
SENATE BILL No. 472

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-33; IC 5-11; IC 36-1-8-9.5.

Synopsis: Oversight of public money. Provides that the gaming commission has continuing jurisdiction over riverboat economic development agreements and incentive payments, regardless of the date of the development agreement. Establishes reporting requirements for the recipients of incentive payments under the agreements. Provides that: (1) a contributing unit shall after June 30, 2011, contractually require, as a condition of providing public money to a community benefit organization that is not required to be audited annually by the state board of accounts, that the community benefit organization must be audited by an independent accounting firm acceptable to the contributing unit; (2) a community benefit organization must provide the results of an independent audit to the contributing unit and, in the case of a community benefit organization that receives money under a gaming development agreement, to the gaming commission; (3) a community benefit organization shall pay the costs of an independent audit; and (4) providing an independent audit by a community benefit organization does not result in the community benefit organization being considered a public agency for purposes of the open door law or the public records law. Provides that a contributing unit shall after June 30, 2011, contractually require, as a condition of providing public money to a community benefit organization, that the members of the governing body or chief executive officer of the community benefit organization shall annually file a verified written certification with each contributing unit stating that a written statement of accounts has been prepared. Requires the fiscal body of a contributing unit to review the amount of public money attributable to: (1) the unit; (2) an agreement
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Effective: July 1, 2011.

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January 13, 2011, read first time and referred to Committee on Public Policy.



Digest Continued

entered into by the unit; or (3) an enterprise zone business; that is used as compensation to or reimbursement of expenditures of a member of the governing body or chief executive officer of a community benefit organization. Specifies that these reporting and review requirements do not require the disclosure of trade secrets or certain information regarding economic development negotiations that may be excepted from disclosure under the public records law. Provides that otherwise reportable information regarding money disbursed as an incentive for an economic development project is not subject to disclosure until after the project is completed. Provides that the definition of "development agreement" also applies to agreements between an operating agent and a unit. Provides that examinations of public entities by the state board of accounts shall be conducted on a schedule determined by the board, except as specifically required by Indiana law. (Current law requires certain entities to be examined on an annual basis and other entities to be examined on a biennial basis.) Specifies that examinations of certain entities must be conducted at least biennially.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 472



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

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

1 SECTION 1. IC 4-33-2-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 6.5. "Development agreement" has the meaning set
4 forth in IC 36-1-8-9.5.**

5 SECTION 2. IC 4-33-2-20 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2011]: **Sec. 20. "Incentive payment" means any payment that a
8 licensed owner or an operating agent is required to make under a
9 development agreement.**

10 SECTION 3. IC 4-33-4-22.5 IS ADDED TO THE INDIANA CODE
11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2011]: **Sec. 22.5. (a) The commission has continuing jurisdiction
13 over development agreements and incentive payments, regardless
14 of the date of the development agreement. The commission may
15 verify and ensure that development agreements, incentive
16 payments, and disbursements of incentive payment money
17 received:**



1 **(1) comport with the purposes of this article; and**
 2 **(2) do not adversely affect the integrity of the riverboat**
 3 **gambling industry in Indiana.**
 4 **(b) The commission may not, under the commission's continuing**
 5 **jurisdiction over development agreements, redirect an otherwise**
 6 **lawful payment of money under the development agreement.**
 7 SECTION 4. IC 4-33-4-23, AS ADDED BY P.L.199-2005,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2011]: Sec. 23. (a) An operating agent or a person holding an
 10 owner's license must report annually to the commission the following:
 11 (1) The total dollar amounts and recipients of incentive payments
 12 made.
 13 (2) Any other items related to ~~the payments described in~~
 14 ~~subdivision (1)~~ **an incentive payment** that the commission may
 15 require.
 16 (b) The commission shall prescribe, with respect to ~~the~~ a report
 17 required by ~~subsection (a)~~: **this section:**
 18 (1) the format of the report;
 19 (2) the deadline by which the report must be filed; and
 20 (3) the manner in which the report must be maintained and filed.
 21 **(c) A recipient of an incentive payment shall annually report to**
 22 **the commission a verified accounting of:**
 23 **(1) the incentive payment received by the recipient; and**
 24 **(2) any disbursements of incentive payment money received.**
 25 **(d) Except as provided in subsections (g) and (h), a report**
 26 **required under subsection (c) must include:**
 27 **(1) the legal name of the recipient of each disbursement;**
 28 **(2) the date, amount, and purpose of each disbursement; and**
 29 **(3) any other information required by the commission.**
 30 **(e) Upon request of the commission, a recipient of an incentive**
 31 **payment shall furnish to the commission sufficient documentation**
 32 **to prove the validity of a transaction described in a report required**
 33 **under subsection (c).**
 34 **(f) A report submitted under subsection (c) must be made**
 35 **available electronically through the computer gateway**
 36 **administered by the office of technology established by**
 37 **IC 4-13.1-2-1.**
 38 **(g) This section does not require the reporting of:**
 39 **(1) any trade secret (as defined in IC 24-2-3-2); or**
 40 **(2) any information that may be excepted from disclosure as**
 41 **a public record under IC 5-14-3-4(b)(5).**
 42 **(h) A person required to submit a report under subsection (c) is**

