.

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

- 6 (1) the grant or loan has been disbursed on a pro rata basis; and
- 7 (2) in the judgment of the corporation, the recipient's performance
- 8 in relation to the recipient's performance goals equals or exceeds
- 9 the ratio of the amount of the recipient's actual benefit from the
- 10 grant or loan to the total amount of the grant or loan originally
- 11 contemplated in the grant or loan award.

12 (d) If the incentive granted by the corporation was awarded after
 13 March 31, 2010, **subject to section 8 of this chapter**, the corporation
 14 shall seek a refund or arrange other methods of reclaiming the value of
 15 the incentive granted by the corporation from the recipient. The amount
 16 of the refund or reclaimed part must be in proportion to the degree of
 17 default by the recipient as determined by the corporation. **If the**
 18 **noncompliance is a failure to meet a requirement related to**
 19 **employment levels, the amount reclaimed must be a percentage of**
 20 **the incentive that equals the deficiency in the number of**
 21 **individuals employed as compared to the number of individuals the**
 22 **recipient agreed to employ.**

23 SECTION 9. IC 5-28-28-8, AS ADDED BY P.L.110-2010,
 24 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 UPON PASSAGE]: Sec. 8. (a) As used in this section, "recapture
 26 provision" means language that requires the recipient of an incentive
 27 to repay some part of the incentive.

28 (b) The corporation may waive or modify a recapture provision of
 29 this article or an agreement made with a person to whom the
 30 corporation has awarded an incentive if the corporation determines that
 31 the recipient of an incentive awarded by the corporation has failed to
 32 meet a condition for receiving the incentive because of circumstances
 33 beyond the recipient's control, including:

- 34 (1) natural disaster;
- 35 (2) unforeseen industry trends;
- 36 (3) lack of available labor force; **or**
- 37 (4) loss of a major supplier or market. **or**
- 38 ~~(5) another circumstance beyond the recipient's control, as~~

1 ~~determined by the corporation.~~

2 SECTION 10. IC 5-28-28-9, AS ADDED BY P.L.110-2010,
3 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 9. ~~(a)~~ Beginning in 2010, the economic
5 incentives and compliance report required under section 5 of this
6 chapter must include an annual report containing summary statistics on
7 the effectiveness of and compliance with all incentives granted by the
8 corporation. The report required by this section must: ~~describe:~~

9 ~~(1) the overall compliance with the terms and conditions of~~
10 ~~incentives provided; and~~

11 ~~(2) penalties imposed for failure to comply with the terms and~~
12 ~~conditions of incentives provided.~~

13 The report must also be submitted to the general assembly in an
14 electronic format under IC 5-14-6.

15 ~~(b) Upon request, the corporation shall make available:~~

16 ~~(1) information include a section~~ specifying each person's
17 compliance with its incentive agreement and any incentive that
18 had to be reduced or paid back as a result of noncompliance with
19 an incentive agreement;

20 ~~(2) information stating, state,~~ for each incentive recipient, the
21 total incentive provided for each job created, computed from the
22 date the incentive is granted through June 30 of the year of the
23 report; **and**

24 ~~(3) information concerning all waivers or modifications under~~
25 ~~section 8 of this chapter; and~~

26 ~~(4) information describing all hearings and determinations under~~
27 ~~IC 5-28-6-6.~~

28 **(3) also be submitted to the general assembly in an electronic**
29 **format under IC 5-14-6.**

30 SECTION 11. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
31 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2011]:

33 **Chapter 34. Employer Tax Credit for Tuition Expenses**

34 **Sec. 1. This chapter applies only to taxable years beginning after**
35 **December 31, 2011.**

36 **Sec. 2. As used in this chapter, "employer" means an entity that**
37 **has employees, including:**

38 **(1) an individual acting as a sole proprietor;**

- 1 (2) a pass through entity; and
2 (3) a corporation.

3 **Sec. 3. As used in this chapter, "pass through entity" means:**

- 4 (1) a corporation that is exempt from the adjusted gross
5 income tax under IC 6-3-2-2.8(2);
6 (2) a partnership;
7 (3) a limited liability company; or
8 (4) a limited liability partnership.

