

SENATE BILL No. 254

DIGEST OF INTRODUCED BILL

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

Synopsis: Economic development incentive accountability. Adds various job and employee definitions to the Indiana economic development corporation (IEDC) laws. Requires that all records related to taxpayer funded economic development incentives must be disclosed under the open records law. Requires that the IEDC's annual job creation incentives and compliance report must be published on the Indiana transparency portal Internet web site. Requires the IEDC and the department of state revenue to compile information on all job creation incentives granted, including the total amount of uncollected or diverted state tax revenues resulting from each incentive, and requires that this information must be included as part of the IEDC's annual job creation incentives and compliance report. Requires the IEDC to recapture job creation incentives from a recipient that: (1) fails to make the level of capital investment; (2) fails to create or retain the promised number of jobs; or (3) pays less in wages; than specified in an incentive agreement. Requires the IEDC to compile information on all recapture activities and incentives recouped from unfulfilled commitments and to include the information as part of the IEDC's annual job creation incentives and compliance report. Requires incentive recipients to prepare an annual compliance report on the number of jobs created or retained, employee pay, and various other information concerning the use of the incentives, and requires the IEDC to compile this information and include it in the IEDC's annual job creation incentives and compliance report. Repeals and replaces the definition of "job creation incentive" without change to maintain alphabetical order.

Effective: July 1, 2018.

Mrvan

January 3, 2018, read first time and referred to Committee on Tax and Fiscal Policy.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 254

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 5-14-3-3.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **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 5-28-28-11 must be available
6 for inspection and copying under section 3 of this chapter.**

7 SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.197-2017,
8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2018]: 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.



- 1 (4) Records containing trade secrets.
- 2 (5) Confidential financial information obtained, upon request,
- 3 from a person. However, this does not include information that is
- 4 filed with or received by a public agency pursuant to state statute.
- 5 (6) Information concerning research, including actual research
- 6 documents, conducted under the auspices of a state educational
- 7 institution, including information:
- 8 (A) concerning any negotiations made with respect to the
- 9 research; and
- 10 (B) received from another party involved in the research.
- 11 (7) Grade transcripts and license examination scores obtained as
- 12 part of a licensure process.
- 13 (8) Those declared confidential by or under rules adopted by the
- 14 supreme court of Indiana.
- 15 (9) Patient medical records and charts created by a provider,
- 16 unless the patient gives written consent under IC 16-39 or as
- 17 provided under IC 16-41-8.
- 18 (10) Application information declared confidential by the Indiana
- 19 economic development corporation under IC 5-28-16.
- 20 (11) A photograph, a video recording, or an audio recording of an
- 21 autopsy, except as provided in IC 36-2-14-10.
- 22 (12) A Social Security number contained in the records of a
- 23 public agency.
- 24 (13) The following information that is part of a foreclosure action
- 25 subject to IC 32-30-10.5:
- 26 (A) Contact information for a debtor, as described in
- 27 IC 32-30-10.5-8(d)(1)(B).
- 28 (B) Any document submitted to the court as part of the debtor's
- 29 loss mitigation package under IC 32-30-10.5-10(a)(3).
- 30 (14) The following information obtained from a call made to a
- 31 fraud hotline established under IC 36-1-8-8.5:
- 32 (A) The identity of any individual who makes a call to the
- 33 fraud hotline.
- 34 (B) A report, transcript, audio recording, or other information
- 35 concerning a call to the fraud hotline.
- 36 However, records described in this subdivision may be disclosed
- 37 to a law enforcement agency, a private university police
- 38 department, the attorney general, the inspector general, the state
- 39 examiner, or a prosecuting attorney.
- 40 (b) Except as otherwise provided by subsection (a), the following
- 41 public records shall be excepted from section 3 of this chapter at the
- 42 discretion of a public agency:



