
HOUSE BILL No. 1082

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-33; IC 36-7-7.6-18; IC 36-7.5-4; IC 36-7.6-4-2.

Synopsis: Local development agreements. Provides that the gaming commission has continuous jurisdiction over development agreements, economic development payments, disbursements to third party recipients, and expenditures of third party recipients. Establishes reporting requirements for entities that receive economic development payments and third party recipients. Provides that reports are public records. Grants subpoena power to the gaming commission in its exercise of jurisdiction over development agreements. Makes conforming changes to the use of new defined terms.

Effective: July 1, 2010.

Van Haften

January 7, 2010, read first time and referred to Committee on Public Policy.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1082



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

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

1 SECTION 1. IC 4-33-2-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 6.5. "Development agreement" means an agreement
4 that:**

- 5 **(1) is between a person or a unit of local government and:**
 - 6 **(A) an operating agent or an affiliate of the operating**
 - 7 **agent; or**
 - 8 **(B) a licensed owner or an affiliate of the licensed owner;**
 - 9 **and**
- 10 **(2) sets forth the operating agent's or licensed owner's**
- 11 **financial commitments to support economic development in**
- 12 **a unit or geographic region.**

13 SECTION 2. IC 4-33-2-7.3 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2010]: **Sec. 7.3. "Economic development payment" means a
16 monetary amount:**

- 17 **(1) paid by an operating agent (or an affiliate of the operating**



1 agent) or a licensed owner (or an affiliate of the licensed
 2 owner); and
 3 (2) received by a unit of local government or any other entity
 4 regardless of whether the entity is organized or operated for
 5 private profit or gain;
 6 in accordance with the terms of a development agreement.

7 SECTION 3. IC 4-33-2-18.5 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2010]: **Sec. 18.5. "Third party recipient" means an entity that**
 10 **receives a disbursement from money originally received by the**
 11 **disbursing party as an economic development payment.**

12 SECTION 4. IC 4-33-4-22.5 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2010]: **Sec. 22.5. The commission has continuous jurisdiction**
 15 **over development agreements. The commission may verify and**
 16 **ensure that development agreements, economic development**
 17 **payments, disbursements to third party recipients, and**
 18 **expenditures of third party recipients:**

- 19 (1) comport with the purposes of this article; and
- 20 (2) do not adversely affect the integrity of the riverboat
- 21 gambling industry in Indiana.

22 SECTION 5. IC 4-33-4-23, AS ADDED BY P.L.199-2005,
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2010]: **Sec. 23. (a) An operating agent or a person holding an**
 25 **owner's license must report annually to the commission the following:**

- 26 (1) The total dollar amounts and recipients of ~~incentive~~ **economic**
 27 **development** payments made.
- 28 (2) Any other items related to the payments described in
 29 ~~subdivision (1)~~ **an economic development payment** that the
 30 commission may require.

31 (b) The commission shall prescribe, with respect to ~~the~~ a report
 32 required by ~~subsection (a):~~ **this section:**

- 33 (1) the format of the report;
- 34 (2) the deadline by which the report must be filed; and
- 35 (3) the manner in which the report must be maintained and filed.

36 (c) **Except as provided in subsection (g), an entity that receives**
 37 **an economic development payment shall annually report to the**
 38 **commission an accounting of:**

- 39 (1) the economic development payment received by the entity;
- 40 and
- 41 (2) any disbursements of economic development payment
- 42 money received by the entity.

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- (d) A report required under subsection (c) must include:**
 - (1) the legal name of the entity submitting the report;**
 - (2) the date, amount, and purpose of each disbursement;**
 - (3) the name of each third party recipient receiving a disbursement; and**
 - (4) any other information required by the commission.**

(e) Upon request of the commission, an entity submitting a report under subsection (c) shall furnish to the commission sufficient documentation to prove the validity of a transaction described in the report.

(f) A report submitted under subsection (c) or (h) must be made available electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(g) An entity that is required to file a report under IC 5-11-1-4 is not required to submit the report required by subsection (c).

(h) A third party recipient shall annually report to the commission an accounting of:

- (1) the aggregate amount of money received by the third party recipient that is attributable to an economic development payment; and**
- (2) all expenditures for the benefit of any person that:**
 - (A) are attributable to disbursements from an economic development payment; and**
 - (B) exceed five thousand dollars (\$5,000) in the aggregate during the preceding calendar year.**

(i) The accounting of the expenditures required by subsection (h)(2) must include an itemized list stating:

- (1) the legal name of the recipient of the expenditure;**
- (2) the date of each expenditure;**
- (3) the amount of each expenditure; and**
- (4) the purpose of each expenditure.**

(j) A report required by this section is a public record.

