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# SENATE BILL No. 165

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-28; IC 6-3.1.

**Synopsis:** Economic development incentive accountability. Adds various job and employee definitions to the Indiana economic development corporation (IEDC) laws. Requires all records related to taxpayer funded economic development incentives to be disclosed under the open records law. Requires the IEDC's annual job creation incentives and compliance report to be published on the Indiana transparency portal Internet web site. Requires the IEDC and the department of state revenue to compile information on all job creation incentives granted, including the aggregate amount of uncollected or diverted state tax revenues resulting from each incentive, and requires this information to be included as part of the IEDC's annual job creation incentives and compliance report. Requires the IEDC to recapture incentives from a recipient failing to make the level of capital investment, failing to create or retain the promised number of jobs, or paying less in wages than specified in the agreement. Requires the IEDC to compile information on all recapture activities and incentives recouped from unfulfilled commitments and to include the information as part of the IEDC's annual job creation incentives and compliance report. Requires incentive recipients to prepare an annual progress report on the number of jobs created or retained, employee pay, and various other information concerning the use of the job creation incentives, and requires the IEDC to compile this information and include it in the IEDC's annual job creation incentives and compliance report. Repeals and replaces the definition of job creation incentive without change to maintain alphabetical order.

**Effective:** July 1, 2011.

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**Mrvan, Taylor**

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January 5, 2011, read first time and referred to Committee on Commerce & Economic Development.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 165



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

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

1 SECTION 1. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2011]: **Sec. 4.1. "Full-time employee" has the meaning set forth**  
4 **in IC 6-3.1-13-4.**

5 SECTION 2. IC 5-28-2-4.2 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2011]: **Sec. 4.2. (a) "Full-time, permanent job" means**  
8 **employment in which a new employee works for the recipient of a**  
9 **job creation incentive as a full-time employee without any expected**  
10 **date of termination.**

11 **(b) The term does not include a temporary job.**

12 SECTION 3. IC 5-28-2-4.5 IS ADDED TO THE INDIANA CODE  
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2011]: **Sec. 4.5. "Job creation incentive" means a tax credit, tax**  
15 **deduction, grant, loan, or loan guarantee that a statute authorizes**  
16 **the state or an instrumentality of the state (excluding any political**  
17 **subdivision or other unit of local government) to award or approve**



1 **for the purpose of encouraging the creation of new jobs in Indiana.**

2 SECTION 4. IC 5-28-2-4.6 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2011]: **Sec. 4.6. "Job creation incentive agreement" or "incentive  
5 agreement" means any agreement executed by the corporation and  
6 the recipient of a job creation incentive setting forth the terms and  
7 conditions of any job creation incentive to be provided to the  
8 recipient.**

9 SECTION 5. IC 5-28-2-4.7 IS ADDED TO THE INDIANA CODE  
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2011]: **Sec. 4.7. "New employee" means a full-time employee  
12 who:**

13 (1) **is first employed by the recipient of a job creation  
14 incentive at the specific project site that is the subject of the  
15 job creation incentive agreement executed by the corporation  
16 and the applicant; and**

17 (2) **is employed by the recipient of a job creation incentive  
18 after the recipient enters into the job creation incentive  
19 agreement.**

20 SECTION 6. IC 5-28-2-4.8 IS ADDED TO THE INDIANA CODE  
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
22 1, 2011]: **Sec. 4.8. "Part-time job" means employment in which a  
23 new employee works for the recipient of a job creation incentive  
24 for fewer hours each week than the number of hours necessary to  
25 be considered a full-time employee.**

26 SECTION 7. IC 5-28-2-4.9 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 2011]: **Sec. 4.9. "Retained employee" means any employee:**

29 (1) **who has a full-time or full-time equivalent job at a specific  
30 facility or site;**

31 (2) **the continuance of whose job is threatened by a specific  
32 and demonstrable threat, as specified by the applicant in the  
33 application for a job creation incentive; and**