9 **Sec. 4. As used in this chapter, "state educational institution"**
10 **has the meaning set forth in IC 21-7-13-32.**

11 **Sec. 5. As used in this chapter, "state tax liability" means a**
12 **taxpayer's total tax liability that is incurred under:**

- 13 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
14 (2) IC 6-5.5 (the financial institutions tax); and
15 (3) IC 27-1-18-2 (the insurance premiums tax);

16 **as computed after the application of the credits that under**
17 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
18 **chapter.**

19 **Sec. 6. As used in this chapter, "taxpayer" means a person,**
20 **corporation, partnership, or other entity that has any state tax**
21 **liability.**

22 **Sec. 7. As used in this chapter, "tuition" includes required**
23 **books, course supplies, and course fees.**

24 **Sec. 8. (a) Each taxable year, subject to subsection (b), an**
25 **employer that incurs tuition expenses for an employee who attends**
26 **a state educational institution during the taxable year is entitled to**
27 **a credit against state tax liability for the amount of tuition expenses**
28 **incurred during the taxable year for a course in which the**
29 **employee achieves a final grade of at least:**

- 30 (1) 2.0, if a 4.0 grading scale is used; or
31 (2) a grade equivalent to the grade specified in subdivision (1),
32 if another grading scale is used.

33 **(b) The credit provided by subsection (a) is not allowed for**
34 **tuition expenses to the extent a taxpayer has claimed a deduction**
35 **from the taxpayer's federal gross income for the tuition expenses**
36 **in determining the taxpayer's Indiana adjusted gross income.**

37 **Sec. 9. An employer that claims the credit provided by this**
38 **chapter shall keep the following records for each tuition payment**

1 **the employer makes for a course taken by an employee at a state**
 2 **educational institution:**

- 3 (1) **The name of the employee.**
 4 (2) **The state educational institution at which the course was**
 5 **taken.**
 6 (3) **The name of the course.**
 7 (4) **The academic semester or other period in which the course**
 8 **was taken.**
 9 (5) **The amount of the tuition payment.**
 10 (6) **The employee's final grade in the course.**
 11 (7) **Any other reasonable information required by the**
 12 **department.**

13 **Sec. 10. If a pass through entity does not have state tax liability**
 14 **for a taxable year but is otherwise entitled to the tax credit**
 15 **provided by this chapter, each shareholder, partner, or member of**
 16 **the pass through entity is entitled to a share of the tax credit equal**
 17 **to:**

- 18 (1) **the amount of the tax credit determined for the pass**
 19 **through entity for the taxable year; multiplied by**
 20 (2) **the percentage of the pass through entity's distributive**
 21 **income to which the shareholder, partner, or member is**
 22 **entitled.**

23 **Sec. 11. (a) If the credit provided by this chapter exceeds a**
 24 **taxpayer's state tax liability for the taxable year for which the**
 25 **credit is first claimed, the excess may be carried forward to**
 26 **succeeding taxable years and used as a credit against the**
 27 **taxpayer's state tax liability during those taxable years. Each time**
 28 **the credit is carried forward to a succeeding taxable year, the**
 29 **credit is to be reduced by the amount that was used as a credit**
 30 **during the immediately preceding taxable year. The credit**
 31 **provided by this chapter may be carried forward and applied to**
 32 **succeeding taxable years for not more than five (5) taxable years**
 33 **following the first year for which the credit is claimed.**

34 **(b) A taxpayer is not entitled to a carryback or refund of any**
 35 **unused credit under this chapter.**

36 **Sec. 12. To receive the tax credit under this chapter, a taxpayer**
 37 **must claim the credit on the taxpayer's annual state tax return or**
 38 **returns in the manner prescribed by the department.**

1 SECTION 12. IC 6-3.1-35 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JANUARY 1, 2011 (RETROACTIVE)]:

4 **Chapter 35. Small Business Job Creation Tax Credit**

5 **Sec. 1. As used in this chapter, "base employment period" of a**
 6 **small business refers the six (6) month period beginning January**
 7 **1, 2009. However, if a small business began doing business in**
 8 **Indiana after January 1, 2009, the term refers to the initial period**
 9 **before January 1, 2011, not to exceed six (6) months, in which the**
 10 **small business employed full-time employees in Indiana in the**
 11 **trade or business of the small business.**

12 **Sec. 2. As used in this chapter, "department" refers to the**
 13 **department of state revenue or the department of insurance,**
 14 **whichever is obligated to administer the tax against which a tax**
 15 **credit is applied.**

16 **Sec. 3. As used in this chapter, "full-time employee" means an**
 17 **individual who:**

18 **(1) is employed for consideration for at least thirty-five (35)**
 19 **hours each week, or renders any other standard of service**
 20 **generally accepted by custom or specified by contract as**
 21 **full-time employment; and**

22 **(2) earns income for service described in subdivision (1) that**
 23 **is subject to withholding under IC 6-3 (before the application**
 24 **of any earned income tax credit) in an amount that is the**
 25 **equivalent of at least two hundred percent (200%) of the**
 26 **federal hourly minimum wage in effect during the week of**
 27 **employment.**

28 **Sec. 4. As used in this chapter, "qualified new employee" refers**
 29 **to a full-time employee described in section 14 of this chapter.**

