

SENATE BILL No. 411

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 progress 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. Makes technical corrections.

Effective: July 1, 2014.

Mrvan

January 14, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 411



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

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

- 1 SECTION 1. IC 5-14-3-3.4 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2014]: **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.175-2013,
- 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2014]: 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.



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



- 1 (3) Test questions, scoring keys, and other examination data used
 2 in administering a licensing examination, examination for
 3 employment, or academic examination before the examination is
 4 given or if it is to be given again.
- 5 (4) Scores of tests if the person is identified by name and has not
 6 consented to the release of the person's scores.
- 7 (5) The following:
- 8 (A) Records relating to negotiations between the Indiana
 9 economic development corporation, the ports of Indiana, the
 10 Indiana state department of agriculture, the Indiana finance
 11 authority, an economic development commission, a local
 12 economic development organization (as defined in
 13 IC 5-28-11-2(3)), or a governing body of a political
 14 subdivision with industrial, research, or commercial prospects,
 15 if the records are created while negotiations are in progress.
- 16 (B) Notwithstanding clause (A), the terms of the final offer of
 17 public financial resources communicated by the Indiana
 18 economic development corporation, the ports of Indiana, the
 19 Indiana finance authority, an economic development
 20 commission, or a governing body of a political subdivision to
 21 an industrial, a research, or a commercial prospect shall be
 22 available for inspection and copying under section 3 of this
 23 chapter after negotiations with that prospect have terminated.
- 24 (C) When disclosing a final offer under clause (B), the Indiana
 25 economic development corporation shall certify that the
 26 information being disclosed accurately and completely
 27 represents the terms of the final offer.
- 28 (D) Notwithstanding clause (A), an incentive agreement with
 29 an incentive recipient shall be available for inspection and
 30 copying under section 3 of this chapter after the date the
 31 incentive recipient and the Indiana economic development
 32 corporation execute the incentive agreement regardless of
 33 whether negotiations are in progress with the recipient after
 34 that date regarding a modification or extension of the incentive
 35 agreement.
- 36 **This subdivision does not apply to any information submitted**
 37 **by a recipient of an incentive granted by the Indiana economic**
 38 **development corporation to comply with the reporting**
 39 **requirements of IC 5-28-28-11.**
- 40 (6) Records that are intra-agency or interagency advisory or
 41 deliberative material, including material developed by a private
 42 contractor under a contract with a public agency, that are



1 expressions of opinion or are of a speculative nature, and that are
2 communicated for the purpose of decision making.

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

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

7 (A) the name, compensation, job title, business address,
8 business telephone number, job description, education and
9 training background, previous work experience, or dates of
10 first and last employment of present or former officers or
11 employees of the agency;

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

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

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

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

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

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

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

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

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

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

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

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



- 1 (16) Library or archival records:
 2 (A) which can be used to identify any library patron; or
 3 (B) deposited with or acquired by a library upon a condition
 4 that the records be disclosed only:
 5 (i) to qualified researchers;
 6 (ii) after the passing of a period of years that is specified in
 7 the documents under which the deposit or acquisition is
 8 made; or
 9 (iii) after the death of persons specified at the time of the
 10 acquisition or deposit.
- 11 However, nothing in this subdivision shall limit or affect contracts
 12 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 13 (17) The identity of any person who contacts the bureau of motor
 14 vehicles concerning the ability of a driver to operate a motor
 15 vehicle safely and the medical records and evaluations made by
 16 the bureau of motor vehicles staff or members of the driver
 17 licensing medical advisory board regarding the ability of a driver
 18 to operate a motor vehicle safely. However, upon written request
 19 to the commissioner of the bureau of motor vehicles, the driver
 20 must be given copies of the driver's medical records and
 21 evaluations.
- 22 (18) School safety and security measures, plans, and systems,
 23 including emergency preparedness plans developed under 511
 24 IAC 6.1-2-2.5.
- 25 (19) A record or a part of a record, the public disclosure of which
 26 would have a reasonable likelihood of threatening public safety
 27 by exposing a vulnerability to terrorist attack. A record described
 28 under this subdivision includes:
 29 (A) a record assembled, prepared, or maintained to prevent,
 30 mitigate, or respond to an act of terrorism under IC 35-47-12-1
 31 or an act of agricultural terrorism under IC 35-47-12-2;
 32 (B) vulnerability assessments;
 33 (C) risk planning documents;
 34 (D) needs assessments;
 35 (E) threat assessments;
 36 (F) intelligence assessments;
 37 (G) domestic preparedness strategies;
 38 (H) the location of community drinking water wells and
 39 surface water intakes;
 40 (I) the emergency contact information of emergency
 41 responders and volunteers;
 42 (J) infrastructure records that disclose the configuration of



