

# IN S 361 , Engrossed

Indiana

SUMMARY: Relates to economic development; makes certain amendments to the Hoosier business investment tax credit, the economic development for a growing economy tax credit, the headquarters relocation tax credit, and the redevelopment tax credit; establishes an innovation development district program; allows the State Economic Development Corporation to designate an area as a district under certain procedures and enter into an agreement for the terms and conditions of the district.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

01/10/2022 INTRODUCED.

01/10/2022 To SENATE Committee on APPROPRIATIONS.

01/27/2022 From SENATE Committee on APPROPRIATIONS: Do pass as amended.

01/27/2022 Committee amendment adopted on SENATE floor.

01/31/2022 Amended on SENATE floor.

01/31/2022 Ordered Engrossed.

02/01/2022 Passed SENATE. \*\*\*\*\*To HOUSE.

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session: Indiana 122nd General Assembly - Second Regular Session

cite: 2022 IN S 361

Engrossed

January 31, 2022

Mishler

Reprinted

February 1, 2022

SENATE BILL No. 361

DIGEST OF SB 361 (Updated January 31, 2022 5:39 pm - DI 120)

Citations Affected: IC 5-1.2; IC 5-28; IC 5-33; IC 6-3; IC 6-3.1; IC 35-52; IC 36-7.

Synopsis: Economic development. Makes certain amendments to the hoosier business investment tax credit, the economic development for a growing economy tax credit, the headquarters relocation tax credit, and the redevelopment tax credit beginning July 1, 2023. Establishes innovation development district (district) program beginning July 1, 2023. Allows the Indiana economic development corporation (IEDC) to designate an area as a district under certain procedures and enter into an agreement for the terms and conditions of the district. Establishes the innovation development district fund (fund) administered by the IEDC. Provides for the transfer of incremental tax revenue in a district to the fund. Provides that the IEDC may make grants, loans, or investments from the fund for specified purposes. Provides an exemption from wage withholding requirements for an employer within a district that meets certain requirements and procedures. Limits the total amount of credits that the Indiana economic development corporation (IEDC) may award for a calendar year for all taxpayers for all applicable tax credits to \$400,000,000. However, provides that, subject to review by the budget committee, the IEDC may award an additional \$200,000,000, in addition to the \$400,000,000 limit, but that the

additional credits shall not be assigned or transferred. Provides that the IEDC may award a tax credit for media production expenses for certain media productions in Indiana beginning July 1, 2023. Requires the Indiana destination development corporation to design and implement a new remote worker grant program to provide grants to new remote workers for certain qualifying expenses beginning July 1, 2023. Limits the total amount of grants that may be awarded under the new remote worker grant program in a fiscal year. Makes conforming changes.

Effective: July 1, 2023.

Mishler, Holdman, Ford Jon, Busch

January 11, 2022, read first time and referred to Committee on Appropriations.

January 27, 2022, amended, reported favorably -- Do Pass.

January 31, 2022, read second time, amended, ordered engrossed.

Reprinted

February 1, 2022

Second Regular Session of the 122nd General Assembly (2022)

SENATE BILL No. 361

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

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

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***

SECTION 3. IC 5-28-6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: ***Sec. 9. (a) Except as provided in subsection (b), the total amount of credits that the corporation may award for a calendar year for all taxpayers for all applicable tax credits is four hundred million dollars (\$400,000,000).***

***(b) Subject to review by the budget committee, the corporation may award for a calendar year for all taxpayers an additional two hundred million dollars (\$200,000,000) for all applicable tax credits in addition to those under subsection (a). However, the tax credits awarded under this subsection shall not be assigned or transferred.***

***(c) If the corporation has not or does not expect to exhaust the limit on the award of applicable credits, the corporation may award some or all of the remaining credits to taxpayers that make contributions to the Indiana promotion fund established by IC 5-28-5-12 in accordance with the policy established by the corporation under subsection (e).***

***(d) Credits provided to taxpayers providing contributions to the Indiana promotion fund may not be carried back or refunded.***

***(e) The corporation shall establish a policy for the award and distribution of credits that must be approved by the board.***

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***

SECTION 6. IC 6-3-4-8, AS AMENDED BY P.L.159-2021, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in ***subsections (d) and (m)***, every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total local income tax rate that the taxpayer is subject to under IC 6-3.6, and on

the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.6 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed one thousand dollars (\$1,000). An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period.

(c) For purposes of determining whether an employee is subject to taxation under IC 6-3.6, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

(2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing, with regard to wages paid to the employer's employees:

(1) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;

(2) the amount of income tax, if any, imposed under IC 6-3.6 and deducted therefrom in accordance with this section; and

(3) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.6, withheld from the employees, on the forms prescribed by the department. In addition, the employer shall file Form WH-3 annual withholding tax reports with the department not later than thirty-one (31) days after the end of the calendar year.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under

the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes, shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.6, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.6, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and IC 6-3.6, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) A person who knowingly fails to remit trust fund money as set forth in this section commits a Level 6 felony.

***(m) Subject to the limitations of this chapter, an employer within an innovation development district designated under IC 36-7-32.5 that:***

***(1) maintains a fixed place of business within the innovation development district; and***

***(2) makes payments of wages subject to tax under this article to a new employee (as defined in IC 6-3.1-13-6) for performance of the duties of the new employee;***

***is not required, at the time of payment of the wages to the new employee, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.***

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***

SECTION 19. IC 6-3.1-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ

AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

**Chapter 36. Film and Media Production Tax Credit**

**Sec. 1.** As used in this chapter, “qualified applicant” means a person, corporation, limited liability partnership, limited liability company, or other entity that is engaged in the business of making a qualified media production in Indiana.

**Sec. 2.** As used in this chapter, “qualified media production” means:

(1) a feature length film, including an independent or studio production, or a documentary;

(2) a television episodic series, program, or feature;

(3) a digital media production that is intended for reasonable commercial exploitation; or

(4) any other similar production as determined by the corporation;

that is produced in Indiana.

**Sec. 3.** As used in this chapter, “qualified production expenses” means expenses incurred by a qualified applicant for a qualified media production.

**Sec. 4.** 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 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

**Sec. 5.** As used in this chapter, “taxpayer” means a qualified applicant that has any state tax liability.

**Sec. 6. (a)** A qualified applicant may apply to the Indiana economic development corporation for a tax credit under this chapter. The corporation shall prescribe the form and contents of the application.

(b) The corporation shall evaluate an applicant's eligibility for a tax credit under this chapter.

(c) The corporation may certify the eligibility of a taxpayer that meets the requirements for a tax credit under this chapter.

(d) If the corporation certifies a taxpayer under subsection (c), the corporation shall determine the percentage used to calculate the amount of a tax credit under section 7(2) of this chapter.

**Sec. 7.** If the corporation certifies a taxpayer under section 6(c) of this chapter, the taxpayer is entitled to a tax credit under this chapter equal to:

(1) the amount of the taxpayer's qualified production expenses; multiplied by (2) a percentage determined by the corporation.

**Sec. 8.** If a pass through entity is entitled to a credit under section 7 of this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

**Sec. 9.** To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

*Sec. 10. A tax credit awarded under this chapter is subject to the limitations set forth in IC 5-28-6-9.*

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***