
SENATE BILL No. 435

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-21; IC 4-4; IC 5-28-29.

Synopsis: Capital access program and agency evaluations. Provides that the legislative evaluation and oversight policy committee shall evaluate various state agencies and programs on a schedule beginning in 2011 and ending in 2025. Provides that in 2011 the committee shall evaluate agencies and programs with commerce matters as their major function, including the Indiana economic development corporation (IEDC). Provides that any savings resulting from a committee recommendation regarding a commerce agency or program must be used for the capital access program. Moves the administration of the capital access program from the Indiana economic development corporation to the Indiana finance authority.

Effective: July 1, 2011.

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January 12, 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. 435



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 2-5-21-10 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) Subject to
3 subsection (c), the chairman of the council, with the advice of the vice
4 chairman of the council, shall appoint a committee to evaluate each of
5 the following:

- 6 (1) Agencies and programs with highway or transportation
7 matters as their major function during ~~1994~~: **2012**.
- 8 (2) Agencies and programs with occupational licensing as their
9 major function during ~~1995~~: **2013**.
- 10 (3) Agencies and programs with commerce matters as their major
11 function during ~~1996~~: **2011**. **The committee and subcommittee**
12 **shall include in the evaluation all programs administered by**
13 **the Indiana economic development corporation established by**
14 **IC 5-28-3-1**.
- 15 (4) Agencies and programs with agricultural matters as their
16 major function during ~~1997~~: **2014**.
- 17 (5) Agencies and programs with human resources or economic



- 1 security as their major function during ~~1998~~. **2015.**
- 2 (6) Agencies and programs with management or administration
- 3 as their major function during ~~1999~~. **2016.**
- 4 (7) Agencies and programs with corrections or judicial matters as
- 5 their major function during ~~2000~~. **2017.**
- 6 (8) Agencies and programs with public safety matters as their
- 7 major function during ~~2001~~. **2018.**
- 8 (9) Agencies and programs with education matters as their major
- 9 function during ~~2002~~. **2019.**
- 10 (10) Agencies and programs with human services as their major
- 11 function during ~~2003~~. **2020.**
- 12 (11) Agencies and programs with labor matters as their major
- 13 function during ~~2004~~. **2021.**
- 14 (12) Agencies and programs with taxation or finance as their
- 15 major function during ~~2005~~. **2022.**
- 16 (13) Agencies and programs with business regulation as their
- 17 major function during ~~2006~~. **2023.**
- 18 (14) Agencies and programs with health matters as their major
- 19 function during ~~2007~~. **2024.**
- 20 (15) Agencies and programs with natural resources or recreation
- 21 as their major function during ~~2008~~. **2025.**
- 22 (b) The committee shall be appointed before July 1 of the year the
- 23 agencies and programs are required to be evaluated under this section.
- 24 (c) The council by resolution may do any of the following with
- 25 respect to agencies and programs evaluated under this section:
- 26 (1) Require evaluation of agencies and programs in an order
- 27 different from the order specified in subsection (a).
- 28 (2) Assign specific topics or issues for audit and evaluation by
- 29 staff and a committee.
- 30 (3) Assign areas for audit and evaluation in classifications
- 31 different from the areas described in subsection (a).
- 32 SECTION 2. IC 2-5-21-14 IS AMENDED TO READ AS
- 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) Subject to the
- 34 direction of the subcommittee, a committee shall do the following
- 35 during the year the committee is appointed to evaluate agencies and
- 36 programs:
- 37 (1) Review audit reports.
- 38 (2) Take testimony regarding audit reports and other areas the
- 39 committee considers related to the committee's work.
- 40 (3) Make recommendations for legislation.
- 41 (4) Make recommendations for administrative changes.
- 42 (b) **With respect to an agency or program with commerce**

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1 matters as a major function, including the Indiana economic
 2 development corporation established by IC 5-28-3-1, the committee
 3 shall include with any recommendation for legislation or
 4 administrative change, an estimate of the amount of state fund
 5 savings that would result from implementing the recommendation.
 6 If such a recommendation results in any savings to a state fund, as
 7 determined by the state budget agency, the amount of the savings
 8 shall be transferred from the state fund to which the savings are
 9 attributable to the capital access account referred to in
 10 IC 5-28-29-4.

