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# SENATE BILL No. 162

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-3; IC 5-28.

**Synopsis:** Economic development incentives and reports. Specifies for purposes of the public records law that information provided to receive an economic development incentive from the Indiana economic development corporation (IEDC), the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization, or a governing body of a political subdivision with industrial, research, or commercial prospects (an "economic development incentive provider") must be available for inspection and copying, if the information is provided after the incentive recipient executes the financial incentive agreement. Specifies that negotiations with an economic development incentive provider terminate on the date the incentive recipient executes the financial incentive agreement. Prohibits the IEDC from granting any incentive that is measured by any activity that occurred before the date the incentive recipient executes the financial incentive agreement. Requires a person that applies for an economic development incentive with the IEDC to include a representation of the applicant's expected financial investment in Indiana. Requires an IEDC incentive recipient to annually provide job and financial investment information that corresponds to the recipient's representations as an applicant. Specifies that the information that an applicant and incentive recipient files with the IEDC compliance officer to detail the applicant's compliance with the incentive agreement must be available for inspection and copying under the public records law. Requires that the applicant's representations and the recipient's annual compliance information must be included in the  
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**Effective:** July 1, 2013.

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January 7, 2013, read first time and referred to Committee on Tax and Fiscal Policy.

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Digest Continued

IEDC's annual economic incentives and compliance report. Repeals a duplicate statute concerning the requirement that the IEDC disclose the terms of a final incentive offer.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## SENATE BILL No. 162

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

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

1 SECTION 1. IC 5-14-3-3.3 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2013]: **Sec. 3.3. Any information that is provided to:**  
4 (1) **the Indiana economic development corporation;**  
5 (2) **the ports of Indiana;**  
6 (3) **the Indiana state department of agriculture;**  
7 (4) **the Indiana finance authority;**  
8 (5) **an economic development commission;**  
9 (6) **a local economic development organization (as defined in**  
10 **IC 5-28-11-2(3)); or**  
11 (7) **a governing body of a political subdivision with industrial,**  
12 **research, or commercial prospects;**  
13 **must be available for inspection and copying under section 3 of this**  
14 **chapter, if the information is provided after the incentive recipient**  
15 **executes the financial incentive agreement.**



1 SECTION 2. IC 5-14-3-3.4 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 3 1, 2013]: **Sec. 3.4. Any information that is provided to the Indiana  
 4 economic development corporation in an incentive recipient's  
 5 annual compliance report under IC 5-28-6-6 must be available for  
 6 inspection and copying under section 3 of this chapter.**

7 SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.134-2012,  
 8 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2013]: Sec. 4. (a) The following public records are excepted  
 10 from section 3 of this chapter and may not be disclosed by a public  
 11 agency, unless access to the records is specifically required by a state  
 12 or federal statute or is ordered by a court under the rules of discovery:

- 13 (1) Those declared confidential by state statute.
- 14 (2) Those declared confidential by rule adopted by a public  
 15 agency under specific authority to classify public records as  
 16 confidential granted to the public agency by statute.
- 17 (3) Those required to be kept confidential by federal law.
- 18 (4) Records containing trade secrets.
- 19 (5) Confidential financial information obtained, upon request,  
 20 from a person. However, this does not include information that is  
 21 filed with or received by a public agency pursuant to state statute.
- 22 (6) Information concerning research, including actual research  
 23 documents, conducted under the auspices of a state educational  
 24 institution, including information:
  - 25 (A) concerning any negotiations made with respect to the  
 26 research; and
  - 27 (B) received from another party involved in the research.
- 28 (7) Grade transcripts and license examination scores obtained as  
 29 part of a licensure process.
- 30 (8) Those declared confidential by or under rules adopted by the  
 31 supreme court of Indiana.
- 32 (9) Patient medical records and charts created by a provider,  
 33 unless the patient gives written consent under IC 16-39 or as  
 34 provided under IC 16-41-8.
- 35 (10) Application information declared confidential by the board  
 36 of the Indiana economic development corporation under  
 37 IC 5-28-16.
- 38 (11) A photograph, a video recording, or an audio recording of an  
 39 autopsy, except as provided in IC 36-2-14-10.
- 40 (12) A Social Security number contained in the records of a  
 41 public agency.
- 42 (13) The following information that is part of a foreclosure action

