

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.

SENATE ENROLLED ACT No. 23

AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.

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

SECTION 1. IC 4-3-22-16, AS ADDED BY P.L.137-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) As used in this section, "coordinator" means the following:

- (1) A small business regulatory coordinator (as defined in IC 4-22-2-28.1(b)).
- (2) An ombudsman designated under IC 13-28-3-2.
- (3) An ombudsman designated under IC 5-28-17-5.**

(b) Each coordinator may review proposed legislation affecting the small businesses that are regulated by the agency or that would be regulated by the agency under proposed legislation. A coordinator may submit to the OMB written comments concerning the impact of proposed legislation on small business.

(c) The OMB may review comments received under subsection (b). The OMB may amend the comments. After completing its review, the OMB shall transmit the comments to the legislative services agency for posting on the general assembly's web site. The comments submitted under this section shall be transmitted electronically in a format suitable for posting to the general assembly's web site as determined by the legislative services agency.

SECTION 2. IC 4-22-2-28, AS AMENDED BY P.L.123-2006,



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SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 28. (a) ~~As used in~~ **The following definitions apply throughout** this section:

(1) **"Ombudsman" refers to the small business ombudsman designated under IC 5-28-17-5.**

(2) "Total estimated economic impact" means the annual economic impact of a rule on all regulated persons after the rule is fully implemented under subsection (g).

(b) ~~The Indiana economic development corporation established by IC 5-28-3-1:~~ **ombudsman:**

(1) shall review a proposed rule that:

(A) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); and

(B) is referred to the ~~corporation~~ **ombudsman** by an agency under IC 4-22-2.1-5(c); and

(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

After conducting a review under subdivision (1) or (2), the ~~corporation~~ **ombudsman** may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the ~~Indiana economic development corporation~~ **ombudsman** concerning the ~~corporation's~~ **ombudsman's** comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(c) Subject to subsection (f) and not later than fifty (50) days before the public hearing required by section 26 of this chapter, an agency shall submit a proposed rule to the office of management and budget for a review under subsection (d) if the agency proposing the rule determines that the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons. In determining the total estimated economic impact under this subsection, the agency shall consider any applicable information submitted by the regulated persons affected by the rule. To assist the office of management and budget in preparing the fiscal impact statement required by subsection (d), the agency shall submit, along with the proposed rule, the data used and assumptions made by the agency in determining the total estimated economic impact of the rule.

(d) Except as provided in subsection (e), before the adoption of the rule, and not more than forty-five (45) days after receiving a proposed rule under subsection (c), the office of management and budget shall

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prepare, using the data and assumptions provided by the agency proposing the rule, along with any other data or information available to the office of management and budget, a fiscal impact statement concerning the effect that compliance with the proposed rule will have on:

- (1) the state; and
- (2) all persons regulated by the proposed rule.

The fiscal impact statement must contain the total estimated economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal impact statement is a public document. The office of management and budget shall make the fiscal impact statement available to interested parties upon request. The agency proposing the rule shall consider the fiscal impact statement as part of the rulemaking process and shall provide the office of management and budget with the information necessary to prepare the fiscal impact statement, including any economic impact statement prepared by the agency under IC 4-22-2.1-5. The office of management and budget may also receive and consider applicable information from the regulated persons affected by the rule in preparation of the fiscal impact statement.

(e) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give written notice to the office of management and budget of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and
- (2) the office of management and budget shall prepare the fiscal impact statement referred to in subsection (d) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

(f) In determining whether a proposed rule has a total estimated economic impact greater than five hundred thousand dollars (\$500,000), the agency proposing the rule shall consider the impact of the rule on any regulated person that already complies with the standards imposed by the rule on a voluntary basis.

(g) For purposes of this section, a rule is fully implemented after:

- (1) the conclusion of any phase-in period during which:
 - (A) the rule is gradually made to apply to certain regulated persons; or
 - (B) the costs of the rule are gradually implemented; and
- (2) the rule applies to all regulated persons that will be affected by the rule.

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In determining the total estimated economic impact of a proposed rule under this section, the agency proposing the rule shall consider the annual economic impact on all regulated persons beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total estimated economic impact of a rule under this section.

SECTION 3. IC 4-22-2-28.1, AS AMENDED BY P.L.123-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 28.1. (a) This section applies to the following:

(1) A rule for which the notice required by section 23 of this chapter or by IC 13-14-9-3 is published by an agency or by any of the boards (as defined in IC 13-11-2-18).

(2) A rule for which:

(A) the notice required by IC 13-14-9-3; or

(B) an appropriate later notice for circumstances described in subsection (g);

is published by the department of environmental management after June 30, 2006.

(b) As used in this section, "coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e).

(c) As used in this section, "director" refers to the director or other administrative head of an agency.

(d) As used in this section, "small business" ~~means any person, firm, corporation, limited liability company, partnership, or association that:~~

~~(1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;~~

~~(2) is independently owned and operated;~~

~~(3) employs not more than one hundred (100) full-time employees; and~~

~~(4) has gross annual receipts of not more than five million dollars (\$5,000,000):~~ **has the meaning set forth in IC 5-28-2-6.**

(e) For each rulemaking action and rule finally adopted as a result of a rulemaking action by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is

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qualified by knowledge or experience with respect to each rule. Subject to subsection (f):

- (1) in the case of a proposed rule, the notice of intent to adopt the rule published under section 23 of this chapter; or
- (2) in the case of a rule proposed by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the notice published under IC 13-14-9-3 or the findings published under IC 13-14-9-8(b)(1), whichever applies; must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule, **the name, address, telephone number, and electronic mail address of the small business ombudsman designated under IC 5-28-17-5, and a statement of the resources available to regulated entities through the small business ombudsman designated under IC 5-28-17-5.** Subject to subsection (f), in the case of a rule finally adopted, the final rule, as published in the Indiana Register, must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) This subsection applies to a rule adopted by the department of environmental management or any of the boards (as defined in IC 13-11-2-18) under IC 13-14-9. Subject to subsection (g), the department shall include in the notice provided under IC 13-14-9-3 or in the findings published under IC 13-14-9-8(b)(1), whichever applies, and in the publication of the final rule in the Indiana Register:

- (1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3
- (2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2;
- (3) if applicable, a statement of:
 - (A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and
 - (B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3); and
- (4) the information required by subsection (e).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (h) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e)

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shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (h) and IC 13-28-5.

(g) If the notice provided under IC 13-14-9-3 is not published as allowed by IC 13-14-9-7, the department of environmental management shall publish in the notice provided under IC 13-14-9-4 the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3. If neither the notice under IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed by IC 13-14-9-8, the department of environmental management shall publish in the commissioner's written findings under IC 13-14-9-8(b) the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3.

(h) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(i) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

(j) The coordinator assigned to a rule under subsection (e) shall

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keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

- (1) not later than ten (10) days after the date on which the rule is submitted to the publisher under section 35 of this chapter; and
- (2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(k) Not later than November 1 of each year, the director shall:

- (1) compile the records received from all of the agency's coordinators under subsection (j);
- (2) prepare a report that sets forth:
 - (A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;
 - (B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;
 - (C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;
 - (D) the agency's costs in complying with this section during the most recent state fiscal year; and
 - (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
- (3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the ~~Indiana economic development corporation established~~ **small business ombudsman designated** by ~~IC 5-28-3~~. **IC 5-28-17-5.**

SECTION 4. IC 4-22-2.1-4, AS ADDED BY P.L.188-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. As used in this chapter, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;
- (2) is independently owned and operated;
- (3) employs one hundred (100) or fewer full-time employees; and
- (4) has gross annual receipts of five million dollars (\$5,000,000)

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~~or less.~~ **has the meaning set forth in IC 5-28-2-6.**

SECTION 5. IC 4-22-2.1-5, AS AMENDED BY P.L.123-2006, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented as described in subsection (b). The statement required by this section must include the following:

- (1) An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.
- (3) An estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. The agency is not required to submit the proposed rule to the office of management and budget for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.
- (4) A statement justifying any requirement or cost that is:
 - (A) imposed on small businesses by the rule; and
 - (B) not expressly required by:
 - (i) the statute authorizing the agency to adopt the rule; or
 - (ii) any other state or federal law.