1 critical systems such as communication, electrical, ventilation,
2 water, and wastewater systems;

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

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

17 (ii) must identify a record described under item (i) and
18 clearly mark the record as "confidential and not subject to
19 public disclosure under IC 5-14-3-4(b)(19)(J) without
20 approval of (insert name of submitting public agency)"; and
21 (L) the home address, home telephone number, and emergency
22 contact information for any:

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

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

26 (iii) emergency medical responder (as defined in
27 IC 35-42-2-6); or

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

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

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

40 (A) Telephone number.

41 (B) Address.

42 (C) Social Security number.



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



1 adoption by any public agency of a rule or procedure creating an
2 exception from disclosure under this section.

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

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

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

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

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

16 SECTION 3. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2014]: **Sec. 4.1. "Full-time employee" has the meaning set forth
19 in IC 6-3.1-13-4.**

20 SECTION 4. IC 5-28-2-4.2 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2014]: **Sec. 4.2. (a) "Full-time, permanent job" means
23 employment in which a new employee works for the recipient of a
24 job creation incentive as a full-time employee without any expected
25 date of termination.**

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

27 SECTION 5. IC 5-28-2-4.5 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2014]: **Sec. 4.5. "Job creation incentive" means a tax credit, tax
30 deduction, grant, loan, or loan guarantee that a statute authorizes
31 the state or an instrumentality of the state, excluding any political
32 subdivision or other unit of local government, to award or approve
33 for the purpose of encouraging the creation of new jobs in Indiana.**

34 SECTION 6. IC 5-28-2-4.6 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
36 1, 2014]: **Sec. 4.6. "Job creation incentive agreement" or "incentive
37 agreement" means any agreement executed by the corporation and
38 the recipient of a job creation incentive setting forth the terms and
39 conditions of any job creation incentive to be provided to the
40 recipient.**

41 SECTION 7. IC 5-28-2-4.7 IS ADDED TO THE INDIANA CODE
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2014]: **Sec. 4.7. "New employee" means a full-time employee who:**

- 3 **(1) is first employed by the recipient of a job creation**
- 4 **incentive at the specific project site that is the subject of the**
- 5 **job creation incentive agreement executed by the corporation**
- 6 **and the applicant; and**
- 7 **(2) is employed by the recipient of a job creation incentive**
- 8 **after the recipient enters into the job creation incentive**
- 9 **agreement.**

10 SECTION 8. IC 5-28-2-4.8 IS ADDED TO THE INDIANA CODE
11 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
12 **1, 2014]: Sec. 4.8. "Part-time job" means employment in which a**
13 **new employee works for the recipient of a job creation incentive**
14 **for fewer hours each week than the number of hours necessary to**
15 **be considered a full-time employee.**

16 SECTION 9. IC 5-28-2-4.9 IS ADDED TO THE INDIANA CODE
17 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
18 **1, 2014]: Sec. 4.9. "Retained employee" means any employee:**

- 19 **(1) who has a full-time or full-time equivalent job at a specific**
- 20 **facility or site;**
- 21 **(2) the continuance of whose job is threatened by a specific**
- 22 **and demonstrable threat, as specified by the applicant in the**
- 23 **application for a job creation incentive; and**
- 24 **(3) whose job is preserved.**