11 SECTION 3. IC 4-4-10.9-1.2, AS AMENDED BY P.L.1-2010,
 12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2011]: Sec. 1.2. "Affected statutes" means all statutes that
 14 grant a power to or impose a duty on the authority, including but not
 15 limited to IC 4-4-11, IC 4-4-11.4, IC 4-4-11.6, IC 4-4-21, IC 4-13.5,
 16 IC 5-1-16, IC 5-1-16.5, IC 5-28-29, IC 8-9.5, IC 8-14.5, IC 8-15,
 17 IC 8-15.5, IC 8-16, IC 13-18-13, IC 13-18-21, IC 13-19-5, and
 18 IC 14-14.

19 SECTION 4. IC 4-4-11-2.5, AS AMENDED BY P.L.1-2006,
 20 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2011]: Sec. 2.5. (a) The general assembly makes the following
 22 findings of fact in addition to those set forth in section 2 of this chapter:

23 (1) There are currently numerous bodies corporate and politic of
 24 the state, with separate decision making and borrowing authority,
 25 that may issue bonds, notes, and obligations, and otherwise access
 26 the financial markets.

27 (2) Consolidation of this decision making and borrowing authority
 28 may provide economic efficiencies and management synergies
 29 and enable the state to communicate, with a single voice, with the
 30 various participants in the financial markets, including credit
 31 rating agencies, investment bankers, investors, and municipal
 32 bond insurers and other credit enhancers.

33 (b) In addition to the purposes set forth in section 2 of this chapter,
 34 the authority is established for the purpose of permitting the
 35 consolidation of certain bodies in a single body of decision making
 36 concerning access to the capital and financial markets in the name of,
 37 or for the benefit of, the state. **The authority is also best suited to**
 38 **administer the capital access program under IC 5-28-29 because of**
 39 **the authority's expertise in the financial markets.**

40 (c) The authority is authorized to carry out the public purposes
 41 provided for in the affected statutes through a single entity in order to
 42 achieve the purposes of this section.

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1 SECTION 5. IC 5-28-29-1, AS ADDED BY P.L.162-2007,
2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 1. As used in this chapter, "agreement" means an
4 agreement between a lender and the ~~corporation~~ **authority** under which
5 a lender may participate in the program.

6 SECTION 6. IC 5-28-29-2.5 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2011]: **Sec. 2.5. As used in this chapter, "authority" refers to the**
9 **Indiana finance authority created by IC 4-4-11.**

10 SECTION 7. IC 5-28-29-4, AS ADDED BY P.L.162-2007,
11 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 4. As used in this chapter, "capital access
13 account" means an account created by the ~~corporation~~ **authority** for the
14 purposes of the capital access program.

15 SECTION 8. IC 5-28-29-8, AS ADDED BY P.L.162-2007,
16 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2011]: Sec. 8. As used in this chapter, "enrolled loan" means
18 a loan enrolled by the ~~corporation~~ **authority** under the terms of section
19 19 of this chapter.

20 SECTION 9. IC 5-28-29-9, AS ADDED BY P.L.162-2007,
21 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2011]: Sec. 9. As used in this chapter, "lender" means a
23 financial institution (as defined in IC 5-13-4-10) that has entered into
24 an agreement with the ~~corporation~~ **authority** to participate in the
25 program.

26 SECTION 10. IC 5-28-29-12, AS ADDED BY P.L.162-2007,
27 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2011]: Sec. 12. As used in this chapter, "reserve fund" means
29 an account established by the ~~corporation~~ **authority** with funds
30 accumulated under this chapter and to cover claims made by the lender
31 under this chapter.