The statement required by this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

- (5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:
 - (A) The establishment of less stringent compliance or reporting requirements for small businesses.
 - (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
 - (C) The consolidation or simplification of compliance or reporting requirements for small businesses.

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(D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

(E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

- (1) the conclusion of any phase-in period during which:
 - (A) the rule is gradually made to apply to small businesses or certain types of small businesses; or
 - (B) the costs of the rule are gradually implemented; and
- (2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3).

- (c) The agency shall:
 - (1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and
 - (2) deliver a copy of the statement, along with the proposed rule, to the ~~Indiana economic development corporation~~ **small business ombudsman designated under IC 5-28-17-5** not later than the date of publication under subdivision (1).

SECTION 6. IC 5-28-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. "Job creation incentive" means a tax credit, tax deduction, grant, loan, or loan guarantee that a statute authorizes the state or an instrumentality of the state (excluding any political subdivision or other unit of local government) to award or approve for the purpose of encouraging the creation of new jobs in Indiana.**

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SECTION 7. IC 5-28-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. The board, the corporation, and the officers and employees of the board or corporation, when developing job creation incentive packages to locate companies in Indiana, shall give weight, in the awarding or approving of job creation incentives, to business entities that locate in an area where individuals have become dislocated workers due to a permanent closure of a plant or facility or a significant reduction in the workforce.**

SECTION 8. IC 5-28-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. The corporation shall designate an employee to serve as a compliance officer whose duties are to determine and report to the corporation whether each person that receives a job creation incentive granted by the corporation or another agency or instrumentality of the state (excluding any political subdivision or other unit of local government) complies with the terms and conditions of the person's incentive agreement.**

SECTION 9. IC 5-28-6-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. The corporation shall require an applicant for a job creation incentive to be granted by the corporation after March 31, 2010, to enter into an agreement with the corporation as a condition of receiving the incentive. Subject to IC 5-28-28-8, the agreement must include the following requirements:**

- (1) The number of individuals that are expected to be employed by the applicant.**
- (2) A requirement that the applicant will file with the compliance officer an annual compliance report detailing the applicant's compliance, or progress toward compliance, with subdivision (1).**
- (3) A provision that notifies the applicant that the applicant is subject to a determination of the corporation under this subdivision. The corporation, after a finding that the applicant is employing fewer individuals than the applicant agreed to employ under subdivision (1), subject to any confidentiality laws, shall hold a hearing to determine if the applicant shall be required to pay back to the state a part of the incentive granted to the applicant under the agreement. The penalty imposed must be a matter of public record and**

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must reflect in a fair and balanced way the amount of incentive received.

(4) A requirement that the applicant will pay back to the state the incentive that has been received by the applicant if the applicant moves or closes.

SECTION 10. IC 5-28-6-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. The corporation shall establish a program to ensure that dislocated workers from Indiana are given consideration for jobs created by business entities receiving a job creation incentive from the state or an instrumentality of the state (excluding any political subdivision or other unit of local government). The corporation, including its board, shall condition job creation incentives awarded or approved by the corporation after March 31, 2010, on compliance with the corporation's program under this section. This requirement must be included in an agreement entered into by the recipient and the corporation.**

SECTION 11. IC 5-28-17-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 5. The board shall designate an employee in the small business division to be the small business ombudsman. The small business ombudsman serves at the pleasure of the board. The corporation shall provide staff support to the small business ombudsman. The small business ombudsman shall carry out the following duties:**

- (1) Work with state agencies to permit increased enforcement flexibility and the ability to grant common sense exemptions for first time offenders of state rules and policies, including, notwithstanding any other law, policies for the compromise of interest and penalties related to a listed tax (as defined in IC 6-8.1-1-1) and other taxes and fees collected or administered by a state agency.**
- (2) Work with state agencies to seek ways to consolidate forms and eliminate the duplication of paperwork, harmonize data, and coordinate due dates.**
- (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform cost benefit analyses.**
- (4) Work with state agencies to monitor any outdated, ineffective, or overly burdensome information requests from state agencies to small businesses.**
- (5) Carry out the duties specified under IC 4-22-2-28 and IC 4-22-2.1 to review proposed rules and participate in**

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rulemaking actions that affect small businesses.

(6) Coordinate with the ombudsmen designated under IC 13-28-3-2 and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under IC 4-22-2-28.1 and IC 13-28-3.

(7) Prepare written and electronic information for periodic distribution to small businesses describing the small business services provided by coordinators (as defined in IC 4-3-22-16) and work with the office of technology established by IC 4-13.1-2-1 to place information concerning the availability of these services on state Internet web sites that the small business ombudsman or a state agency determines are most likely to be visited by small business owners and managers.

(8) Assist in training agency coordinators that will be assigned to rules under IC 4-22-2-28.1(e).

(9) Investigate and attempt to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

State agencies shall cooperate with the small business ombudsman to carry out the purpose of this section. The department of state revenue and the department of workforce development shall establish a program to distribute the information described in subdivision (7) to small businesses that are required to file returns or information with these state agencies.

SECTION 12. IC 5-28-28-7, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) If, in the course of compiling information to complete a report required by section 5 of this chapter or upon the receipt of any other information concerning noncompliance with the terms and conditions of an incentive granted by the corporation, the corporation determines that a recipient of a grant or loan an incentive awarded by the corporation has not complied with the representations that the recipient made in obtaining the grant or loan, incentive, the corporation shall take the actions required under subsections (b) and (d).

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

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

(b) If in the judgment of the corporation there is not good cause for any noncompliance discovered under subsection (a), the corporation may

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seek a refund or arrange other methods of reclaiming the grant or loan from the recipient. If the corporation does seek a refund or otherwise reclaims a grant or loan from the recipient under this section, the amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.

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

- (1) the grant or loan has been disbursed on a pro rata basis; and
- (2) in the judgment of the corporation, the recipient's performance in relation to the recipient's performance goals equals or exceeds the ratio of the amount of the recipient's actual benefit from the grant or loan to the total amount of the grant or loan originally contemplated in the grant or loan award.

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

SECTION 13. IC 5-28-28-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) As used in this section, "recapture provision" means language that requires the recipient of an incentive to repay some part of the incentive.**

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

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

SECTION 14. IC 5-28-28-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) Beginning in 2010, the economic incentives and compliance report required under section 5 of this chapter must include an annual report containing summary statistics on the effectiveness of and compliance with all incentives**

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granted by the corporation. The report required by this section must describe:

- (1) the overall compliance with the terms and conditions of incentives provided; and**
- (2) penalties imposed for failure to comply with the terms and conditions of incentives provided.**

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

(b) Upon request, the corporation shall make available:

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

SECTION 15. IC 6-3.1-13-15.5, AS AMENDED BY P.L.137-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

- (1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.
- (2) The applicant is engaged in research and development, manufacturing, or business services, according to the NAICS Manual of the United States Office of Management and Budget.
- (3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:
 - (A) If there is more than one (1) business in the same NAICS industry sector as the applicant's business in the county in which the applicant's business is located, the average compensation paid during that same period to all employees working in that NAICS industry sector in that county multiplied by one hundred five percent (105%).

