



March 17, 2017

ENGROSSED HOUSE BILL No. 1431

DIGEST OF HB 1431 (Updated March 15, 2017 5:02 pm - DI 87)

Citations Affected: IC 5-14.

Synopsis: Executive sessions and open records. Provides that a governing body may admit to an executive session of the governing body an individual who has been elected to the governing body but has not been sworn in as a member of the governing body. Allows a state educational institution to: (1) meet in executive session to discuss certain matters concerning establishment of a collaborative relationship or venture to advance the research, engagement, or education mission of the state educational institution; and (2) withhold records from public disclosure that are created while the negotiations are in progress. Amends the tabulation of a provision regarding negotiations of certain state and local government entities to reflect that all of the listed entities negotiate with industrial, research, or commercial prospects.

Effective: July 1, 2017.

GiaQuinta, Lehman, Pryor, Engleman

(SENATE SPONSORS — BROWN L, KRUSE, RUCKELSHAUS,
NIEZGODSKI)

January 17, 2017, read first time and referred to Committee on Local Government.
February 9, 2017, reported — Do Pass.
February 13, 2017, read second time, ordered engrossed. Engrossed.
February 16, 2017, read third time, passed. Yeas 87, nays 1.

SENATE ACTION

February 23, 2017, read first time and referred to Committee on Local Government.
March 16, 2017, amended, reported favorably — Do Pass.

EH 1431—LS 7054/DI 129



March 17, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1431

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 5-14-1.5-2, AS AMENDED BY P.L.103-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 2. For the purposes of this chapter:
4 (a) "Public agency", except as provided in section 2.1 of this
5 chapter, means the following:
6 (1) Any board, commission, department, agency, authority, or
7 other entity, by whatever name designated, exercising a portion of
8 the executive, administrative, or legislative power of the state.
9 (2) Any county, township, school corporation, city, town, political
10 subdivision, or other entity, by whatever name designated,
11 exercising in a limited geographical area the executive,
12 administrative, or legislative power of the state or a delegated
13 local governmental power.
14 (3) Any entity which is subject to either:
15 (A) budget review by either the department of local
16 government finance or the governing body of a county, city,
17 town, township, or school corporation; or

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- 1 (B) audit by the state board of accounts that is required by
 2 statute, rule, or regulation.
- 3 (4) Any building corporation of a political subdivision of the state
 4 of Indiana that issues bonds for the purpose of constructing public
 5 facilities.
- 6 (5) Any advisory commission, committee, or body created by
 7 statute, ordinance, or executive order to advise the governing
 8 body of a public agency, except medical staffs or the committees
 9 of any such staff.
- 10 (6) The Indiana gaming commission established by IC 4-33,
 11 including any department, division, or office of the commission.
- 12 (7) The Indiana horse racing commission established by IC 4-31,
 13 including any department, division, or office of the commission.
- 14 (b) "Governing body" means two (2) or more individuals who are
 15 **any of the following:**
- 16 (1) A public agency that:
- 17 (A) is a board, a commission, an authority, a council, a
 18 committee, a body, or other entity; and
- 19 (B) takes official action on public business.
- 20 (2) The board, commission, council, or other body of a public
 21 agency which takes official action upon public business.
- 22 (3) Any committee appointed directly by the governing body or
 23 its presiding officer to which authority to take official action upon
 24 public business has been delegated. An agent or agents appointed
 25 by the governing body to conduct collective bargaining on behalf
 26 of the governing body does not constitute a governing body for
 27 purposes of this chapter.
- 28 (c) "Meeting" means a gathering of a majority of the governing body
 29 of a public agency for the purpose of taking official action upon public
 30 business. It does not include any of the following:
- 31 (1) Any social or chance gathering not intended to avoid this
 32 chapter.
- 33 (2) Any on-site inspection of any:
- 34 (A) project;
- 35 (B) program; or
- 36 (C) facilities of applicants for incentives or assistance from the
 37 governing body.
- 38 (3) Traveling to and attending meetings of organizations devoted
 39 to betterment of government.
- 40 (4) A caucus.
- 41 (5) A gathering to discuss an industrial or a commercial prospect
 42 that does not include a conclusion as to recommendations, policy,