25 SECTION 10. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE JULY
26 1, 2014]. **Sec. 5-5: "Job creation incentive" means a tax credit, tax**
27 **deduction, grant, loan, or loan guarantee that a statute authorizes the**
28 **state or an instrumentality of the state (excluding any political**
29 **subdivision or other unit of local government) to award or approve for**
30 **the purpose of encouraging the creation of new jobs in Indiana.**

31 SECTION 11. IC 5-28-2-6.5 IS ADDED TO THE INDIANA CODE
32 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
33 **1, 2014]: Sec. 6.5. "Temporary job" means employment in which**
34 **a new employee is hired for a specific duration of time or season.**

35 SECTION 12. IC 5-28-5-9, AS ADDED BY P.L.4-2005, SECTION
36 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
37 2014]: **Sec. 9. (a) Except as specifically provided by law, the**
38 **corporation and the board are subject to IC 5-14-1.5 and IC 5-14-3.**

39 **(b) All records required to be prepared or maintained under**
40 **this article, including any cost analyses, audits, recipient**
41 **compliance reports, and any other records or proceedings of the**
42 **corporation, must be disclosed as provided by IC 5-14-3. In**



1 **addition, if the corporation contracts with an entity to perform a**
 2 **cost analysis as part of a determination by the corporation of**
 3 **whether to provide a job creation incentive and the estimated**
 4 **contract price exceeds twenty-five thousand dollars (\$25,000), that**
 5 **cost analysis must be disclosed as provided by IC 5-14-3.**

6 SECTION 13. IC 5-28-6-2, AS AMENDED BY P.L.6-2012,
 7 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2014]: Sec. 2. (a) The corporation shall develop and promote
 9 programs designed to make the best use of Indiana resources to ensure
 10 a balanced economy and continuing economic growth for Indiana, and,
 11 for those purposes, may do the following:

12 (1) Cooperate with federal, state, and local governments and
 13 agencies in the coordination of programs to make the best use of
 14 Indiana resources, based on a statewide study to determine
 15 specific economic sectors that should be emphasized by the state
 16 and by local economic development organizations within
 17 geographic regions in Indiana, and encourage collaboration with
 18 local economic development organizations within geographic
 19 regions in Indiana and with the various state economic
 20 development organizations within the states contiguous to
 21 Indiana.

22 (2) Receive and expend funds, grants, gifts, and contributions of
 23 money, property, labor, interest accrued from loans made by the
 24 corporation, and other things of value from public and private
 25 sources, including grants from agencies and instrumentalities of
 26 the state and the federal government. The corporation:

27 (A) may accept federal grants for providing planning
 28 assistance, making grants, or providing other services or
 29 functions necessary to political subdivisions, planning
 30 commissions, or other public or private organizations;

31 (B) shall administer these grants in accordance with the terms
 32 of the grants; and

33 (C) may contract with political subdivisions, planning
 34 commissions, or other public or private organizations to carry
 35 out the purposes for which the grants were made.

36 (3) Direct that assistance, information, and advice regarding the
 37 duties and functions of the corporation be given to the corporation
 38 by an officer, agent, or employee of the executive branch of the
 39 state. The head of any other state department or agency may
 40 assign one (1) or more of the department's or agency's employees
 41 to the corporation on a temporary basis or may direct a division
 42 or an agency under the department's or agency's supervision and