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- 1 subject to IC 32-30-10.5:
- 2 (A) Contact information for a debtor, as described in
- 3 IC 32-30-10.5-8(d)(2)(B).
- 4 (B) Any document submitted to the court as part of the debtor's
- 5 loss mitigation package under IC 32-30-10.5-10(a)(3).
- 6 (b) Except as otherwise provided by subsection (a), the following
- 7 public records shall be excepted from section 3 of this chapter at the
- 8 discretion of a public agency:
- 9 (1) Investigatory records of law enforcement agencies. However,
- 10 certain law enforcement records must be made available for
- 11 inspection and copying as provided in section 5 of this chapter.
- 12 (2) The work product of an attorney representing, pursuant to
- 13 state employment or an appointment by a public agency:
- 14 (A) a public agency;
- 15 (B) the state; or
- 16 (C) an individual.
- 17 (3) Test questions, scoring keys, and other examination data used
- 18 in administering a licensing examination, examination for
- 19 employment, or academic examination before the examination is
- 20 given or if it is to be given again.
- 21 (4) Scores of tests if the person is identified by name and has not
- 22 consented to the release of the person's scores.
- 23 (5) The following:
- 24 (A) Records relating to negotiations between the Indiana
- 25 economic development corporation, the ports of Indiana, the
- 26 Indiana state department of agriculture, the Indiana finance
- 27 authority, an economic development commission, a local
- 28 economic development organization (as defined in
- 29 IC 5-28-11-2(3)), or a governing body of a political
- 30 subdivision with industrial, research, or commercial prospects,
- 31 if the records are created while negotiations are in progress.
- 32 **Negotiations may not be considered to be in progress after**
- 33 **the date the incentive recipient executes the financial**
- 34 **incentive agreement.**
- 35 (B) Notwithstanding clause (A), the terms of the final offer of
- 36 public financial resources communicated by the Indiana
- 37 economic development corporation, the ports of Indiana, the
- 38 Indiana finance authority, an economic development
- 39 commission, or a governing body of a political subdivision to
- 40 an industrial, a research, or a commercial prospect shall be
- 41 available for inspection and copying under section 3 of this
- 42 chapter after negotiations with that prospect have terminated.

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1 (C) When disclosing a final offer under clause (B), the Indiana  
 2 economic development corporation shall certify that the  
 3 information being disclosed accurately and completely  
 4 represents the terms of the final offer.

5 **This subdivision does not apply to any information submitted**  
 6 **by a recipient of an incentive granted by the Indiana economic**  
 7 **development corporation to comply with the reporting**  
 8 **requirements of IC 5-28-6-6.**

9 (6) Records that are intra-agency or interagency advisory or  
 10 deliberative material, including material developed by a private  
 11 contractor under a contract with a public agency, that are  
 12 expressions of opinion or are of a speculative nature, and that are  
 13 communicated for the purpose of decision making.

14 (7) Diaries, journals, or other personal notes serving as the  
 15 functional equivalent of a diary or journal.

16 (8) Personnel files of public employees and files of applicants for  
 17 public employment, except for:

18 (A) the name, compensation, job title, business address,  
 19 business telephone number, job description, education and  
 20 training background, previous work experience, or dates of  
 21 first and last employment of present or former officers or  
 22 employees of the agency;

23 (B) information relating to the status of any formal charges  
 24 against the employee; and

25 (C) the factual basis for a disciplinary action in which final  
 26 action has been taken and that resulted in the employee being  
 27 suspended, demoted, or discharged.

28 However, all personnel file information shall be made available  
 29 to the affected employee or the employee's representative. This  
 30 subdivision does not apply to disclosure of personnel information  
 31 generally on all employees or for groups of employees without the  
 32 request being particularized by employee name.

33 (9) Minutes or records of hospital medical staff meetings.

34 (10) Administrative or technical information that would  
 35 jeopardize a record keeping or security system.

36 (11) Computer programs, computer codes, computer filing  
 37 systems, and other software that are owned by the public agency  
 38 or entrusted to it and portions of electronic maps entrusted to a  
 39 public agency by a utility.