- 1 decisions, or final action on the terms of a request or an offer of
 2 public financial resources.
- 3 (6) An orientation of members of the governing body on their role
 4 and responsibilities as public officials, but not for any other
 5 official action.
- 6 (7) A gathering for the sole purpose of administering an oath of
 7 office to an individual.
- 8 (8) Collective bargaining discussions that the governing body of
 9 a school corporation engages in directly with bargaining
 10 adversaries. This subdivision ~~only~~ applies **only** to a governing
 11 body that has not appointed an agent or agents to conduct
 12 collective bargaining on behalf of the governing body as
 13 described in subsection (b)(3).
- 14 (d) "Official action" means to:
- 15 (1) receive information;
 16 (2) deliberate;
 17 (3) make recommendations;
 18 (4) establish policy;
 19 (5) make decisions; or
 20 (6) take final action.
- 21 (e) "Public business" means any function upon which the public
 22 agency is empowered or authorized to take official action.
- 23 (f) "Executive session" means a meeting from which the public is
 24 excluded, except the governing body may admit those persons
 25 necessary to carry out its purpose. **The governing body may also**
 26 **admit an individual who has been elected to the governing body but**
 27 **has not been sworn in as a member of the governing body.**
- 28 (g) "Final action" means a vote by the governing body on any
 29 motion, proposal, resolution, rule, regulation, ordinance, or order.
- 30 (h) "Caucus" means a gathering of members of a political party or
 31 coalition which is held for purposes of planning political strategy and
 32 holding discussions designed to prepare the members for taking official
 33 action.
- 34 (i) "Deliberate" means a discussion which may reasonably be
 35 expected to result in official action (defined under subsection (d)(3),
 36 (d)(4), (d)(5), or (d)(6)).
- 37 (j) "News media" means all newspapers qualified to receive legal
 38 advertisements under IC 5-3-1, all news services (as defined in
 39 IC 34-6-2-87), and all licensed commercial or public radio or television
 40 stations.
- 41 (k) "Person" means an individual, a corporation, a limited liability
 42 company, a partnership, an unincorporated association, or a



1 governmental entity.

2 **(l) "State educational institution" has the meaning set forth in**
 3 **IC 21-7-13-32.**

4 SECTION 2. IC 5-14-1.5-6.1, AS AMENDED BY P.L.145-2016,
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2017]: Sec. 6.1. (a) As used in this section, "public official"
 7 means a person:

- 8 (1) who is a member of a governing body of a public agency; or
 9 (2) whose tenure and compensation are fixed by law and who
 10 executes an oath.

11 (b) Executive sessions may be held only in the following instances:

- 12 (1) Where authorized by federal or state statute.
 13 (2) For discussion of strategy with respect to any of the following:
 14 (A) Collective bargaining.
 15 (B) Initiation of litigation or litigation that is either pending or
 16 has been threatened specifically in writing. As used in this
 17 clause, "litigation" includes any judicial action or
 18 administrative law proceeding under federal or state law.
 19 (C) The implementation of security systems.
 20 (D) The purchase or lease of real property by the governing
 21 body up to the time a contract or option to purchase or lease is
 22 executed by the parties.
 23 (E) School consolidation.

24 However, all such strategy discussions must be necessary for
 25 competitive or bargaining reasons and may not include
 26 competitive or bargaining adversaries.

27 (3) For discussion of the assessment, design, and implementation
 28 of school safety and security measures, plans, and systems.

29 (4) Interviews and negotiations with industrial or commercial
 30 prospects or agents of industrial or commercial prospects by:

- 31 (A) the Indiana economic development corporation;
 32 (B) the office of tourism development;
 33 (C) the Indiana finance authority;
 34 (D) the ports of Indiana;
 35 (E) an economic development commission;
 36 (F) the Indiana state department of agriculture;
 37 (G) a local economic development organization that is a
 38 nonprofit corporation established under state law whose
 39 primary purpose is the promotion of industrial or business
 40 development in Indiana, the retention or expansion of Indiana
 41 businesses, or the development of entrepreneurial activities in
 42 Indiana; or



