

SENATE BILL No. 388

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14; IC 36-4-3; IC 36-7-4-925.

Synopsis: Land use issues. Allows a public agency engaged in economic development or redevelopment activities to conduct interviews with commercial and industrial prospects in an executive session. Allows a public agency to withhold records relating to the discussions and negotiations with industrial, commercial, or research prospects from public inspection and copying. Requires the public agency to disclose the terms of the final offer of public financial resources communicated to a prospect after discussions and negotiations have ended. Requires a city legislative body and works board to jointly conduct disannexation proceedings. Provides that a special exception approved after June 30, 2007, takes effect when a certificate showing approval of the special exception and acknowledged by the zoning authority is recorded with the county recorder.

Effective: July 1, 2007.

Broden

January 11, 2007, read first time and referred to Committee on Local Government and Elections.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 388



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official"
4 means a person:
5 (1) who is a member of a governing body of a public agency; or
6 (2) whose tenure and compensation are fixed by law and who
7 executes an oath.
8 (b) Executive sessions may be held only in the following instances:
9 (1) Where authorized by federal or state statute.
10 (2) For discussion of strategy with respect to any of the following:
11 (A) Collective bargaining.
12 (B) Initiation of litigation or litigation that is either pending or
13 has been threatened specifically in writing.
14 (C) The implementation of security systems.
15 (D) The purchase or lease of real property by the governing
16 body up to the time a contract or option to purchase or lease is
17 executed by the parties.



- 1 However, all such strategy discussions must be necessary for
- 2 competitive or bargaining reasons and may not include
- 3 competitive or bargaining adversaries.
- 4 (3) For discussion of the assessment, design, and implementation
- 5 of school safety and security measures, plans, and systems.
- 6 (4) Interviews with industrial or commercial prospects or agents
- 7 of industrial or commercial prospects by the Indiana economic
- 8 development corporation, the office of tourism development, the
- 9 Indiana finance authority, ~~or~~ economic development
- 10 commissions, **or a public agency engaged in economic**
- 11 **development or redevelopment activities.**
- 12 (5) To receive information about and interview prospective
- 13 employees.
- 14 (6) With respect to any individual over whom the governing body
- 15 has jurisdiction:
- 16 (A) to receive information concerning the individual's alleged
- 17 misconduct; and
- 18 (B) to discuss, before a determination, the individual's status
- 19 as an employee, a student, or an independent contractor who
- 20 is:
- 21 (i) a physician; or
- 22 (ii) a school bus driver.
- 23 (7) For discussion of records classified as confidential by state or
- 24 federal statute.
- 25 (8) To discuss before a placement decision an individual student's
- 26 abilities, past performance, behavior, and needs.
- 27 (9) To discuss a job performance evaluation of individual
- 28 employees. This subdivision does not apply to a discussion of the
- 29 salary, compensation, or benefits of employees during a budget
- 30 process.
- 31 (10) When considering the appointment of a public official, to do
- 32 the following:
- 33 (A) Develop a list of prospective appointees.
- 34 (B) Consider applications.
- 35 (C) Make one (1) initial exclusion of prospective appointees
- 36 from further consideration.
- 37 Notwithstanding IC 5-14-3-4(b)(12), a governing body may
- 38 release and shall make available for inspection and copying in
- 39 accordance with IC 5-14-3-3 identifying information concerning
- 40 prospective appointees not initially excluded from further
- 41 consideration. An initial exclusion of prospective appointees from
- 42 further consideration may not reduce the number of prospective

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1 appointees to fewer than three (3) unless there are fewer than
2 three (3) prospective appointees. Interviews of prospective
3 appointees must be conducted at a meeting that is open to the
4 public.

5 (11) To train school board members with an outside consultant
6 about the performance of the role of the members as public
7 officials.

8 (12) To prepare or score examinations used in issuing licenses,
9 certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

10 (13) To discuss information and intelligence intended to prevent,
11 mitigate, or respond to the threat of terrorism.

12 (c) A final action must be taken at a meeting open to the public.

