January 25, 2013

SENATE BILL No. 162

DIGEST OF SB 162 (Updated January 22, 2013 12:08 pm - DI 58)

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

Synopsis: Provides that an incentive agreement between the Indiana economic development corporation (IEDC) and an incentive recipient is available after the date the agreement is executed, regardless of whether negotiations may be in progress with that recipient after that date. Provides that a recipient must provide information about its financial investment if a financial investment was a condition for an incentive. Requires the IEDC to include in its annual compliance report aggregate information on performance goals, the total number of actual jobs created and the number of jobs expected, as reviewed by an independent auditing firm chosen by the corporation, recaptured incentives, total number of recipients, and tax credits claimed for the reporting period. Provides that the compliance report is to include the county or municipality of the recipient instead of the recipient's address. Requires the compliance report to include a certification by the corporation that each recipient is complying with the terms of the incentive agreement (current law requires a certification of whether each recipient is meeting the program requirements and representations made in the recipient's application concerning the wages and compensation provided to employees, other benefits to be provided to employees, and the extent to which the recipient has complied with the representations). Changes the timing of the IEDC's annual compliance report from a state fiscal year to a calendar year and specifies that the report is to include cumulative information on active recipients from 2005 instead of 2007. Adds cross-references to recently enacted tax credits. Repeals a duplicate statute concerning the requirement that the IEDC disclose the terms of a final incentive offer.

Effective: July 1, 2013.

Delph, Banks, Becker

January 7, 2013, read first time and referred to Committee on Tax and Fiscal Policy.
January 24, 2013, amended, reported favorably — Do Pass.

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January 25, 2013

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:

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

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) The following information that is part of a foreclosure action subject to IC 32-30-10.5:

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(2)(B).

(B) Any document submitted to the court as part of the debtor's loss mitigation package under IC 32-30-10.5-10(a)(3).

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not

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consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

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

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.

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

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

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

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of

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first and last employment of present or former officers or employees of the agency;

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

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

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

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

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

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

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the

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acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

(H) the location of community drinking water wells and surface water intakes;

(I) the emergency contact information of emergency responders and volunteers;

(J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of

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the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) a law enforcement officer (as defined in IC 35-31.5-2-185);

(iii) a judge (as defined in IC 33-38-12-3);

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(iv) the victim of a crime; or

(v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational institution, including the following information regarding the individual or the individual's parent or guardian:

(A) Name.

(B) Address.

(C) Telephone number.

(D) Electronic mail account address.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

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

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

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

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

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

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

SECTION 2. IC 5-14-3-4.5 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 4.5. (a) Records relating to negotiations between the Indiana economic development corporation and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the~~

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~~discretion of the corporation if the records are created while negotiations are in progress.~~

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

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

SECTION 3. IC 5-28-6-6, AS ADDED BY P.L.110-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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 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 **applicant's agreement regarding the following:**

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

(B) If a financial investment by an applicant is a condition for providing an incentive, the amount of the financial investment that the applicant expects to make in Indiana as a result of the project for which the incentive is granted.

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

(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 **or that the applicant has not made the financial investment agreed to** 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 matter of public record and must reflect in a fair and balanced way the amount of incentive received.

(4) A requirement that the applicant will pay back to the state the

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incentive that has been received by the applicant if the applicant moves or closes.

SECTION 4. IC 5-28-28-1, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. This chapter applies to grants, loans, and tax credits:

(1) applied for; and

(2) awarded;

after June 30, ~~2007.~~ **2005.**

SECTION 5. IC 5-28-28-4, AS AMENDED BY P.L.133-2012, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. As used in this chapter, "tax credit" means a state tax liability credit under any of the following:

(1) IC 6-3.1-7.

(2) IC 6-3.1-13.

(3) IC 6-3.1-13.5 (until January 1, 2020).

(4) IC 6-3.1-26.

(5) IC 6-3.1-27.

(6) IC 6-3.1-28.

(7) IC 6-3.1-30.

(8) IC 6-3.1-31.9.

(9) IC 6-3.1-33.

SECTION 6. IC 5-28-28-5, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Beginning February 1, 2008, the corporation shall:

(1) submit an economic incentives and compliance report to:

(A) the governor; and

(B) the legislative council in an electronic format under IC 5-14-6; and

(2) publish the report on the corporation's Internet web site;

on the schedule specified in subsection (b).