32 SECTION 11. IC 5-28-29-14, AS ADDED BY P.L.162-2007,
33 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2011]: Sec. 14. The ~~corporation~~ **authority** shall do the
35 following:

- 36 (1) Administer the program.
- 37 (2) Market the program to businesses and other persons in Indiana
38 in cooperation with financial institutions and statewide
39 associations representing financial institutions.
- 40 (3) If the reserve funds are not maintained in an account with the
41 lender, upon execution of an agreement between the lender and
42 the ~~corporation;~~ **authority**, the ~~corporation~~ **authority** shall

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1 establish a reserve fund account at the ~~corporation~~ **authority** for
 2 the lender for the purpose of receiving all required premium
 3 charges to be paid by the lender and the borrower and transfers
 4 made by the ~~corporation~~ **authority** under this chapter. If the
 5 reserve funds are maintained in an account with the lender, upon
 6 execution of an agreement between the lender and the ~~corporation~~
 7 **authority**, the ~~corporation~~ **authority** shall establish a reserve
 8 fund account with the lender in the name of the ~~corporation~~
 9 **authority** for the purpose of receiving all required premium
 10 charges to be paid by the lender and the borrower and transfers
 11 made by the ~~corporation~~ **authority** under this chapter.

12 (4) Develop the program, in cooperation with financial
 13 institutions and statewide associations representing financial
 14 institutions, so that the degree of flexibility for the ~~corporation~~
 15 **authority** and the participating lenders is maximized, the state
 16 oversight of individual loans is minimized, and the fiscal integrity
 17 of the program is maintained.

18 (5) Enter into any contracts necessary to carry out the program.

19 (6) Take any action reasonably necessary to ensure compliance
 20 with the program.

21 SECTION 12. IC 5-28-29-15, AS ADDED BY P.L.162-2007,
 22 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2011]: Sec. 15. A lender is eligible to participate in the
 24 program upon entering into an agreement with the ~~corporation~~
 25 **authority** governing the duties of the ~~corporation~~ **authority** and the
 26 lender under the program. The lender shall provide the ~~corporation~~
 27 **authority** with information regarding the lender's participation in the
 28 program that the ~~corporation~~ **authority** reasonably requires. Upon
 29 notice to the lender, the ~~corporation~~ **authority** may inspect the files of
 30 the lender relating to any loans enrolled under the program during
 31 normal business hours of the lender.

32 SECTION 13. IC 5-28-29-16, AS ADDED BY P.L.162-2007,
 33 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2011]: Sec. 16. Except upon the exercise of the ~~corporation's~~
 35 **authority's** right of subrogation under section 32 of this chapter, the
 36 ~~corporation~~ **authority** has no legal or equitable interest in any
 37 collateral, security, or other right of recovery in connection with any
 38 loan enrolled in the program, and the ~~corporation's~~ **authority's** consent
 39 is not necessary for any amendment to the lender's loan documents.

40 SECTION 14. IC 5-28-29-18, AS ADDED BY P.L.162-2007,
 41 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2011]: Sec. 18. (a) To enroll a loan under the program, the

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1 lender must file a completed loan enrollment form with the ~~corporation~~
2 **authority**. The lender must also certify the following to the ~~corporation~~
3 **authority** as part of the filing:

4 (1) The lender has no substantial reason to believe that the loan
5 is being made to a borrower who does not meet the requirements
6 of section 3 of this chapter.

7 (2) The lender has received from the borrower a written
8 representation, warranty, pledge, and waiver stating that the
9 borrower has no legal, beneficial, or equitable interest in the
10 nonrefundable premium charges or any other funds credited to the
11 reserve fund established to cover losses sustained by the lender on
12 enrolled loans.

13 (3) The loan being filed for enrollment is an eligible loan under
14 section 17 of this chapter.

15 (4) Premium charges required of the borrower and lender under
16 this chapter have been deposited in the reserve fund.