30 **Sec. 5. As used in this chapter, "small business" refers to a small**
 31 **business (as defined in IC 5-28-2-6) that was in existence and**
 32 **employed full-time employees in Indiana in the trade or business**
 33 **of the small business before January 1, 2011.**

34 **Sec. 6. As used in this chapter, "state tax liability" means a**
 35 **taxpayer's total tax liability that is incurred under:**

36 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**

37 **(2) IC 27-1-18-2 (the insurance premiums tax); and**

38 **(3) IC 6-5.5 (the financial institutions tax);**

1 as computed after the application of the credits that under
2 IC 6-3.1-1-2 are to be applied before the credit provided by this
3 chapter.

4 Sec. 7. As used in this chapter, "tax credit" refers to a tax credit
5 granted by this chapter against state tax liability.

6 Sec. 8. As used in this chapter, "taxpayer" means an individual
7 or entity that has state tax liability.

8 Sec. 9. (a) This section applies only to taxable years beginning
9 after December 31, 2010, and before January 1, 2014.

10 (b) Subject to this chapter, a small business that employs a
11 qualified new employee in Indiana in a taxable year is eligible for
12 a tax credit against the state tax liability imposed against the small
13 business for the taxable year if, on average, the small business
14 employed a greater number of full-time employees in Indiana in
15 the taxable year than the small business employed in Indiana, on
16 average, in the small business's base employment period.

17 Sec. 10. The amount of the tax credit to which a small business
18 is entitled in a taxable year is equal to the lesser of the following:

19 (1) Three thousand dollars (\$3,000) multiplied by the lesser
20 of:

21 (A) the average number of qualified new employees that
22 the small business employed in Indiana during the taxable
23 year in the trade or business of the small business; or

24 (B) the average number of additional full-time employees
25 that the small business employed in Indiana in the trade or
26 business of the small business during the taxable year in
27 excess of the average number of full-time employees that
28 the small business employed in Indiana in the trade or
29 business of the small business during the small business's
30 base employment period.

31 (2) One hundred thousand dollars (\$100,000).

32 However, if the taxable year of the small business is less than
33 twelve (12) months, the three thousand dollar (\$3,000) and one
34 hundred thousand dollar (\$100,000) amounts are reduced in
35 proportion to the amount by which the taxable year of the small
36 business is shortened.

37 Sec. 11. (a) If the amount of a tax credit to which a small
38 business is entitled in a taxable year exceeds the small business's

1 state tax liability for that taxable year, the small business may
2 carry the excess over to not more than three (3) subsequent taxable
3 years. The amount of the credit carryover from a taxable year shall
4 be reduced to the extent that the carryover is used by the small
5 business to obtain a credit under this chapter for any subsequent
6 taxable year.

7 (b) A small business is not entitled to a carryback or refund of
8 any unused credit.

9 Sec. 12. If a small business is a pass through entity that does not
10 have state tax liability against which a tax credit may be applied,
11 a shareholder, partner, fiduciary, or member of the pass through
12 entity is entitled to a tax credit equal to:

13 (1) the tax credit that the pass through entity would be
14 entitled to for the taxable year if the pass through entity were
15 a taxpayer; multiplied by

16 (2) the percentage of the pass through entity's distributive
17 income to which the shareholder, partner, fiduciary, or
18 member is entitled.

19 Sec. 13. To receive a tax credit, a taxpayer must claim the credit
20 on the taxpayer's annual state tax return or returns in the manner
21 prescribed by the department. The taxpayer shall maintain the
22 records required by the department for the period specified by the
23 department to substantiate the taxpayer's eligibility for a tax
24 credit.

25 Sec. 14. To be a qualified new employee in a particular taxable
26 year, an individual must meet all of the following criteria:

27 (1) Have been initially hired into a position as a full-time
28 employee by the small business for the first time after
29 December 31, 2010.

30 (2) Be, at the time the small business initially employs the
31 individual after December 31, 2010:

32 (A) an individual who is receiving state or federal
33 unemployment insurance benefits or has exhausted the
34 individual's eligibility for state or federal unemployment
35 insurance benefits since last becoming unemployed; or

36 (B) a former member of the military services of the United
37 States who served on active duty in any branch of the
38 armed forces of the United States or National Guard and

1 **who at no time received a discharge or separation under**
 2 **other than honorable conditions, except corrected**
 3 **separation or discharge to read "honorable" as evidenced**
 4 **by appropriate records presented from the United States**
 5 **Department of Defense or appropriate branch of the**
 6 **military service;**

7 **or both.**

8 **(3) Was not employed by:**

9 **(A) a related member (as defined in IC 6-3.1-13-8) of the**
 10 **small business; or**