- 1 (1) Investigatory records of law enforcement agencies or private
2 university police departments. For purposes of this chapter, a law
3 enforcement recording is not an investigatory record. Law
4 enforcement agencies or private university police departments
5 may share investigatory records with a person who advocates on
6 behalf of a crime victim, including a victim advocate (as defined
7 in IC 35-37-6-3.5) or a victim service provider (as defined in
8 IC 35-37-6-5), for the purposes of providing services to a victim
9 or describing services that may be available to a victim, without
10 the law enforcement agency or private university police
11 department losing its discretion to keep those records confidential
12 from other records requesters. However, certain law enforcement
13 records must be made available for inspection and copying as
14 provided in section 5 of this chapter.
- 15 (2) The work product of an attorney representing, pursuant to
16 state employment or an appointment by a public agency:
- 17 (A) a public agency;
 - 18 (B) the state; or
 - 19 (C) an individual.
- 20 (3) Test questions, scoring keys, and other examination data used
21 in administering a licensing examination, examination for
22 employment, or academic examination before the examination is
23 given or if it is to be given again.
- 24 (4) Scores of tests if the person is identified by name and has not
25 consented to the release of the person's scores.
- 26 (5) The following:
- 27 (A) Records relating to negotiations between:
 - 28 (i) the Indiana economic development corporation;
 - 29 (ii) the ports of Indiana;
 - 30 (iii) the Indiana state department of agriculture;
 - 31 (iv) the Indiana finance authority;
 - 32 (v) an economic development commission;
 - 33 (vi) a local economic development organization that is a
34 nonprofit corporation established under state law whose
35 primary purpose is the promotion of industrial or business
36 development in Indiana, the retention or expansion of
37 Indiana businesses, or the development of entrepreneurial
38 activities in Indiana; or
 - 39 (vii) a governing body of a political subdivision;
- 40 with industrial, research, or commercial prospects, if the
41 records are created while negotiations are in progress.
42 However, this clause does not apply to records regarding



- 1 research that is prohibited under IC 16-34.5-1-2 or any other
2 law.
- 3 (B) Notwithstanding clause (A), the terms of the final offer of
4 public financial resources communicated by the Indiana
5 economic development corporation, the ports of Indiana, the
6 Indiana finance authority, an economic development
7 commission, or a governing body of a political subdivision to
8 an industrial, a research, or a commercial prospect shall be
9 available for inspection and copying under section 3 of this
10 chapter after negotiations with that prospect have terminated.
- 11 (C) When disclosing a final offer under clause (B), the Indiana
12 economic development corporation shall certify that the
13 information being disclosed accurately and completely
14 represents the terms of the final offer.
- 15 (D) Notwithstanding clause (A), an incentive agreement with
16 an incentive recipient shall be available for inspection and
17 copying under section 3 of this chapter after the date the
18 incentive recipient and the Indiana economic development
19 corporation execute the incentive agreement regardless of
20 whether negotiations are in progress with the recipient after
21 that date regarding a modification or extension of the incentive
22 agreement.
- 23 **This subdivision does not apply to any information submitted**
24 **by a recipient of an incentive granted by the Indiana economic**
25 **development corporation to comply with the reporting**
26 **requirements of IC 5-28-28-11.**
- 27 (6) Records that are intra-agency or interagency advisory or
28 deliberative material, including material developed by a private
29 contractor under a contract with a public agency, that are
30 expressions of opinion or are of a speculative nature, and that are
31 communicated for the purpose of decision making.
- 32 (7) Diaries, journals, or other personal notes serving as the
33 functional equivalent of a diary or journal.
- 34 (8) Personnel files of public employees and files of applicants for
35 public employment, except for:
- 36 (A) the name, compensation, job title, business address,
37 business telephone number, job description, education and
38 training background, previous work experience, or dates of
39 first and last employment of present or former officers or
40 employees of the agency;
- 41 (B) information relating to the status of any formal charges
42 against the employee; and



- 1 (C) the factual basis for a disciplinary action in which final
 2 action has been taken and that resulted in the employee being
 3 suspended, demoted, or discharged.
- 4 However, all personnel file information shall be made available
 5 to the affected employee or the employee's representative. This
 6 subdivision does not apply to disclosure of personnel information
 7 generally on all employees or for groups of employees without the
 8 request being particularized by employee name.
- 9 (9) Minutes or records of hospital medical staff meetings.
- 10 (10) Administrative or technical information that would
 11 jeopardize a record keeping or security system.
- 12 (11) Computer programs, computer codes, computer filing
 13 systems, and other software that are owned by the public agency
 14 or entrusted to it and portions of electronic maps entrusted to a
 15 public agency by a utility.
- 16 (12) Records specifically prepared for discussion or developed
 17 during discussion in an executive session under IC 5-14-1.5-6.1.
 18 However, this subdivision does not apply to that information
 19 required to be available for inspection and copying under
 20 subdivision (8).
- 21 (13) The work product of the legislative services agency under
 22 personnel rules approved by the legislative council.
- 23 (14) The work product of individual members and the partisan
 24 staffs of the general assembly.
- 25 (15) The identity of a donor of a gift made to a public agency if:
 26 (A) the donor requires nondisclosure of the donor's identity as
 27 a condition of making the gift; or
 28 (B) after the gift is made, the donor or a member of the donor's
 29 family requests nondisclosure.
- 30 (16) Library or archival records:
 31 (A) which can be used to identify any library patron; or
 32 (B) deposited with or acquired by a library upon a condition
 33 that the records be disclosed only:
 34 (i) to qualified researchers;
 35 (ii) after the passing of a period of years that is specified in
 36 the documents under which the deposit or acquisition is
 37 made; or
 38 (iii) after the death of persons specified at the time of the
 39 acquisition or deposit.
- 40 However, nothing in this subdivision shall limit or affect contracts
 41 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 42 (17) The identity of any person who contacts the bureau of motor