(b) ~~Before August 2, 2009, the corporation shall submit and publish before February 1 and August 1 of each year an incentives and compliance report that covers the six (6) month period that ends one (1) month before the report is due.~~ **Before August 1, 2013, the corporation shall submit and publish an incentives and compliance report that provides updated information for active incentive agreements approved and awarded after January 1, 2005, through June, 30, 2013.** After ~~August 1, 2009,~~ **December 31, 2013,** the corporation shall submit and publish before ~~August~~ **February** 1 of each year an incentives and compliance report that ~~covers the twelve~~

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~~(12) month period that ends one (1) month before the report is due.~~ **provides updated information for active incentive agreements approved and awarded after January 1, 2005, through the immediately preceding calendar year.**

SECTION 7. IC 5-28-28-6, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. The economic incentives and compliance report required under section 5 of this chapter must include at least the following:

(1) The total amount of each of the following:

(A) Tax credits, ~~approved or~~ **loans, and grants contractually** awarded by the corporation.

(B) ~~Loans made by the corporation.~~ **Investments made by the recipients of the tax credits, loans, and grants.**

(C) ~~Grants made by the corporation.~~ **Actual jobs created and the number of jobs expected through the reporting year, as reviewed by an independent auditing firm chosen by the corporation.**

(D) Recaptured incentives for the reporting year and the total number of recipients.

(E) Tax credits claimed for the reporting year, as reported by the department of state revenue to the corporation by December 31 of each year.

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

(A) The name, ~~and address~~ **county, and municipality (if any)** of the recipient.

(B) The amount of ~~the tax credit, loan, or grant.~~ **tax credits certified to each recipient, and the amount of grants and loans actually paid out, during the term of the agreement.**

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

(D) ~~Representations of the following made by the recipient at the time of application for the tax credit, loan, or grant~~ **The performance goals for the reporting year, including the following:**

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

(ii) If a financial investment by a recipient was a condition for providing an incentive, the amount of the financial investment that the recipient expects to make in Indiana as a result of the project for which the incentive was granted.

~~(ii) Certification by the corporation that each recipient is~~

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~~meeting the program requirements and representations made in the recipient's application concerning the wages and compensation provided to employees who have been or are to be hired, trained, or retrained.~~

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

~~(E) The extent to which the recipient has~~ complie~~d with the representations referred to in clause (D).~~

(E) Certification by the corporation that each recipient is complying with the terms of the incentive agreement.

SECTION 8. IC 5-28-28-7, AS AMENDED BY P.L.110-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) If, in the course of compiling information to complete a report required by section 5 of this chapter or upon the receipt of any other information concerning noncompliance with the terms and conditions of an incentive granted by the corporation, the corporation determines that a recipient of an incentive awarded by the corporation has not complied with the ~~representations that the recipient made in obtaining the incentive,~~ **terms of the incentive agreement,** the corporation shall take the actions required under subsections (b) and (d).

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

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

(2) whether the recipient is in default.

If in the judgment of the corporation there is not good cause for any noncompliance discovered under subsection (a), the corporation may seek a refund or arrange other methods of reclaiming the grant or loan from the recipient. If the corporation does seek a refund or otherwise reclaims a grant or loan from the recipient under this section, the amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.

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

(1) the grant or loan has been disbursed on a pro rata basis; and

(2) in the judgment of the corporation, the recipient's performance in relation to the recipient's performance goals equals or exceeds the ratio of the amount of the recipient's actual benefit from the grant or loan to the total amount of the grant or loan originally contemplated in the grant or loan award.

(d) If the incentive granted by the corporation was awarded after March 31, 2010, the corporation shall seek a refund or arrange other methods of reclaiming the value of the incentive granted by the

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1 corporation from the recipient. The amount of the refund or reclaimed
2 part must be in proportion to the degree of default by the recipient as
3 determined by the corporation.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 162, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete page 1.

Page 2, delete lines 1 through 6.

Page 3, delete lines 32 through 34.

Page 4, delete lines 5 through 8, begin a new line double block indented and insert:

"**(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.**".

Page 9, line 1, delete "The" and insert "**If a financial investment by an applicant is a condition for providing an incentive, the**".

Page 9, line 3, delete "job creation".

Page 9, line 4, delete "applicant," and insert "applicant".

Page 9, line 4, delete ", if the applicant".

Page 9, line 5, delete "receives a financial incentive,".

Page 9, line 7, delete "The incentive".

Page 9, delete lines 8 through 11.

Page 9, delete lines 26 through 31, begin a new paragraph and insert:

"SECTION 3. IC 5-28-28-1, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. This chapter applies to grants, loans, and tax credits:

(1) applied for; and

(2) awarded;

after June 30, ~~2007.~~ **2005.**

SECTION 4. IC 5-28-28-4, AS AMENDED BY P.L.133-2012, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. As used in this chapter, "tax credit" means a state tax liability credit under any of the following:

(1) IC 6-3.1-7.