- 1 (H) a governing body of a political subdivision.
 2 **However, this subdivision does not apply to any discussions**
 3 **regarding research that is prohibited under IC 16-34.5-1-2 or**
 4 **under any other law.**
 5 (5) To receive information about and interview prospective
 6 employees.
 7 (6) With respect to any individual over whom the governing body
 8 has jurisdiction:
 9 (A) to receive information concerning the individual's alleged
 10 misconduct; and
 11 (B) to discuss, before a determination, the individual's status
 12 as an employee, a student, or an independent contractor who
 13 is:
 14 (i) a physician; or
 15 (ii) a school bus driver.
 16 (7) For discussion of records classified as confidential by state or
 17 federal statute.
 18 (8) To discuss before a placement decision an individual student's
 19 abilities, past performance, behavior, and needs.
 20 (9) To discuss a job performance evaluation of individual
 21 employees. This subdivision does not apply to a discussion of the
 22 salary, compensation, or benefits of employees during a budget
 23 process.
 24 (10) When considering the appointment of a public official, to do
 25 the following:
 26 (A) Develop a list of prospective appointees.
 27 (B) Consider applications.
 28 (C) Make one (1) initial exclusion of prospective appointees
 29 from further consideration.
 30 Notwithstanding IC 5-14-3-4(b)(12), a governing body may
 31 release and shall make available for inspection and copying in
 32 accordance with IC 5-14-3-3 identifying information concerning
 33 prospective appointees not initially excluded from further
 34 consideration. An initial exclusion of prospective appointees from
 35 further consideration may not reduce the number of prospective
 36 appointees to fewer than three (3) unless there are fewer than
 37 three (3) prospective appointees. Interviews of prospective
 38 appointees must be conducted at a meeting that is open to the
 39 public.
 40 (11) To train school board members with an outside consultant
 41 about the performance of the role of the members as public
 42 officials.



- 1 (12) To prepare or score examinations used in issuing licenses,
 2 certificates, permits, or registrations under IC 25.
 3 (13) To discuss information and intelligence intended to prevent,
 4 mitigate, or respond to the threat of terrorism.
 5 (14) To train members of a board of aviation commissioners
 6 appointed under IC 8-22-2 or members of an airport authority
 7 board appointed under IC 8-22-3 with an outside consultant about
 8 the performance of the role of the members as public officials. A
 9 board may hold not more than one (1) executive session per
 10 calendar year under this subdivision.
 11 **(15) For discussion by the governing body of a state**
 12 **educational institution of:**
 13 **(A) the assessment of; or**
 14 **(B) negotiation with another entity concerning;**
 15 **the establishment of a collaborative relationship or venture to**
 16 **advance the research, engagement, or education mission of**
 17 **the state educational institution. However, this subdivision**
 18 **does not apply to any discussions regarding research that is**
 19 **prohibited under IC 16-34.5-1-2 or under any other law.**
 20 (c) A final action must be taken at a meeting open to the public.
 21 (d) Public notice of executive sessions must state the subject matter
 22 by specific reference to the enumerated instance or instances for which
 23 executive sessions may be held under subsection (b). The requirements
 24 stated in section 4 of this chapter for memoranda and minutes being
 25 made available to the public is modified as to executive sessions in that
 26 the memoranda and minutes must identify the subject matter
 27 considered by specific reference to the enumerated instance or
 28 instances for which public notice was given. The governing body shall
 29 certify by a statement in the memoranda and minutes of the governing
 30 body that no subject matter was discussed in the executive session
 31 other than the subject matter specified in the public notice.
 32 (e) A governing body may not conduct an executive session during
 33 a meeting, except as otherwise permitted by applicable statute. A
 34 meeting may not be recessed and reconvened with the intent of
 35 circumventing this subsection.
 36 SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.217-2016,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2017]: Sec. 4. (a) The following public records are excepted
 39 from section 3 of this chapter and may not be disclosed by a public
 40 agency, unless access to the records is specifically required by a state
 41 or federal statute or is ordered by a court under the rules of discovery:
 42 (1) Those declared confidential by state statute.