1 vehicles concerning the ability of a driver to operate a motor
 2 vehicle safely and the medical records and evaluations made by
 3 the bureau of motor vehicles staff or members of the driver
 4 licensing medical advisory board regarding the ability of a driver
 5 to operate a motor vehicle safely. However, upon written request
 6 to the commissioner of the bureau of motor vehicles, the driver
 7 must be given copies of the driver's medical records and
 8 evaluations.

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

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

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

19 (B) Vulnerability assessments.

20 (C) Risk planning documents.

21 (D) Needs assessments.

22 (E) Threat assessments.

23 (F) Intelligence assessments.

24 (G) Domestic preparedness strategies.

25 (H) The location of community drinking water wells and
 26 surface water intakes.

27 (I) The emergency contact information of emergency
 28 responders and volunteers.

29 (J) Infrastructure records that disclose the configuration of
 30 critical systems such as communication, electrical, ventilation,
 31 water, and wastewater systems.

32 (K) Detailed drawings or specifications of structural elements,
 33 floor plans, and operating, utility, or security systems, whether
 34 in paper or electronic form, of any building or facility located
 35 on an airport (as defined in IC 8-21-1-1) that is owned,
 36 occupied, leased, or maintained by a public agency, or any part
 37 of a law enforcement recording that captures information
 38 about airport security procedures, areas, or systems. A record
 39 described in this clause may not be released for public
 40 inspection by any public agency without the prior approval of
 41 the public agency that owns, occupies, leases, or maintains the
 42 airport. Both of the following apply to the public agency that



owns, occupies, leases, or maintains the airport:

(i) The public agency is responsible for determining whether the public disclosure of a record or a part of a record, including a law enforcement recording, has a reasonable likelihood of threatening public safety by exposing a security procedure, area, system, or vulnerability to terrorist attack.

(ii) The public agency 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)". However, in the case of a law enforcement recording, the public agency must clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(K) without approval of (insert name of the public agency that owns, occupies, leases, or maintains the airport)".

(L) The home address, home telephone number, and emergency contact information for any:

(i) emergency management worker (as defined in IC 10-14-3-3);

(ii) public safety officer (as defined in IC 35-47-4.5-3);

(iii) emergency medical responder (as defined in IC 16-18-2-109.8); or

(iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

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.



- 1 (B) The complainant's address. However, if the complainant's
 2 address is the location of the suspected crime, infraction,
 3 accident, or complaint reported, the address shall be made
 4 available for public inspection and copying.
- 5 (22) Notwithstanding subdivision (8)(A), the name,
 6 compensation, job title, business address, business telephone
 7 number, job description, education and training background,
 8 previous work experience, or dates of first employment of a law
 9 enforcement officer who is operating in an undercover capacity.
- 10 (23) Records requested by an offender that:
- 11 (A) contain personal information relating to:
- 12 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 13 (ii) a law enforcement officer (as defined in
 14 IC 35-31.5-2-185);
 15 (iii) a judge (as defined in IC 33-38-12-3);
 16 (iv) the victim of a crime; or
 17 (v) a family member of a correctional officer, law
 18 enforcement officer (as defined in IC 35-31.5-2-185), judge
 19 (as defined in IC 33-38-12-3), or victim of a crime; or
- 20 (B) concern or could affect the security of a jail or correctional
 21 facility.
- 22 (24) Information concerning an individual less than eighteen (18)
 23 years of age who participates in a conference, meeting, program,
 24 or activity conducted or supervised by a state educational
 25 institution, including the following information regarding the
 26 individual or the individual's parent or guardian:
- 27 (A) Name.
 28 (B) Address.
 29 (C) Telephone number.
 30 (D) Electronic mail account address.
- 31 (25) Criminal intelligence information.
- 32 (26) The following information contained in a report of unclaimed
 33 property under IC 32-34-1-26 or in a claim for unclaimed
 34 property under IC 32-34-1-36:
- 35 (A) Date of birth.
 36 (B) Driver's license number.
 37 (C) Taxpayer identification number.
 38 (D) Employer identification number.
 39 (E) Account number.
- 40 (27) Except as provided in subdivision (19) and sections 5.1 and
 41 5.2 of this chapter, a law enforcement recording. However, before
 42 disclosing the recording, the public agency must comply with the