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(B) If there is more than one (1) business in the same NAICS industry sector as the applicant's business in Indiana, the average compensation paid during that same period to all employees working in that NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) **For taxable years beginning before January 1, 2010**, the applicant employs at least thirty-five (35) employees in Indiana.

(5) The applicant has prepared a plan for the use of the credits under this chapter for:

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(6) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(7) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(8) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs in an amount determined by the corporation. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

(10) The credit is not prohibited by section 16 of this chapter.

(11) If the business is located in a community revitalization enhancement district established under IC 36-7-13 or a certified technology park established under IC 36-7-32, the legislative body of the political subdivision establishing the district or park has adopted an ordinance recommending the granting of a credit amount that is at least equal to the credit amount provided in the agreement.

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SECTION 16. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]:

Chapter 33. New Employer Tax Credit

Sec. 1. This chapter applies to taxable years beginning after December 31, 2009.

Sec. 2. As used in this chapter, "department" refers to:

- (1) the department of state revenue; or
- (2) the department of insurance;

whichever agency is obligated to administer the tax against which a credit is applied.

Sec. 3. As used in the chapter, "IEDC" refers to the Indiana economic development corporation.

Sec. 4. As used in this chapter, "new Indiana business" means a corporation or pass through entity that after December 31, 2009:

- (1) either:
 - (A) locates or relocates the operations of a business enterprise in Indiana;
 - (B) incorporates or otherwise first organizes in Indiana; or
 - (C) expands the entity's operation of a business enterprise in Indiana;
- (2) employs at least ten (10) qualified employees;
- (3) makes an application to the IEDC under this chapter; and
- (4) is issued a certificate of approval by the IEDC under this chapter.

Sec. 5. As used in this chapter, "qualified employee" means an individual who is:

- (1) a full-time employee (as defined in IC 6-3.1-13-4) first hired by a new Indiana business during the period specified in section 10(b) of this chapter;
- (2) a resident of Indiana; and
- (3) not more than a five percent (5%) shareholder, partner, member, or owner of the applicant;

as determined by the IEDC. The term does not include rehired individuals, individuals employed to fill positions vacated as the result of a layoff that occurred during the previous two (2) years, or individuals employed in the same business operation before and after a change of business ownership.

Sec. 6. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and

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(3) IC 6-5.5 (the financial institutions tax);
as computed before the application of any other credit against state tax liability to which the taxpayer is entitled, including any credit described in IC 6-3.1-1-2.

Sec. 7. As used in this chapter, "tax credit" refers to a tax credit granted by this chapter before the application of any other tax credits to which a new Indiana business might be eligible.

Sec. 8. As used in this chapter, "taxpayer" means a person, corporation, partnership, or other entity that has any state tax liability.

Sec. 9. (a) Before January 1, 2013, a corporation or pass through entity that desires to qualify for the credit provided by this chapter may submit an application to the IEDC in the form and manner specified by the IEDC.

(b) The IEDC shall promptly review all applications submitted to the IEDC under this chapter.

(c) If the IEDC determines that an applicant for the tax credit provided by this chapter has furnished reliable evidence, as determined by the IEDC, that the applicant is reasonably capable of:

- (1)** employing at least ten (10) qualified employees in each month of the period specified in section 10(b) of this chapter during the taxable year; and
- (2)** meeting the requirements for the tax credit provided by this chapter;

the IEDC may issue the applicant a certificate of approval. If a certificate of approval is issued, the IEDC shall provide a copy of the certificate to the department.

(d) In making a determination of whether an applicant is qualified for a credit under this chapter, the IEDC may consider the following:

- (1)** The applicant's employment levels in previous years to determine if the applicant is hiring new individuals or rehiring individuals.
- (2)** Whether the applicant is the successor to part or all of the assets or business operations of another corporation or pass through entity that conducted business operations in Indiana in the same line of business to determine if the applicant is a new Indiana business under this chapter.

(e) If the IEDC determines that the applicant will not employ at least ten (10) qualified employees in each month of the period specified in section 10(b) of this chapter during the taxable year, is

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not a new Indiana business, or does not meet, or is unlikely to meet, any other requirements for the tax credit provided by this chapter, the IEDC shall notify the applicant of the IEDC's determination.

(f) The IEDC may not issue a certificate of approval under this chapter after December 31, 2012.

Sec. 10. (a) Each taxable year, a new Indiana business is entitled to a tax credit against the new Indiana business's state tax liability for the taxable year in the amount specified by section 11 of this chapter.

(b) The tax credit provided by subsection (a) is based on a period not exceeding twenty-four (24) consecutive calendar months during which the new Indiana business meets the conditions of this chapter. The period begins on the first day of the month following the month in which the new Indiana business is approved by the IEDC under this chapter. The period ends on the final day of:

- (1) the twenty-fourth consecutive calendar month that the new Indiana business complies with the conditions of this chapter; or
- (2) the month in which the new Indiana business ceases to comply with the conditions of this chapter;

whichever month occurs first.

Sec. 11. For each taxable year, the amount of the tax credit under this chapter is equal to ten percent (10%) of the wages paid by the new Indiana business to qualified employees during the calendar months of the period specified in section 10(b) of this chapter that are included in the taxable year.

Sec. 12. If a pass through entity does not have state tax liability against which a tax credit may be applied, a shareholder, partner, fiduciary, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit to which the pass through entity would be entitled under this chapter for the taxable year if the pass through entity were a taxpayer; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, fiduciary, or member is entitled.

Sec. 13. (a) If the credit provided by this chapter exceeds the taxpayer's state tax liability for the taxable year for which the credit is first claimed, the excess may be carried forward to succeeding taxable years and used as a credit against the taxpayer's state tax liability during those taxable years. Each time that the credit is carried forward to a succeeding taxable year, the

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credit is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The credit provided by this chapter may be carried forward and applied to succeeding taxable years for not more than nine (9) taxable years following the first year the credit is claimed.

(b) A taxpayer is not entitled to any carryback or refund of any unused credit.

Sec. 14. To qualify for a tax credit under this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall maintain the records required by the department for the period specified by the department to substantiate the taxpayer's eligibility for the credit.

SECTION 17. IC 12-7-2-64, AS AMENDED BY P.L.146-2008, SECTION 379, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 64. "Director" refers to the following:

(1) With respect to a particular division, the director of the division.

(2) With respect to a particular state institution, the director who has administrative control of and responsibility for the state institution.

(3) For purposes of IC 12-8-12.5, the term refers to the director of the division of family resources.

~~(4)~~ (4) For purposes of IC 12-10-15, the term refers to the director of the division of aging.

~~(5)~~ (5) For purposes of IC 12-25, the term refers to the director of the division of mental health and addiction.

~~(6)~~ (6) For purposes of IC 12-26, the term:

(A) refers to the director who has administrative control of and responsibility for the appropriate state institution; and

(B) includes the director's designee.

~~(7)~~ (7) If subdivisions (1) through ~~(5)~~ (6) do not apply, the term refers to the director of any of the divisions.

SECTION 18. IC 12-7-2-146 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 146. "Program" refers to the following:

(1) For purposes of IC 12-8-12.5, the meaning set forth in IC 12-8-12.5-1.

~~(2)~~ (2) For purposes of IC 12-10-7, the adult guardianship services program established by IC 12-10-7-5.

~~(3)~~ (3) For purposes of IC 12-10-10, the meaning set forth in

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IC 12-10-10-5.