34 (3) **whose job is preserved.**

35 SECTION 8. IC 5-28-2-6.5 IS ADDED TO THE INDIANA CODE  
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
37 1, 2011]: **Sec. 6.5. "Temporary job" means employment in which  
38 a new employee is hired for a specific duration of time or season.**

39 SECTION 9. IC 5-28-5-9, AS ADDED BY P.L.4-2005, SECTION  
40 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
41 2011]: **Sec. 9. (a) Except as specifically provided by law, the  
42 corporation and the board are subject to IC 5-14-1.5 and IC 5-14-3.**

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1           **(b) All records required to be prepared or maintained under**  
 2 **this article, including any cost analyses, audits, recipient**  
 3 **compliance reports, and any other records or proceedings of the**  
 4 **corporation, must be disclosed as provided by IC 5-14-3. In**  
 5 **addition, if the corporation contracts with an entity to perform a**  
 6 **cost analysis as part of a determination by the corporation of**  
 7 **whether to provide a job creation incentive and the estimated**  
 8 **contract price exceeds twenty-five thousand dollars (\$25,000), that**  
 9 **cost analysis must be disclosed as provided by IC 5-14-3.**

10           SECTION 10. IC 5-28-6-2, AS AMENDED BY P.L.120-2008,  
 11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2011]: Sec. 2. (a) The corporation shall develop and promote  
 13 programs designed to make the best use of Indiana resources to ensure  
 14 a balanced economy and continuing economic growth for Indiana, and,  
 15 for those purposes, may do the following:

16           (1) Cooperate with federal, state, and local governments and  
 17 agencies in the coordination of programs to make the best use of  
 18 Indiana resources.

19           (2) Receive and expend funds, grants, gifts, and contributions of  
 20 money, property, labor, interest accrued from loans made by the  
 21 corporation, and other things of value from public and private  
 22 sources, including grants from agencies and instrumentalities of  
 23 the state and the federal government. The corporation:

24           (A) may accept federal grants for providing planning  
 25 assistance, making grants, or providing other services or  
 26 functions necessary to political subdivisions, planning  
 27 commissions, or other public or private organizations;

28           (B) shall administer these grants in accordance with the terms  
 29 of the grants; and

30           (C) may contract with political subdivisions, planning  
 31 commissions, or other public or private organizations to carry  
 32 out the purposes for which the grants were made.

33           (3) Direct that assistance, information, and advice regarding the  
 34 duties and functions of the corporation be given to the corporation  
 35 by an officer, agent, or employee of the executive branch of the  
 36 state. The head of any other state department or agency may  
 37 assign one (1) or more of the department's or agency's employees  
 38 to the corporation on a temporary basis or may direct a division  
 39 or an agency under the department's or agency's supervision and  
 40 control to make a special study or survey requested by the  
 41 corporation.

42           (b) The corporation shall perform the following duties:

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- 1 (1) Develop and implement industrial development programs to
- 2 encourage expansion of existing industrial, commercial, and
- 3 business facilities in Indiana and to encourage new industrial,
- 4 commercial, and business locations in Indiana.
- 5 (2) Assist businesses and industries in acquiring, improving, and
- 6 developing overseas markets and encourage international plant
- 7 locations in Indiana. The corporation, with the approval of the
- 8 governor, may establish foreign offices to assist in this function.
- 9 (3) Promote the growth of minority business enterprises by doing
- 10 the following:
- 11 (A) Mobilizing and coordinating the activities, resources, and
- 12 efforts of governmental and private agencies, businesses, trade
- 13 associations, institutions, and individuals.
- 14 (B) Assisting minority businesses in obtaining governmental
- 15 or commercial financing for expansion or establishment of
- 16 new businesses or individual development projects.
- 17 (C) Aiding minority businesses in procuring contracts from
- 18 governmental or private sources, or both.
- 19 (D) Providing technical, managerial, and counseling assistance
- 20 to minority business enterprises.
- 21 (4) Assist the office of the lieutenant governor in:
- 22 (A) community economic development planning;
- 23 (B) implementation of programs designed to further
- 24 community economic development; and
- 25 (C) the development and promotion of Indiana's tourist
- 26 resources.
- 27 (5) Assist the secretary of agriculture and rural development in
- 28 promoting and marketing of Indiana's agricultural products and
- 29 provide assistance to the director of the Indiana state department
- 30 of agriculture.
- 31 (6) With the approval of the governor, implement federal
- 32 programs delegated to the state to carry out the purposes of this
- 33 article.
- 34 (7) Promote the growth of small businesses by doing the
- 35 following:
- 36 (A) Assisting small businesses in obtaining and preparing the
- 37 permits required to conduct business in Indiana.
- 38 (B) Serving as a liaison between small businesses and state
- 39 agencies.
- 40 (C) Providing information concerning business assistance
- 41 programs available through government agencies and private
- 42 sources.