- 1 obscuring requirements of sections 5.1 and 5.2 of this chapter, if
 2 applicable.
- 3 (28) Records relating to negotiations between a state educational
 4 institution and another entity concerning the establishment of a
 5 collaborative relationship or venture to advance the research,
 6 engagement, or educational mission of the state educational
 7 institution, if the records are created while negotiations are in
 8 progress. The terms of the final offer of public financial resources
 9 communicated by the state educational institution to an industrial,
 10 a research, or a commercial prospect shall be available for
 11 inspection and copying under section 3 of this chapter after
 12 negotiations with that prospect have terminated. However, this
 13 subdivision does not apply to records regarding research
 14 prohibited under IC 16-34.5-1-2 or any other law.
- 15 (c) Nothing contained in subsection (b) shall limit or affect the right
 16 of a person to inspect and copy a public record required or directed to
 17 be made by any statute or by any rule of a public agency.
- 18 (d) Notwithstanding any other law, a public record that is classified
 19 as confidential, other than a record concerning an adoption or patient
 20 medical records, shall be made available for inspection and copying
 21 seventy-five (75) years after the creation of that record.
- 22 (e) Only the content of a public record may form the basis for the
 23 adoption by any public agency of a rule or procedure creating an
 24 exception from disclosure under this section.
- 25 (f) Except as provided by law, a public agency may not adopt a rule
 26 or procedure that creates an exception from disclosure under this
 27 section based upon whether a public record is stored or accessed using
 28 paper, electronic media, magnetic media, optical media, or other
 29 information storage technology.
- 30 (g) Except as provided by law, a public agency may not adopt a rule
 31 or procedure nor impose any costs or liabilities that impede or restrict
 32 the reproduction or dissemination of any public record.
- 33 (h) Notwithstanding subsection (d) and section 7 of this chapter:
 34 (1) public records subject to IC 5-15 may be destroyed only in
 35 accordance with record retention schedules under IC 5-15; or
 36 (2) public records not subject to IC 5-15 may be destroyed in the
 37 ordinary course of business.
- 38 SECTION 3. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2018]: **Sec. 4.1. "Full-time employee" has the meaning set forth
 41 in IC 6-3.1-13-4.**
- 42 SECTION 4. IC 5-28-2-4.2 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2018]: **Sec. 4.2. (a) "Full-time, permanent job" means**
3 **employment in which a new employee works for the recipient of a**
4 **job creation incentive as a full-time employee without any expected**
5 **date of termination.**

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

7 SECTION 5. IC 5-28-2-4.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2018]: **Sec. 4.5. "Job creation incentive" means a tax credit, tax**
10 **deduction, grant, loan, or loan guarantee that a statute authorizes**
11 **the state or an instrumentality of the state, excluding any political**
12 **subdivision or other unit of local government, to award or approve**
13 **for the purpose of encouraging the creation of new jobs in Indiana.**

14 SECTION 6. IC 5-28-2-4.6 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2018]: **Sec. 4.6. "Job creation incentive agreement" or "incentive**
17 **agreement" means any agreement executed by the corporation and**
18 **the recipient of a job creation incentive setting forth the terms and**
19 **conditions of any job creation incentive to be provided to the**
20 **recipient.**

21 SECTION 7. IC 5-28-2-4.7 IS ADDED TO THE INDIANA CODE
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
23 1, 2018]: **Sec. 4.7. "New employee" means a full-time employee**
24 **who:**

25 **(1) is first employed by the recipient of a job creation**
26 **incentive at the specific project site that is the subject of the**
27 **job creation incentive agreement executed by the corporation**
28 **and the applicant; and**

29 **(2) is employed by the recipient of a job creation incentive**
30 **after the recipient enters into the job creation incentive**
31 **agreement.**