11 **(B) another business entity that would be a related member**
 12 **(as defined in IC 6-3.1-13-8) of the small business if the**
 13 **other entity were a corporation;**

14 **within twelve (12) months of being initially employed by the**
 15 **small business.**

16 **(4) Is not a child, grandchild, parent, or spouse (other than a**
 17 **spouse who is legally separated from the individual) of any**
 18 **individual:**

19 **(A) who is an employee of the small business; or**

20 **(B) who has a direct or an indirect ownership interest of at**
 21 **least five percent (5%) in the profits, capital, or value of:**

22 **(i) the small business;**

23 **(ii) a related member (as defined in IC 6-3.1-13-8) of the**
 24 **small business; or**

25 **(iii) another business entity that would be a related**
 26 **member (as defined in IC 6-3.1-13-8) of the small**
 27 **business if the other entity were a corporation.**

28 **For purposes of this subdivision, an ownership interest shall**
 29 **be determined in accordance with Section 1563 of the Internal**
 30 **Revenue Code and regulations prescribed under Section 1563**
 31 **of the Internal Revenue Code.**

32 **Sec. 15. The tax credit to which a taxpayer would otherwise be**
 33 **entitled under this chapter in a taxable year is reduced by the sum**
 34 **of the following tax credits received for the same qualified new**
 35 **employee:**

36 **(1) The economic development for a growing economy tax**
 37 **credits (IC 6-3.1-13) allowable to the taxpayer in a taxable**
 38 **year and attributable to the same employee for which a tax**

- 1 **credit would otherwise be granted under this chapter.**
- 2 **(2) The Hoosier business investment tax credits (IC 6-3.1-26)**
- 3 **allowable to the taxpayer in a taxable year and attributable to**
- 4 **the same employee for which a tax credit would otherwise be**
- 5 **granted under this chapter.**
- 6 **(3) The amount of federal or state training grants used in the**
- 7 **taxable year to train an employee for which a tax credit would**
- 8 **otherwise be granted under this chapter.**

9 **Sec. 16. A small business (or if section 12 of this chapter applies,**

10 **a shareholder, partner, or member of a small business) forfeits fifty**

11 **percent (50%) of the amount of the tax credits attributable to the**

12 **employment of a qualified new employee if, within eighteen (18)**

13 **months after the qualified new employee was initially hired:**

- 14 **(1) the qualified new employee is terminated, laid off, or**
- 15 **otherwise reclassified to a position that is not a full-time**
- 16 **employment position with the small business; or**
- 17 **(2) the position created for the qualified new employee is**
- 18 **eliminated.**

19 **For purposes of this section, the replacement, within a reasonable**

20 **time as determined by the department, of a qualified new employee**

21 **with another qualified new employee shall be treated as continuous**

22 **employment of a qualified new employee from the date of the**

23 **hiring or rehiring of the initial qualified new employee.**

24 **Sec. 17. The amount due to the department from a forfeiture**

25 **under section 16 of this chapter shall be treated as due to the state**

26 **on the date the taxpayer's annual return or informational return**

27 **is due for the taxable year in which the reduction in employment**

28 **occurred.**

29 **Sec. 18. (a) For purposes of this chapter, employment levels**

30 **shall be determined using the total number of employees reported**

31 **by the small business on the quarterly payroll report submitted by**

32 **the small business to the department of workforce development.**

33 **The department of workforce development shall give the**

34 **information to the department on the schedule and in the form**

35 **requested by the department.**

36 **(b) A small business shall use the method prescribed by the**

37 **department to determine the average number of full-time**

38 **employees or qualified new employees that the small business**

1 employed during a period.

2 **Sec. 19. The department may adopt rules under IC 4-22-2,**
3 **including rules adopted in the manner provided for the adoption**
4 **of emergency rules under IC 4-22-2-37.1, to implement this**
5 **chapter.**

6 **Sec. 20. This chapter expires January 1, 2020.**

7 SECTION 13. IC 8-10-1-7.7 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: **Sec. 7.7. (a) As used in this section, "resident of**
10 **Indiana" means a person who is at least eighteen (18) years of age**
11 **and is one (1) of the following:**

- 12 (1) A person who has registered a motor vehicle in Indiana.
- 13 (2) A person who is registered to vote in Indiana.
- 14 (3) A person who has a child enrolled in an elementary or a
- 15 secondary school located in Indiana.
- 16 (4) A person who derives more than one-half (1/2) of the
- 17 person's gross income (as defined in Section 61 of the Internal
- 18 Revenue Code) from sources in Indiana, according to the
- 19 provisions applicable to determining the source of adjusted
- 20 gross income that are set forth in IC 6-3-2-2. However, a
- 21 person who would otherwise be considered a resident of
- 22 Indiana under this subdivision is not a resident of Indiana if
- 23 a preponderance of the evidence concerning the factors set
- 24 forth in subdivisions (1) through (3) proves that the person is
- 25 not a resident of Indiana.