(3) (4) For purposes of IC 12-17.6, the meaning set forth in IC 12-17.6-1-5.

SECTION 19. IC 12-7-2-184.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 184.3. "State match", for purposes of IC 12-8-12.5, means funding that counts toward the state's maintenance of effort under TANF (45 CFR 265) to obtain the maximum reimbursement available to the state from the TANF emergency fund under Division B, Title II, Subtitle B of the federal American Recovery and Reinvestment Act of 2009.**

SECTION 20. IC 12-7-2-189.7, AS ADDED BY P.L.180-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 189.7. "TANF", for purposes of IC 12-20 and IC 12-8-12.5, refers to the federal Temporary Assistance for Needy Families program under 42 U.S.C. 601 et seq.**

SECTION 21. IC 12-8-12.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 12.5. TANF Emergency Funds

Sec. 1. As used in this chapter, "program" refers to the Helping Indiana Restart Employment (HIRE) program established under IC 22-4.1-17.

Sec. 2. The secretary may apply to the United States Department of Health and Human Services for maximum reimbursement available to the state from the TANF emergency fund under Division B, Title II, Subtitle B of the federal American Recovery and Reinvestment Act of 2009 as follows:

(1) Nonrecurrent short term benefits, including qualified state expenditures for the following:

- (A) The earned income tax credit under IC 6-3.1-21.**
- (B) The domestic violence prevention and treatment fund under IC 5-2-6.7.**
- (C) Food bank allocations as supplemented by third party expenditures that qualify as the state's maintenance of effort under TANF (45 CFR 263.2(e)).**
- (D) Any other qualified state expenditure.**

(2) The HIRE program.

Sec. 3. Upon approval of an application described in section 2 of this chapter, the secretary may administer funding of the HIRE program.

Sec. 4. For each state fiscal year that an appropriation is made

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by P.L.182-2009(ss) for TANF, augmentation is allowed (as defined in P.L.182-2009(ss), SECTION 1) from any state fund that is not restricted by federal law or the terms of a contract, grant, loan, gift, or bequest solely for the purpose of providing state match money for the program. The amount of augmentation from a fund other than the state general fund that is not expended or unencumbered before the end of a state fiscal year reverts to and is available for the purposes of the fund from which the augmentation came. Notwithstanding IC 4-9.1-1-7, IC 4-12-1-12, IC 4-13-2-23, or another law, the money may not be transferred, assigned, or reassigned for another purpose.

Sec. 5. On or before June 30, 2010, and at the end of each quarter thereafter, the secretary shall submit to the budget committee a report describing the secretary's progress in implementing this chapter, including a description of the sources of state match money used for the program.

Sec. 6. This chapter expires December 31, 2013.

SECTION 22. IC 22-2-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 15. Guidelines and Procedures for Investigating Questions and Complaints Concerning Employee Classification

Sec. 1. As used in this chapter, "department" refers to the department of labor created by IC 22-1-1-1.

Sec. 2. (a) The department shall develop guidelines and procedures for investigating questions and complaints concerning employee classification and a plan for implementation of those guidelines and procedures.

(b) The guidelines and procedures must do the following:

(1) Cover at least the following:

(A) Who is eligible to file a complaint. The guidelines and procedures must allow any aggrieved person to file a complaint and must indicate what evidence is needed to initiate an investigation.

(B) Applicable and appropriate penalties, taking into consideration:

(i) the financial impact on both employers and misclassified employees; and

(ii) whether the employer has previously misclassified employees.

(C) Mechanisms to share data with appropriate state agencies to assist those agencies in determining compliance

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with and enforcing state laws concerning misclassified employees and to recoup contributions owed, depending on the level of culpability.

(D) Record keeping requirements for contractors, including any records necessary for the department to investigate alleged violations concerning misclassification of employees.

(E) Investigative procedures.

(2) Apply to public works and private work projects for the construction industry (as described in IC 4-13.5-1-1(3)), including demolition.

(3) Apply to any contractor that engages in construction and is authorized to do business in Indiana.

(4) Provide a remedy for an employer or a misclassified employee in response to:

(A) any retaliation that occurs as the result of an investigation or a complaint; and

(B) any complaints that the department determines are frivolous or that are filed for the purpose of harassment.

(5) Provide that in carrying out this chapter the department has the same inspection, investigative, and enforcement powers that the department has in enforcing the labor laws of this state, including powers described in IC 22-1-1.

(c) The guidelines and procedures may include other elements as determined by the department.

(d) The department shall exempt the following from the guidelines and procedures developed under this chapter:

(1) Residential construction of a single family home or duplex if the builder builds less than twenty-five (25) units each year.

(2) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier.

Sec. 3. In developing the guidelines and procedures under this chapter, the department shall use:

(1) the definition of "employee" used in Section 3401(c) of the Internal Revenue Code; and

(2) the following factors used by the Internal Revenue Service to determine whether a worker is an independent contractor:

(A) Instructions. A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control

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factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

(B) Training. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. See Rev. Rul. 70-630, 1970-2 C.B. 229.

(C) Integration. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.

(D) Services rendered personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

(E) Hiring, supervising, and paying assistants. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants under a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. Compare Rev. Rul. 63-115, 1963-1 C.B. 178, with Rev. Rul. 55-593 1955-2 C.B. 610.

(F) Continuing relationship. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at

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frequently recurring although irregular intervals. See *United States v. Silk*.

(G) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

(H) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor on the other hand, is free to work when and for whom he or she chooses. See Rev. Rul. 56-694, 1956-2 C.B. 694.

(I) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Rev. Rul. 56-660, 1956-2 C.B. 693. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. See Rev. Rul. 56-694.

(J) **Order of sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control,

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however, if such person or persons retain the right to do so. See Rev. Rul. 56-694.

(K) Oral or written reports. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

(L) Payment by hour, week, month. Payment by the hour, week, or month generally points to an employer-employee relationship, if this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor. See Rev. Rul. 74-389, 1974-2 C.B. 330.

(M) Payment of business and traveling expenses. If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses or business and traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. See Rev. Rul. 55-144, 1955-1 C.B. 483.

(N) Furnishing of tools and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. See Rev. Rul. 71-524, 1971-2 C.B. 346.

(O) Significant investment. If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. See Rev. Rul. 71-524. Special scrutiny is required with respect to certain types of facilities, such as home offices.

(P) Realization of profit or loss. A worker who can realize a profit or suffer a loss as a result of the worker's services

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(in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. See Rev. Rul. 70-309. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

(Q) Working for more than one (1) firm at a time. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. See Rev. Rul. 70-572, 1970-2 C.B. 221. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(R) Making service available to general public. The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship. See Rev. Rul. 56-660.

(S) Right to discharge. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. Rev. Rul. 75-41, 1975-1 C.B. 323.

(T) Right to terminate. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. See Rev. Rul. 70-309.

(U) Any other guidelines under IC 22-3-6-1(b) and IC 22-3-7-9(b)(5).

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Sec. 4. The department shall make a presentation to the pension management oversight commission not later than October 1, 2010, outlining the proposed guidelines and procedures.

Sec. 5. The department shall before November 1, 2010, make recommendations in an electronic format under IC 5-14-6 to the legislative council concerning any legislative changes needed to implement the guidelines and procedures developed under this chapter, including a budgetary recommendation for the implementation of the guidelines and procedures and a funding mechanism, to the extent possible, which must include a fee.

Sec. 6. After considering any recommendations by the pension management oversight commission, the department shall convert the guidelines and procedures to rules by adopting rules under IC 4-22-2 before August 1, 2011. The department shall implement the rules before August 1, 2011.