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(8) Establish a public information page on its current Internet site on the world wide web. The page must provide the following:

~~(A) By program, cumulative information on the total amount of incentives awarded, the total number of companies that received the incentives and were assisted in a year, and the names and addresses of those companies.~~

**(A) The job creation incentives and compliance report required by IC 5-28-28-5.**

(B) A mechanism on the page whereby the public may request further information online about specific programs or incentives awarded.

(C) A mechanism for the public to receive an electronic response.

(c) The corporation may do the following:

(1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.

(2) Plan, direct, and conduct research activities.

(3) Assist in community economic development planning and the implementation of programs designed to further community economic development.

SECTION 11. IC 5-28-6-6, AS ADDED BY P.L.110-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The corporation shall require an applicant for a job creation incentive to be granted by the corporation after March 31, 2010, to enter into ~~an~~ **a job creation incentive** agreement with the corporation as a condition of receiving the incentive. Subject to IC 5-28-28-8, the agreement must include the following requirements:

(1) The number of individuals that are expected to be employed by the applicant.

(2) A requirement that the applicant will file with the compliance officer an annual compliance report ~~detailing the applicant's compliance, or progress toward compliance, with subdivision (1).~~ **as required by IC 5-28-28-10.**

(3) A provision that notifies the applicant that the applicant is subject to a determination of the corporation under this subdivision. The corporation, after a finding that the applicant is employing fewer individuals than the applicant agreed to employ under subdivision (1), subject to any confidentiality laws, shall hold a hearing to determine if the applicant shall be required to pay back to the state a part of the incentive granted to the applicant under the agreement. The penalty imposed must be a

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- 1 matter of public record and must reflect in a fair and balanced
- 2 way the amount of incentive received.
- 3 (4) A **requirement recapture provision requiring that** the
- 4 applicant ~~will to~~ pay back to the state the **job creation** incentive
- 5 that has been received by the applicant if the applicant:
- 6 (A) moves or closes;
- 7 (B) **does not make the level of capital investment specified**
- 8 **by the applicant in the application for the job creation**
- 9 **incentive;**
- 10 (C) **employs fewer individuals than specified by the**
- 11 **applicant in the application for the job creation incentive;**
- 12 **or**
- 13 (D) **pays less in wages than specified by the applicant in the**
- 14 **application for the job creation incentive.**

15 SECTION 12. IC 5-28-28-5, AS ADDED BY P.L.222-2007,  
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2011]: Sec. 5. (a) Beginning February 1, 2008, the corporation  
 18 shall:

- 19 (1) ~~submit an economic~~ **prepare an annual job creation**
- 20 ~~incentives and compliance report for submission to:~~
- 21 (A) the governor; and
- 22 (B) the legislative council in an electronic format under
- 23 IC 5-14-6; and
- 24 (2) publish the report on the corporation's **and on the Indiana**
- 25 **transparency portal** Internet web site.

