

Looking Out for Taxpayers – Clawbacks and Economic Development Incentives

Association of Indiana Counties

September 28, 2016



Allen County Economic Development Toolbox

- * Allen County utilizes economic development tools such as property tax abatement (aka phase-in), economic development revenue bonds, and local performance-based incentives
- * Property tax phase-in and economic development revenue bonds have been around for awhile
- * Allen County processes on average 10 applications each year for phase-in

Property Tax Phase-in

- * Allen County has responded to changes in state enabling legislation by revising its own local policy
- * Since 1992, Allen County has had a review system in place to evaluate phase-in applications
- * Applications are reviewed and awarded points for meeting certain criteria on investment, jobs and quality of jobs
- * In competitive projects, phase-in figures prominently in determining the extent to which the state will offer incentives (i.e. state will usually tie the number of years of incentives offered to the number of years local community grants phase-in)

Property Tax Phase-in

- * Allen County in recent years has partnered with the City of Fort Wayne in establishing economic development incentive policy
- * County and city worked together in 2012/2013 to align phase-in policies and the review systems
- * Review system based on 100 points possible
 - * Investment/Tax Base Benefits (45 points possible)
 - * Jobs (45 points possible)
 - * Economic Base (5 points possible)
 - * Employee Benefits (3 points possible)
 - * Reciprocating Benefits (2 points possible)

Phase-in Compliance

- * The issue of compliance is not unique to Allen County
- * By law, each company approved for ERA designation filed a Statement of Benefits (SB-1) form at the beginning of their project and then must annually file a Compliance with Statement of Benefits form (CF-1) which shows the progress being made on the commitments made on the SB-1
- * While this is a “self reporting” tool, each authorized representative that signs the CF-1 form certifies the representations in the document are true

Phase-in Compliance

- * Like many other communities, Allen County has its own policy on what constitutes “substantial compliance” under Indiana Code
- * Allen County defines “substantial compliance” as
 - * creating or retaining at least 75% of the total number of full-time and/or part-time jobs delineated in SB-1 form and/or
 - * creating or retaining at least 75% of the total salaries delineated in SB-1 form

within the timeframe projected in the company’s SB-1 form

If found non-compliant, then further review is done to see whether the investment in real estate or personal property equals or exceeds 75% of the investment delineated on the SB-1 form and a visit and/or call is made to the company to seek explanation of failure to meet “substantial compliance”

Phase-in Compliance

- * Smaller communities can often visit each company to monitor for compliance and may incorporate it into their business retention strategy
- * Larger communities rely on the self-reporting done through the CF-1 due to the amount of resources and staff it would take to visit each company
- * Allen County relies on the CF-1 reported numbers but also makes visits to companies if compliance issues arise
- * Allen County has terminated deductions for failure to file CF-1 paperwork

Other Incentives

- * Allen County set up joint guidelines with the City of Fort Wayne for the use of performance-based incentives for competitive projects in 2010
- * Performance-based incentive agreement documents have language that outlines annual disbursement schedules based on job and investment performance of the company
- * If company fails to meet minimum performance, no disbursement is made and may be subject to cancellation
- * Other language is also included on a case-to-case basis that may require repayment of the incentive should the company fail to perform