26 (b) Except as provided in subsection (f), a contract for a public
27 works project under this chapter may not be awarded to a
28 contractor who does not:

- 29 (1) employ residents of Indiana as at least eighty percent
- 30 (80%) of the employees of the contractor who work on the
- 31 contract; and
- 32 (2) enter into subcontracts only with subcontractors who
- 33 employ residents of Indiana as at least eighty percent (80%)
- 34 of the employees who work on the subcontract.

35 (c) Except as provided in subsection (f), before August 15 of
36 2012, and each year thereafter, the commission shall file with the
37 legislative council a report for the preceding year stating:

- 38 (1) for each contractor awarded a contract under this

1 **chapter; and**
 2 **(2) for each subcontractor with which a contractor referred**
 3 **to in subdivision (1) enters into a contract in connection with**
 4 **a contract awarded under this chapter;**
 5 **the percentage of the employees of the contractor or subcontractor**
 6 **who work on the contract and are residents of Indiana. The report**
 7 **to the legislative council must be in an electronic format under**
 8 **IC 5-14-6.**

9 **(d) Except as provided in subsection (f), a contract awarded**
 10 **under this chapter for a public works project is terminated if the**
 11 **commission determines that the contractor has failed to:**

12 **(1) employ residents of Indiana as at least eighty percent**
 13 **(80%) of the employees who work on the contract; and**
 14 **(2) enter into subcontracts only with subcontractors who**
 15 **employ residents of Indiana as at least eighty percent (80%)**
 16 **of the employees who work on the subcontract.**

17 **(e) Except as provided in subsection (f), a contractor or**
 18 **subcontractor who fails to employ residents of Indiana as at least**
 19 **eighty percent (80%) of the employees who work on the contract**
 20 **or subcontract commits a Class B infraction for each nonresident**
 21 **of Indiana employed in excess of the number of nonresident**
 22 **employees permitted by this section.**

23 **(f) If:**

24 **(1) a contract or subcontract subject to this section is funded**
 25 **in whole or in part with federal funds; and**
 26 **(2) imposing the requirements of this section would cause the**
 27 **state to lose the federal funds for the contract, as determined**
 28 **by the federal agency providing the funds;**

29 **subsections (b) through (e) do not apply.**

30 **(g) If an agency of the federal government makes a**
 31 **determination under subsection (f) that causes a contract to be**
 32 **exempted from the requirements of subsections (b) through (e), this**
 33 **section is meant to express the view of the general assembly that**
 34 **expanding employment opportunities for Indiana residents**
 35 **remains a vital part of the state's economy.**

36 **(h) A contract exempted from the requirements of subsections**
 37 **(b) through (e) may not reference the employment of Indiana**
 38 **residents. The commission may not consider the number of**

1 **employment opportunities for Indiana residents when doing any of**
 2 **the following with respect to a project subject to a contract that is**
 3 **exempted from the requirements of subsections (b) through (e):**

- 4 (1) Issuing a request for proposals.
- 5 (2) Issuing a bulletin inviting bids for the contract.
- 6 (3) Prequalifying a contractor for the contract.
- 7 (4) Evaluating a bid for the contract.

8 (i) **This section does not apply to contracts entered into to**
 9 **perform work:**

- 10 (1) **resulting from an emergency; or**
- 11 (2) **performed by an artisan or by someone in a speciality area**
 12 **with limited persons able to perform the work.**

13 SECTION 14. IC 8-23-9-4.6 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 4.6. (a) **As used in this section, "resident of**
 16 **Indiana" means a person who is at least eighteen (18) years of age**
 17 **and is one (1) of the following:**

- 18 (1) **A person who has registered a motor vehicle in Indiana.**
- 19 (2) **A person who is registered to vote in Indiana.**
- 20 (3) **A person who has a child enrolled in an elementary or a**
 21 **secondary school located in Indiana.**
- 22 (4) **A person who derives more than one-half (1/2) of the**
 23 **person's gross income (as defined in Section 61 of the Internal**
 24 **Revenue Code) from sources in Indiana, according to the**
 25 **provisions applicable to determining the source of adjusted**
 26 **gross income that are set forth in IC 6-3-2-2. However, a**
 27 **person who would otherwise be considered a resident of**
 28 **Indiana under this subdivision is not a resident of Indiana if**
 29 **a preponderance of the evidence concerning the factors set**
 30 **forth in subdivisions (1) through (3) proves that the person is**
 31 **not a resident of Indiana.**