SECTION 6. IC 4-33-4-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23.5. The commission may do any of the following when exercising its jurisdiction over a development agreement:

- (1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, books, papers, and documents for inspection by the commission.**
- (2) Issue and serve a subpoena for the appearance of a person**

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- to provide testimony under oath.**
- (3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).**
- (4) Refer any matter to the attorney general, a local prosecuting attorney, or a law enforcement agency.**

SECTION 7. IC 4-33-21-7, AS ADDED BY P.L.142-2009, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) A trustee acting under the authority of this chapter must fulfill the trustee's duties as a fiduciary for the owner of the riverboat. In addition, the trustee shall consider the effect of the trustee's actions upon:

- (1) the amount of taxes remitted by the trustee under IC 4-33-12 and IC 4-33-13;
- (2) the riverboat's dock city or county;
- (3) the riverboat's employees; and
- (4) the creditors of the owner of the riverboat.

(b) In balancing the interests described in subsection (a), a trustee shall conduct gambling operations on the riverboat in a manner that enhances the credibility and integrity of riverboat gambling in Indiana while minimizing disruptions to tax revenues, ~~incentive~~ **economic development** payments, employment, and credit obligations.

SECTION 8. IC 36-7-7.6-18, AS AMENDED BY P.L.39-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 18. (a) The commission shall prepare and adopt an annual appropriation budget for its operation. The appropriation budget shall be apportioned to each participating county on a pro rata per capita basis. After adoption of the appropriation budget, any amount that does not exceed an amount for each participating county equal to seventy cents (\$0.70) per capita for each participating county shall be certified to the respective county auditor.

(b) A county's portion of the commission's appropriation budget may be paid from any of the following, as determined by the county fiscal body:

- (1) Property tax revenue as provided in subsections (c) and (d).
- (2) Any other local revenue, other than property tax revenue, received by the county, including local option income tax revenue under IC 6-3.5, excise tax revenue, riverboat admissions tax revenue, riverboat wagering tax revenue, ~~riverboat incentive~~ **economic development** payments (as defined in IC 4-33-2-7.3), and any funds received from the state that may be used for this purpose.

(c) The county auditor shall:

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1 (1) advertise the amount of property taxes that the county fiscal
 2 body determines will be levied to pay the county's portion of the
 3 commission's appropriation budget, after the county fiscal body
 4 determines the amount of other local revenue that will be paid
 5 under subsection (b)(2); and

6 (2) establish the rate necessary to collect that property tax
 7 revenue;

8 in the same manner as for other county budgets.

9 (d) The tax levied under this section and certified shall be estimated
 10 and entered upon the tax duplicates by the county auditor and shall be
 11 collected and enforced by the county treasurer in the same manner as
 12 other county taxes are estimated, entered, collected, and enforced. The
 13 tax collected by the county treasurer shall be transferred to the
 14 commission.

15 (e) In fixing and determining the amount of the necessary levy for
 16 the purpose provided in this section, the commission shall take into
 17 consideration the amount of revenue, if any, to be derived from federal
 18 grants, contractual services, and miscellaneous revenues above the
 19 amount of those revenues considered necessary to be applied upon or
 20 reserved upon the operation, maintenance, and administrative expenses
 21 for working capital throughout the year.

22 (f) After the budget is approved, amounts may not be expended
 23 except as budgeted unless the commission authorizes their expenditure.
 24 Before the expenditure of sums appropriated as provided in this
 25 section, a claim must be filed and processed as other claims for
 26 allowance or disallowance for payment as provided by law.

27 (g) Any two (2) of the following officers may allow claims:

- 28 (1) Chairperson.
- 29 (2) Vice chairperson.
- 30 (3) Secretary.
- 31 (4) Treasurer.

32 (h) The treasurer of the commission may receive, disburse, and
 33 otherwise handle funds of the commission, subject to applicable
 34 statutes and to procedures established by the commission.

35 (i) The commission shall act as a board of finance under the statutes
 36 relating to the deposit of public funds by political subdivisions.

37 (j) Any appropriated money remaining unexpended or
 38 unencumbered at the end of a year becomes part of a nonreverting
 39 cumulative fund to be held in the name of the commission. Unbudgeted
 40 expenditures from this fund may be authorized by vote of the
 41 commission and upon other approval as required by statute. The
 42 commission is responsible for the safekeeping and deposit of the

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1 amounts in the nonreverting cumulative fund, and the state board of
2 accounts shall prescribe the methods and forms for keeping the
3 accounts, records, and books to be used by the commission. The books,
4 records, and accounts of the commission shall be audited periodically
5 by the state board of accounts, and those audits shall be paid for as
6 provided by statute.