(2) IC 6-3.1-13.

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(3) IC 6-3.1-13.5 (until January 1, 2020).
(4) IC 6-3.1-26.
(5) IC 6-3.1-27.
(6) IC 6-3.1-28.
(7) IC 6-3.1-30.
(8) IC 6-3.1-31.9.
(9) IC 6-3.1-33.

SECTION 5. IC 5-28-28-5, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Beginning February 1, 2008, the corporation shall:

(1) submit an economic incentives and compliance report to:
(A) the governor; and
(B) the legislative council in an electronic format under IC 5-14-6; and
(2) publish the report on the corporation's Internet web site;

on the schedule specified in subsection (b).

(b) ~~Before August 2, 2009, the corporation shall submit and publish before February 1 and August 1 of each year an incentives and compliance report that covers the six (6) month period that ends one (1) month before the report is due.~~ **Before August 1, 2013, the corporation shall submit and publish an incentives and compliance report that provides updated information for active incentive agreements approved and awarded after January 1, 2005, through June, 30, 2013.** After ~~August 1, 2009,~~ **December 31, 2013,** the corporation shall submit and publish before ~~August~~ **February** 1 of each year an incentives and compliance report that ~~covers the twelve (12) month period that ends one (1) month before the report is due.~~ **provides updated information for active incentive agreements approved and awarded after January 1, 2005, through the immediately preceding calendar year.**".

Page 9, line 38, after "credits" insert ",".

Page 9, line 38, strike "approved or" and insert "**loans, and grants contractually**".

Page 9, line 39, strike "Loans made by the corporation." and insert "**Investments made by the recipients of the tax credits, loans, and grants.**".

Page 9, line 40, strike "Grants made by the corporation." and insert "**Actual jobs created and the number of jobs expected through the reporting year, as reviewed by an independent auditing firm chosen by the corporation.**".

Page 9, between lines 40 and 41, begin a new line double block

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indented and insert:

"**(D) Recaptured incentives for the reporting year and the total number of recipients.**

(E) Tax credits claimed for the reporting year, as reported by the department of state revenue to the corporation by December 31 of each year.".

Page 10, line 1, after "name" insert ",".

Page 10, line 1, strike "and address" and insert "**county, and municipality (if any)**".

Page 10, line 2, strike "the tax credit, loan, or grant." and insert "**tax credits certified to each recipient, and the amount of grants and loans actually paid out, during the term of the agreement.**".

Page 10, line 4, strike "Representations of the following made by the recipient at".

Page 10, line 5, strike "the time of application for the tax credit, loan, or grant".

Page 10, line 5, delete "and the".

Page 10, delete lines 6 through 7 and insert "**The performance goals for the reporting year, including the following:**".

Page 10, line 8, after "trained" insert ".".

Page 10, delete line 9.

Page 10, line 10, delete "The" and insert "**If a financial investment by a recipient was a condition for providing an incentive, the**".

Page 10, line 12, delete "job creation".

Page 10, line 13, delete "(iii)".

Page 10, strike lines 13 through 17.

Page 10, line 18, delete "(iv)".

Page 10, strike lines 18 through 21 and insert:

"**(E) Certification by the corporation that each recipient is complying with the terms of the incentive agreement.**

SECTION 7. IC 5-28-28-7, AS AMENDED BY P.L.110-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) If, in the course of compiling information to complete a report required by section 5 of this chapter or upon the receipt of any other information concerning noncompliance with the terms and conditions of an incentive granted by the corporation, the corporation determines that a recipient of an incentive awarded by the corporation has not complied with the ~~representations that the recipient made in obtaining the incentive,~~ **terms of the incentive agreement,** the corporation shall take the actions required under subsections (b) and (d).

(b) If the incentive is a grant or loan awarded before April 1, 2010,

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the corporation shall determine:

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

(2) whether the recipient is in default.

If in the judgment of the corporation there is not good cause for any noncompliance discovered under subsection (a), the corporation may seek a refund or arrange other methods of reclaiming the grant or loan from the recipient. If the corporation does seek a refund or otherwise reclaims a grant or loan from the recipient under this section, the amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.

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

(1) the grant or loan has been disbursed on a pro rata basis; and

(2) in the judgment of the corporation, the recipient's performance in relation to the recipient's performance goals equals or exceeds the ratio of the amount of the recipient's actual benefit from the grant or loan to the total amount of the grant or loan originally contemplated in the grant or loan award.

(d) If the incentive granted by the corporation was awarded after March 31, 2010, the corporation shall seek a refund or arrange other methods of reclaiming the value of the incentive granted by the corporation from the recipient. The amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 162 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 12, Nays 0.

C o p y