- 1 (2) Those declared confidential by rule adopted by a public
 2 agency under specific authority to classify public records as
 3 confidential granted to the public agency by statute.
 4 (3) Those required to be kept confidential by federal law.
 5 (4) Records containing trade secrets.
 6 (5) Confidential financial information obtained, upon request,
 7 from a person. However, this does not include information that is
 8 filed with or received by a public agency pursuant to state statute.
 9 (6) Information concerning research, including actual research
 10 documents, conducted under the auspices of a state educational
 11 institution, including information:
 12 (A) concerning any negotiations made with respect to the
 13 research; and
 14 (B) received from another party involved in the research.
 15 (7) Grade transcripts and license examination scores obtained as
 16 part of a licensure process.
 17 (8) Those declared confidential by or under rules adopted by the
 18 supreme court of Indiana.
 19 (9) Patient medical records and charts created by a provider,
 20 unless the patient gives written consent under IC 16-39 or as
 21 provided under IC 16-41-8.
 22 (10) Application information declared confidential by the Indiana
 23 economic development corporation under IC 5-28-16.
 24 (11) A photograph, a video recording, or an audio recording of an
 25 autopsy, except as provided in IC 36-2-14-10.
 26 (12) A Social Security number contained in the records of a
 27 public agency.
 28 (13) The following information that is part of a foreclosure action
 29 subject to IC 32-30-10.5:
 30 (A) Contact information for a debtor, as described in
 31 IC 32-30-10.5-8(d)(1)(B).
 32 (B) Any document submitted to the court as part of the debtor's
 33 loss mitigation package under IC 32-30-10.5-10(a)(3).
 34 (14) The following information obtained from a call made to a
 35 fraud hotline established under IC 36-1-8-8.5:
 36 (A) The identity of any individual who makes a call to the
 37 fraud hotline.
 38 (B) A report, transcript, audio recording, or other information
 39 concerning a call to the fraud hotline.
 40 However, records described in this subdivision may be disclosed
 41 to a law enforcement agency, a private university police
 42 department, the attorney general, the inspector general, the state



- 1 examiner, or a prosecuting attorney.
- 2 (b) Except as otherwise provided by subsection (a), the following
- 3 public records shall be excepted from section 3 of this chapter at the
- 4 discretion of a public agency:
- 5 (1) Investigatory records of law enforcement agencies or private
- 6 university police departments. For purposes of this chapter, a law
- 7 enforcement recording is not an investigatory record. Law
- 8 enforcement agencies or private university police departments
- 9 may share investigatory records with a person who advocates on
- 10 behalf of a crime victim, including a victim advocate (as defined
- 11 in IC 35-37-6-3.5) or a victim service provider (as defined in
- 12 IC 35-37-6-5), for the purposes of providing services to a victim
- 13 or describing services that may be available to a victim, without
- 14 the law enforcement agency or private university police
- 15 department losing its discretion to keep those records confidential
- 16 from other records requesters. However, certain law enforcement
- 17 records must be made available for inspection and copying as
- 18 provided in section 5 of this chapter.
- 19 (2) The work product of an attorney representing, pursuant to
- 20 state employment or an appointment by a public agency:
- 21 (A) a public agency;
- 22 (B) the state; or
- 23 (C) an individual.
- 24 (3) Test questions, scoring keys, and other examination data used
- 25 in administering a licensing examination, examination for
- 26 employment, or academic examination before the examination is
- 27 given or if it is to be given again.
- 28 (4) Scores of tests if the person is identified by name and has not
- 29 consented to the release of the person's scores.
- 30 (5) The following:
- 31 (A) Records relating to negotiations between:
- 32 (i) the Indiana economic development corporation;
- 33 (ii) the ports of Indiana;
- 34 (iii) the Indiana state department of agriculture;
- 35 (iv) the Indiana finance authority;
- 36 (v) an economic development commission;
- 37 (vi) a local economic development organization that is a
- 38 nonprofit corporation established under state law whose
- 39 primary purpose is the promotion of industrial or business
- 40 development in Indiana, the retention or expansion of
- 41 Indiana businesses, or the development of entrepreneurial
- 42 activities in Indiana; or