PROTECTING THE PUBLIC INTEREST IN ECONOMIC DEVELOPMENT

Chris W. Cotterill
Executive Vice President
9/28/2016



Indiana Economic Development Corporation

QUICK OVERVIEW



INDIANA RANKINGS

FIRST Nationally for Cost of Doing Business

CNBC, June 2016

FIRST Nationally for Infrastructure

CNBC, June 2016

FIRST Nationally for Small Business Regulations

The Pacific Research Institute, July 2015

FIRST in the Midwest for Low Taxes and **8TH NATIONALLY**

Tax Foundation, November 2015

SECOND Nationally for Availability of Skilled Labor

Area Development, September 2015

THIRD in the Nation for **TOP 10 Pro-Business States.**

Pollina Corporation Real Estate, November 2015

BEST BUSINESS CLIMATE in the Midwest
and **6TH NATIONALLY**

Chief Executive, May 2015

EIGHTH Nationally for Best Business Climate

Forbes, October 2015

A STATE THAT WORKS



**2015:
A RECORD
BREAKING
YEAR**

323

COMPANIES ARE RELOCATING TO OR
EXPANDING IN INDIANA

26,555

NEW HOOSIER JOBS COMMITTED

\$4.79B

INVESTMENT COMMITTED

\$24.87/HOUR

IEDC AVERAGE PROJECT WAGE



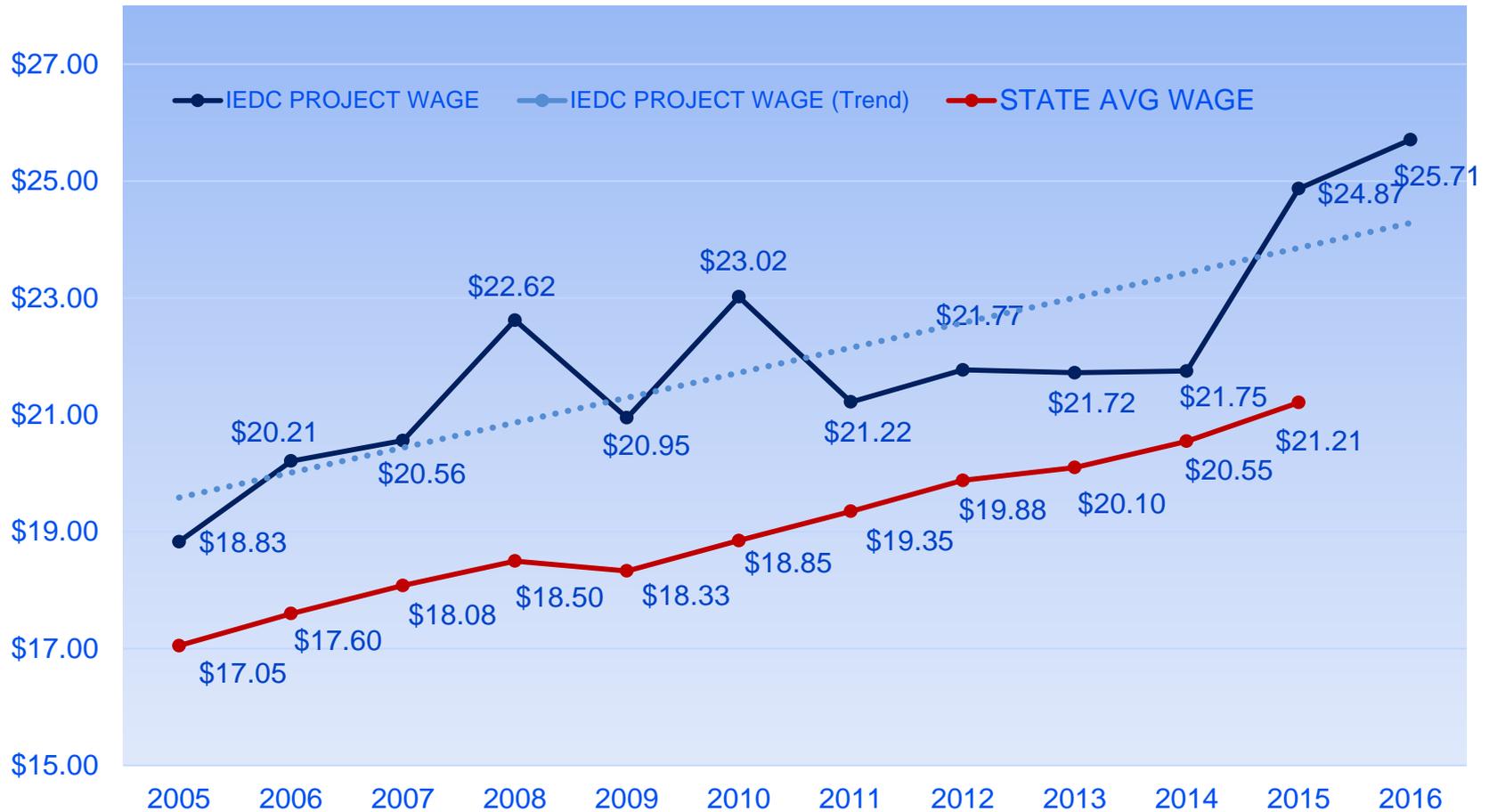
PRIVATE SECTOR EMPLOYMENT



Source: Current Employment Statistics (CES data set)



HOOSIER AVERAGE WAGE



Source: Quarterly Census
Employment and Wages
(QCEW)



PROMOTING INDIANA: AT HOME & ABROAD

New York:
If you can
make it there,
you can make
**A LOT MORE
OF IT HERE.**



INDIANA
A State that Works
AStateThatWorks.com

**BREXIT
OR NOT**
YOU'LL ALWAYS BE
FRONT OF THE QUEUE
FOR BUSINESS IN



INDIANA
A State that Works

WE STAND WITH BAE SYSTEMS, BP,
ROLLS-ROYCE, TATE & LYLE AND THE
OTHER 50+ U.K. COMPANIES IN INDIANA.

The list of U.K. companies that trust Indiana to help them make the most out of their U.S. operations is impressive. We've gained this level of trust and commitment because we're more than just good ambassadors. We're one of the top locations to build and grow your business in the United States.



If you're ready to start realising your full economic potential, we're serious about bringing together the resources and the freedom to succeed on your own terms in A State that Works.

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AStateThatWorks.com



OTHER MAJOR IEDC INITIATIVES