32 (b) **Except as provided in subsection (f), a contract for a public**
 33 **works project under this chapter may not be awarded to a**
 34 **contractor who does not:**

- 35 (1) **employ residents of Indiana as at least eighty percent**
 36 **(80%) of the employees of the contractor who work on the**
 37 **contract; and**
- 38 (2) **enter into subcontracts only with subcontractors who**

1 **employ residents of Indiana as at least eighty percent (80%)**
 2 **of the employees working on the subcontract.**

3 **(c) Except as provided in subsection (f), before August 15 of**
 4 **2012, and each year thereafter, the department shall file with the**
 5 **legislative council a report for the preceding year stating:**

6 **(1) for each contractor awarded a contract under this**
 7 **chapter; and**

8 **(2) for each subcontractor with which a contractor referred**
 9 **to in subdivision (1) enters into a contract in connection with**
 10 **a contract awarded under this chapter;**

11 **the percentage of the employees of the contractor or subcontractor**
 12 **who work on the contract and are residents of Indiana. The report**
 13 **to the legislative council must be in an electronic format under**
 14 **IC 5-14-6.**

15 **(d) Except as provided in subsection (f), a contract awarded**
 16 **under this chapter for a public works project is terminated if the**
 17 **department determines that the contractor has failed to:**

18 **(1) employ residents of Indiana as at least eighty percent**
 19 **(80%) of the employees who work on the contract; and**

20 **(2) enter into subcontracts only with subcontractors who**
 21 **employ residents of Indiana as at least eighty percent (80%)**
 22 **of the employees who work on the subcontract.**

23 **(e) Except as provided in subsection (f), a contractor or**
 24 **subcontractor who fails to employ residents of Indiana as at least**
 25 **eighty percent (80%) of the employees who work on the contract**
 26 **or subcontract commits a Class B infraction for each nonresident**
 27 **of Indiana employed in excess of the number of nonresident**
 28 **employees permitted by this section.**

29 **(f) If:**

30 **(1) a contract or subcontract subject to this section is funded**
 31 **in whole or in part with federal funds; and**

32 **(2) imposing the requirements of this section would cause the**
 33 **state to lose the federal funds for the contract, as determined**
 34 **by the federal agency providing the funds;**

35 **subsections (b) through (e) do not apply.**

36 **(g) If an agency of the federal government makes a**
 37 **determination under subsection (f) that causes a contract to be**
 38 **exempted from the requirements of subsections (b) through (e), this**

1 section is meant to express the view of the general assembly that
 2 expanding employment opportunities for Indiana residents
 3 remains a vital part of the state's economy.

4 (h) A contract exempted from the requirements of subsections
 5 (b) through (e) may not reference the employment of Indiana
 6 residents. The department may not consider the number of
 7 employment opportunities for Indiana residents when doing any of
 8 the following with respect to a project subject to a contract that is
 9 exempted from the requirements of subsections (b) through (e):

10 (1) Issuing a request for proposals.

11 (2) Issuing a bulletin inviting bids for the contract.

12 (3) Prequalifying a contractor for the contract.

13 (4) Evaluating a bid for the contract.

14 (i) This section does not apply to contracts entered into to
 15 perform work:

16 (1) resulting from an emergency; or

17 (2) performed by an artisan or by someone in a speciality area
 18 in which there is a limited number of persons able to perform
 19 the work.

20 SECTION 15. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
 21 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2011]:

23 **Chapter 6. Prohibition Concerning the Use of Credit Reports**
 24 **for Employment Purposes**

25 **Sec. 1. As used in this chapter, "credit report" means a written,**
 26 **an oral, or another communication of information by a consumer**
 27 **reporting agency concerning a consumer's creditworthiness, credit**
 28 **standing, or credit capacity.**

29 **Sec. 2. As used in this chapter, "trade secret" has the meaning**
 30 **set forth in IC 24-2-3-2.**

31 **Sec. 3. (a) Except as provided in subsection (b), an employer**
 32 **may not use a credit report in the process of hiring a prospective**
 33 **employee or for continuing the employment of an employee.**

34 **(b) An employer may use a credit report for employment**
 35 **purposes if:**

36 **(1) the information contained in the credit report is**
 37 **substantially job related in that the employment position or**
 38 **prospective employment position of the individual for whom**

- 1 **the report is sought has access to:**
 2 **(A) money;**
 3 **(B) other assets; or**
 4 **(C) trade secrets or other confidential information; or**
 5 **(2) the employment position of the individual for whom the**
 6 **report is sought is a:**
 7 **(A) managerial position;**
 8 **(B) position in the office of the attorney general created by**
 9 **IC 4-6-1-2;**
 10 **(C) sworn law enforcement position; or**
 11 **(D) position for which the information contained in the**
 12 **report is required to be disclosed by law or to be obtained**
 13 **by the employer.**