SECTION 23. IC 22-4-4-2, AS AMENDED BY P.L.175-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 2. (a) Except as otherwise provided in this section, "wages" means all remuneration as defined in section 1 of this chapter paid to an individual by an employer, remuneration received as tips or gratuities in accordance with Sections 3301 and 3102 et seq. of the Internal Revenue Code, and includes all remuneration considered as wages under Sections 3301 and 3102 et seq. of the Internal Revenue Code. However, the term shall not include any amounts paid as compensation for services specifically excluded by IC 22-4-8-3 or IC 22-4-8-3.5 from the definition of employment as defined in IC 22-4-8-1 and IC 22-4-8-2. The term shall include, but not be limited to, any payments made by an employer to an employee or former employee, under order of the National Labor Relations Board, or a successor thereto, or agency named to perform the duties thereof, as additional pay, back pay, or for loss of employment, or any such payments made in accordance with an agreement made and entered into by an employer, a union, and the National Labor Relations Board.

(b) The term "wages" shall not include the following:

- (1) That part of remuneration which, after remuneration equal to:
 - (A) seven thousand dollars (\$7,000), has been paid in a calendar year to an individual by an employer or the employer's predecessor with respect to employment during any calendar year that begins after December 31, 1982, and before January 1, ~~2010~~; **2011**; or
 - (B) nine thousand five hundred dollars (\$9,500), has been paid

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in a calendar year to an individual by an employer or the employer's predecessor for employment during a calendar year that begins after December 31, ~~2009~~, **2010**;

unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision, the term "employment" shall include service constituting employment under any employment security law of any state or of the federal government. However, nothing in this subdivision shall be taken as an approval or disapproval of any related federal legislation.

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) made to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

- (A) retirement;
- (B) sickness or accident disability;
- (C) medical or hospitalization expenses in connection with sickness or accident disability; or
- (D) death.

(3) The amount of any payment made by an employer to an individual performing service for it (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) on account of retirement.

(4) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability made by an employer to, or on behalf of, an individual performing services for it and after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer.

(5) The amount of any payment made by an employer to, or on behalf of, an individual performing services for it or to the individual's beneficiary:

- (A) from or to a trust exempt from tax under Section 401(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for

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the trust as remuneration for such services and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payments, meets the requirements of Section 401(a)(3), 401(a)(4), 401(a)(5), and 401(a)(6) of the Internal Revenue Code.

(6) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business.

(7) The amount of any payment (other than vacation or sick pay) made to an individual after the month in which the individual attains the age of sixty-five (65) if the individual did not perform services for the employer in the period for which such payment is made.

(8) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under Sections 3101 et seq. of the Internal Revenue Code (Federal Insurance Contributions Act).

SECTION 24. IC 22-4-5-1, AS AMENDED BY P.L.138-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) "Deductible income" wherever used in this article, means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to:

- (1) remuneration for services from employing units, whether or not such remuneration is subject to contribution under this article, except as provided in subsection (c);
- (2) dismissal pay;
- (3) vacation pay;
- (4) pay for idle time;
- (5) holiday pay;
- (6) sick pay;
- (7) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;
- (8) net earnings from self-employment;
- (9) payments in lieu of compensation for services;
- (10) awards by the national labor relations board of additional pay, back pay, or for loss of employment, or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board;
- (11) payments made to an individual by an employing unit pursuant to the terms of the Fair Labor Standards Act (Federal

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Wage and Hour Law, 29 U.S.C. 201 et seq.);

(12) for a week in which a payment is actually received by an individual, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure; or

(13) except as provided in subsection (c)(2), the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:

(A) occurs after an individual receives the payment; and

(B) was used under the terms of a written agreement to compute the payment.

(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than the individual's base period employer or employers.

(c) For the purpose of deductible income only, remuneration for services from employing units does not include:

(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or

(2) compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.

(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.

(e) Deductible income does not include any payments made to an individual by a court system under a summons for jury service.

SECTION 25. IC 22-4-10-3, AS AMENDED BY P.L.175-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3. (a) This subsection applies before January 1, ~~2010~~ **2011**. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and six-tenths percent (5.6%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, **IC 22-4-11.5**, and IC 22-4-37-3.

(b) This subsection applies after December 31, ~~2009~~ **2010**. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to twelve percent (12%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3.5, **IC 22-4-11.5**,

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and IC 22-4-37-3.

SECTION 26. IC 22-4-11-2, AS AMENDED BY P.L.175-2009, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5 or IC 22-4-10-5.5(1) (**repealed**) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section 3.3 or 3.5 of this chapter; and

(2) for each calendar year, an employer's rate shall be two and seven-tenths percent (2.7%) before January 1, ~~2010~~, **2011**, and two and five-tenths percent (2.5%) after December 31, ~~2009~~, **2010**, except as otherwise provided in IC 22-4-37-3, unless and until:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date; and

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date.

(c) This subsection applies before January 1, ~~2010~~, **2011**. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than five and six-tenths percent (5.6%) unless all required contribution and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors for periods prior to and including the computation date have been paid:

(1) within thirty-one (31) days following the computation date; or

(2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet

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the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

(d) This subsection applies after December 31, ~~2009~~ **2010**. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate ~~shall not be less than twelve percent (12%)~~ **is equal to the sum of the employer's contribution rate determined under this article plus two percent (2%)** unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and ~~owing~~ **owing** by the employer or the employer's predecessor for periods before and including the computation date have been paid:

- (1) within thirty-one (31) days following the computation date; or
- (2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:
 - (A) the delinquency; or
 - (B) failure to file the reports;

whichever is the later date. The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

(e) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of:

- (1) one percent (1%), before January 1, ~~2010~~ **2011**; or
- (2) one and six-tenths percent (1.6%), after December 31, ~~2009~~ **2010**;

until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

(f) On the computation date every employer who had taxable wages in the previous calendar year shall have the employer's experience account charged with the amount determined under the following formula:

- STEP ONE: Divide:
- (A) the employer's taxable wages for the preceding calendar year; by

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(B) the total taxable wages for the preceding calendar year.

STEP TWO: Multiply the quotient determined under STEP ONE by the total amount of benefits charged to the fund under section 1 of this chapter.

(g) One (1) percentage point of the rate imposed under subsection (c) or (d), or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer pursuant to the maximum rate shall be:

- (1) considered a contribution for the purposes of this article; and
- (2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

SECTION 27. IC 22-4-11-3, AS AMENDED BY P.L.175-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3. (a) The applicable schedule of rates for calendar years before January 1, ~~2010~~, **2011**, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedule A, B, C, or D, appearing on the line opposite the fund ratio in the schedule below, shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For the purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	1.0%	A
1.0%	1.5%	B
1.5%	2.25%	C
2.25%		D

(b) Except as provided in subsection (c), the applicable schedule of rates for calendar years after December 31, ~~2009~~, **2010**, shall be determined by the ratio resulting when the balance in the fund as of the

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determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedules A through I appearing on the line opposite the fund ratio in the schedule below are applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected ~~or is required~~ to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	0.2%	A
0.2%	0.4%	B
0.4%	0.6%	C
0.6%	0.8%	D
0.8%	1.0%	E
1.0%	1.2%	F
1.2%	1.4%	G
1.4%	1.6%	H
1.6%		I

(c) For calendar year ~~2010~~ **2011** only, Schedule B applies in determining and assigning each employer's contribution rate.

(d) Any adjustment in the amount charged to any employer's experience account made subsequent to the assignment of rates of contributions for any calendar year shall not operate to alter the amount charged to the experience accounts of any other base-period employers.