Indiana Economic Development Corporation

PROTECTING THE PUBLIC INTEREST THROUGH OUR CONTRACTS



IEDC'S STANDARD PROJECT PROCESS



1. IEDC receives a site search and/or RFI request from a company
2. Project is assigned to an IEDC project manager
3. The project manager will partner with the LEDO
4. IEDC provides assistance to the company in completing our online application for incentives
5. Upon receipt of the local incentives offer, the IEDC evaluates and prepares our offer of incentives
6. The IEDC presents the company with formal incentives offer—called a Pre-Commit
7. Company accepts offer by signing and returning Pre-Commit
8. IEDC project manager processes acceptance and account manager is assigned
9. If the company is interested, the IEDC media team will coordinate a press release



THREE PRIMARY PERFORMANCE BASED INCENTIVES

- Economic Development for a Growing Economy (EDGE)
- Hoosier Business Investment (HBI)
- Skills Enhancement Fund (SEF)



ECONOMIC DEVELOPMENT FOR A GROWING ECONOMY

- A refundable corporate income tax credit calculated as a percentage of the state income tax withholdings generated from creation of new full-time jobs for Indiana residents at the project location
- The credit is certified annually by the IEDC for up to 10 years based upon the actual number of new jobs and average wage of those jobs
- Company required to submit annual report for 10 year active term of the agreement plus two additional years.



HOOSIER BUSINESS INVESTMENT

- A non-refundable corporate income tax credit calculated as a percentage of the eligible qualified capital investment to support a project multiplied by the percentage of the projected aggregate payroll amount.
- Qualified investment (defined in Indiana Code Section 6-3.1-26-8) includes the company's investment in equipment, computers, costs associated with modernization of existing facilities and construction of new facilities, and costs of onsite infrastructure improvements
- The credit is certified annually based on:
 - » The phase-in of the qualified investment, over a period of two full calendar years from the commencement date of the project; and
 - » The company's percentage of the projected aggregate payroll amount at the end of the taxable year.