14 **(c) This section does not apply to a person or business subject to**
 15 **Sections 6801 through 6809 of the Fair Credit Reporting Act (15**
 16 **U.S.C. 1681 et seq.), or state or federal statutes or regulations**
 17 **implementing those sections, if the person or business is subject to**
 18 **compliance oversight by a state or federal regulatory agency with**
 19 **respect to those sections.**

20 **Sec. 4. (a) An employee or prospective employee may bring a**
 21 **civil action against an employer to enforce section 3 of this chapter.**

22 **(b) If an employer violates section 3 of this chapter, the court**
 23 **may do the following:**

- 24 **(1) Award:**
 25 **(A) actual damages; and**
 26 **(B) court costs and reasonable attorney's fees;**
 27 **to the prevailing employee or prospective employee.**
 28 **(2) Enjoin the employer from committing further violations**
 29 **of this chapter.**

30 **Sec. 5. This chapter does not limit an employee's or prospective**
 31 **employee's rights or remedies under any other state or federal law.**

32 **SECTION 16. IC 22-5-7 IS ADDED TO THE INDIANA CODE AS**
 33 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**
 34 **1, 2011]:**

35 **Chapter 7. Prohibition Concerning the Consideration of**
 36 **Employment Status for Employment Applicants**

37 **Sec. 1. An employer may not discriminate against an applicant**
 38 **or a prospective applicant for employment based on the current**

1 **employment status of the applicant or prospective applicant.**

2 **Sec. 2. (a) An employee or prospective employee may bring a**
3 **civil action against an employer to enforce section 1 of this chapter.**

4 **(b) If an employer violates section 1 of this chapter, the court**
5 **may do the following:**

6 **(1) Award:**

7 **(A) actual damages; and**

8 **(B) court costs and reasonable attorney's fees;**

9 **to the prevailing employee or prospective employee.**

10 **(2) Enjoin further violation of this chapter.**

11 **Sec. 3. This chapter does not limit an employee's or prospective**
12 **employee's rights or remedies under any other state or federal law.**

13 SECTION 17. IC 36-1-12-5.5 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) As used in this section,**
16 **"resident of Indiana" means a person who is at least eighteen (18)**
17 **years of age and is one (1) of the following:**

18 **(1) A person who has registered a motor vehicle in Indiana.**

19 **(2) A person who is registered to vote in Indiana.**

20 **(3) A person who has a child enrolled in an elementary or a**
21 **secondary school located in Indiana.**

22 **(4) A person who derives more than one-half (1/2) of the**
23 **person's gross income (as defined in Section 61 of the Internal**
24 **Revenue Code) from sources in Indiana, according to the**
25 **provisions applicable to determining the source of adjusted**
26 **gross income that are set forth in IC 6-3-2-2. However, a**
27 **person who would otherwise be considered a resident of**
28 **Indiana under this subdivision is not a resident of Indiana if**
29 **a preponderance of the evidence concerning the factors set**
30 **forth in subdivisions (1) through (3) proves that the person is**
31 **not a resident of Indiana.**

32 **(b) Except as provided in subsection (e), a contract for a public**
33 **works project under this chapter may not be awarded to a**
34 **contractor who does not:**

35 **(1) employ residents of Indiana as at least eighty percent**
36 **(80%) of the employees of the contractor who work on the**
37 **contract; and**

38 **(2) enter into subcontracts only with subcontractors who**

1 **employ residents of Indiana as at least eighty percent (80%)**
 2 **of the employees working on the subcontract.**

3 **(c) Except as provided in subsection (e), a contract awarded**
 4 **under this chapter for a public works project is terminated if the**
 5 **unit determines that the contractor has failed to:**

6 **(1) employ residents of Indiana as at least eighty percent**
 7 **(80%) of the employees who work on the contract; and**

8 **(2) enter into subcontracts only with subcontractors who**
 9 **employ residents of Indiana as at least eighty percent (80%)**
 10 **of the employees who work on the subcontract.**

11 **(d) Except as provided in subsection (e), a contractor or**
 12 **subcontractor who fails to employ residents of Indiana as at least**
 13 **eighty percent (80%) of the employees who work on the contract**
 14 **or subcontract commits a Class B infraction for each nonresident**
 15 **of Indiana employed in excess of the number of nonresident**
 16 **employees permitted by this section.**

17 **(e) If:**

18 **(1) a contract or subcontract subject to this section is funded**
 19 **in whole or in part with federal funds; and**