26 ~~on the schedule specified in subsection (b).~~

27 (b) ~~Before August 2, 2009, the corporation shall submit and publish~~  
 28 ~~before February 1 and August 1 of each year an incentives and~~  
 29 ~~compliance report that covers the six (6) month period that ends one~~  
 30 ~~(1) month before the report is due. After August 1, 2009, The~~  
 31 ~~corporation shall submit and publish before August 1 of each year an~~  
 32 **the job creation** incentives and compliance report that **covers under**  
 33 **subsection (a) before August 1 of each year. The report must cover**  
 34 **the twelve (12) month period that ends one (1) month before the report**  
 35 **is due: immediately preceding July 1 through June 30 period.**

36 SECTION 13. IC 5-28-28-6, AS ADDED BY P.L.222-2007,  
 37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2011]: Sec. 6. The **economic job creation** incentives and  
 39 compliance report required under section 5 of this chapter must include  
 40 at least the following:

- 41 (1) The total amount of each of the following:
- 42 (A) Tax credits approved or awarded by the corporation,

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1 including the aggregate amount of uncollected or diverted  
 2 state tax revenues resulting from each tax credit, as  
 3 reported to the department of state revenue on tax returns  
 4 filed during the state fiscal year that ends immediately  
 5 before the due date of the report. Before July 15 each year,  
 6 the department of state revenue shall submit to the  
 7 corporation the information necessary for the corporation  
 8 to include these aggregate amounts in the corporation's  
 9 report.

10 (B) Loans made by the corporation.

11 (C) Grants made by the corporation.

12 (2) With respect to each recipient of a tax credit, loan, or grant  
 13 referred to in subdivision (1):

14 (A) The name and address of the recipient.

15 (B) The amount of the tax credit, loan, or grant.

16 (C) The purpose of the tax credit, loan, or grant.

17 (D) Representations of the following made by the recipient at  
 18 the time of application for the tax credit, loan, or grant:

19 (i) Numbers of employees to be hired, retained, or trained.

20 (ii) Certification by the corporation that each recipient is  
 21 meeting the program requirements and representations made  
 22 in the recipient's application concerning the wages and  
 23 compensation provided to employees who have been or are  
 24 to be hired, trained, or retrained.

25 (iii) Other benefits to be provided to employees to be hired,  
 26 retained, or trained.

27 (E) The extent to which the recipient has complied with the  
 28 representations referred to in clause (D).

29 (3) **A summary of the information submitted by certified  
 30 technology parks as part of the corporation's review under  
 31 IC 36-7-32-11.**

32 (4) **All data in all of the compliance reports submitted under  
 33 section 10 of this chapter.**

34 (5) **By program, cumulative information on the total amount  
 35 of job creation incentives awarded, the total number of  
 36 companies that received the job creation incentives and were  
 37 assisted in a year, and the names and addresses of those  
 38 companies.**

39 SECTION 14. IC 5-28-28-7, AS AMENDED BY P.L.110-2010,  
 40 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2011]: Sec. 7. (a) If, in the course of compiling information to  
 42 complete a **job creation incentives and compliance** report required by

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

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, the corporation shall seek a refund or arrange other  
 28 methods of reclaiming the value of the incentive granted by the  
 29 corporation from the recipient. The amount of the refund or reclaimed  
 30 part must be in proportion to the degree of default by the recipient as  
 31 determined by the corporation.

32 SECTION 15. IC 5-28-28-8, AS ADDED BY P.L.110-2010,  
 33 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2011]: Sec. 8. (a) As used in this section, "recapture  
 35 provision" means language that requires the recipient of ~~an~~ **a job**  
 36 **creation** incentive to repay some part of the incentive.