7 SECTION 9. IC 36-7.5-4-1, AS AMENDED BY P.L.182-2009(ss),
8 SECTION 425, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) The development board shall
10 establish and administer a development authority fund.

11 (b) The development authority fund consists of the following:

12 (1) Riverboat admissions tax revenue, riverboat wagering tax
13 revenue, or ~~riverboat incentive~~ **economic development** payments
14 **(as defined in IC 4-33-2-7.3)** received by a city or county
15 described in IC 36-7.5-2-3(b) and transferred by the county or city
16 to the fund.

17 (2) County economic development income tax revenue received
18 under IC 6-3.5-7 by a county or city and transferred by the county
19 or city to the fund.

20 (3) Amounts distributed under IC 8-15-2-14.7.

21 (4) Food and beverage tax revenue deposited in the fund under
22 IC 6-9-36-8.

23 (5) Funds received from the federal government.

24 (6) Appropriations to the fund by the general assembly.

25 (7) Other local revenue appropriated to the fund by a political
26 subdivision.

27 (8) Gifts, donations, and grants to the fund.

28 (c) The development authority shall establish a development
29 authority fund. The development board shall establish and administer
30 a general account, a lease rental account, and such other accounts in the
31 fund as are necessary or appropriate to carry out the powers and duties
32 of the development authority. Except as otherwise provided by law or
33 agreement with holders of any obligations of the development
34 authority, all money transferred to the development authority fund
35 under subsection (b)(1), (b)(2), and (b)(4) shall be deposited in the
36 lease rental account and used only for the payment of or to secure the
37 payment of obligations of an eligible political subdivision under a lease
38 entered into by an eligible political subdivision and the development
39 authority under this chapter. However, any money deposited in the
40 lease rental account and not used for the purposes of this subsection
41 shall be returned by the treasurer of the development authority to the
42 respective counties and cities that contributed the money to the

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development authority.

(d) If the amount of money transferred to the development authority fund under subsection (b)(1), (b)(2), and (b)(4) for deposit in the lease rental account in any one (1) calendar year is greater than an amount equal to:

- (1) one and twenty-five hundredths (1.25); multiplied by
- (2) the total of the highest annual debt service on any bonds then outstanding to their final maturity date, which have been issued under this article and are not secured by a lease, plus the highest annual lease payments on any leases to their final maturity, which are then in effect under this article;

all or a portion of the excess may instead be deposited in the general account.

(e) Except as otherwise provided by law or agreement with the holders of obligations of the development authority, all other money and revenues of the development authority may be deposited in the general account or the lease rental account at the discretion of the development board. Money on deposit in the lease rental account may be used only to make rental payments on leases entered into by the development authority under this article. Money on deposit in the general account may be used for any purpose authorized by this article.

(f) The development authority fund shall be administered by the development authority.

(g) Money in the development authority fund shall be used by the development authority to carry out this article and does not revert to any other fund.

SECTION 10. IC 36-7.5-4-2, AS AMENDED BY P.L.182-2009(ss), SECTION 426, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Except as provided in subsection (b), beginning in 2006 the fiscal officer of each city and county described in IC 36-7.5-2-3(b) shall each transfer three million five hundred thousand dollars (\$3,500,000) each year to the development authority for deposit in the development authority fund established under section 1 of this chapter. However, if a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000) ceases to be a member of the development authority and two (2) or more municipalities in the county have become members of the development authority as authorized by IC 36-7.5-2-3(i), the transfer of county economic development income tax transferred under IC 6-3.5-7-13.1(b)(4) is the contribution of the municipalities in the county that have become members of the development authority.

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1 (b) This subsection applies only if:
 2 (1) the fiscal body of the county described in IC 36-7.5-2-3(e) has
 3 adopted an ordinance under IC 36-7.5-2-3(e) providing that the
 4 county is joining the development authority;
 5 (2) the fiscal body of the city described in IC 36-7.5-2-3(e) has
 6 adopted an ordinance under IC 36-7.5-2-3(e) providing that the
 7 city is joining the development authority; and
 8 (3) the county described in IC 36-7.5-2-3(e) is an eligible county
 9 participating in the development authority.