13 (d) Public notice of executive sessions must state the subject matter
14 by specific reference to the enumerated instance or instances for which
15 executive sessions may be held under subsection (b). The requirements
16 stated in section 4 of this chapter for memoranda and minutes being
17 made available to the public is modified as to executive sessions in that
18 the memoranda and minutes must identify the subject matter
19 considered by specific reference to the enumerated instance or
20 instances for which public notice was given. The governing body shall
21 certify by a statement in the memoranda and minutes of the governing
22 body that no subject matter was discussed in the executive session
23 other than the subject matter specified in the public notice.

24 (e) A governing body may not conduct an executive session during
25 a meeting, except as otherwise permitted by applicable statute. A
26 meeting may not be recessed and reconvened with the intent of
27 circumventing this subsection.

28 SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.101-2006,
29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2007]: Sec. 4. (a) The following public records are excepted
31 from section 3 of this chapter and may not be disclosed by a public
32 agency, unless access to the records is specifically required by a state
33 or federal statute or is ordered by a court under the rules of discovery:

- 34 (1) Those declared confidential by state statute.
- 35 (2) Those declared confidential by rule adopted by a public
36 agency under specific authority to classify public records as
37 confidential granted to the public agency by statute.
- 38 (3) Those required to be kept confidential by federal law.
- 39 (4) Records containing trade secrets.
- 40 (5) Confidential financial information obtained, upon request,
41 from a person. However, this does not include information that is
42 filed with or received by a public agency pursuant to state statute.

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- 1 (6) Information concerning research, including actual research
- 2 documents, conducted under the auspices of an institution of
- 3 higher education, including information:
- 4 (A) concerning any negotiations made with respect to the
- 5 research; and
- 6 (B) received from another party involved in the research.
- 7 (7) Grade transcripts and license examination scores obtained as
- 8 part of a licensure process.
- 9 (8) Those declared confidential by or under rules adopted by the
- 10 supreme court of Indiana.
- 11 (9) Patient medical records and charts created by a provider,
- 12 unless the patient gives written consent under IC 16-39.
- 13 (10) Application information declared confidential by the board
- 14 of the Indiana economic development corporation under
- 15 IC 5-28-16.
- 16 (11) A photograph, a video recording, or an audio recording of an
- 17 autopsy, except as provided in IC 36-2-14-10.
- 18 (12) A Social Security number contained in the records of a
- 19 public agency.
- 20 (b) Except as otherwise provided by subsection (a), the following
- 21 public records shall be excepted from section 3 of this chapter at the
- 22 discretion of a public agency:
- 23 (1) Investigatory records of law enforcement agencies. However,
- 24 certain law enforcement records must be made available for
- 25 inspection and copying as provided in section 5 of this chapter.
- 26 (2) The work product of an attorney representing, pursuant to
- 27 state employment or an appointment by a public agency:
- 28 (A) a public agency;
- 29 (B) the state; or
- 30 (C) an individual.
- 31 (3) Test questions, scoring keys, and other examination data used
- 32 in administering a licensing examination, examination for
- 33 employment, or academic examination before the examination is
- 34 given or if it is to be given again.
- 35 (4) Scores of tests if the person is identified by name and has not
- 36 consented to the release of the person's scores.
- 37 (5) The following:
- 38 (A) Records relating to negotiations between the Indiana
- 39 economic development corporation, the Indiana finance
- 40 authority, ~~or~~ economic development commissions, **or a public**
- 41 **agency engaged in economic development or**
- 42 **redevelopment activities** with industrial, research, or

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commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana finance authority, or economic development commissions, **or a public agency engaged in economic development or redevelopment activities** to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B):

- (i) **a public agency; or**
- (ii) **in the case of communication of the terms of the final offer of public financial resources by the Indiana economic development corporation, the Indiana finance authority, or economic development commissions,** the Indiana economic development corporation, **the Indiana finance authority, or the economic development commission** shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

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

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

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

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available

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

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1 to operate a motor vehicle safely. However, upon written request
 2 to the commissioner of the bureau of motor vehicles, the driver
 3 must be given copies of the driver's medical records and
 4 evaluations.