32 SECTION 8. IC 5-28-2-4.8 IS ADDED TO THE INDIANA CODE
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
34 1, 2018]: **Sec. 4.8. "Part-time job" means employment in which a**
35 **new employee works for the recipient of a job creation incentive**
36 **for fewer hours each week than the number of hours necessary to**
37 **be considered a full-time employee.**

38 SECTION 9. IC 5-28-2-4.9 IS ADDED TO THE INDIANA CODE
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2018]: **Sec. 4.9. "Retained employee" means any employee:**

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



- 1 **(2) the continuance of whose job is threatened by a specific**
- 2 **and demonstrable threat, as specified by the applicant in the**
- 3 **application for a job creation incentive; and**
- 4 **(3) whose job is preserved.**

5 SECTION 10. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE JULY
6 1, 2018]. Sec. 5-5: "Job creation incentive" means a tax credit, tax
7 deduction, grant, loan, or loan guarantee that a statute authorizes the
8 state or an instrumentality of the state (excluding any political
9 subdivision or other unit of local government) to award or approve for
10 the purpose of encouraging the creation of new jobs in Indiana.

11 SECTION 11. IC 5-28-2-6.8 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2018]: Sec. 6.8. "Temporary job" means employment in which
14 a new employee is hired for a specific duration of time or season.

15 SECTION 12. IC 5-28-5-9, AS ADDED BY P.L.4-2005, SECTION
16 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
17 2018]: Sec. 9. (a) Except as specifically provided by law, the
18 corporation and the board are subject to IC 5-14-1.5 and IC 5-14-3.

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

28 SECTION 13. IC 5-28-6-2, AS AMENDED BY P.L.6-2012,
29 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2018]: Sec. 2. (a) The corporation shall develop and promote
31 programs designed to make the best use of Indiana resources to ensure
32 a balanced economy and continuing economic growth for Indiana, and,
33 for those purposes, may do the following:

- 34 (1) Cooperate with federal, state, and local governments and
- 35 agencies in the coordination of programs to make the best use of
- 36 Indiana resources, based on a statewide study to determine
- 37 specific economic sectors that should be emphasized by the state
- 38 and by local economic development organizations within
- 39 geographic regions in Indiana, and encourage collaboration with
- 40 local economic development organizations within geographic
- 41 regions in Indiana and with the various state economic
- 42 development organizations within the states contiguous to



- 1 Indiana.
- 2 (2) Receive and expend funds, grants, gifts, and contributions of
- 3 money, property, labor, interest accrued from loans made by the
- 4 corporation, and other things of value from public and private
- 5 sources, including grants from agencies and instrumentalities of
- 6 the state and the federal government. The corporation:
- 7 (A) may accept federal grants for providing planning
- 8 assistance, making grants, or providing other services or
- 9 functions necessary to political subdivisions, planning
- 10 commissions, or other public or private organizations;
- 11 (B) shall administer these grants in accordance with the terms
- 12 of the grants; and
- 13 (C) may contract with political subdivisions, planning
- 14 commissions, or other public or private organizations to carry
- 15 out the purposes for which the grants were made.
- 16 (3) Direct that assistance, information, and advice regarding the
- 17 duties and functions of the corporation be given to the corporation
- 18 by an officer, agent, or employee of the executive branch of the
- 19 state. The head of any other state department or agency may
- 20 assign one (1) or more of the department's or agency's employees
- 21 to the corporation on a temporary basis or may direct a division
- 22 or an agency under the department's or agency's supervision and
- 23 control to make a special study or survey requested by the
- 24 corporation.
- 25 (b) The corporation shall perform the following duties:
- 26 (1) Develop and implement industrial development programs to
- 27 encourage expansion of existing industrial, commercial, and
- 28 business facilities in Indiana and to encourage new industrial,
- 29 commercial, and business locations in Indiana.
- 30 (2) Assist businesses and industries in acquiring, improving, and
- 31 developing overseas markets and encourage international plant
- 32 locations in Indiana. The corporation, with the approval of the
- 33 governor, may establish foreign offices to assist in this function.
- 34 (3) Promote the growth of minority business enterprises by doing
- 35 the following:
- 36 (A) Mobilizing and coordinating the activities, resources, and
- 37 efforts of governmental and private agencies, businesses, trade
- 38 associations, institutions, and individuals.
- 39 (B) Assisting minority businesses in obtaining governmental
- 40 or commercial financing for expansion or establishment of
- 41 new businesses or individual development projects.
- 42 (C) Aiding minority businesses in procuring contracts from