- 1 control to make a special study or survey requested by the
 2 corporation.
- 3 (b) The corporation shall perform the following duties:
- 4 (1) Develop and implement industrial development programs to
 5 encourage expansion of existing industrial, commercial, and
 6 business facilities in Indiana and to encourage new industrial,
 7 commercial, and business locations in Indiana.
- 8 (2) Assist businesses and industries in acquiring, improving, and
 9 developing overseas markets and encourage international plant
 10 locations in Indiana. The corporation, with the approval of the
 11 governor, may establish foreign offices to assist in this function.
- 12 (3) Promote the growth of minority business enterprises by doing
 13 the following:
- 14 (A) Mobilizing and coordinating the activities, resources, and
 15 efforts of governmental and private agencies, businesses, trade
 16 associations, institutions, and individuals.
- 17 (B) Assisting minority businesses in obtaining governmental
 18 or commercial financing for expansion or establishment of
 19 new businesses or individual development projects.
- 20 (C) Aiding minority businesses in procuring contracts from
 21 governmental or private sources, or both.
- 22 (D) Providing technical, managerial, and counseling assistance
 23 to minority business enterprises.
- 24 (4) Assist the office of the lieutenant governor in:
- 25 (A) community economic development planning;
- 26 (B) implementation of programs designed to further
 27 community economic development; and
- 28 (C) the development and promotion of Indiana's tourist
 29 resources.
- 30 (5) Assist the secretary of agriculture and rural development in
 31 promoting and marketing of Indiana's agricultural products and
 32 provide assistance to the director of the Indiana state department
 33 of agriculture.
- 34 (6) With the approval of the governor, implement federal
 35 programs delegated to the state to carry out the purposes of this
 36 article.
- 37 (7) Promote the growth of small businesses by doing the
 38 following:
- 39 (A) Assisting small businesses in obtaining and preparing the
 40 permits required to conduct business in Indiana.
- 41 (B) Serving as a liaison between small businesses and state
 42 agencies.



- 1 (C) Providing information concerning business assistance
 2 programs available through government agencies and private
 3 sources.
 4 (8) Establish a public information page on its current Internet site
 5 on the world wide web. The page must provide the following:
 6 (A) ~~By program, cumulative information on the total amount~~
 7 ~~of incentives awarded, the total number of companies that~~
 8 ~~received the incentives and were assisted in a year, and the~~
 9 ~~names and addresses of those companies.~~
 10 (A) **The job creation incentives and compliance report**
 11 **required by IC 5-28-28-5.**
 12 (B) A mechanism on the page whereby the public may request
 13 further information online about specific programs or
 14 incentives awarded.
 15 (C) A mechanism for the public to receive an electronic
 16 response.
 17 (c) The corporation may do the following:
 18 (1) Disseminate information concerning the industrial,
 19 commercial, governmental, educational, cultural, recreational,
 20 agricultural, and other advantages of Indiana.
 21 (2) Plan, direct, and conduct research activities.
 22 (3) Assist in community economic development planning and the
 23 implementation of programs designed to further community
 24 economic development.
 25 SECTION 14. IC 5-28-6-6, AS AMENDED BY P.L.175-2013,
 26 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2014]: Sec. 6. The corporation shall require an applicant for
 28 a job creation incentive to be granted by the corporation after March
 29 31, 2010, to enter into ~~an~~ **a job creation incentive** agreement with the
 30 corporation as a condition of receiving the incentive. Subject to
 31 IC 5-28-28-8, the agreement must include the following:
 32 (1) The applicant's agreement regarding the following:
 33 (A) The number of individuals that are expected to be
 34 employed by the applicant, including the number of employees
 35 who will be hired, retained, or trained during the duration of
 36 the agreement.
 37 (B) If a financial investment by an applicant is a condition for
 38 providing an incentive, the amount of the financial investment
 39 that the applicant expects to make in Indiana as a result of the
 40 project for which the incentive is granted.
 41 (2) A requirement that the applicant shall file with the compliance
 42 officer an annual compliance report ~~detailing the applicant's~~



1 ~~compliance, or progress toward compliance, with subdivision (1):~~
 2 **as required by IC 5-28-28-11.**

3 (3) A provision that notifies the applicant that the applicant is
 4 subject to a determination of the corporation under this
 5 subdivision. The corporation, after a finding that the applicant is
 6 employing fewer individuals than the applicant agreed to employ
 7 or that the applicant has not made the financial investment agreed
 8 to under subdivision (1), subject to any confidentiality laws, shall
 9 hold a hearing to determine if the applicant shall be required to
 10 pay back to the state a part of the incentive granted to the
 11 applicant under the agreement. The penalty imposed must be a
 12 matter of public record and must reflect in a fair and balanced
 13 way the amount of incentive received.