- 1 (vii) a governing body of a political subdivision; ~~with~~
 2 ~~industrial, research, or commercial prospects;~~
 3 **with industrial, research, or commercial prospects**, if the
 4 records are created while negotiations are in progress.
 5 **However, this clause does not apply to records regarding**
 6 **research that is prohibited under IC 16-34.5-1-2 or any**
 7 **other law.**
- 8 (B) Notwithstanding clause (A), the terms of the final offer of
 9 public financial resources communicated by the Indiana
 10 economic development corporation, the ports of Indiana, the
 11 Indiana finance authority, an economic development
 12 commission, or a governing body of a political subdivision to
 13 an industrial, a research, or a commercial prospect shall be
 14 available for inspection and copying under section 3 of this
 15 chapter after negotiations with that prospect have terminated.
- 16 (C) When disclosing a final offer under clause (B), the Indiana
 17 economic development corporation shall certify that the
 18 information being disclosed accurately and completely
 19 represents the terms of the final offer.
- 20 (D) Notwithstanding clause (A), an incentive agreement with
 21 an incentive recipient shall be available for inspection and
 22 copying under section 3 of this chapter after the date the
 23 incentive recipient and the Indiana economic development
 24 corporation execute the incentive agreement regardless of
 25 whether negotiations are in progress with the recipient after
 26 that date regarding a modification or extension of the incentive
 27 agreement.
- 28 (6) Records that are intra-agency or interagency advisory or
 29 deliberative material, including material developed by a private
 30 contractor under a contract with a public agency, that are
 31 expressions of opinion or are of a speculative nature, and that are
 32 communicated for the purpose of decision making.
- 33 (7) Diaries, journals, or other personal notes serving as the
 34 functional equivalent of a diary or journal.
- 35 (8) Personnel files of public employees and files of applicants for
 36 public employment, except for:
- 37 (A) the name, compensation, job title, business address,
 38 business telephone number, job description, education and
 39 training background, previous work experience, or dates of
 40 first and last employment of present or former officers or
 41 employees of the agency;
- 42 (B) information relating to the status of any formal charges



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



- 1 (17) The identity of any person who contacts the bureau of motor
2 vehicles concerning the ability of a driver to operate a motor
3 vehicle safely and the medical records and evaluations made by
4 the bureau of motor vehicles staff or members of the driver
5 licensing medical advisory board regarding the ability of a driver
6 to operate a motor vehicle safely. However, upon written request
7 to the commissioner of the bureau of motor vehicles, the driver
8 must be given copies of the driver's medical records and
9 evaluations.
- 10 (18) School safety and security measures, plans, and systems,
11 including emergency preparedness plans developed under 511
12 IAC 6.1-2-2.5.
- 13 (19) A record or a part of a record, the public disclosure of which
14 would have a reasonable likelihood of threatening public safety
15 by exposing a vulnerability to terrorist attack. A record described
16 under this subdivision includes the following:
- 17 (A) A record assembled, prepared, or maintained to prevent,
18 mitigate, or respond to an act of terrorism under IC 35-47-12-1
19 or an act of agricultural terrorism under IC 35-47-12-2.
 - 20 (B) Vulnerability assessments.
 - 21 (C) Risk planning documents.
 - 22 (D) Needs assessments.
 - 23 (E) Threat assessments.
 - 24 (F) Intelligence assessments.
 - 25 (G) Domestic preparedness strategies.
 - 26 (H) The location of community drinking water wells and
27 surface water intakes.
 - 28 (I) The emergency contact information of emergency
29 responders and volunteers.
 - 30 (J) Infrastructure records that disclose the configuration of
31 critical systems such as communication, electrical, ventilation,
32 water, and wastewater systems.
 - 33 (K) Detailed drawings or specifications of structural elements,
34 floor plans, and operating, utility, or security systems, whether
35 in paper or electronic form, of any building or facility located
36 on an airport (as defined in IC 8-21-1-1) that is owned,
37 occupied, leased, or maintained by a public agency, or any part
38 of a law enforcement recording that captures information
39 about airport security procedures, areas, or systems. A record
40 described in this clause may not be released for public
41 inspection by any public agency without the prior approval of
42 the public agency that owns, occupies, leases, or maintains the



1 airport. Both of the following apply to the public agency that
 2 owns, occupies, leases, or maintains the airport:

3 (i) The public agency is responsible for determining whether
 4 the public disclosure of a record or a part of a record,
 5 including a law enforcement recording, has a reasonable
 6 likelihood of threatening public safety by exposing a
 7 security procedure, area, system, or vulnerability to terrorist
 8 attack.

