

SENATE BILL No. 325

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3-4.4; IC 23-1; IC 23-17; IC 30-4.

Synopsis: Local development agreements. Requires certain disclosures from a business corporation, nonprofit corporation, charitable trust, or trust for a benevolent public purpose that receives payments under a development agreement. Provides that certain information disclosed by a recipient is not subject to access as a public record.

Effective: July 1, 2011.

Banks, Delph, Kruse

January 10, 2011, read first time and referred to Committee on Public Policy.

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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. 325



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 5-14-3-4.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 4.4. (a) Except as provided in subsection (b),**
4 **disbursement information contained in a report prepared under**
5 **IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e) and provided**
6 **to the attorney general under IC 23-1-53-1(d), IC 23-17-27-6(d), or**
7 **IC 30-4-5-12(f) is excepted from section 3 of this chapter if both of**
8 **the following apply:**

9 (1) **The disbursement was made with respect to negotiations**
10 **with an industrial, research, or commercial prospect to**
11 **persuade the prospect to invest in the locality, to build or**
12 **relocate a business or organization in the locality, or to**
13 **perform or provide other economic development services or**
14 **benefits for the locality.**

15 (2) **The person required to prepare the annual report under**
16 **IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e) specifies**
17 **in the annual report that the disbursement was made for a**



1 purpose set forth in subdivision (1) and requests that it be
2 excepted from section 3 of this chapter.

3 **(b) The exception provided under subsection (a) does not apply**
4 **if:**

5 **(1) the attorney general determines that a violation of**
6 **applicable state or federal law relating to the disbursement**
7 **has occurred and the attorney general takes enforcement**
8 **action under the applicable law; or**

9 **(2) the attorney general, in furtherance of an investigation,**
10 **refers the disbursement information to a state, federal, or**
11 **local law enforcement agency or a government agency with**
12 **responsibility for enforcement of state or federal law or a**
13 **local ordinance, and the agency receiving the disbursement**
14 **information from the attorney general determines that a**
15 **violation of applicable law has occurred and takes**
16 **enforcement action under the applicable law or ordinance.**

17 SECTION 2. IC 23-1-20-6.1 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2011]: **Sec. 6.1. "Development agreement" means an agreement**
20 **that:**

21 **(1) is between:**
22 **(A) the direct or indirect holder of an owner's license**
23 **issued under IC 4-33 or an operating agent contract (as**
24 **defined in IC 4-33-2-14.6); and**

25 **(B) either:**
26 **(i) a person; or**
27 **(ii) a unit of local government; and**

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

30 SECTION 3. IC 23-1-20-6.2 IS ADDED TO THE INDIANA CODE
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
32 1, 2011]: **Sec. 6.2. "Development agreement payment" means any**
33 **payment that a direct or indirect holder of:**

34 **(1) an owner's license under IC 4-33; or**
35 **(2) an operating agent contract (as defined in IC 4-33-2-14.6);**
36 **is required to make under a development agreement.**

37 SECTION 4. IC 23-1-53-1 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1. (a) On written**
39 **request of any shareholder, a corporation shall prepare and mail to the**
40 **shareholder annual financial statements, which may be consolidated or**
41 **combined statements of the corporation and one (1) or more of its**
42 **subsidiaries, as appropriate, that include a balance sheet as of the end**

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1 of the fiscal year most recently completed, an income statement for that
 2 year, and a statement of changes in shareholders' equity for that year
 3 unless that information appears elsewhere in the financial statements.
 4 If financial statements are prepared for the corporation on the basis of
 5 generally accepted accounting principles, the annual financial
 6 statements must also be prepared on that basis.

7 (b) If the annual financial statements are reported upon by a public
 8 accountant, the public accountant's report must accompany them. If
 9 not, the statements must be accompanied by a statement of the
 10 president or the person responsible for the corporation's accounting
 11 records:

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

18 **(c) If a corporation is a recipient of a local development**
 19 **agreement payment, the corporation shall prepare an annual**
 20 **report containing the following information before February 1 of**
 21 **each year:**

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

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

- 29 **(A) the legal name of each recipient of a disbursement;**
 30 **(B) the date of each disbursement;**
 31 **(C) the amount of each disbursement; and**
 32 **(D) the purpose of each disbursement.**

33 **(d) The principal officer of a corporation subject to subsection**
 34 **(c) shall annually, before March 1 of each year, file with the**
 35 **attorney general a verified written certification stating that an**
 36 **annual report has been prepared containing at least the items listed**
 37 **in subsection (c). The certification must state that the annual**
 38 **report is available to the attorney general upon request.**

39 SECTION 5. IC 23-17-2-15.1 IS ADDED TO THE INDIANA
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2011]: **Sec. 15.1. "Development agreement"**
 42 **means an agreement that:**