17 (b) The lender shall file the loan enrollment form within ten (10)
18 business days after the lender makes the loan. The date on which the
19 lender makes a loan is the earlier of the date on which the lender first
20 disburses proceeds of the loan to the borrower or the date on which the
21 loan documents have been executed and the lender has obligated itself
22 to disburse proceeds of the loan. The filing date of a loan enrollment
23 form is the date on which the lender does any of the following:

24 (1) Delivers the required documentation to the ~~corporation~~
25 **authority**.

26 (2) Delivers the document to a professional courier service for
27 delivery to the ~~corporation~~ **authority**.

28 (3) Mails the document to the ~~corporation~~ **authority** by certified
29 mail.

30 SECTION 15. IC 5-28-29-19, AS ADDED BY P.L.162-2007,
31 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2011]: Sec. 19. When the ~~corporation~~ **authority** receives a
33 loan enrollment form, the ~~corporation~~ **authority** shall enroll the loan
34 if the information provided under section 18 of this chapter indicates
35 that the loan is an eligible loan. Within five (5) business days after
36 receipt of a loan enrollment form for an eligible loan, the ~~corporation~~
37 **authority** shall deliver to the lender an acknowledgment of enrollment
38 signed by the ~~corporation~~ **authority** or the ~~corporation's~~ **authority's**
39 designee, including documentation of the amount being transferred by
40 the ~~corporation~~ **authority** into the reserve fund under this chapter.

41 SECTION 16. IC 5-28-29-23, AS ADDED BY P.L.162-2007,
42 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 23. Upon execution of an agreement between the
 2 lender and the ~~corporation~~, **authority**, the ~~corporation~~ **authority** shall
 3 establish a reserve fund account with the lender in the name of the
 4 ~~corporation~~ **authority** for the purpose of receiving all required
 5 premium charges to be paid by the lender and the borrower and
 6 transfers made by the ~~corporation~~ **authority** under this chapter.

7 SECTION 17. IC 5-28-29-24, AS ADDED BY P.L.162-2007,
 8 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2011]: Sec. 24. The ~~corporation~~ **authority** may not accept
 10 loans for enrollment in the program if the ~~corporation~~ **authority** does
 11 not have sufficient funds to make the necessary transfer from the
 12 ~~corporation~~ **authority** to the reserve fund under section 25 of this
 13 chapter.

14 SECTION 18. IC 5-28-29-25, AS ADDED BY P.L.162-2007,
 15 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2011]: Sec. 25. The lender shall determine the premium
 17 charges payable to the reserve fund by the lender and the borrower in
 18 connection with a loan filed for enrollment. The premium paid by the
 19 borrower may not be less than one and one-half percent (1.5%) or
 20 greater than three and one-half percent (3.5%) of the amount of the
 21 loan. The premium paid by the lender must be equal to the amount of
 22 the premium paid by the borrower. The lender may recover the cost of
 23 the lender's premium payment from the borrower in any manner on
 24 which the lender and borrower agree. When enrolling a loan, the
 25 ~~corporation~~ **authority** must transfer into the reserve fund from the
 26 account premium amounts determined as follows:

27 (1) If the amount of a loan, plus the amount of loans previously
 28 enrolled by the lender, is less than two million dollars
 29 (\$2,000,000), the premium amount transferred must be equal to
 30 one hundred fifty percent (150%) of the combined premiums paid
 31 into the reserve fund by the borrower and the lender for each
 32 enrolled loan.

33 (2) If, before the enrollment of the loan, the amount of loans
 34 previously enrolled by the lender is equal to or greater than two
 35 million dollars (\$2,000,000), the premium amount transferred
 36 must be equal to the combined premiums paid into the reserve
 37 fund by the borrower and the lender for each enrolled loan.