SECTION 28. IC 22-4-11-3.3, AS AMENDED BY P.L.175-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3.3. (a) For calendar years after 2001 and before ~~2010~~, **2011**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefore according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

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RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
3.00		1.10	0.10	0.10	0.10	0.15
2.80	3.00	1.30	0.30	0.10	0.10	0.15
2.60	2.80	1.50	0.50	0.10	0.10	0.15
2.40	2.60	1.70	0.70	0.30	0.10	0.20
2.20	2.40	1.90	0.90	0.50	0.10	0.20
2.00	2.20	2.10	1.10	0.70	0.30	0.40
1.80	2.00	2.30	1.30	0.90	0.50	0.60
1.60	1.80	2.50	1.50	1.10	0.70	0.80
1.40	1.60	2.70	1.70	1.30	0.90	1.00
1.20	1.40	2.90	1.90	1.50	1.10	1.20
1.00	1.20	3.10	2.10	1.70	1.30	1.40
0.80	1.00	3.30	2.30	1.90	1.50	1.60
0.60	0.80	3.50	2.50	2.10	1.70	1.80
0.40	0.60	3.70	2.70	2.30	1.90	2.00
0.20	0.40	3.90	2.90	2.50	2.10	2.20
0.00	0.20	4.10	3.10	2.70	2.30	2.40

(b) For calendar years after 2001 and before ~~2010~~, **2011**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible therefore according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
	1.50	4.40	4.30	4.20	4.10	5.40
1.50	3.00	4.70	4.60	4.50	4.40	5.40
3.00	4.50	5.00	4.90	4.70	4.70	5.40
4.50	6.00	5.30	5.20	5.10	5.00	5.40
6.00		5.60	5.50	5.40	5.40	5.40

SECTION 29. IC 22-4-11-3.5, AS ADDED BY P.L.175-2009,



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SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3.5. (a) For calendar years after ~~2009~~, **2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are therefore eligible according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much	But Less Than	Rate Schedules (%)				
As	Than	A	B	C	D	E
3.00		0.75	0.70	0.70	0.60	0.50
2.80	3.00	1.00	0.90	0.90	0.80	0.70
2.60	2.80	1.30	1.20	1.10	1.00	0.90
2.40	2.60	1.60	1.50	1.40	1.30	1.20
2.20	2.40	1.90	1.80	1.70	1.50	1.40
2.00	2.20	2.20	2.00	1.90	1.80	1.60
1.80	2.00	2.50	2.30	2.20	2.00	1.80
1.60	1.80	2.80	2.60	2.40	2.20	2.00
1.40	1.60	3.10	2.90	2.70	2.50	2.30
1.20	1.40	3.40	3.20	3.00	2.70	2.50
1.00	1.20	3.70	3.40	3.20	3.00	2.70
0.80	1.00	4.00	3.70	3.50	3.20	2.90
0.60	0.80	4.30	4.00	3.70	3.40	3.10
0.40	0.60	4.60	4.30	4.00	3.70	3.40
0.20	0.40	4.90	4.60	4.30	3.90	3.60
0.00	0.20	5.20	4.80	4.50	4.20	3.80

**RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much	But Less Than	Rate Schedules (%)			
As	Than	F	G	H	I
3.00		0.40	0.40	0.30	0.00
2.80	3.00	0.60	0.50	0.40	0.00
2.60	2.80	0.80	0.70	0.60	0.10
2.40	2.60	1.10	1.00	0.90	0.10

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2.20	2.40	1.30	1.20	1.00	0.10
2.00	2.20	1.40	1.20	1.00	0.10
1.80	2.00	1.60	1.40	1.20	0.10
1.60	1.80	1.80	1.60	1.40	0.20
1.40	1.60	2.10	1.90	1.70	0.20
1.20	1.40	2.20	2.00	1.70	0.20
1.00	1.20	2.40	2.10	1.80	0.20
0.80	1.00	2.60	2.30	2.00	0.20
0.60	0.80	2.80	2.50	2.20	0.20
0.40	0.60	3.10	2.80	2.40	0.30
0.20	0.40	3.20	2.80	2.40	0.30
0.00	0.20	3.40	3.00	2.60	0.30

(b) For calendar years after ~~2009~~, **2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are therefore eligible according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	A	B	C	D	E
0.00	1.50	6.75	6.30	5.90	5.40	4.90
1.50	3.00	7.00	6.50	6.10	5.60	5.10
3.00	4.50	7.25	6.70	6.30	5.80	5.30
4.50	6.00	7.50	7.00	6.50	6.00	5.50
6.00	8.00	7.75	7.20	6.70	6.20	5.70
8.00	10.00	8.25	7.70	7.20	6.60	6.00
10.00	12.00	8.75	8.10	7.60	7.00	6.40
12.00	14.00	9.25	8.60	8.00	7.40	6.80
14.00	16.00	9.75	9.10	8.50	7.80	7.10
16.00		10.20	9.50	8.90	8.20	7.40

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	F	G	H	I	



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0.00	1.50	4.40	3.90	3.40	0.40
1.50	3.00	4.60	4.10	3.60	0.40
3.00	4.50	4.80	4.30	3.80	0.40
4.50	6.00	4.90	4.40	3.80	0.40
6.00	8.00	5.10	4.50	3.90	0.40
8.00	10.00	5.40	4.80	4.20	0.50
10.00	12.00	5.80	5.20	4.50	0.50
12.00	14.00	6.10	5.40	4.70	0.50
14.00	16.00	6.40	5.70	5.00	0.50
16.00		6.70	6.00	5.40	5.40

SECTION 30. IC 22-4-14-3, AS AMENDED BY P.L.175-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) may restrict the individual's availability because of the individual's need to address the physical, psychological, or legal effects of being a victim of domestic or family violence (as defined in IC 31-9-2-42).

(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

- (1) is physically and mentally able to work;
- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the department, unless the department determines that:
 - (A) the individual has completed the reemployment services; or
 - (B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the department through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment. ~~but must include as a condition the individual's submission of at least one (1) application for work in each week for which the individual is claiming benefits. An individual who submits an application for work online through an Internet web site complies with this condition.~~ However, if an otherwise eligible individual is unable to work or unavailable for work

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on any normal work day of the week the individual shall be eligible to receive benefits with respect to such week reduced by one-third (1/3) of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

(c) For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with respect to any week, it is found:

- (1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment, or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;
- (2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;
- (3) that such individual is suspended for misconduct in connection with the individual's work; or
- (4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and is available for suitable full-time work with the individual's last employer, or is available for any other full-time employment deemed suitable.

(d) Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The department shall by rule prescribe the conditions under which approval of such training will be granted.

(e) Notwithstanding subsection (b), (c), or (d), or IC 22-4-15-2, an otherwise eligible individual shall not be denied benefits for any week or determined not able, available, and actively seeking work,

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because the individual is responding to a summons for jury service. The individual shall:

- (1) obtain from the court proof of the individual's jury service; and**
- (2) provide to the department, in the manner the department prescribes by rule, proof of the individual's jury service.**

SECTION 31. IC 22-4-17-2, AS AMENDED BY P.L.175-2009, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly follow the procedure described in subsections (b) through (e) to make a determination of the individual's status as an insured worker in a form prescribed by the department. A written notice of the determination of insured status shall be furnished to the individual promptly. The notice must include the time by which the employer is required to respond to the department's notice of the individual's claim; and complete information about the rules of evidence and standards of proof that the department will apply to determine the validity of the individual's claim; if the employer disputes the claim. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) Not later than January 1, 2010, the department shall establish an unemployment claims compliance center. When an individual files an initial claim after the unemployment claims compliance center is established, the department, before making a determination that the individual is eligible for benefits, shall compare the information provided by the individual making the claim with information from the separating employer concerning the individual's eligibility for benefits. If the information provided by the individual making the claim does not match the information from the separating employer, the department

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may not pay the individual benefits and shall refer the individual's claim to the department's unemployment claims compliance center for investigation. The department shall provide a written notice to the individual who filed the claim that the individual's claim is being referred to the unemployment claims compliance center, including the reason for the referral.