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1 **(1) is between:**
2 **(A) the direct or indirect holder of an owner's license**
3 **issued under IC 4-33 or an operating agent contract (as**
4 **defined in IC 4-33-2-14.6); and**
5 **(B) either:**
6 **(i) a person; or**
7 **(ii) a unit of local government; and**
8 **(2) sets forth the holder's financial commitments to support**
9 **economic development in a unit or a geographic region.**
10 SECTION 6. IC 23-17-2-15.2 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2011]: **Sec. 15.2. "Development agreement**
13 **payment" means any payment that a direct or indirect holder of:**
14 **(1) an owner's license under IC 4-33; or**
15 **(2) an operating agent contract (as defined in IC 4-33-2-14.6);**
16 **is required to make under a development agreement.**
17 SECTION 7. IC 23-17-27-6 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Except as
19 provided in articles of incorporation or bylaws of a religious
20 corporation, a corporation upon written demand from a member shall
21 furnish the member the corporation's latest annual financial statements,
22 which may be consolidated or combined statements of the corporation
23 and the corporation's subsidiaries or affiliates, as appropriate, that
24 include a balance sheet as of the end of the fiscal year and statement of
25 operations for that year. If financial statements are prepared for the
26 corporation on the basis of generally accepted accounting principles,
27 the annual financial statements must also be prepared on that basis.
28 (b) If annual financial statements are reported upon by a certified
29 public accountant, the accountant's report must accompany the
30 statements. If annual financial statements are not reported upon by a
31 certified public accountant, the statements must be accompanied by the
32 statement of the president or the person responsible for the
33 corporation's financial accounting records that does the following:
34 (1) States the president's or other person's reasonable belief as to
35 whether the statements were prepared on the basis of generally
36 accepted accounting principles and, if not, describes the basis of
37 preparation.
38 (2) Describes any respects in which the statements were not
39 prepared on a basis of accounting consistent with the statements
40 prepared for the preceding year.
41 **(c) If a corporation is a recipient of a local development**
42 **agreement payment, the corporation shall prepare an annual**

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1 report containing the following information before February 1 of
2 each year:

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

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

10 (A) the legal name of each recipient of a disbursement;

11 (B) the date of each disbursement;

12 (C) the amount of each disbursement; and

13 (D) the purpose of each disbursement.

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

20 SECTION 8. IC 30-4-1-2, AS AMENDED BY P.L.61-2008,
21 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2011]: Sec. 2. As used in this article:

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

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

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

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

33 (5) "Charitable trust" means a trust in which all the beneficiaries
34 are the general public or organizations, including trusts,
35 corporations, and associations, and that is organized and operated
36 wholly for religious, charitable, scientific, public safety testing,
37 literary, or educational purposes. The term does not include
38 charitable remainder trusts, charitable lead trusts, pooled income
39 funds, or any other form of split-interest charitable trust that has
40 at least one (1) noncharitable beneficiary.

41 (6) "Court" means a court having jurisdiction over trust matters.

42 (7) "Development agreement" means an agreement that:

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(A) is between:
(i) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and
(ii) either a person or a unit of local government; and
(B) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

(8) "Development agreement payment" means any payment that a direct or indirect holder of:

- (A) an owner's license under IC 4-33; or**
- (B) an operating agent contract (as defined in IC 4-33-2-14.6);**

is required to make under a development agreement.

~~(7)~~ **(9) "Income",** except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

~~(8)~~ **(10) "Income beneficiary"** has the meaning set forth in IC 30-2-14-5.

~~(9)~~ **(11) "Inventory value"** means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

~~(10)~~ **(12) "Minor"** means any person under the age of eighteen (18) years.

~~(11)~~ **(13) "Person"** has the meaning set forth in IC 30-2-14-9.

~~(12)~~ **(14) "Personal representative"** means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

~~(13)~~ **(15) "Principal"** has the meaning set forth in IC 30-2-14-10.

~~(14)~~ **(16) "Qualified beneficiary"** means:

- (A) a beneficiary who, on the date the beneficiary's qualification is determined:**
 - (i) is a distributee or permissible distributee of trust income or principal;**
 - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;**
 - (iii) would be a distributee or permissible distributee of trust**