38 (3) If the total amount of all loans previously enrolled by the
 39 lender is less than two million dollars (\$2,000,000), but the
 40 enrollment of a loan will cause the total amount of all enrolled
 41 loans made by the lender to exceed two million dollars
 42 (\$2,000,000), the ~~corporation~~ **authority** shall transfer into the

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- 1 reserve fund an amount equal to a percentage of the combined
- 2 premiums paid into the reserve fund by the lender and the
- 3 borrower. The percentage is determined as follows:
- 4 STEP ONE: Multiply by one hundred fifty (150) that part of
- 5 the loan that when added to the total amount of all loans
- 6 previously enrolled by the lender totals two million dollars
- 7 (\$2,000,000).
- 8 STEP TWO: Multiply the remaining balance of the loan by
- 9 one hundred (100).
- 10 STEP THREE: Add the STEP ONE product to the STEP TWO
- 11 product.
- 12 STEP FOUR: Divide the STEP THREE sum by the total
- 13 amount of the loan.

14 The ~~corporation~~ **authority** may transfer two (2) times the amount
 15 determined under this section to the reserve fund if the borrower is a
 16 disadvantaged business enterprise (as defined in IC 5-16-6.5-1). The
 17 ~~corporation~~ **authority** may transfer three (3) times the amount
 18 determined under this section to the reserve fund if the borrower is a
 19 high growth company with high skilled jobs (as defined in
 20 IC 5-28-30-4). The ~~corporation~~ **authority** may transfer to the reserve
 21 fund three (3) times the amount determined under this section if the
 22 borrower is a child care facility. Unless money is paid out of the
 23 reserve fund according to the specific terms of this chapter, all money
 24 paid into the reserve account by the lender must remain in that account.

25 SECTION 19. IC 5-28-29-26, AS ADDED BY P.L.162-2007,
 26 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2011]: Sec. 26. (a) All money credited to the reserve fund is
 28 under the exclusive control of the ~~corporation~~ **authority**. The
 29 ~~corporation~~ **authority** may not withdraw money from the reserve fund,
 30 except as specifically provided in this chapter.

31 (b) If money in the reserve fund is not deposited by the ~~corporation~~
 32 **authority** in an account with the lender, the money must be invested
 33 or reinvested by the ~~corporation~~ **authority** in one (1) of the following:

- 34 (1) Direct obligations of the United States, the principal and
- 35 interest of which are unconditionally guaranteed by the United
- 36 States.
- 37 (2) A deposit account at a depository institution whose deposits
- 38 are insured by the Federal Deposit Insurance Corporation or
- 39 National Credit Union Administration.

40 (c) All interest earned in a reserve fund account shall be credited to
 41 that account. Fifty percent (50%) of the interest earned may be
 42 withdrawn by the ~~corporation~~ **authority** from that account and used for

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any purpose.
SECTION 20. IC 5-28-29-27, AS ADDED BY P.L.162-2007, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 27. The ~~corporation~~ **authority** shall pledge the following to the lender:

- (1) The money in the reserve fund will be available to pay claims under section 29 of this chapter.
- (2) The lender will have a first security interest in the money in the reserve fund to pay the claims.
- (3) The ~~corporation~~ **authority** will not encumber or pledge the money to any other party.

SECTION 21. IC 5-28-29-28, AS ADDED BY P.L.162-2007, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 28. (a) If the reserve fund is not maintained with the lender, the ~~corporation~~ **authority** shall provide to the lender quarterly transaction reports indicating the following:

- (1) The balance in the reserve fund.
 - (2) Payments and transfers into the reserve fund.
 - (3) Withdrawals from the reserve fund.
 - (4) Interest or income earned on money credited to the reserve fund.
- (b) The records of the ~~corporation~~ **authority** with respect to all:
- (1) payments and transfers into the reserve fund;
 - (2) withdrawals from the reserve fund; and
 - (3) interest or income earned on the money credited to the reserve fund;

are available to the lender at the offices of the ~~corporation~~ **authority** during normal business hours.

SECTION 22. IC 5-28-29-29, AS ADDED BY P.L.162-2007, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 29. (a) If the lender charges off all or part of an enrolled loan, the lender may file a claim with the ~~corporation~~ **authority**. The claim must be filed contemporaneously with the charge-off.