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1 **not required to report information concerning money that is:**
 2 **(1) disbursed as an incentive for an economic development**
 3 **project; and**
 4 **(2) not covered by subsection (g)(2);**
 5 **until after the economic development project is completed.**

6 SECTION 5. IC 5-11-1-25 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. (a) **Except as**
 8 **specifically required or provided by another law, examinations**
 9 **under this chapter shall be conducted annually for the following:**

- 10 ~~(1) The state;~~
- 11 ~~(2) Cities;~~
- 12 ~~(3) Counties;~~
- 13 ~~(4) Towns with a population greater than five thousand (5,000);~~
- 14 ~~(5) Public hospitals;~~

15 **on a schedule determined by the state board of accounts. The state**
 16 **board of accounts may not establish an audit schedule for the**
 17 **examination of an entity that is inconsistent with any federal audit**
 18 **guidelines that govern the entity.**

19 (b) Subject to section 9 of this chapter, examinations under this
 20 chapter shall be conducted **at least** biennially for:

- 21 ~~(1) municipalities;~~
- 22 **(1) schools that require a federal audit;**
- 23 **(2) towns with a population of less than five thousand (5,000)**
 24 **that require a federal audit; and**
- 25 ~~(2) (3) all other entities that require a federal audit and are not~~
 26 ~~listed in audited annually on the schedule determined by the~~
 27 ~~state board of accounts under subsection (a).~~

28 SECTION 6. IC 5-11-20 IS ADDED TO THE INDIANA CODE AS
 29 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 30 1, 2011]:

31 **Chapter 20. Management and Use of Public Money by**
 32 **Community Benefit Organizations**

33 **Sec. 1. This chapter applies only to a community benefit**
 34 **organization in a year in which the community benefit organization**
 35 **receives or holds public money.**

36 **Sec. 2. As used in this chapter, "contributing unit" means a**
 37 **county, city, or town that:**

- 38 **(1) gives public money to a community benefit organization;**
- 39 **(2) enters into an agreement under which a community**
 40 **benefit organization receives public money; or**
- 41 **(3) contains a zone business (as defined in IC 5-28-15-3) that**
 42 **received a benefit that resulted in the payment of a fee or**

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other assistance to a community benefit organization.

Sec. 3. As used in this chapter, "local economic development organization" has the meaning set forth in IC 5-28-11-2.

Sec. 4. (a) As used in this chapter, "community benefit organization" refers to any of the following:

- (1) An instrumentality of a county, city, or town.
- (2) A local economic development organization that is maintained in whole or in part at public expense.
- (3) A nonprofit corporation or charitable trust that:
 - (A) is not described in subdivision (1) or (2);
 - (B) has a principal purpose of making grants to unrelated organizations or institutions or to individuals for scientific, educational, cultural, or other governmental purposes; and
 - (C) is:
 - (i) maintained in whole or in part at public expense; or
 - (ii) supported in whole or in part by appropriations, public funds, taxation, or other public money.

(b) The term does not include any of the following:

- (1) The state.
- (2) A county, city, or town.
- (3) A public foundation for a nonpublic school (as defined in IC 20-18-2-12).
- (4) A state educational institution (as defined in IC 21-7-13-32).
- (5) A private postsecondary educational institution.

Sec. 5. As used in this chapter, "public money" means the following:

- (1) Appropriations by the state, a county, a city, or a town.
- (2) Public funds (as defined in IC 5-13-4-20).
- (3) Taxes and other sources of public funds.
- (4) Anything of value derived from any of the following sources to the extent the amount would not otherwise qualify as public money under subdivisions (1) through (3):
 - (A) An interest in a grant, gift, donation, endowment, bequest, or trust that is transferred by a contributing unit.
 - (B) An agreement to share tax revenue received by a county or city under IC 4-33-12-6 or IC 4-33-13.
 - (C) An agreement with a contributing unit to share or designate the recipient of any payment from:
 - (i) a licensed owner (as defined in IC 4-33-2-13);
 - (ii) an operating agent (as defined in IC 4-33-2-14.5); or
 - (iii) a shareholder, partner, or member of a licensed