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

17 (A) moves or closes;

18 (B) **does not make the level of capital investment specified**
 19 **by the applicant in the application for the job creation**
 20 **incentive;**

21 (C) **employs fewer individuals than specified by the**
 22 **applicant in the application for the job creation incentive;**
 23 **or**

24 (D) **pays less in wages than specified by the applicant in the**
 25 **application for the job creation incentive.**

26 SECTION 15. IC 5-28-28-5, AS AMENDED BY P.L.175-2013,
 27 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2014]: Sec. 5. (a) Beginning February 1, 2008, the corporation
 29 shall:

30 (1) ~~submit an economic prepare an annual job creation~~
 31 ~~incentives and compliance report for submission to:~~

32 (A) the governor; and

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

35 (2) publish the report on the corporation's **Internet web site and**
 36 **on the Indiana transparency portal** Internet web site.

37 on the schedule specified in subsection (b).

38 (b) Before August 1, 2013, the corporation shall submit and publish
 39 an incentives and compliance report that provides updated information
 40 for active incentive agreements approved and awarded after January 1,
 41 2005, through June, 30, 2013. After December 31, 2013, the
 42 corporation shall submit and publish before February 1 of each year an



1 **annual job creation** incentives and compliance report that provides
 2 updated information for active incentive agreements approved and
 3 awarded after January 1, 2005, through the immediately preceding
 4 calendar year.

5 SECTION 16. IC 5-28-28-6, AS AMENDED BY P.L.175-2013,
 6 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2014]: Sec. 6. The **economic job creation** incentives and
 8 compliance report required under section 5 of this chapter must include
 9 at least the following:

10 (1) The total ~~amount of~~ **for** each of the following:

11 (A) **The number and amount of** tax credits, loans, and grants
 12 contractually awarded by the corporation. **This information**
 13 **must also include the total amount of uncollected or**
 14 **diverted state tax revenues resulting from each tax credit,**
 15 **as reported to the department of state revenue on tax**
 16 **returns filed during the state fiscal year that ends**
 17 **immediately before the due date of the report. Before July**
 18 **15 each year, the department of state revenue shall submit**
 19 **to the corporation the information necessary for the**
 20 **corporation to include these total amounts in the**
 21 **corporation's report.**

22 (B) **The amount of** investments made by the recipients of the
 23 tax credits, loans, and grants.

24 (C) **The number of** actual jobs created and the number of jobs
 25 expected through the reporting year, as reviewed by an
 26 independent auditing firm chosen by the corporation.

27 (D) **The amount of** recaptured incentives for the reporting
 28 year and the total number of recipients.

29 (E) **The number and amount of** tax credits claimed for the
 30 reporting year, as reported by the department of state revenue
 31 to the corporation by December 31 of each year.

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

34 (A) The name, county, and municipality (if any) of the
 35 recipient.

36 (B) The amount of tax credits certified to ~~each~~ **the** recipient,
 37 and the amount of grants and loans actually paid out, during
 38 the term of the agreement.