40 (12) Records specifically prepared for discussion or developed  
 41 during discussion in an executive session under IC 5-14-1.5-6.1.

42 However, this subdivision does not apply to that information

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- 1 required to be available for inspection and copying under  
 2 subdivision (8).  
 3 (13) The work product of the legislative services agency under  
 4 personnel rules approved by the legislative council.  
 5 (14) The work product of individual members and the partisan  
 6 staffs of the general assembly.  
 7 (15) The identity of a donor of a gift made to a public agency if:  
 8 (A) the donor requires nondisclosure of the donor's identity as  
 9 a condition of making the gift; or  
 10 (B) after the gift is made, the donor or a member of the donor's  
 11 family requests nondisclosure.  
 12 (16) Library or archival records:  
 13 (A) which can be used to identify any library patron; or  
 14 (B) deposited with or acquired by a library upon a condition  
 15 that the records be disclosed only:  
 16 (i) to qualified researchers;  
 17 (ii) after the passing of a period of years that is specified in  
 18 the documents under which the deposit or acquisition is  
 19 made; or  
 20 (iii) after the death of persons specified at the time of the  
 21 acquisition or deposit.  
 22 However, nothing in this subdivision shall limit or affect contracts  
 23 entered into by the Indiana state library pursuant to IC 4-1-6-8.  
 24 (17) The identity of any person who contacts the bureau of motor  
 25 vehicles concerning the ability of a driver to operate a motor  
 26 vehicle safely and the medical records and evaluations made by  
 27 the bureau of motor vehicles staff or members of the driver  
 28 licensing medical advisory board regarding the ability of a driver  
 29 to operate a motor vehicle safely. However, upon written request  
 30 to the commissioner of the bureau of motor vehicles, the driver  
 31 must be given copies of the driver's medical records and  
 32 evaluations.  
 33 (18) School safety and security measures, plans, and systems,  
 34 including emergency preparedness plans developed under 511  
 35 IAC 6.1-2-2.5.  
 36 (19) A record or a part of a record, the public disclosure of which  
 37 would have a reasonable likelihood of threatening public safety  
 38 by exposing a vulnerability to terrorist attack. A record described  
 39 under this subdivision includes:  
 40 (A) a record assembled, prepared, or maintained to prevent,  
 41 mitigate, or respond to an act of terrorism under IC 35-47-12-1  
 42 or an act of agricultural terrorism under IC 35-47-12-2;

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- 1 (B) vulnerability assessments;
- 2 (C) risk planning documents;
- 3 (D) needs assessments;
- 4 (E) threat assessments;
- 5 (F) intelligence assessments;
- 6 (G) domestic preparedness strategies;
- 7 (H) the location of community drinking water wells and
- 8 surface water intakes;
- 9 (I) the emergency contact information of emergency
- 10 responders and volunteers;
- 11 (J) infrastructure records that disclose the configuration of
- 12 critical systems such as communication, electrical, ventilation,
- 13 water, and wastewater systems; and
- 14 (K) detailed drawings or specifications of structural elements,
- 15 floor plans, and operating, utility, or security systems, whether
- 16 in paper or electronic form, of any building or facility located
- 17 on an airport (as defined in IC 8-21-1-1) that is owned,
- 18 occupied, leased, or maintained by a public agency. A record
- 19 described in this clause may not be released for public
- 20 inspection by any public agency without the prior approval of
- 21 the public agency that owns, occupies, leases, or maintains the
- 22 airport. The public agency that owns, occupies, leases, or
- 23 maintains the airport:
- 24 (i) is responsible for determining whether the public
- 25 disclosure of a record or a part of a record has a reasonable
- 26 likelihood of threatening public safety by exposing a
- 27 vulnerability to terrorist attack; and
- 28 (ii) must identify a record described under item (i) and
- 29 clearly mark the record as "confidential and not subject to
- 30 public disclosure under IC 5-14-3-4(b)(19)(J) without
- 31 approval of (insert name of submitting public agency)".
- 32 This subdivision does not apply to a record or portion of a record
- 33 pertaining to a location or structure owned or protected by a
- 34 public agency in the event that an act of terrorism under
- 35 IC 35-47-12-1 or an act of agricultural terrorism under
- 36 IC 35-47-12-2 has occurred at that location or structure, unless
- 37 release of the record or portion of the record would have a
- 38 reasonable likelihood of threatening public safety by exposing a
- 39 vulnerability of other locations or structures to terrorist attack.
- 40 (20) The following personal information concerning a customer
- 41 of a municipally owned utility (as defined in IC 8-1-2-1):
- 42 (A) Telephone number.