37 (b) The corporation may waive or modify a recapture provision of  
 38 this article or an agreement made with a person to whom the  
 39 corporation has awarded ~~an~~ **a job creation** incentive if the corporation  
 40 determines that the recipient of ~~an~~ **the** incentive awarded by the  
 41 corporation has failed to meet a condition for receiving the incentive  
 42 because of circumstances beyond the recipient's control, including:

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- 1 (1) natural disaster;
- 2 (2) unforeseen industry trends;
- 3 (3) lack of available labor force;
- 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 16. IC 5-28-28-9, AS ADDED BY P.L.110-2010,  
 8 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2011]: Sec. 9. (a) Beginning in 2010, the ~~economic job~~  
 10 **creation** incentives and compliance report required under section 5 of  
 11 this chapter must include ~~an annual report~~ **a part** containing a  
 12 summary **of annual** statistics on the effectiveness of and compliance  
 13 with all incentives granted by the corporation. The **part of the job**  
 14 **creation incentives and compliance** report required by this section  
 15 must describe:

- 16 (1) the overall compliance with the terms and conditions of
- 17 incentives provided; and
- 18 (2) penalties imposed for failure to comply with the terms and
- 19 conditions of incentives provided, **including a description of the**
- 20 **outcomes and effectiveness of recapture provisions, organized**
- 21 **by the job creation incentive program, along with at least the**
- 22 **following information:**
- 23 **(A) The total number of companies receiving a job creation**
- 24 **incentive.**
- 25 **(B) The total number of recipients in violation of a job**
- 26 **creation incentive agreement.**
- 27 **(C) The total number of recapture efforts initiated.**
- 28 **(D) The total number of recapture efforts completed.**
- 29 **(E) The number of recapture waivers granted.**

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

32 (b) Upon request, the corporation shall make available **as a public**  
 33 **record under IC 5-14-3:**

- 34 (1) information specifying each person's compliance with its
- 35 incentive agreement and any incentive that had to be reduced or
- 36 paid back as a result of noncompliance with an incentive
- 37 agreement;
- 38 (2) information stating, for each incentive recipient, the total
- 39 incentive provided for each job created, computed from the date
- 40 the incentive is granted through June 30 of the year of the report;
- 41 (3) information concerning all waivers or modifications under
- 42 section 8 of this chapter; and

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1 (4) information describing all hearings and determinations under  
2 IC 5-28-6-6.

3 SECTION 17. IC 5-28-28-10 IS ADDED TO THE INDIANA  
4 CODE AS A NEW SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) Before July 15 each year,**  
6 **each recipient of a job creation incentive shall submit to the**  
7 **corporation an annual compliance report covering the immediately**  
8 **preceding July 1 through June 30 period. A recipient that is a**  
9 **party to multiple job creation incentive agreements for a single**  
10 **project site may file a consolidated compliance report. A**  
11 **compliance report must include at least the following information:**

12 (1) Each application tracking number.

13 (2) The recipient's:

14 (A) office mailing address;

15 (B) telephone number; and

16 (C) six (6) digit North American Industry Classification  
17 System (NAICS) code assigned to industries in the NAICS  
18 Manual of the United States Office of Management and  
19 Budget;

20 and the name of the recipient's chief officer or authorized  
21 designee for the specific project site for which the job creation  
22 incentive was approved.

23 (3) The job creation incentive program and value of the job  
24 creation incentive that was approved by the corporation.

25 (4) The total number of the recipient's employees at the  
26 specific project site on the date on which the application was  
27 submitted to the corporation, and total number of the  
28 recipient's employees at the specific project site on the date of  
29 the report, including, for each date:

30 (A) the number of employees with full-time, permanent  
31 jobs;

32 (B) the number of employees with part-time jobs; and

33 (C) the number of employees with temporary jobs;

34 and a computation of the increase or decrease in the number  
35 of employees within each category set forth in clauses (A)  
36 through (C) between the date of submission of the application  
37 and the date of the report.

38 (5) The number of:

39 (A) jobs for new employees that the recipient promised in  
40 the job creation incentive agreement it would create; and

41 (B) jobs for retained employees that the recipient promised  
42 in the job creation incentive agreement it would preserve;

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broken down by full-time, permanent jobs, part-time jobs, and temporary jobs.

(6) A declaration of whether the recipient is in compliance with each term and condition of the job creation incentive agreement.