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

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

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

15 (B) vulnerability assessments;

16 (C) risk planning documents;

17 (D) needs assessments;

18 (E) threat assessments;

19 (F) intelligence assessments;

20 (G) domestic preparedness strategies;

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

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

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

28 (K) detailed drawings or specifications of structural elements,
 29 floor plans, and operating, utility, or security systems, whether
 30 in paper or electronic form, of any building or facility located
 31 on an airport (as defined in IC 8-21-1-1) that is owned,
 32 occupied, leased, or maintained by a public agency. A record
 33 described in this clause may not be released for public
 34 inspection by any public agency without the prior approval of
 35 the public agency that owns, occupies, leases, or maintains the
 36 airport. The public agency that owns, occupies, leases, or
 37 maintains the airport:

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

42 (ii) must identify a record described under item (i) and

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1 clearly mark the record as "confidential and not subject to
2 public disclosure under IC 5-14-3-4(b)(19)(J) without
3 approval of (insert name of submitting public agency)".
4 This subdivision does not apply to a record or portion of a record
5 pertaining to a location or structure owned or protected by a
6 public agency in the event that an act of terrorism under
7 IC 35-47-12-1 or an act of agricultural terrorism under
8 IC 35-47-12-2 has occurred at that location or structure, unless
9 release of the record or portion of the record would have a
10 reasonable likelihood of threatening public safety by exposing a
11 vulnerability of other locations or structures to terrorist attack.
12 (20) The following personal information concerning a customer
13 of a municipally owned utility (as defined in IC 8-1-2-1):
14 (A) Telephone number.
15 (B) Address.
16 (C) Social Security number.
17 (21) The following personal information about a complainant
18 contained in records of a law enforcement agency:
19 (A) Telephone number.
20 (B) The complainant's address. However, if the complainant's
21 address is the location of the suspected crime, infraction,
22 accident, or complaint reported, the address shall be made
23 available for public inspection and copying.
24 (c) Nothing contained in subsection (b) shall limit or affect the right
25 of a person to inspect and copy a public record required or directed to
26 be made by any statute or by any rule of a public agency.
27 (d) Notwithstanding any other law, a public record that is classified
28 as confidential, other than a record concerning an adoption, shall be
29 made available for inspection and copying seventy-five (75) years after
30 the creation of that record.
31 (e) Notwithstanding subsection (d) and section 7 of this chapter:
32 (1) public records subject to IC 5-15 may be destroyed only in
33 accordance with record retention schedules under IC 5-15; or
34 (2) public records not subject to IC 5-15 may be destroyed in the
35 ordinary course of business.
36 SECTION 3. IC 36-4-3-17 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) The owner or
38 owners of:
39 (1) fifty-one percent (51%) or more in number of the lots in an
40 addition or subdivision to a municipality; or
41 (2) contiguous territory within the corporate boundaries of a
42 municipality, constituting not less than one (1) entire block, if

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1 platted, and not less than one (1) acre, if not platted;
2 may file a petition for disannexation if any of the boundaries of the
3 addition, subdivision, or contiguous territory forms part of the
4 corporate boundary of the municipality.

5 **(b) ~~The~~ A petition for disannexation must be filed with the:**

6 **(1) works board, if the municipality is a town; or**

7 **(2) city legislative body and city works board, of the**
8 **municipality if the municipality is a city;**

9 and must include a plat of the territory sought to be disannexed. Notice
10 of the petition must be given **by the works board** in the manner
11 prescribed by IC 5-3-1.

12 **~~(b)~~ (c)** A remonstrance against the granting of the petition may be
13 filed by:

14 (1) the owner of a lot in the subdivision or addition; or

15 (2) the owner of territory adjoining the territory sought to be
16 disannexed;

17 **with the municipal body or bodies set forth in subsection (b).**

18 **~~(c)~~ (d)** **This subsection applies only to a town.** The works board
19 shall conduct a hearing and make a just and equitable order on the
20 petition. In conducting the hearing, the works board may:

21 (1) subpoena witnesses;

22 (2) punish contempt;

23 (3) adjourn the hearing from time to time;

24 (4) make orders concerning streets and alleys, including their
25 vacation; and

26 (5) award damages.