- 1 governmental or private sources, or both.
 2 (D) Providing technical, managerial, and counseling assistance
 3 to minority business enterprises.
 4 (4) Assist the office of the lieutenant governor in:
 5 (A) community economic development planning;
 6 (B) implementation of programs designed to further
 7 community economic development; and
 8 (C) the development and promotion of Indiana's tourist
 9 resources.
 10 (5) Assist the secretary of agriculture and rural development in
 11 promoting and marketing of Indiana's agricultural products and
 12 provide assistance to the director of the Indiana state department
 13 of agriculture.
 14 (6) With the approval of the governor, implement federal
 15 programs delegated to the state to carry out the purposes of this
 16 article.
 17 (7) Promote the growth of small businesses by doing the
 18 following:
 19 (A) Assisting small businesses in obtaining and preparing the
 20 permits required to conduct business in Indiana.
 21 (B) Serving as a liaison between small businesses and state
 22 agencies.
 23 (C) Providing information concerning business assistance
 24 programs available through government agencies and private
 25 sources.
 26 (8) Establish a public information page on its current Internet site
 27 on the world wide web. The page must provide the following:
 28 ~~(A) By program, cumulative information on the total amount~~
 29 ~~of incentives awarded; the total number of companies that~~
 30 ~~received the incentives and were assisted in a year; and the~~
 31 ~~names and addresses of those companies.~~
 32 **(A) The annual job creation incentives and compliance**
 33 **report required by IC 5-28-28-5.**
 34 (B) A mechanism on the page whereby the public may request
 35 further information online about specific programs or
 36 incentives awarded.
 37 (C) A mechanism for the public to receive an electronic
 38 response.
 39 (c) The corporation may do the following:
 40 (1) Disseminate information concerning the industrial,
 41 commercial, governmental, educational, cultural, recreational,
 42 agricultural, and other advantages of Indiana.



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

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

5 SECTION 14. IC 5-28-6-6, AS AMENDED BY P.L.175-2013,
6 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2018]: Sec. 6. The corporation shall require an applicant for
8 a job creation incentive to be granted by the corporation after March
9 31, 2010, to enter into **an a job creation incentive** agreement with the
10 corporation as a condition of receiving the incentive. Subject to
11 IC 5-28-28-8, the agreement must include the following:

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

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

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

21 (2) A requirement that the applicant shall file with the compliance
22 officer an annual compliance report, ~~detailing the applicant's~~
23 ~~compliance, or progress toward compliance, with subdivision (1):~~
24 **as required by IC 5-28-28-11.**

25 (3) A provision that notifies the applicant that the applicant is
26 subject to a determination of the corporation under this
27 subdivision. The corporation, after a finding that the applicant is
28 employing fewer individuals than the applicant agreed to employ
29 or that the applicant has not made the financial investment agreed
30 to under subdivision (1), subject to any confidentiality laws, shall
31 hold a hearing to determine if the applicant shall be required to
32 pay back to the state a part of the incentive granted to the
33 applicant under the agreement. The penalty imposed must be a
34 matter of public record and must reflect in a fair and balanced
35 way the amount of incentive received.

36 (4) A ~~requirement that recapture provision that requires~~ the
37 applicant ~~will to~~ pay back to the state the **job creation** incentive
38 that has been received by the applicant if the applicant:

39 (A) moves or closes;

40 (B) **does not make the level of capital investment specified**
41 **by the applicant in the application for the job creation**
42 **incentive;**



1 (C) employs fewer individuals than specified by the
 2 applicant in the application for the job creation incentive;

3 or

4 (D) pays less in wages than specified by the applicant in the
 5 application for the job creation incentive.

6 SECTION 15. IC 5-28-28-5, AS AMENDED BY P.L.145-2016,
 7 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2018]: Sec. 5. (a) The corporation shall:

9 (1) ~~submit an economic~~ **prepare an annual job creation**
 10 incentives and compliance report **for submission to:**

11 (A) the governor; and

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

14 (2) publish the report on the corporation's **Internet web site and**
 15 **on the Indiana transparency portal** Internet web site;
 16 on the schedule specified in subsection (b).

17 (b) The corporation shall submit and publish before February 1 of
 18 each year an incentives and compliance report that provides updated
 19 information for active incentive agreements approved and awarded
 20 after January 1, 2005, through the immediately preceding calendar
 21 year.