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- 1 (B) Address.  
 2 (C) Social Security number.  
 3 (21) The following personal information about a complainant  
 4 contained in records of a law enforcement agency:  
 5 (A) Telephone number.  
 6 (B) The complainant's address. However, if the complainant's  
 7 address is the location of the suspected crime, infraction,  
 8 accident, or complaint reported, the address shall be made  
 9 available for public inspection and copying.  
 10 (22) Notwithstanding subdivision (8)(A), the name,  
 11 compensation, job title, business address, business telephone  
 12 number, job description, education and training background,  
 13 previous work experience, or dates of first employment of a law  
 14 enforcement officer who is operating in an undercover capacity.  
 15 (23) Records requested by an offender that:  
 16 (A) contain personal information relating to:  
 17 (i) a correctional officer (as defined in IC 5-10-10-1.5);  
 18 (ii) a law enforcement officer (as defined in  
 19 IC 35-31.5-2-185);  
 20 (iii) a judge (as defined in IC 33-38-12-3);  
 21 (iv) the victim of a crime; or  
 22 (v) a family member of a correctional officer, law  
 23 enforcement officer (as defined in IC 35-31.5-2-185), judge  
 24 (as defined in IC 33-38-12-3), or victim of a crime; or  
 25 (B) concern or could affect the security of a jail or correctional  
 26 facility.  
 27 (24) Information concerning an individual less than eighteen (18)  
 28 years of age who participates in a conference, meeting, program,  
 29 or activity conducted or supervised by a state educational  
 30 institution, including the following information regarding the  
 31 individual or the individual's parent or guardian:  
 32 (A) Name.  
 33 (B) Address.  
 34 (C) Telephone number.  
 35 (D) Electronic mail account address.  
 36 (c) Nothing contained in subsection (b) shall limit or affect the right  
 37 of a person to inspect and copy a public record required or directed to  
 38 be made by any statute or by any rule of a public agency.  
 39 (d) Notwithstanding any other law, a public record that is classified  
 40 as confidential, other than a record concerning an adoption or patient  
 41 medical records, shall be made available for inspection and copying  
 42 seventy-five (75) years after the creation of that record.

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1 (e) Only the content of a public record may form the basis for the  
2 adoption by any public agency of a rule or procedure creating an  
3 exception from disclosure under this section.

4 (f) Except as provided by law, a public agency may not adopt a rule  
5 or procedure that creates an exception from disclosure under this  
6 section based upon whether a public record is stored or accessed using  
7 paper, electronic media, magnetic media, optical media, or other  
8 information storage technology.

9 (g) Except as provided by law, a public agency may not adopt a rule  
10 or procedure nor impose any costs or liabilities that impede or restrict  
11 the reproduction or dissemination of any public record.

12 (h) Notwithstanding subsection (d) and section 7 of this chapter:

13 (1) public records subject to IC 5-15 may be destroyed only in  
14 accordance with record retention schedules under IC 5-15; or

15 (2) public records not subject to IC 5-15 may be destroyed in the  
16 ordinary course of business.

17 SECTION 4. IC 5-14-3-4.5 IS REPEALED [EFFECTIVE JULY 1,  
18 2013]. Sec. 4.5. (a) Records relating to negotiations between the  
19 Indiana economic development corporation and industrial, research, or  
20 commercial prospects are excepted from section 3 of this chapter at the  
21 discretion of the corporation if the records are created while  
22 negotiations are in progress.

23 (b) Notwithstanding subsection (a); the terms of the final offer of  
24 public financial resources communicated by the corporation to an  
25 industrial, a research, or a commercial prospect shall be available for  
26 inspection and copying under section 3 of this chapter after  
27 negotiations with that prospect have terminated.

28 (c) When disclosing a final offer under subsection (b); the  
29 corporation shall certify that the information being disclosed accurately  
30 and completely represents the terms of the final offer.