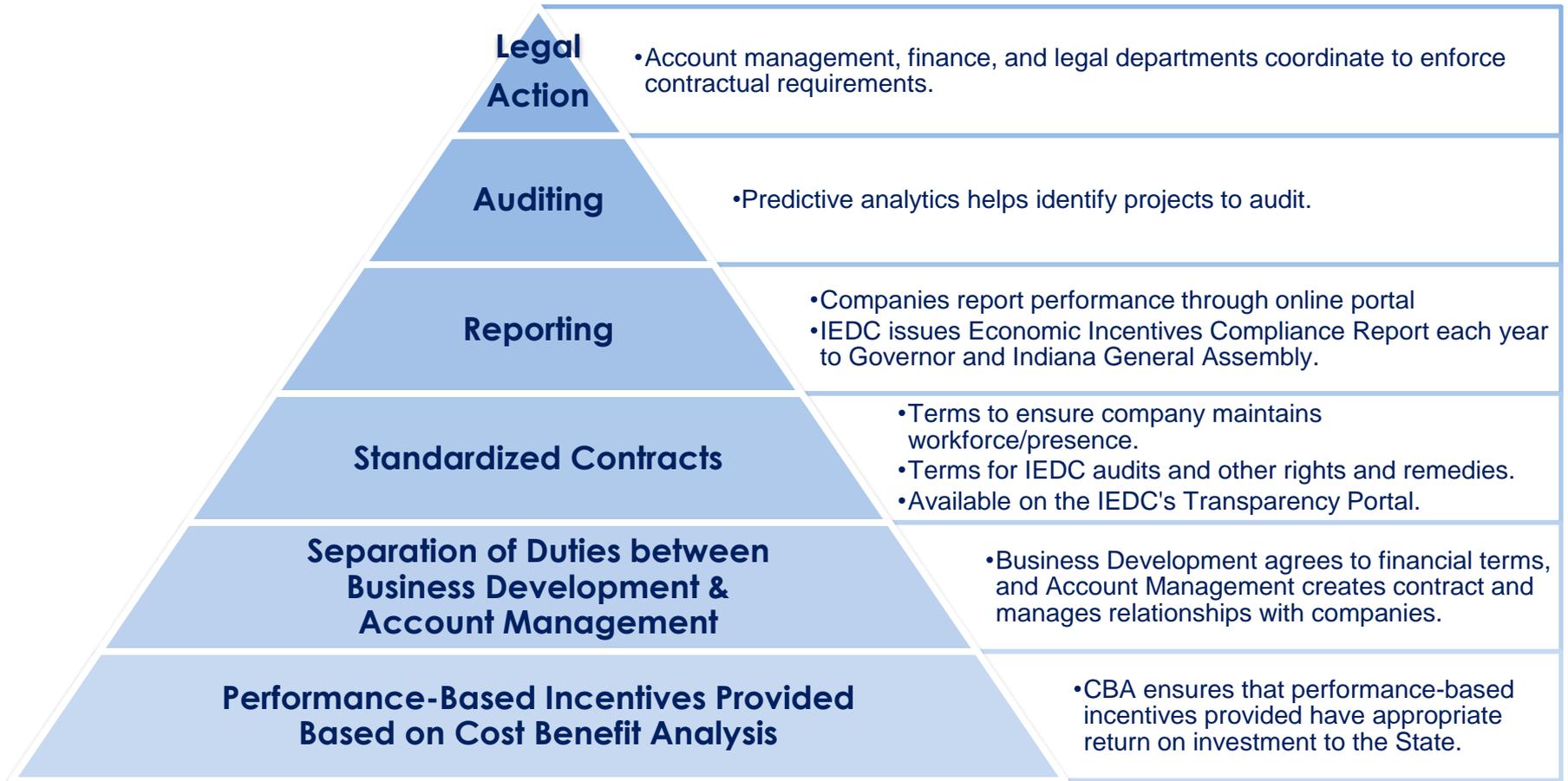


SKILLS ENHANCEMENT FUND GRANT

- A grant that reimburses businesses for certain employee training and skills development costs.
 - » Typically, the IEDC reimburses 50% of eligible training costs over a period of two full calendar years from the commencement of the project.
- Eligible expenses include:
 - » Trainer's wages and trainee wages;
 - » Software licenses for training programs;
 - » Tuition reimbursement for accredited institutions; and,
 - » Reasonable travel expenses for employees to attend training.
- Ineligible expenses include OSHA and other federally-mandated training and general new hire orientation training