22 SECTION 16. IC 5-28-28-6, AS AMENDED BY P.L.2-2014,
 23 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2018]: Sec. 6. The ~~economic annual job creation~~ incentives
 25 and compliance report required under section 5 of this chapter must
 26 include at least the following:

27 (1) The total for each of the following:

28 (A) The number and amount of tax credits, loans, and grants
 29 contractually awarded by the corporation. **This information**
 30 **must also include the total amount of uncollected or**
 31 **diverted state tax revenues resulting from each tax credit,**
 32 **as reported to the department of state revenue on tax**
 33 **returns filed during the state fiscal year that ends**
 34 **immediately before the due date of the report. Before July**
 35 **15 each year, the department of state revenue shall submit**
 36 **to the corporation the information necessary for the**
 37 **corporation to include these total amounts in the**
 38 **corporation's report.**

39 (B) The amount of investments made by the recipients of the
 40 tax credits, loans, and grants.

41 (C) The number of actual jobs created and the number of jobs
 42 expected through the reporting year, as reviewed by an



- 1 independent auditing firm chosen by the corporation.
 2 (D) The amount of recaptured incentives for the reporting year
 3 and the total number of recipients.
 4 (E) The number and amount of tax credits claimed for the
 5 reporting year, as reported by the department of state revenue
 6 to the corporation by December 31 of each year.
 7 (2) With respect to each recipient of a tax credit, loan, or grant
 8 referred to in subdivision (1), the following:
 9 (A) The name, county, and municipality (if any) of the
 10 recipient.
 11 (B) The amount of tax credits certified to the recipient, and the
 12 amount of grants and loans actually paid out, during the term
 13 of the agreement.
 14 (C) The purpose of the tax credit, loan, or grant.
 15 (D) The performance goals for the reporting year, including
 16 the following:
 17 (i) Numbers of employees to be hired, retained, or trained.
 18 (ii) If a financial investment by the recipient was a condition
 19 for providing an incentive, the amount of the financial
 20 investment that the recipient expects to make in Indiana as
 21 a result of the project for which the incentive was granted.
 22 (E) Certification by the corporation that the recipient is
 23 complying with the terms of the incentive agreement.
 24 **(3) A summary of the information submitted by certified**
 25 **technology parks as part of the corporation's review under**
 26 **IC 36-7-32-11.**
 27 **(4) All data in all compliance reports submitted under section**
 28 **11 of this chapter.**
 29 **(5) By program, cumulative information on the total amount**
 30 **of job creation incentives awarded, the total number of**
 31 **companies that received the job creation incentives and were**
 32 **assisted in a year, and the names and addresses of those**
 33 **companies.**
 34 SECTION 17. IC 5-28-28-7, AS AMENDED BY P.L.175-2013,
 35 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2018]: Sec. 7. (a) If, in the course of compiling information to
 37 complete a **an annual job creation incentives and compliance** report
 38 required by section 5 of this chapter or upon the receipt of any other
 39 information concerning noncompliance with the terms and conditions
 40 of an incentive granted by the corporation, the corporation determines
 41 that a recipient of an incentive awarded by the corporation has not
 42 complied with the terms of the incentive agreement, the corporation



- 1 shall take the actions required under subsections (b) and (d).
 2 (b) If the incentive is a grant or loan awarded before April 1, 2010,
 3 the corporation shall determine:
 4 (1) whether there was good cause for the noncompliance; and
 5 (2) whether the recipient is in default.
 6 If in the judgment of the corporation there is not good cause for any
 7 noncompliance discovered under subsection (a), the corporation may
 8 seek a refund or arrange other methods of reclaiming the grant or loan
 9 from the recipient. If the corporation does seek a refund or otherwise
 10 reclaims a grant or loan from the recipient under this section, the
 11 amount of the refund or reclaimed part must be in proportion to the
 12 degree of default by the recipient as determined by the corporation.
 13 (c) Subsection (b) does not apply to a recipient of a grant or loan if:
 14 (1) the grant or loan has been disbursed on a pro rata basis; and
 15 (2) in the judgment of the corporation, the recipient's performance
 16 in relation to the recipient's performance goals equals or exceeds
 17 the ratio of the amount of the recipient's actual benefit from the
 18 grant or loan to the total amount of the grant or loan originally
 19 contemplated in the grant or loan award.
 20 (d) If the incentive granted by the corporation was awarded after
 21 March 31, 2010, the corporation shall seek a refund or arrange other
 22 methods of reclaiming the value of the incentive granted by the
 23 corporation from the recipient. The amount of the refund or reclaimed
 24 part must be in proportion to the degree of default by the recipient as
 25 determined by the corporation.
 26 SECTION 18. IC 5-28-28-8, AS ADDED BY P.L.110-2010,
 27 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2018]: Sec. 8. (a) As used in this section, "recapture
 29 provision" means language that requires the recipient of **an a job**
 30 **creation** incentive to repay some part of the incentive.
 31 (b) The corporation may waive or modify a recapture provision of
 32 this article or an agreement made with a person to whom the
 33 corporation has awarded **an a job creation** incentive if the corporation
 34 determines that the recipient of **an the** incentive awarded by the
 35 corporation has failed to meet a condition for receiving the incentive
 36 because of circumstances beyond the recipient's control, including:
 37 (1) natural disaster;
 38 (2) unforeseen industry trends;
 39 (3) lack of available labor force;
 40 (4) loss of a major supplier or market; or
 41 (5) another circumstance beyond the recipient's control, as
 42 determined by the corporation.