31 SECTION 5. IC 5-28-6-6, AS ADDED BY P.L.110-2010,  
32 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2013]: Sec. 6. The corporation shall require an applicant for  
34 a job creation incentive to be granted by the corporation after March  
35 31, 2010, to enter into an agreement with the corporation as a condition  
36 of receiving the incentive. Subject to IC 5-28-28-8, the agreement must  
37 include the following: requirements:

38 (1) The applicant's agreement regarding the following:

39 (A) The number of individuals that are expected to be  
40 employed by the applicant, including the number of  
41 employees who will be hired, retained, or trained during  
42 the duration of the agreement.

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- 1           **(B) The amount of the financial investment that the**  
 2           **applicant expects to make in Indiana as a result of the**  
 3           **project for which the job creation incentive is granted.**  
 4           (2) A requirement that the applicant, ~~will~~ **shall, if the applicant**  
 5           **receives a financial incentive,** file with the compliance officer an  
 6           annual compliance report detailing the applicant's compliance, or  
 7           progress toward compliance, with subdivision (1). **The incentive**  
 8           **recipient shall file the annual report on or before December**  
 9           **31 of each year. This information shall be included in the**  
 10           **corporation's annual economic incentives and compliance**  
 11           **report required by IC 5-28-28-5.**  
 12           (3) A provision that notifies the applicant that the applicant is  
 13           subject to a determination of the corporation under this  
 14           subdivision. The corporation, after a finding that the applicant is  
 15           employing fewer individuals than the applicant agreed to employ  
 16           **or that the applicant has not made the financial investment**  
 17           **agreed to** under subdivision (1), subject to any confidentiality  
 18           laws, shall hold a hearing to determine if the applicant shall be  
 19           required to pay back to the state a part of the incentive granted to  
 20           the applicant under the agreement. The penalty imposed must be  
 21           a matter of public record and must reflect in a fair and balanced  
 22           way the amount of incentive received.  
 23           (4) A requirement that the applicant will pay back to the state the  
 24           incentive that has been received by the applicant if the applicant  
 25           moves or closes.  
 26           SECTION 6. IC 5-28-6-8 IS ADDED TO THE INDIANA CODE  
 27           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 28           1, 2013]: **Sec. 8. The corporation may not provide an incentive**  
 29           **under this article that is measured by any activity by an incentive**  
 30           **recipient that occurred before the date the incentive recipient**  
 31           **executes the financial incentive agreement.**  
 32           SECTION 7. IC 5-28-28-6, AS ADDED BY P.L.222-2007,  
 33           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34           JULY 1, 2013]: Sec. 6. The economic incentives and compliance report  
 35           required under section 5 of this chapter must include at least the  
 36           following:  
 37           (1) The total amount of each of the following:  
 38           (A) Tax credits approved or awarded by the corporation.  
 39           (B) Loans made by the corporation.  
 40           (C) Grants made by the corporation.  
 41           (2) With respect to each recipient of a tax credit, loan, or grant  
 42           referred to in subdivision (1):

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- 1 (A) The name and address of the recipient.
- 2 (B) The amount of the tax credit, loan, or grant.
- 3 (C) The purpose of the tax credit, loan, or grant.
- 4 (D) Representations of the following made by the recipient at
- 5 the time of application for the tax credit, loan, or grant **and the**
- 6 **corresponding information provided in the recipient's most**
- 7 **recent annual compliance report under IC 5-28-6-6:**
  - 8 (i) Numbers of employees to be hired, retained, or trained
  - 9 **during the duration of the agreement.**
  - 10 (ii) **The amount of the financial investment that the**
  - 11 **recipient expects to make in Indiana as a result of the**
  - 12 **project for which the job creation incentive was granted.**
  - 13 ~~(ii)~~ (iii) Certification by the corporation that each recipient
  - 14 is meeting the program requirements and representations
  - 15 made in the recipient's application concerning the wages
  - 16 and compensation provided to employees who have been or
  - 17 are to be hired, trained, or retrained.
  - 18 ~~(iii)~~ (iv) Other benefits to be provided to employees to be
  - 19 hired, retained, or trained.
  - 20 (E) The extent to which the recipient has complied with the
  - 21 representations referred to in clause (D).

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