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1 income or principal if the trust terminated on that date;
 2 (iv) has sent the trustee a request for notice;
 3 (v) is a charitable organization expressly designated to
 4 receive distributions under the terms of a charitable trust;
 5 (vi) is a person appointed to enforce a trust for the care of an
 6 animal under IC 30-4-2-18; or
 7 (vii) is a person appointed to enforce a trust for a
 8 noncharitable purpose under IC 30-4-2-19; or
 9 (B) the attorney general, if the trust is a charitable trust having
 10 its principal place of administration in Indiana.
 11 ~~(15)~~ (17) "Remainderman" means a beneficiary entitled to
 12 principal, including income which has been accumulated and
 13 added to the principal.
 14 ~~(16)~~ (18) "Settlor" means a person who establishes a trust
 15 including the testator of a will under which a trust is created.
 16 ~~(17)~~ (19) "Trust estate" means the trust property and the income
 17 derived from its use.
 18 ~~(18)~~ (20) "Trust for a benevolent public purpose" means a
 19 charitable trust (as defined in subdivision (5)), a split-interest
 20 trust (as defined in Section 4947 of the Internal Revenue Code),
 21 a perpetual care fund or an endowment care fund established
 22 under IC 23-14-48-2, a prepaid funeral plan or funeral trust
 23 established under IC 30-2-9, a funeral trust established under
 24 IC 30-2-10, a trust or an escrow account created from payments
 25 of funeral, burial services, or merchandise in advance of need
 26 described in IC 30-2-13, and any other form of split-interest
 27 charitable trust that has both charitable and noncharitable
 28 beneficiaries, including but not limited to charitable remainder
 29 trusts, charitable lead trusts, and charitable pooled income funds.
 30 ~~(19)~~ (21) "Trust property" means property either placed in trust or
 31 purchased or otherwise acquired by the trustee for the trust
 32 regardless of whether the trust property is titled in the name of the
 33 trustee or the name of the trust.
 34 ~~(20)~~ (22) "Trustee" has the meaning set forth in IC 30-2-14-13.
 35 SECTION 9. IC 30-4-5-12 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (Accounting by
 37 Trustees)
 38 (a) Unless the terms of the trust provide otherwise or unless waived
 39 in writing by an adult, competent beneficiary, the trustee shall deliver
 40 a written statement of accounts to each income beneficiary or ~~his~~ **the**
 41 **beneficiary's** personal representative annually. The statement shall
 42 contain at least:

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1 (1) all receipts and disbursements since the last statement; and
 2 (2) all items of trust property held by the trustee on the date of the
 3 statement at their inventory value.
 4 (b) This subsection applies to a charitable trust with assets of at least
 5 five hundred thousand dollars (\$500,000). The trustee of a charitable
 6 trust shall annually file a verified written certification with the attorney
 7 general stating that a written statement of accounts has been prepared
 8 showing at least the items listed in section 13(a) of this chapter. The
 9 certification must state that the statement of accounts is available to the
 10 attorney general and any member of the general public upon request.
 11 A charitable trust may not be exempted from this requirement by a
 12 provision in a will, trust agreement, indenture, or other governing
 13 instrument. This subsection does not prevent a trustee from docketing
 14 a charitable trust to finalize a written statement of account or any other
 15 lawful purpose in the manner provided in this article. However, this
 16 subsection does not apply to an organization that is not required to file
 17 a federal information return under Section 6033(a)(2)(A)(i) or Section
 18 6033(a)(2)(A)(ii) of the Internal Revenue Code.
 19 (c) Upon petition by the settlor, a beneficiary or ~~his~~ **the**
 20 **beneficiary's** personal representative, a person designated by the
 21 settlor to have advisory or supervisory powers over the trust, or any
 22 other person having an interest in the administration or the benefits of
 23 the trust, including the attorney general in the case of a trust for a
 24 benevolent public purpose, the court may direct the trustee to file a
 25 verified written statement of accounts showing the items listed in
 26 section 13(a) of this chapter. The petition may be filed at any time,
 27 provided, however, that the court will not, in the absence of good cause
 28 shown, require the trustee to file a statement more than once a year.
 29 (d) If the court's jurisdiction is of a continuing nature as provided in
 30 IC 30-4-6-2, the trustee shall file a verified written statement of
 31 accounts containing the items shown in section 13(a) of this chapter
 32 with the court biennially, and the court may, on its own motion, require
 33 the trustee to file such a statement at any other time provided there is
 34 good cause for requiring a statement to be filed.
 35 **(e) If a charitable trust or trust for a benevolent public purpose**
 36 **is a recipient of a local development agreement payment, the**
 37 **trustee shall, before February 1 of each year, prepare an annual**
 38 **report containing the following information:**
 39 **(1) A verified accounting of all accounts associated with local**
 40 **development agreement payments received in the preceding**
 41 **calendar year.**
 42 **(2) An itemized list of all disbursements of local development**

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1 **agreement payments exceeding five thousand dollars (\$5,000)**
2 **in the aggregate made to any person during the preceding**
3 **calendar year. The itemized list must include:**
4 **(A) the legal name of each recipient of a disbursement;**
5 **(B) the date of each disbursement;**
6 **(C) the amount of each disbursement; and**
7 **(D) the purpose of each disbursement.**
8 **(f) The trustee of a trust subject to subsection (e) shall annually**
9 **file with the attorney general a verified written certification before**
10 **March 1 stating that an annual report has been prepared**
11 **containing at least the items listed in subsection (e). The**
12 **certification must state that the annual report is available to the**
13 **attorney general upon request.**

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