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

40 (D) The performance goals for the reporting year, including
 41 the following:

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



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

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

8 **(3) A summary of the information submitted by certified**
 9 **technology parks as part of the corporation's review under**
 10 **IC 36-7-32-11.**

11 **(4) All data in all compliance reports submitted under section**
 12 **11 of this chapter.**

13 **(5) By program, cumulative information on the total amount**
 14 **of job creation incentives awarded, the total number of**
 15 **companies that received the job creation incentives and were**
 16 **assisted in a year, and the names and addresses of those**
 17 **companies.**

18 SECTION 17. IC 5-28-28-7, AS AMENDED BY P.L.175-2013,
 19 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2014]: Sec. 7. (a) If, in the course of compiling information to
 21 complete a **job creation incentives and compliance** report required by
 22 section 5 of this chapter or upon the receipt of any other information
 23 concerning noncompliance with the terms and conditions of an
 24 incentive granted by the corporation, the corporation determines that
 25 a recipient of an incentive awarded by the corporation has not complied
 26 with the terms of the incentive agreement, the corporation shall take the
 27 actions required under subsections (b) and (d).

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

- 30 (1) whether there was good cause for the noncompliance; and
 31 (2) whether the recipient is in default.

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

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

- 40 (1) the grant or loan has been disbursed on a pro rata basis; and
 41 (2) in the judgment of the corporation, the recipient's performance
 42 in relation to the recipient's performance goals equals or exceeds



1 the ratio of the amount of the recipient's actual benefit from the
 2 grant or loan to the total amount of the grant or loan originally
 3 contemplated in the grant or loan award.

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

10 SECTION 18. IC 5-28-28-8, AS ADDED BY P.L.110-2010,
 11 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2014]: Sec. 8. (a) As used in this section, "recapture
 13 provision" means language that requires the recipient of ~~an~~ **a job**
 14 **creation** incentive to repay some part of the incentive.

15 (b) The corporation may waive or modify a recapture provision of
 16 this article or an agreement made with a person to whom the
 17 corporation has awarded ~~an~~ **a job creation** incentive if the corporation
 18 determines that the recipient of ~~an~~ **the** incentive awarded by the
 19 corporation has failed to meet a condition for receiving the incentive
 20 because of circumstances beyond the recipient's control, including:

- 21 (1) natural disaster;
- 22 (2) unforeseen industry trends;
- 23 (3) lack of available labor force;
- 24 (4) loss of a major supplier or market; or
- 25 (5) another circumstance beyond the recipient's control, as
 26 determined by the corporation.

27 SECTION 19. IC 5-28-28-9, AS ADDED BY P.L.110-2010,
 28 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2014]: Sec. 9. (a) Beginning in 2010, the ~~economic job~~
 30 **creation** incentives and compliance report required under section 5 of
 31 this chapter must include ~~an annual report~~ **a part** containing a
 32 summary **of annual** statistics on the effectiveness of and compliance
 33 with all incentives granted by the corporation. The **part of the job**
 34 **creation incentives and compliance** report required by this section
 35 must describe:

- 36 (1) the overall compliance with the terms and conditions of
 37 incentives provided; and
- 38 (2) penalties imposed for failure to comply with the terms and
 39 conditions of incentives provided, **including a description of the**
 40 **outcomes and effectiveness of recapture provisions, organized**
 41 **by the job creation incentive program, along with at least the**
 42 **following information:**



- 1 **(A) The total number of companies receiving a job creation**
 2 **incentive.**
 3 **(B) The total number of recipients in violation of a job**
 4 **creation incentive agreement.**
 5 **(C) The total number of recapture efforts initiated.**
 6 **(D) The total number of recapture efforts completed.**
 7 **(E) The number of recapture waivers granted.**

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

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

- 12 (1) information specifying each person's compliance with its
 13 incentive agreement and any incentive that had to be reduced or
 14 paid back as a result of noncompliance with an incentive
 15 agreement;
 16 (2) information stating, for each incentive recipient, the total
 17 incentive provided for each job created, computed from the date
 18 the incentive is granted through June 30 of the year of the report;
 19 (3) information concerning all waivers or modifications under
 20 section 8 of this chapter; and
 21 (4) information describing all hearings and determinations under
 22 IC 5-28-6-6.