KEY ASPECTS OF COMPLIANCE PROGRAM





EDGE CLAWBACK

- Triggers for Clawback of EDGE Credits Claimed
 - » Closure of project Location prior to expiration of the term of the Agreement (12 years)
 - » Company's exit from the state prior to the expiration of the term of the agreement (12 years)
 - » Insolvency/bankruptcy
 - » Delinquency in submitting annual report to the IEDC
- Enforcement Procedure
 - » Courtesy call to company representative
 - » Demand letter
 - » Referral to Indiana Department of Revenue for tax assessment/lien



HBI CLAWBACK

- Triggers for Clawback of HBI Credits Claimed
 - » Closure of project Location prior to expiration of the term of the Agreement (9 years)
 - » Company's exit from the state prior to the expiration of the term of the agreement (9 years)
 - » Insolvency/bankruptcy
 - » Delinquency in submitting annual report to the IEDC
- Enforcement Procedure
 - » Courtesy call to company representative
 - » Demand letter
 - » Referral to Indiana Department of Revenue for tax assessment/lien



SEF CLAWBACK

- Triggers for Clawback of SEF Grant Funds Paid Out:
 - » Closure of project Location prior to expiration of the term of the Agreement (7 years)
 - » Company's exit from the state prior to the expiration of the term of the agreement (7 years)
 - » Failure to employ at least 80% of the Company's base employment number for the 5 years after the active term of the agreement
 - » Insolvency/bankruptcy
 - » Delinquency in submitting annual report to the IEDC
- Enforcement procedure
 - » Courtesy call to company representative
 - » Demand letter



MAINTAINING THE RIGHT BALANCE



A STATE THAT WORKS

**CONGRATULATIONS
AND THANK YOU**
to Indiana's workforce,
businesses, and economic
development professionals.

**You've achieved an
all-time record for
Hoosier employment
2,614,800**



AStateThatWorks.com



Economic Development Incentives – Risk Management from the Start

- * Before any Request for Information (RFI) is Received
 - * Form of game plan already developed
 - * Understand types and ranges of resources available locally
 - * Education/Communication with local officials
 - * Consensus on general matrix of incentives available vs. opportunity presented
 - * How to differentiate your community / response
 - * Location
 - * Resources
 - * Work force
 - * Quality of life
 - * Other

Economic Development Incentives – Risk Management from the Start

- * When RFI is Received
 - * Gather as much information as is available, which may be limited
 - * How does opportunity fit profile previously developed for your community
 - * Develop response in line with incentive/opportunity matrix
 - * Make sure in formal response that manage risk related to
 - * Tie incentives to representations made in RFI
 - * Reliance risk with disclosures, process description, etc.
Consult Counsel!
 - * Outline time frame for offer

MANAGING INCENTIVE RISK - BONDS

- * Company Purchases the Bonds
- * Company Guaranty Debt Service
- * Company Pay Off Bonds Early
- * Company Letter of Credit – DSRF
- * Covenant Not to Appeal
- * Dispute Resolution Fund
- * Clawback Percentage of Pledge

MANAGING INCENTIVE RISK – NO BONDS

- * Minimum Taxpayer Guaranty Agreement
- * Clawback of Taxes Abated or Funds Provided
 - * ...based on jobs to be created
 - * ...based on investment levels
 - * ...based on other predetermined criteria