20 **(2) imposing the requirements of this section would cause the**
 21 **state to lose the federal funds for the contract, as determined**
 22 **by the federal agency providing the funds;**

23 **subsections (b) through (d) do not apply.**

24 **(f) If an agency of the federal government makes a**
 25 **determination under subsection (e) that causes a contract to be**
 26 **exempted from the requirements of subsections (b) through (d),**
 27 **this section is meant to express the view of the general assembly**
 28 **that expanding employment opportunities for Indiana residents**
 29 **remains a vital part of the state's economy.**

30 **(g) A contract exempted from the requirements of subsections**
 31 **(b) through (d) may not reference the employment of Indiana**
 32 **residents. The division may not consider the number of**
 33 **employment opportunities for Indiana residents when doing any of**
 34 **the following with respect to a project subject to a contract that is**
 35 **exempted from the requirements of subsections (b) through (d):**

36 **(1) Issuing a request for proposals.**

37 **(2) Issuing a bulletin inviting bids for the contract.**

38 **(3) Prequalifying a contractor for the contract.**

- 1 **(4) Evaluating a bid for the contract.**
2 **(h) This section does not apply to contracts entered into to**
3 **perform work:**
4 **(1) resulting from an emergency; or**
5 **(2) performed by an artisan or by someone in a speciality area**
6 **in which there is a limited number of persons able to perform**
7 **the work.**

8 SECTION 18. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE UPON
9 PASSAGE].

10 SECTION 19. [EFFECTIVE JULY 1, 2011] **(a) The definitions in**
11 **HB 1001-2011, SECTION 1 apply throughout this SECTION.**

12 **(b) In addition to the appropriations made to the Indiana**
13 **economic development corporation by HB 1001-2011, there is**
14 **appropriated one million five hundred thousand dollars**
15 **(\$1,500,000) to the Indiana economic development corporation for**
16 **the total operating expenses of the capital access program**
17 **established under IC 5-28-29 for the biennium beginning July 1,**
18 **2011, and ending June 30, 2013. The amount of the appropriation**
19 **is in addition to any amount allotted, encumbered, or expended**
20 **before the effective date of this SECTION for the capital access**
21 **program established under IC 5-28-29 or transferred before the**
22 **effective date of this SECTION to the reserve fund (as defined in**
23 **IC 5-28-29-12).**

24 **(c) The appropriations made to the Indiana economic**
25 **development corporation for the biennium beginning July 1, 2011,**
26 **and ending June 30, 2013, by HB 1001-2011 are reduced by one**
27 **million five hundred thousand dollars (\$1,500,000). The budget**
28 **agency shall exercise its authority under IC 4-12-1-12 to reassign**
29 **appropriations made to the Indiana economic development**
30 **corporation for the state fiscal year beginning July 1, 2011, and**
31 **ending June 30, 2012, and the state fiscal year beginning July 1,**
32 **2012, and ending June 30, 2013, to determine the specific line item**
33 **appropriations that must be reduced under this subsection to fund**
34 **the appropriation made by subsection (b).**

35 **(d) An amount appropriated under subsection (b) may not be**
36 **used for administrative expenses. However, up to two hundred fifty**
37 **thousand dollars (\$250,000) of the amount appropriated by**
38 **subsection (b) shall be used to improve and carry out the**

1 **marketing program for the capital access program required under**
2 **IC 5-28-29-14(2). The remainder of the appropriation not used for**
3 **the marketing program shall be deposited in the reserve fund (as**
4 **defined in IC 5-28-29-12) and used in the biennium to provide**
5 **capital to businesses, particularly small and medium sized**
6 **businesses, to foster economic development in Indiana.**

7 **(e) Notwithstanding any other law, the amount appropriated**
8 **under subsection (b):**

9 **(1) may not be transferred or reassigned to another purpose**
10 **or fund;**

11 **(2) does not revert to the state general fund or any other fund**
12 **at the end of a state fiscal year and remains available in**
13 **subsequent state fiscal years for the purposes of the capital**
14 **access program established under IC 5-28-29; and**

15 **(3) shall be allotted and expended for the purposes of the**
16 **capital access program established under IC 5-28-29.**

17 **IC 4-13-2-18(f) does not apply to an amount reassigned under this**
18 **SECTION or any other amount appropriated or allotted to the**

1 **purposes of the capital access program established under**
2 **IC 5-28-29.**

3 **(f) This SECTION expires July 1, 2013.**

4 **SECTION 20. An emergency is declared for this act.**

5 Renumber all SECTIONS consecutively.

(Reference is to HB 1538 as introduced.)

and when so amended that said bill do pass.

Representative Niezgodski