23 SECTION 20. IC 5-28-28-11 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) Before July 15 each year,**
 26 **each recipient of a job creation incentive shall submit to the**
 27 **corporation an annual compliance report covering the immediately**
 28 **preceding July 1 through June 30 period. A recipient that is a**
 29 **party to multiple job creation incentive agreements for a single**
 30 **project site may file a consolidated compliance report. A**
 31 **compliance report must include at least the following information:**

- 32 **(1) Each application tracking number.**
 33 **(2) The recipient's:**
 34 **(A) office mailing address;**
 35 **(B) telephone number; and**
 36 **(C) six (6) digit North American Industry Classification**
 37 **System (NAICS) code assigned to industries in the NAICS**
 38 **Manual of the United States Office of Management and**
 39 **Budget;**
 40 **and the name of the recipient's chief officer or authorized**
 41 **designee for the specific project site for which the job creation**
 42 **incentive was approved.**



- 1 **(3) The name of the job creation incentive program and value**
 2 **of the job creation incentive that was approved by the**
 3 **corporation.**
- 4 **(4) The total number of the recipient's employees at the**
 5 **specific project site on the date on which the application was**
 6 **submitted to the corporation, and the total number of the**
 7 **recipient's employees at the specific project site on the date of**
 8 **the report, including, for each date:**
- 9 **(A) the number of employees with full-time, permanent**
 10 **jobs;**
- 11 **(B) the number of employees with part-time jobs; and**
- 12 **(C) the number of employees with temporary jobs;**
 13 **and a computation of the increase or decrease in the number**
 14 **of employees within each category set forth in clauses (A)**
 15 **through (C) between the date of submission of the application**
 16 **and the date of the report.**
- 17 **(5) The number of:**
- 18 **(A) jobs for new employees that the recipient promised in**
 19 **the job creation incentive agreement the recipient would**
 20 **create; and**
- 21 **(B) jobs for retained employees that the recipient promised**
 22 **in the job creation incentive agreement the recipient would**
 23 **retain;**
- 24 **broken down by full-time, permanent jobs, part-time jobs,**
 25 **and temporary jobs.**
- 26 **(6) A declaration of whether the recipient is in compliance**
 27 **with each term and condition of the job creation incentive**
 28 **agreement.**
- 29 **(7) The following for the full-time, permanent jobs that the**
 30 **recipient created or retained as a result of the job creation**
 31 **incentive:**
- 32 **(A) A detailed list of:**
- 33 **(i) the occupations; or**
 34 **(ii) job classifications;**
 35 **of the jobs.**
- 36 **(B) A schedule of the starting dates for the new employees**
 37 **hired for the jobs.**
- 38 **(C) The actual average wage paid to employees with the**
 39 **jobs, broken down by occupation or job classification.**
- 40 **(D) The total payroll for new employees and retained**
 41 **employees with these jobs.**
- 42 **(8) A narrative, if necessary, stating whether and, if so, how**



- 1 the recipient's use of the job creation incentive during the
2 reporting year has reduced unemployment at any site in
3 Indiana.
- 4 **(9) A certification by the chief officer of the recipient or the**
5 **chief officer's authorized designee that the information in the**
6 **compliance report contains no knowing misrepresentation of**
7 **material facts upon which eligibility for the job creation**
8 **incentive is based.**
- 9 **(10) Any other information the corporation considers**
10 **necessary to ensure compliance with the job creation incentive**
11 **program.**
- 12 **(b) The corporation may verify information contained in the**
13 **recipient's compliance report, including inspecting the specific**
14 **project site and inspecting the records of the recipient that relate**
15 **to the job creation incentive agreement.**
- 16 **(c) If a recipient of a job creation incentive fails to comply with**
17 **subsection (a), the corporation shall suspend all current job**
18 **creation incentives being provided to the recipient, effective the**
19 **immediately following October 1. In addition, the corporation is**
20 **prohibited from completing any current job creation incentive or**
21 **providing any future job creation incentive until the corporation**
22 **receives proof that the recipient has complied with subsection (a).**