(c) After receiving a claim from the department, the unemployment claims compliance center shall contact the separating employer that provided information that does not match information provided by the individual making the claim to obtain information about the claim that is accurate and sufficient for the department to determine whether the individual is eligible for benefits. The center shall also obtain from the employer the name and address of a person to receive without delay notices served on the employer concerning the claim.

(d) Except as provided in subsection (c), the department may not pay the individual benefits under this article as long as the discrepancy between the information provided by the individual and the information provided by the individual's separating employer is unresolved. If the information provided by an individual and the information provided by the individual's separating employer does not match, the department shall notify both the separating employer and the individual that they have forty-eight (48) hours to resolve the discrepancy. If the discrepancy is not resolved at the end of the forty-eighth hour, the department shall use the information provided by the employer to determine the individual's eligibility for benefits.

(e) If the employer does not respond to the inquiry from the unemployment claims compliance center within five (5) days after the date of the inquiry, the center shall report to the department that the employer has not responded, and the department shall use the information provided by the individual to determine the individual's eligibility for benefits.

(f) (b) After the department makes a determination concerning the individual's eligibility for benefits, The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. The notice shall contain the date, the name and Social Security account number of the individual, the ending date of the individual's base period, **and** the week ending date of the first week of the individual's benefit period. the time by which the employer is required to respond to the notice, and complete information about the rules of evidence and standards of proof that the department will apply to

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~~determine the validity of a claim, if an employer disputes the claim.~~
The notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer within ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

~~(g)~~ (c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the department.

~~(h)~~ (d) If, after the department determines that additional information is necessary to make a determination under this chapter:

(1) the department makes a request in writing for additional information from an employing unit, including an employer, on a form prescribed by the department; and

(2) the employing unit fails to respond within ten (10) days after the date the request is ~~delivered~~ **mailed** to the employing unit;

the department shall make ~~the determination~~ **a decision** with the information available.

~~(i)~~ (e) If:

(1) an employer ~~subsequently obtains a determination by the department that the employee is not eligible for benefits;~~ **appeals an original determination granting benefits to a claimant and the determination is reversed on appeal;** and

(2) the ~~determination decision to reverse the determination~~ is at least in part based on information that the department requested from the employer under subsection ~~(h)~~; (d), but which the employer failed to provide within ten (10) days after the department's request was ~~delivered~~ **mailed** to the employer;

the employer's experience account shall be charged an amount equal to fifty percent (50%) of the benefits paid to the employee to which the employee was not entitled **and for which the employer's experience account may be charged.**

~~(j)~~ (f) If:

(1) the employer's experience account is charged under subsection ~~(i)~~; (e); and

(2) the employee repays all or a part of the benefits on which the

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charge under subsection ~~(i)~~ (e) is based; the employer shall receive a credit to the employer's experience account that is equal to the amount of the employee's repayment up to **fifty percent (50%)** of the amount charged to the employer's experience account under subsection ~~(i)~~: (e).

~~(k)~~ (g) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in section 3 of this chapter.

~~(i)~~ (h) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof.

~~(m)~~ (i) Except as otherwise hereinafter provided in this section regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within ten (10) days after the notification required by subsection ~~(k)~~ (h), was mailed to the claimant's or the employer's last known address or otherwise delivered to the claimant or the employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

~~(n)~~ (j) For a notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless the claimant or employer, within fifteen (15) days after the notification required by subsection ~~(k)~~ (h), was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

~~(o)~~ (k) If a claimant or an employer requests a hearing under subsection ~~(m)~~ (i) or ~~(n)~~: (j), the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this section and shall be in such form as the department may

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prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

~~(p)~~ **(l)** A person may not participate on behalf of the department in any case in which the person is an interested party.

~~(q)~~ **(m)** Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection ~~(g)~~: **(c)**.

~~(r)~~ **(n)** Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

~~(s)~~ **(o)** If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer of the claimant's current address or physical location.

SECTION 32. IC 22-4-18-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4.2. Each administrative law judge employed or used by the department of workforce development must be an attorney who is licensed to practice law in Indiana.

SECTION 33. IC 22-4-19-6, AS AMENDED BY P.L.182-2009(ss), SECTION 367, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

- (1) open to inspection; and
- (2) subject to being copied;

by an authorized representative of the department at any reasonable

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time and as often as may be necessary. The department, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant or an employer at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The department may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The department may release the following information:

(1) Summary statistical data may be released to the public.

(2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:

(A) The purpose of conducting a survey.

(B) The purpose of aiding the officers or employees of the Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department, **including the purposes of IC 5-28-6-7.**

(3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency and the legislative services agency only for aiding the employees of the budget agency or the legislative services agency in forecasting tax revenues.

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(4) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:

(A) department of state revenue; or

(B) state or local law enforcement agencies;

only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes.

(e) The department may make information available under subsection (d)(1), (d)(2), or (d)(3) only:

(1) if:

(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or

(B) there is an agreement that the employer specific information released to the Indiana economic development corporation, the budget agency, or the legislative services agency will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and

(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.

(f) In addition to the confidentiality provisions of subsection (b), the fact that a claim has been made under IC 22-4-15-1(c)(8) and any information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence are confidential. Information concerning the claimant's current address or physical location shall not be disclosed to the employer or any other person. Disclosure is subject to the following additional restrictions:

(1) The claimant must be notified before any release of information.

(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.

(g) An employee:

(1) of the department who recklessly violates subsection (a), (c), (d), (e), or (f); or

(2) of any governmental entity listed in subsection (d)(4) who recklessly violates subsection (d)(4);

commits a Class B misdemeanor.

(h) An employee of the Indiana economic development corporation, the budget agency, or the legislative services agency who violates subsection (d) or (e) commits a Class B misdemeanor.

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(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential.

(j) The department may charge a reasonable processing fee not to exceed two dollars (\$2) for each record that provides information about an individual's last known employer released in compliance with a court order under subsection (b).

SECTION 34. IC 22-4.1-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 17. Helping Indiana Restart Employment (HIRE) Program

Sec. 1. This chapter applies upon approval of reimbursement as described in IC 12-8-12.5-2.

Sec. 2. As used in this chapter, "eligible employer" means an employer that meets the requirements established by the commissioner to participate in the program.

Sec. 3. As used in this chapter, "employer" means an individual, corporation, partnership, limited liability company, or any other legal entity that has at least one (1) employee and is legally doing business in Indiana.

Sec. 4. As used in this chapter, "participant" means an individual who is participating in the program as an employee of an eligible employer.

Sec. 5. As used in this chapter, "program" refers to the Helping Indiana Restart Employment (HIRE) program established under section 7 of this chapter.

Sec. 6. As used in this chapter, "secretary" refers to the secretary of family and social services appointed under IC 12-8-1-2.

Sec. 7. (a) The commissioner may adopt rules under IC 4-22-2 to establish, implement, and maintain the Helping Indiana Restart Employment (HIRE) program for the purpose of increasing employment opportunities for unemployed or underemployed individuals by providing a wage and benefit subsidy to eligible employers that provide to participants an hourly wage and a transferable work skill.