10 Beginning in 2007, the fiscal officer of the county described in
 11 IC 36-7.5-2-3(e) shall transfer two million six hundred twenty-five
 12 thousand dollars (\$2,625,000) each year to the development authority
 13 for deposit in the development authority fund established under section
 14 1 of this chapter. Beginning in 2007, the fiscal officer of the city
 15 described in IC 36-7.5-2-3(e) shall transfer eight hundred seventy-five
 16 thousand dollars (\$875,000) each year to the development authority for
 17 deposit in the development authority fund established under section 1
 18 of this chapter.

19 (c) The following apply to the transfers required by subsections (a)
 20 and (b):

21 (1) Except for transfers of money described in subdivision (4)(D),
 22 the transfers shall be made without appropriation by the city or
 23 county fiscal body or approval by any other entity.

24 (2) Except as provided in subdivision (3), after December 31,
 25 2005, each fiscal officer shall transfer eight hundred seventy-five
 26 thousand dollars (\$875,000) to the development authority fund
 27 before the last business day of January, April, July, and October
 28 of each year. Food and beverage tax revenue deposited in the fund
 29 under IC 6-9-36-8 is in addition to the transfers required by this
 30 section.

31 (3) After December 31, 2006, the fiscal officer of the county
 32 described in IC 36-7.5-2-3(e) shall transfer six hundred fifty-six
 33 thousand two hundred fifty dollars (\$656,250) to the development
 34 authority fund before the last business day of January, April, July,
 35 and October of each year. The county is not required to make any
 36 payments or transfers to the development authority covering any
 37 time before January 1, 2007. The fiscal officer of a city described
 38 in IC 36-7.5-2-3(e) shall transfer two hundred eighteen thousand
 39 seven hundred fifty dollars (\$218,750) to the development
 40 authority fund before the last business day of January, April, July,
 41 and October of each year. The city is not required to make any
 42 payments or transfers to the development authority covering any

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time before January 1, 2007.

(4) The transfers shall be made from one (1) or more of the following:

(A) Riverboat admissions tax revenue received by the city or county, riverboat wagering tax revenue received by the city or county, or ~~riverboat incentive economic development~~ payments (as defined in IC 4-33-2-7.3) received from a riverboat licensee by the city or county.

(B) Any county economic development income tax revenue received under IC 6-3.5-7 by the city or county.

(C) Any other local revenue other than property tax revenue received by the city or county.

(D) In the case of a county described in IC 36-7.5-2-3(e) or a city described in IC 36-7.5-2-3(e), any money from the major moves construction fund that is distributed to the county or city under IC 8-14-16.

SECTION 11. IC 36-7.6-4-2, AS ADDED BY P.L.232-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Beginning January 1 of the year following the year in which a development authority is established, the fiscal officer of each county and each municipality that is a member of the development authority shall transfer the amount determined under subsection (b) to the development authority for deposit in the development authority fund.

(b) The amount of the transfer required each year by subsection (a) from each county and each municipality is equal to the amount that would be distributed to the county or the municipality as certified distributions of county economic development income tax revenue raised from a county economic development income tax rate of five-hundredths of one percent (0.05%) in the county.

(c) Notwithstanding subsection (b), if the additional county economic development income tax under IC 6-3.5-7-28 is in effect in a county, the obligations of the county and each municipality in the county under this section are satisfied by the transfer to the development fund of all county economic development income tax revenue derived from the additional tax and deposited in the county regional development authority fund.

(d) The following apply to the transfers required by this section:

(1) The transfers shall be made without appropriation by the fiscal body of the county or the fiscal body of the municipality.

(2) Except as provided in subdivision (3), the fiscal officer of each county and each municipality that is a member of the

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1 development authority shall transfer twenty-five percent (25%) of
 2 the total transfers due for the year before the last business day of
 3 January, April, July, and October of each year.
 4 (3) County economic development income tax revenue derived
 5 from the additional county economic development income tax
 6 under IC 6-3.5-7-28 must be transferred to the development fund
 7 not more than thirty (30) days after being deposited in the county
 8 regional development fund.
 9 (4) This subdivision does not apply to a county in which the
 10 additional county economic development income tax under
 11 IC 6-3.5-7-28 has been imposed or to any municipality in the
 12 county. The transfers required by this section may be made from
 13 any local revenue (other than property tax revenue) of the county
 14 or municipality, including excise tax revenue, income tax
 15 revenue, local option tax revenue, riverboat tax revenue,
 16 distributions, ~~incentive~~ **economic development** payments (**as**
 17 **defined in IC 4-33-2-7.3**), or money deposited in the county's or
 18 municipality's local major moves construction fund under
 19 IC 8-14-16.

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