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1 owner (as defined in IC 4-33-2-13) or an operating agent
 2 (as defined in IC 4-33-2-14.5).
 3 (D) Other funds not generated from a tax.
 4 (E) Assistance or fees described in IC 5-28-15-5.
 5 Sec. 6. (a) A contributing unit shall after June 30, 2011,
 6 contractually require, as a condition of providing public money to
 7 a community benefit organization that is not required to be audited
 8 annually by the state board of accounts, that the community
 9 benefit organization must be audited by an independent accounting
 10 firm acceptable to the contributing unit.
 11 (b) A community benefit organization shall provide the results
 12 of an audit by an independent accounting firm under this section
 13 to the contributing unit and, in the case of a community benefit
 14 organization that receives money described in section 5(4)(C) of
 15 this chapter, to the Indiana gaming commission.
 16 (c) A community benefit organization shall pay the costs of an
 17 audit required by this section.
 18 (d) A community benefit organization is not considered a public
 19 agency for purposes of IC 5-14-1.5-2(a) or IC 5-14-3-2(m) for
 20 merely providing an audit under this section.
 21 Sec. 7. (a) This section does not apply to an organization that is
 22 not required to file a federal information return under Section
 23 6033(a)(3)(A) of the Internal Revenue Code.
 24 (b) A contributing unit shall after June 30, 2011, contractually
 25 require, as a condition of providing public money to a community
 26 benefit organization, that:
 27 (1) the members of the governing body; or
 28 (2) if the community benefit organization is not governed by
 29 a board, the chief executive officer;
 30 of the community benefit organization shall annually file a verified
 31 written certification with each contributing unit stating that a
 32 written statement of accounts has been prepared showing at least
 33 the items listed in section 8 of this chapter. The certification must
 34 state that the statement of accounts is available to the contributing
 35 unit and any member of the public upon request. A community
 36 benefit organization may not be exempted from these requirements
 37 by a provision in articles of incorporation, bylaws, a will, a trust
 38 agreement or other organizing agreement, an indenture, or
 39 another governing instrument. The written statement of accounts
 40 must be signed under penalty of perjury by each of the individuals
 41 described in subdivision (1) or (2), as appropriate.
 42 Sec. 8. (a) Except as provided in subsections (b) and (c), a

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verified written statement of accounts under section 7 of this chapter must show the following:

- (1) The period covered by the account.
- (2) The amount of public money held by the community benefit organization according to:
 - (A) the last preceding written statement of accounts; or
 - (B) the original amount received if there is no preceding statement.
- (3) An itemized schedule of all public money received and disbursed, distributed, or otherwise disposed of during the period.
- (4) The balance of all public money remaining at the close of the period, a description of how the public money was invested, and both the inventory and current market values of all the investments.
- (5) A statement that the community benefit organization has been administered according to all laws and any articles of incorporation, bylaws, wills, trust agreements or other organizing agreements, indentures, and other governing instruments governing the community benefit organization.
- (6) A statement that all public money was held, invested, and expended according to all laws and other conditions applicable to receipt of the public money.
- (7) The business addresses, if any, or the residence addresses of all the members of the governing board for the community benefit organization.
- (8) The compensation received in the period by:
 - (A) each member of the governing board; or
 - (B) if the community benefit organization is not governed by a board, the chief executive officer; of the community benefit organization.
- (b) This chapter does not require the reporting of:
 - (1) any trade secret (as defined in IC 24-2-3-2); or
 - (2) any information that may be excepted from disclosure as a public record under IC 5-14-3-4(b)(5).
- (c) A person required to file a verified written statement under section 7 of this chapter is not required to report information concerning money that is:
 - (1) disbursed as an incentive for an economic development project; and
 - (2) not covered by subsection (b)(2);
 until after the economic development project is completed.

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1 **Sec. 9. The fiscal body of a contributing unit shall review the**
2 **amount of public money attributable to the unit, an agreement**
3 **entered into by the unit, or a zone business (as defined in**
4 **IC 5-28-15-3) in a district or zone established by the unit that is**
5 **used as compensation to or reimbursement of expenditures of:**

- 6 **(1) a member of the governing body; or**
- 7 **(2) if the community benefit organization is not governed by**
- 8 **a board, the chief executive officer;**
- 9 **of a community benefit organization.**

10 SECTION 7. IC 36-1-8-9.5, AS ADDED BY P.L.199-2005,
11 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 9.5. (a) As used in this section, "development
13 agreement" means an agreement between a licensed owner (as defined
14 in IC 4-33-2-13) **or an operating agent (as defined in IC 4-33-2-14.5)**
15 and a unit setting forth the licensed owner's **or operating agent's**
16 financial commitments to support economic development in the unit.

17 (b) Funds received by a unit under a development agreement are
18 public funds (as defined in IC 5-13-4-20).

- 19 (c) Funds received under a development agreement:
 - 20 (1) may not be used to reduce the unit's maximum levy under
 - 21 IC 6-1.1-18.5 but may be used at the discretion of the unit to
 - 22 reduce the property tax levy of the unit for a particular year;
 - 23 (2) may be used for any legal or corporate purpose of the unit,
 - 24 including the pledge of money to bonds, leases, or other
 - 25 obligations under IC 5-1-14-4; and
 - 26 (3) are considered miscellaneous revenue.

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