1 SECTION 19. IC 5-28-28-9, AS AMENDED BY P.L.145-2016,
 2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2018]: Sec. 9. (a) The **economic annual job creation**
 4 **incentives and compliance report** required under section 5 of this
 5 chapter must include **an annual report a part** containing a summary of
 6 **annual** statistics on the effectiveness of and compliance with all
 7 incentives granted by the corporation. The **part of the job creation**
 8 **incentives and compliance** report required by this section must
 9 describe:

10 (1) the overall compliance with the terms and conditions of
 11 incentives provided; and

12 (2) penalties imposed for failure to comply with the terms and
 13 conditions of incentives provided, **including a description of the**
 14 **outcomes and effectiveness of recapture provisions, organized**
 15 **by the job creation incentive program, along with at least the**
 16 **following information:**

17 (A) **The total number of companies receiving a job creation**
 18 **incentive.**

19 (B) **The total number of recipients in violation of a job**
 20 **creation incentive agreement.**

21 (C) **The total number of recapture efforts initiated.**

22 (D) **The total number of recapture efforts completed.**

23 (E) **The number of recapture waivers granted.**

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

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

28 (1) information specifying each person's compliance with its
 29 incentive agreement and any incentive that had to be reduced or
 30 paid back as a result of noncompliance with an incentive
 31 agreement;

32 (2) information stating, for each incentive recipient, the total
 33 incentive provided for each job created, computed from the date
 34 the incentive is granted through June 30 of the year of the report;

35 (3) information concerning all waivers or modifications under
 36 section 8 of this chapter; and

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

39 SECTION 20. IC 5-28-28-11 IS ADDED TO THE INDIANA
 40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2018]: **Sec. 11. (a) Before July 15 each year,**
 42 **each recipient of a job creation incentive shall submit to the**



1 corporation an annual compliance report covering the immediately
 2 preceding July 1 through June 30 period. A recipient that is a
 3 party to multiple job creation incentive agreements for a single
 4 project site may file a consolidated compliance report. A
 5 compliance report must include at least the following information:

6 (1) Each application tracking number.

7 (2) The recipient's:

8 (A) office mailing address;

9 (B) telephone number; and

10 (C) six (6) digit North American Industry Classification
 11 System (NAICS) code assigned to industries in the NAICS
 12 Manual of the United States Office of Management and
 13 Budget;

14 and the name of the recipient's chief officer or authorized
 15 designee for the specific project site for which the job creation
 16 incentive was approved.

17 (3) The name of the job creation incentive program and value
 18 of the job creation incentive that was approved by the
 19 corporation.

20 (4) The total number of the recipient's employees at the
 21 specific project site on the date on which the application was
 22 submitted to the corporation, and the total number of the
 23 recipient's employees at the specific project site on the date of
 24 the report, including, for each date:

25 (A) the number of employees with full-time, permanent
 26 jobs;

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

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

29 and a computation of the increase or decrease in the number
 30 of employees within each category set forth in clauses (A)
 31 through (C) between the date of submission of the application
 32 and the date of the report.

33 (5) The number of:

34 (A) jobs for new employees that the recipient promised in
 35 the job creation incentive agreement the recipient would
 36 create; and

37 (B) jobs for retained employees that the recipient promised
 38 in the job creation incentive agreement the recipient would
 39 retain;

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

42 (6) A declaration of whether the recipient is in compliance



1 with each term and condition of the job creation incentive
2 agreement.

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

6 (A) A detailed list of:

7 (i) the occupations; or

8 (ii) job classifications;

9 of the jobs.

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

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

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

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

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

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

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

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