27 **(e) This subsection applies only to a city. The legislative body**
28 **and the works board shall conduct a joint hearing and shall, by a**
29 **majority vote of all members, make a just and equitable order on**
30 **the petition. In conducting the hearing, the works board may make**
31 **orders concerning streets and alleys, including their vacation. In**
32 **conducting the hearing, the legislative body and works board may,**
33 **by a majority vote of all members:**

34 (1) subpoena witnesses;

35 (2) punish contempt;

36 (3) adjourn the hearing from time to time; and

37 (4) award damages.

38 SECTION 4. IC 36-4-3-19 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) If disannexation
40 is ordered under **section 17** of this chapter by ~~the works board of a~~
41 **municipality** and no appeal is taken, the clerk of the municipality shall,
42 without compensation and not later than ten (10) days after the order

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1 is made, make and certify a complete transcript of the disannexation
2 proceedings to the auditor of each county in which the disannexed lots
3 or lands lie and to the office of the secretary of state. The county
4 auditor shall list those lots or lands appropriately for taxation. The
5 proceedings ~~of the works board~~ **under section 17 of this chapter** shall
6 not be certified to the county auditor or to the office of the secretary of
7 state if an appeal to the circuit court has been taken.

8 (b) In all proceedings begun in or appealed to the circuit court, if
9 vacation or disannexation is ordered, the clerk of the court shall
10 immediately after the judgment of the court, or after a decision on
11 appeal to the supreme court or court of appeals if the judgment on
12 appeal is not reversed, certify the judgment of the circuit court, as
13 affirmed or modified, to each of the following:

- 14 (1) The auditor of each county in which the lands or lots affected
- 15 lie, on receipt of one dollar (\$1) for the making and certifying of
- 16 the transcript from the petitioners for the disannexation.
- 17 (2) The office of the secretary of state.
- 18 (3) The circuit court clerk of each county in which the lands or
- 19 lots affected are located.
- 20 (4) The county election board of each county in which the lands
- 21 or lots affected are located.
- 22 (5) If a board of registration exists, the board of each county in
- 23 which the lands or lots affected are located.
- 24 (6) The office of census data established by IC 2-5-1.1-12.2.

25 (c) The county auditor shall forward a list of lots or lands
26 disannexed under this section to the following:

- 27 (1) The county highway department of each county in which the
- 28 lands or lots affected are located.
- 29 (2) The county surveyor of each county in which the lands or lots
- 30 affected are located.
- 31 (3) Each plan commission, if any, that lost or gained jurisdiction
- 32 over the disannexed territory.
- 33 (4) The township trustee of each township that lost or gained
- 34 jurisdiction over the disannexed territory.
- 35 (5) The sheriff of each county in which the lands or lots affected
- 36 are located.
- 37 (6) The office of the secretary of state.
- 38 (7) The office of census data established by IC 2-5-1.1-12.2.

39 The county auditor may require the clerk of the municipality to furnish
40 an adequate number of copies of the list of disannexed lots or lands or
41 may charge the clerk a fee for photoreproduction of the list.

42 (d) A disannexation described by this section takes effect upon the

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1 clerk of the municipality filing the order with:
 2 (1) the county auditor of each county in which the annexed
 3 territory is located; and
 4 (2) the circuit court clerk, or if a board of registration exists, the
 5 board of each county in which the annexed territory is located.
 6 (e) The clerk of the municipality shall notify the office of the
 7 secretary of state and the office of census data established by
 8 IC 2-5-1.1-12.2 of the date a disannexation is effective under this
 9 chapter.
 10 (f) A disannexation order under this chapter may not take effect
 11 during the year preceding a year in which a federal decennial census is
 12 conducted. A disannexation order that would otherwise take effect
 13 during the year preceding a year in which a federal decennial census is
 14 conducted takes effect January 2 of the year in which a federal
 15 decennial census is conducted.
 16 SECTION 5. IC 36-7-4-925 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2007]: **Sec. 925. (a) This section applies to a special exception
 19 approved after June 30, 2007.**
 20 **(b) A special exception takes effect when a certificate:**
 21 **(1) on a form provided by the zoning authority;**
 22 **(2) showing approval of the special exception; and**
 23 **(3) acknowledged by the zoning authority;**
 24 **is recorded with the county recorder.**

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