(b) The lender's claim may include, in addition to the amount of principal charged off plus accrued interest, one-half (1/2) of the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts, including preservation of collateral. The amount of principal included in the claim may not exceed the principal amount covered under the program. The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount.

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1 (c) The lender shall determine when and how much to charge off on
2 an enrolled loan in a manner consistent with the lender's normal
3 method for making these determinations on similar loans that are not
4 enrolled loans.

5 (d) If the lender files two (2) or more claims contemporaneously and
6 there are insufficient funds in the reserve fund at that time to cover the
7 entire amount of the claims, the lender may designate the order of
8 priority in which the ~~corporation~~ **authority** shall pay the claims.

9 SECTION 23. IC 5-28-29-30, AS ADDED BY P.L.162-2007,
10 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2011]: Sec. 30. (a) Upon receipt by the ~~corporation~~ **authority**
12 of a claim filed by the lender, the ~~corporation~~ **authority** shall, within
13 ten (10) business days, pay or authorize the lender to withdraw from
14 the reserve fund the amount of the claim as submitted, unless the
15 ~~corporation~~ **authority** reasonably determines that:

16 (1) the information provided by the lender to the ~~corporation~~
17 **authority** under this chapter was known by the lender to be false;
18 or

19 (2) the lender is not otherwise in substantial compliance with this
20 chapter or the agreement with the ~~corporation~~ **authority**.

21 (b) If there is insufficient money in the reserve fund to cover the
22 entire amount of the lender's claim, the ~~corporation~~ **authority** shall pay
23 to the lender or authorize the lender to withdraw an amount equal to the
24 current balance in the reserve fund, and the following apply:

25 (1) If the enrolled loan for which the claim has been filed is not an
26 early loan, the payment fully satisfies the claim, and the lender
27 has no right to receive any further amount from the reserve fund
28 with respect to that claim.

29 (2) If the enrolled loan for which the claim has been filed is an
30 early loan, the ~~corporation~~ **authority**, upon request of the lender,
31 shall, out of any future funds that are transferred into the reserve
32 fund on subsequently enrolled loans, pay the remaining balance
33 of the claim upon finding that:

34 (A) the partial payment has not satisfied the lender's claim;
35 and

36 (B) the remaining balance of the claim is not greater than
37 seventy-five percent (75%) of the balance in the reserve fund
38 at the time the request for payment by the lender is received by
39 the ~~corporation~~ **authority**.

40 SECTION 24. IC 5-28-29-31, AS ADDED BY P.L.162-2007,
41 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2011]: Sec. 31. If, after payment of a claim by the ~~corporation~~;

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1 **authority**, the lender recovers from a borrower any amount for which
2 payment of the claim was made, the following apply:

3 (1) If the recovered amount, when added to the claim previously
4 paid by the ~~corporation~~ **authority** in connection with an enrolled
5 loan, exceeds the lender's loss on that enrolled loan, the lender
6 shall promptly pay to the ~~corporation~~ **authority** for deposit in the
7 reserve fund the amount of the excess.

8 (2) For purposes of this section and section 32 of this chapter, the
9 lender's loss on an enrolled loan shall be the amount of principal
10 charged off by the lender plus accrued interest plus one-half (1/2)
11 of the reasonable and documented out-of-pocket expenses
12 incurred by the lender in pursuing collection efforts.

13 SECTION 25. IC 5-28-29-32, AS ADDED BY P.L.162-2007,
14 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2011]: Sec. 32. (a) If the payment of a claim has fully covered
16 the lender's loss on an enrolled loan or if the payment of a claim when
17 combined with any recovery from the borrower has fully covered the
18 lender's loss, the ~~corporation~~ **authority**, upon request, is subrogated to
19 the rights of the lender with respect to any collateral, security, or other
20 right of recovery in connection with the loan that has not been realized
21 by the lender. The lender thereafter shall assign to the ~~corporation~~
22 **authority** any right, title, or interest to any collateral, security, or other
23 right of recovery in connection with the loan.