9 (ii) The public agency must identify a record described
 10 under item (i) and clearly mark the record as "confidential
 11 and not subject to public disclosure under
 12 IC 5-14-3-4(b)(19)(J) without approval of (insert name of
 13 submitting public agency)". However, in the case of a law
 14 enforcement recording, the public agency must clearly mark
 15 the record as "confidential and not subject to public
 16 disclosure under IC 5-14-3-4(b)(19)(K) without approval of
 17 (insert name of the public agency that owns, occupies,
 18 leases, or maintains the airport)".

19 (L) The home address, home telephone number, and
 20 emergency contact information for any:

21 (i) emergency management worker (as defined in
 22 IC 10-14-3-3);

23 (ii) public safety officer (as defined in IC 35-47-4.5-3);

24 (iii) emergency medical responder (as defined in
 25 IC 16-18-2-109.8); or

26 (iv) advanced emergency medical technician (as defined in
 27 IC 16-18-2-6.5).

28 This subdivision does not apply to a record or portion of a record
 29 pertaining to a location or structure owned or protected by a
 30 public agency in the event that an act of terrorism under
 31 IC 35-47-12-1 or an act of agricultural terrorism under
 32 IC 35-47-12-2 has occurred at that location or structure, unless
 33 release of the record or portion of the record would have a
 34 reasonable likelihood of threatening public safety by exposing a
 35 vulnerability of other locations or structures to terrorist attack.

36 (20) The following personal information concerning a customer
 37 of a municipally owned utility (as defined in IC 8-1-2-1):

38 (A) Telephone number.

39 (B) Address.

40 (C) Social Security number.

41 (21) The following personal information about a complainant
 42 contained in records of a law enforcement agency:



- 1 (A) Telephone number.
- 2 (B) The complainant's address. However, if the complainant's
- 3 address is the location of the suspected crime, infraction,
- 4 accident, or complaint reported, the address shall be made
- 5 available for public inspection and copying.
- 6 (22) Notwithstanding subdivision (8)(A), the name,
- 7 compensation, job title, business address, business telephone
- 8 number, job description, education and training background,
- 9 previous work experience, or dates of first employment of a law
- 10 enforcement officer who is operating in an undercover capacity.
- 11 (23) Records requested by an offender that:
- 12 (A) contain personal information relating to:
- 13 (i) a correctional officer (as defined in IC 5-10-10-1.5);
- 14 (ii) a law enforcement officer (as defined in
- 15 IC 35-31.5-2-185);
- 16 (iii) a judge (as defined in IC 33-38-12-3);
- 17 (iv) the victim of a crime; or
- 18 (v) a family member of a correctional officer, law
- 19 enforcement officer (as defined in IC 35-31.5-2-185), judge
- 20 (as defined in IC 33-38-12-3), or victim of a crime; or
- 21 (B) concern or could affect the security of a jail or correctional
- 22 facility.
- 23 (24) Information concerning an individual less than eighteen (18)
- 24 years of age who participates in a conference, meeting, program,
- 25 or activity conducted or supervised by a state educational
- 26 institution, including the following information regarding the
- 27 individual or the individual's parent or guardian:
- 28 (A) Name.
- 29 (B) Address.
- 30 (C) Telephone number.
- 31 (D) Electronic mail account address.
- 32 (25) Criminal intelligence information.
- 33 (26) The following information contained in a report of unclaimed
- 34 property under IC 32-34-1-26 or in a claim for unclaimed
- 35 property under IC 32-34-1-36:
- 36 (A) Date of birth.
- 37 (B) Driver's license number.
- 38 (C) Taxpayer identification number.
- 39 (D) Employer identification number.
- 40 (E) Account number.
- 41 (27) Except as provided in subdivision (19) and sections 5.1 and
- 42 5.2 of this chapter, a law enforcement recording. However, before



1 disclosing the recording, the public agency must comply with the
 2 obscuring requirements of sections 5.1 and 5.2 of this chapter, if
 3 applicable.