(b) Rules adopted under subsection (a) may include the following:

- (1) Eligibility requirements for an employer to participate in the program as an eligible employer.**
- (2) Eligibility requirements for an individual to participate in**

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the program as a participant employed by an eligible employer.

(c) The commissioner shall administer the program with the assistance of the secretary.

(d) The secretary shall administer funding of the program as provided in IC 12-8-12.5.

Sec. 8. This chapter expires December 31, 2013.

SECTION 35. IC 36-8-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Subject to subsection ~~(b)~~, (c), the board or persons having the authority to employ members of the fire or police department shall give a preference for employment according to the following priority:

- (1) A war veteran who has been honorably discharged from the United States armed forces.
- (2) A person whose mother or father was a:
 - (A) firefighter of a unit;
 - (B) municipal police officer; or
 - (C) county police officer;
 who died in the line of duty (as defined in IC 5-10-10-2).

(b) Subject to subsection (c), the board or person having the authority to employ members of a fire or police department may give a preference for employment to any of the following:

- (1) A police officer or firefighter laid off by another city under section 11 of this chapter.**
- (2) A county police officer laid off by a sheriff's department under IC 36-8-10-11.1.**
- (3) A person who:**
 - (A) was employed full-time or part-time by a township to provide fire protection and emergency services; and**
 - (B) has been laid off by the township.**

~~(b)~~ (c) A person described in subsection (a) **or (b)** may not receive a preference for employment unless the person:

- (1) applies; and
- (2) meets all employment requirements prescribed:
 - (A) by law, including physical and age requirements; and
 - (B) by the fire or police department.

SECTION 36. IC 36-8-10-10.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.4. (a) Subject to subsection ~~(b)~~, (c), the board shall give a preference for employment according to the following priority:

- (1) A war veteran who has been honorably discharged from the United States armed forces.

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- (2) A person whose mother or father was a:
 - (A) firefighter of a unit;
 - (B) municipal police officer; or
 - (C) county police officer;
 who died in the line of duty (as defined in IC 5-10-10-2).

(b) Subject to subsection (c), the board may give a preference for employment to any of the following:

- (1) A member of another department laid off under section 11.1 of this chapter.**
- (2) A police officer laid off by a city under IC 36-8-4-11.**

~~(b)~~ **(c)** A person described in subsection (a) **or** ~~(b)~~ may not receive a preference for employment unless the person:

- (1) applies; and
- (2) meets all employment requirements prescribed:
 - (A) by law, including physical and age requirements; and
 - (B) by the department.

SECTION 37. IC 36-8-13-3, AS AMENDED BY P.L.182-2009(ss), SECTION 439, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The executive of a township, with the approval of the legislative body, may do the following:

- (1) Purchase firefighting and emergency services apparatus and equipment for the township, provide for the housing, care, maintenance, operation, and use of the apparatus and equipment to provide services within the township but outside the corporate boundaries of municipalities, and employ full-time or part-time personnel to operate the apparatus and equipment and to provide services in that area. Preference in employment under this section shall be given according to the following priority:
 - (A) A war veteran who has been honorably discharged from the United States armed forces.
 - (B) A person whose mother or father was a:
 - (i) firefighter of a unit;
 - (ii) municipal police officer; or
 - (iii) county police officer;
 who died in the line of duty (as defined in IC 5-10-10-2).

The executive of a township may give a preference for employment under this section to a person who was employed full-time or part-time by another township to provide fire protection and emergency services and has been laid off by the township. The executive of a township may also give a preference for employment to a firefighter laid off by a city

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under IC 36-8-4-11. A person described in this subdivision may not receive a preference for employment unless the person applies for employment and meets all employment requirements prescribed by law, including physical and age requirements, and all employment requirements prescribed by the fire department.

(2) Contract with a municipality in the township or in a contiguous township that maintains adequate firefighting or emergency services apparatus and equipment to provide fire protection or emergency services for the township in accordance with IC 36-1-7.

(3) Cooperate with a municipality in the township or in a contiguous township in the purchase, maintenance, and upkeep of firefighting or emergency services apparatus and equipment for use in the municipality and township in accordance with IC 36-1-7.

(4) Contract with a volunteer fire department that has been organized to fight fires in the township for the use and operation of firefighting apparatus and equipment that has been purchased by the township in order to save the private and public property of the township from destruction by fire, including use of the apparatus and equipment in an adjoining township by the department if the department has made a contract with the executive of the adjoining township for the furnishing of firefighting service within the township.

(5) Contract with a volunteer fire department that maintains adequate firefighting service in accordance with IC 36-8-12.

(b) This subsection applies only to townships that provide fire protection or emergency services or both under subsection (a)(1) and to municipalities that have some part of the municipal territory within a township and do not have a full-time paid fire department. A township may provide fire protection or emergency services or both without contracts inside the corporate boundaries of the municipalities if before July 1 of a year the following occur:

(1) The legislative body of the municipality adopts an ordinance to have the township provide the services without a contract.

(2) The township legislative body passes a resolution approving the township's provision of the services without contracts to the municipality.

In a township providing services to a municipality under this section, the legislative body of either the township or a municipality in the township may opt out of participation under this subsection by adopting an ordinance or a resolution, respectively, before July 1 of a year.

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- (c) This subsection applies only to a township that:
 - (1) is located in a county containing a consolidated city;
 - (2) has at least three (3) included towns (as defined in IC 36-3-1-7) that have all municipal territory completely within the township on January 1, 1996; and
 - (3) provides fire protection or emergency services, or both, under subsection (a)(1);

and to included towns (as defined in IC 36-3-1-7) that have all the included town's municipal territory completely within the township. A township may provide fire protection or emergency services, or both, without contracts inside the corporate boundaries of the municipalities if before August 1 of the year preceding the first calendar year to which this subsection applies the township legislative body passes a resolution approving the township's provision of the services without contracts to the municipality. The resolution must identify the included towns to which the resolution applies. In a township providing services to a municipality under this section, the legislative body of the township may opt out of participation under this subsection by adopting a resolution before July 1 of a year. A copy of a resolution adopted under this subsection shall be submitted to the executive of each included town covered by the resolution, the county auditor, and the department of local government finance.

SECTION 38. IC 22-4-10-5.5 IS REPEALED [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)].

SECTION 39. [EFFECTIVE UPON PASSAGE] **(a) An interim study committee is established to study the feasibility and value of indexing unemployment benefits and the taxable wage base under IC 22-4.**

(b) The interim study committee consists of the following four (4) members:

- (1) One (1) member appointed by the president pro tempore of the senate.**
- (2) One (1) member appointed by the minority leader of the senate.**
- (3) One (1) member appointed by the speaker of the house of representatives.**
- (4) One (1) member appointed by the minority leader of the house of representatives.**

(c) The member appointed under subsection (b)(1) and the member appointed under subsection (b)(3) shall be co-chairs of the interim study committee.

(d) The interim study committee shall issue a final report in an

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electronic format under IC 5-14-6 before November 1, 2010, to the legislative council containing any findings and recommendations of the committee.

(e) Except as otherwise provided, the committee shall operate under the policies governing study committees adopted by the legislative council.

(f) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any measure, including final reports.

(g) This SECTION expires January 1, 2011.

SECTION 40. [EFFECTIVE UPON PASSAGE] (a) The commissioner of the department of workforce development shall:

(1) examine whether expenditures by an eligible employer that are allocated to state match money for the HIRE program established under IC 22-4.1-17 may be credited under state or federal law toward the eligible employer's contributions under IC 22-4; and

(2) not later than June 1, 2010, report to the budget committee the results of the examination.

(b) This SECTION expires June 30, 2010.

SECTION 41. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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