24 (b) If an assignment has been made under subsection (a), the
25 ~~corporation~~ **authority** is not required to undertake the obligations of
26 the lender under the lender's loan documents, except for obligations
27 directly related to the ~~corporation's~~ **authority's** assigned rights of
28 recovery in connection with the loan. The lender shall fulfill any other
29 obligations the lender has under the loan documents in the same
30 manner and to the same degree as would be required if the assignment
31 had not been made. The lender shall provide the ~~corporation~~ **authority**
32 with all reasonable assistance the ~~corporation~~ **authority** requests in
33 proceeding with respect to any collateral, security, or other right of
34 recovery, except that the lender does not need to incur any
35 out-of-pocket expenses.

36 (c) If the ~~corporation~~ **authority** desires to exercise the right of
37 subrogation in connection with an enrolled loan, and would be entitled
38 to exercise that right except that the lender's loss has not been fully
39 covered, the ~~corporation~~ **authority**, at the ~~corporation's~~ **authority's**
40 option, may pay from funds in the reserve fund an amount sufficient to
41 result in the lender's loss being fully covered. A payment under this
42 subsection may cover a principal amount not covered under the

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1 program or not included in the lender's claim. Upon making a payment
 2 under this subsection, the ~~corporation~~ **authority** is subrogated to the
 3 rights of the lender in accordance with subsection (a).

4 (d) Notwithstanding any other provision of this section, the
 5 ~~corporation~~ **authority** may not exercise the right of subrogation unless
 6 the ~~corporation~~ **authority** determines, in the ~~corporation's~~ **authority's**
 7 discretion, that the lender has not exercised reasonable care and
 8 diligence in collection activities with respect to the loan, or that there
 9 is a reasonable basis for believing that the lender will not exercise
 10 reasonable care and diligence in the future with respect to those
 11 collection activities.

12 SECTION 26. IC 5-28-29-33, AS ADDED BY P.L.162-2007,
 13 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2011]: Sec. 33. (a) Before July 16, October 16, January 16,
 15 and April 16 of each year, the lender shall file a quarterly report with
 16 the ~~corporation~~ **authority** indicating the number and total outstanding
 17 balances of all enrolled loans for the period of the three (3) preceding
 18 calendar months. A quarterly report is not required for a quarter that
 19 ends with a balance in the reserve fund of zero (0), except that a
 20 year-end report must be filed before July 16 for the preceding twelve
 21 (12) calendar months ending June 30. In computing the total
 22 outstanding balance of all enrolled loans, the balance of a loan may not
 23 be greater than the covered amount of the loan as enrolled.

24 (b) If a year-end report filed under this section indicates that, for the
 25 immediately preceding twelve (12) calendar month period ending June
 26 30, the balance in the reserve fund continuously exceeded fifty percent
 27 (50%) of the total outstanding balance of all enrolled loans, including
 28 unfunded parts of enrolled loans that are lines of credit, the ~~corporation~~
 29 **authority** may make a withdrawal from the reserve fund. The amount
 30 of the withdrawal may not be greater than the minimum amount of any
 31 excess as continuously maintained over the immediately preceding
 32 twelve (12) calendar month period ending June 30. Withdrawals of
 33 excess reserve funds by the ~~corporation~~ **authority** under this section
 34 may be used for any purpose.

35 (c) If a year-end report is not filed within thirty (30) days after the
 36 original due date of the report, the ~~corporation~~ **authority** may make a
 37 withdrawal from the reserve fund based on the ~~corporation's~~
 38 **authority's** determination from an inspection of the lender's files that,
 39 for the immediately preceding twelve (12) calendar month period
 40 ending June 30, the balance in the reserve fund continuously exceeded
 41 fifty percent (50%) of the aggregate outstanding balance of all enrolled
 42 loans, including unfunded parts of enrolled loans that are lines of

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1 credit. The amount of the withdrawal may not be greater than the
2 minimum amount of any excess as continuously maintained over the
3 immediately preceding twelve (12) calendar month period ending June
4 30. Withdrawals of excess reserve funds by the **corporation authority**
5 under this section may be used for any purpose.