4 **(28) Records relating to negotiations between a state**
 5 **educational institution and another entity concerning the**
 6 **establishment of a collaborative relationship or venture to**
 7 **advance the research, engagement, or educational mission of**
 8 **the state educational institution, if the records are created**
 9 **while negotiations are in progress. The terms of the final offer**
 10 **of public financial resources communicated by the state**
 11 **educational institution to an industrial, a research, or a**
 12 **commercial prospect shall be available for inspection and**
 13 **copying under section 3 of this chapter after negotiations with**
 14 **that prospect have terminated. However, this subdivision does**
 15 **not apply to records regarding research prohibited under**
 16 **IC 16-34.5-1-2 or any other law.**

17 (c) Nothing contained in subsection (b) shall limit or affect the right
 18 of a person to inspect and copy a public record required or directed to
 19 be made by any statute or by any rule of a public agency.

20 (d) Notwithstanding any other law, a public record that is classified
 21 as confidential, other than a record concerning an adoption or patient
 22 medical records, shall be made available for inspection and copying
 23 seventy-five (75) years after the creation of that record.

24 (e) Only the content of a public record may form the basis for the
 25 adoption by any public agency of a rule or procedure creating an
 26 exception from disclosure under this section.

27 (f) Except as provided by law, a public agency may not adopt a rule
 28 or procedure that creates an exception from disclosure under this
 29 section based upon whether a public record is stored or accessed using
 30 paper, electronic media, magnetic media, optical media, or other
 31 information storage technology.

32 (g) Except as provided by law, a public agency may not adopt a rule
 33 or procedure nor impose any costs or liabilities that impede or restrict
 34 the reproduction or dissemination of any public record.

35 (h) Notwithstanding subsection (d) and section 7 of this chapter:

36 (1) public records subject to IC 5-15 may be destroyed only in
 37 accordance with record retention schedules under IC 5-15; or

38 (2) public records not subject to IC 5-15 may be destroyed in the
 39 ordinary course of business.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1431, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1431 as introduced.)

ZENT

Committee Vote: Yeas 9, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, after line 1, begin a new paragraph and insert:

"(l) "State educational institution" has the meaning set forth in IC 21-7-13-32.

SECTION 2. IC 5-14-1.5-6.1, AS AMENDED BY P.L.145-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6.1. (a) As used in this section, "public official" means a person:

- (1) who is a member of a governing body of a public agency; or
- (2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
 - (A) Collective bargaining.
 - (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.
 - (C) The implementation of security systems.
 - (D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.
 - (E) School consolidation.

However, all such strategy discussions must be necessary for

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competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by:

- (A) the Indiana economic development corporation;
- (B) the office of tourism development;
- (C) the Indiana finance authority;
- (D) the ports of Indiana;
- (E) an economic development commission;
- (F) the Indiana state department of agriculture;
- (G) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or
- (H) a governing body of a political subdivision.

However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged misconduct; and
- (B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:
 - (i) a physician; or
 - (ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do



the following:

- (A) Develop a list of prospective appointees.
- (B) Consider applications.
- (C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

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

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 25.

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

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this subdivision.

(15) For discussion by the governing body of a state educational institution of:

(A) the assessment of; or

(B) negotiation with another entity concerning;

the establishment of a collaborative relationship or venture to advance the research, engagement, or education mission of the state educational institution. However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

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

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being



made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

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

SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.217-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.
- (10) Application information declared confidential by the Indiana economic development corporation under IC 5-28-16.
- (11) A photograph, a video recording, or an audio recording of an



autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) The following information that is part of a foreclosure action subject to IC 32-30-10.5:

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(1)(B).

(B) Any document submitted to the court as part of the debtor's loss mitigation package under IC 32-30-10.5-10(a)(3).

(14) The following information obtained from a call made to a fraud hotline established under IC 36-1-8-8.5:

(A) The identity of any individual who makes a call to the fraud hotline.

(B) A report, transcript, audio recording, or other information concerning a call to the fraud hotline.