(7) The following for the full-time, permanent jobs that the recipient created or retained as a result of the job creation incentive:

(A) A detailed list of:

(i) the occupations; or

(ii) job classifications;

of the jobs.

(B) A schedule of the starting dates for the new employees hired for the jobs.

(C) The actual average wage paid to the employees with the jobs, broken down by occupation or job classification.

(D) The total payroll for the new employees and retained employees with these jobs.

(8) A narrative, if necessary, stating whether and, if so, how the recipient's use of the job creation incentive during the reporting year has reduced unemployment at any site in Indiana.

(9) A certification by the chief officer of the recipient or the chief officer's authorized designee that the information in the compliance report contains no knowing misrepresentation of material facts upon which eligibility for the job creation incentive is based.

(10) Any other information the corporation considers necessary to ensure compliance with a job creation incentive program.

(b) The corporation may verify information contained in the recipient's compliance report, including inspecting the specific project site and inspecting the records of the recipient that relate to the job creation incentive agreement.

(c) If a recipient of a job creation incentive fails to comply with subsection (a), the corporation shall suspend all current job creation incentives being provided to the recipient, effective the immediately following October 1. In addition, the corporation is prohibited from completing any current job creation incentive or providing any future job creation incentive until the corporation receives proof that the recipient has complied with subsection (a).

SECTION 18. IC 6-3.1-13.5-12, AS AMENDED BY P.L.4-2005,

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1 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2011]: Sec. 12. (a) If a taxpayer receives a credit under this  
3 chapter, the equipment, machinery, facilities improvements, facilities,  
4 buildings, or foundations for which the credit was granted must be fully  
5 installed or completed not more than five (5) years after the corporation  
6 issues a letter under section 10 of this chapter certifying that the  
7 taxpayer is entitled to claim the credit.

8 (b) If a taxpayer receives a credit under this chapter and does not  
9 make the qualified investment (or a part of the qualified investment)  
10 for which the credit was granted within the time required by subsection  
11 (a), the corporation ~~may~~ **shall** require the taxpayer to repay the  
12 following:

13 (1) The additional amount of state tax liability that would have  
14 been paid by the taxpayer if the credit had not been granted for  
15 the qualified investment (or part of the qualified investment) that  
16 was not made by the taxpayer within the time required by  
17 subsection (a).

18 (2) Interest at a rate established under IC 6-8.1-10-1(c) on the  
19 additional amount of state tax liability referred to in subdivision  
20 (1).

21 SECTION 19. IC 6-3.1-32-19, AS ADDED BY P.L.235-2007,  
22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2011]: Sec. 19. (a) If a taxpayer (or any successor in interest  
24 of the taxpayer) fails to satisfy any condition of this chapter or any  
25 condition in an agreement under section 13 of this chapter, or fails to  
26 file tax returns as required by section 18 of this chapter, the corporation  
27 ~~may~~ **shall**:

28 (1) disallow the use of all or a part of any unused tax credit  
29 granted to the taxpayer (or any successor in interest of the  
30 taxpayer) under this chapter;

31 (2) recapture all or a part of the tax credit under this chapter that  
32 has been applied to the state tax liability of the taxpayer (or any  
33 successor in interest of the taxpayer); or

34 (3) both disallow the tax credit under subdivision (1) and  
35 recapture the tax credit under subdivision (2).

36 (b) A taxpayer may not receive a credit under this chapter unless the  
37 taxpayer:

38 (1) consents that the taxpayer (and any successor in interest of the  
39 taxpayer) will be subject to the jurisdiction of Indiana courts;

40 (2) consents that service of process in accordance with the Indiana  
41 Rules of Trial Procedure is proper service and subjects the  
42 taxpayer (and any successor in interest of the taxpayer) to the

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1 jurisdiction of Indiana courts; and  
2 (3) consents that any civil action related to the provisions of this  
3 chapter and in which the taxpayer (or any successor in interest of  
4 the taxpayer) is a party will be heard in an Indiana court.  
5 SECTION 20. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE JULY  
6 1, 2011].

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