6 (d) The right of the **corporation authority** to make a withdrawal
7 from the reserve fund under subsection (b) or (c) is subject to the
8 following provisions:

9 (1) If a year-end report is filed by July 16 or not more than thirty
10 (30) days after July 16, the **corporation authority** has the right of
11 withdrawal for a period of ninety (90) days from the date of the
12 filing of the report with the **corporation authority**.

13 (2) If a year-end report is not filed by July 16 or not more than
14 thirty (30) days after July 16, the **corporation authority** has the
15 right of withdrawal for a period of ninety (90) days from the date
16 the **corporation authority** determines from an inspection of the
17 lender's files that the **corporation authority** is entitled to make a
18 withdrawal from the reserve fund under this section.

19 SECTION 27. IC 5-28-29-34, AS ADDED BY P.L.162-2007,
20 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2011]: Sec. 34. The **corporation authority** may terminate the
22 obligation to a lender to enroll loans under the program if the
23 **corporation authority** determines that the lender is not in substantial
24 compliance with the requirements of the program or the requirements
25 of section 23 of this chapter. The termination takes effect on the date
26 specified in the notice of termination, except that the termination does
27 not apply to a loan made on or before the date on which the notice of
28 termination is received by the lender. If the **corporation authority** is
29 terminating the enrollment of loans for all participating lenders under
30 the program, the **corporation authority** shall provide at least ninety
31 (90) days notice to the lender. A termination under this section is
32 prospective only and does not apply to a loan previously refinanced.
33 After termination, the amount covered under the program may not be
34 increased beyond the covered amount as previously enrolled.

35 SECTION 28. IC 5-28-29-35, AS ADDED BY P.L.162-2007,
36 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2011]: Sec. 35. (a) The **corporation authority** shall establish
38 a capital access account. The **corporation authority** shall use the
39 capital access account to carry out the provisions of the capital access
40 program. The capital access account consists of all money that is:

- 41 (1) appropriated by the general assembly;
- 42 (2) transferred by the **corporation authority** from the industrial

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1 development guaranty fund; or
 2 (3) transferred by the ~~corporation~~ **authority** from the general
 3 funds of the ~~corporation~~ **authority**.
 4 (b) The expenses of the ~~corporation~~ **authority** attributable and
 5 allocated by the ~~corporation~~ **authority** to the capital access program
 6 shall be paid from the capital access account.
 7 SECTION 29. IC 5-28-29-36 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2011]: **Sec. 36. (a) On July 1, 2011, all**
 10 **powers, duties, and liabilities of the corporation with respect to the**
 11 **capital access program under this chapter are transferred to the**
 12 **authority.**
 13 **(b) On July 1, 2011, all records and property of the corporation**
 14 **with respect to the capital access program, including**
 15 **appropriations and other funds under the corporation's control or**
 16 **supervision, are transferred to the authority.**
 17 **(c) After June 30, 2011, any amounts owed to the corporation**
 18 **under the capital access program before July 1, 2011, are**
 19 **considered to be owed to the authority.**
 20 **(d) After June 30, 2011, a reference to the corporation in a**
 21 **statute, rule, or other document concerning the capital access**
 22 **program is considered a reference to the authority.**
 23 **(e) On July 1, 2011, all powers, duties, and liabilities of the**
 24 **corporation with respect to agreements entered into or obligations**
 25 **issued in connection with the capital access program are**
 26 **transferred to the authority. The rights of a party to such an**
 27 **agreement or the holder of such an obligation remain unchanged,**
 28 **although the powers, duties, and liabilities described in this**
 29 **subsection have been transferred to the authority.**

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