However, records described in this subdivision may be disclosed to a law enforcement agency, a private university police department, the attorney general, the inspector general, the state examiner, or a prosecuting attorney.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies or private university police departments. For purposes of this chapter, a law enforcement recording is not an investigatory record. Law enforcement agencies or private university police departments may share investigatory records with a person who advocates on behalf of a crime victim, including a victim advocate (as defined in IC 35-37-6-3.5) or a victim service provider (as defined in IC 35-37-6-5), for the purposes of providing services to a victim or describing services that may be available to a victim, without the law enforcement agency or private university police department losing its discretion to keep those records confidential from other records requesters. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used



in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between:

(i) the Indiana economic development corporation;

(ii) the ports of Indiana;

(iii) the Indiana state department of agriculture;

(iv) the Indiana finance authority;

(v) an economic development commission;

(vi) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or

(vii) a governing body of a political subdivision; ~~with industrial, research, or commercial prospects;~~

with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

However, this clause does not apply to records regarding research that is prohibited under IC 16-34.5-1-2 or any other law.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of



whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.

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

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

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

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan



staffs of the general assembly.

- (15) The identity of a donor of a gift made to a public agency if:
- (A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or
 - (B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.
- (16) Library or archival records:
- (A) which can be used to identify any library patron; or
 - (B) deposited with or acquired by a library upon a condition that the records be disclosed only:
 - (i) to qualified researchers;
 - (ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
 - (iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

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

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

- (A) A record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2.
- (B) Vulnerability assessments.
- (C) Risk planning documents.
- (D) Needs assessments.
- (E) Threat assessments.
- (F) Intelligence assessments.



- (G) Domestic preparedness strategies.
- (H) The location of community drinking water wells and surface water intakes.
- (I) The emergency contact information of emergency responders and volunteers.
- (J) Infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems.
- (K) Detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency, or any part of a law enforcement recording that captures information about airport security procedures, areas, or systems. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. Both of the following apply to the public agency that owns, occupies, leases, or maintains the airport:
 - (i) The public agency is responsible for determining whether the public disclosure of a record or a part of a record, including a law enforcement recording, has a reasonable likelihood of threatening public safety by exposing a security procedure, area, system, or vulnerability to terrorist attack.
 - (ii) The public agency must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)". However, in the case of a law enforcement recording, the public agency must clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(K) without approval of (insert name of the public agency that owns, occupies, leases, or maintains the airport)".
- (L) The home address, home telephone number, and emergency contact information for any:
 - (i) emergency management worker (as defined in IC 10-14-3-3);
 - (ii) public safety officer (as defined in IC 35-47-4.5-3);
 - (iii) emergency medical responder (as defined in



IC 16-18-2-109.8); or
 (iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

- (A) Telephone number.
- (B) Address.
- (C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

- (A) Telephone number.
- (B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

- (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
 - (iii) a judge (as defined in IC 33-38-12-3);
 - (iv) the victim of a crime; or
 - (v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime; or
- (B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program,



or activity conducted or supervised by a state educational institution, including the following information regarding the individual or the individual's parent or guardian:

- (A) Name.
- (B) Address.
- (C) Telephone number.
- (D) Electronic mail account address.

(25) Criminal intelligence information.

(26) The following information contained in a report of unclaimed property under IC 32-34-1-26 or in a claim for unclaimed property under IC 32-34-1-36:

- (A) Date of birth.
- (B) Driver's license number.
- (C) Taxpayer identification number.
- (D) Employer identification number.
- (E) Account number.

(27) Except as provided in subdivision (19) and sections 5.1 and 5.2 of this chapter, a law enforcement recording. However, before disclosing the recording, the public agency must comply with the obscuring requirements of sections 5.1 and 5.2 of this chapter, if applicable.

(28) Records relating to negotiations between a state educational institution and another entity concerning the establishment of a collaborative relationship or venture to advance the research, engagement, or educational mission of the state educational institution, if the records are created while negotiations are in progress. The terms of the final offer of public financial resources communicated by the state educational institution to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated. However, this subdivision does not apply to records regarding research prohibited under IC 16-34.5-1-2 or any other law.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Only the content of a public record may form the basis for the



adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.

(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.

(g) Except as provided by law, a public agency may not adopt a rule or procedure nor impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.

(h) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1431 as printed February 10, 2017.)

BUCK, Chairperson

Committee Vote: Yeas 10, Nays 0.

