
SENATE BILL No. 475

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-22; IC 28-16.

Synopsis: Tax credit and local certified equity pools. Permits the formation of local certified equity pools. Allows local certified equity pools to invest in certain Indiana businesses. Allows taxpayers that invest in local certified equity pools to claim a credit against state tax liability. Provides that the credit allowed equals 30% of the taxpayer's investment in a local certified equity pool. Provides that the aggregate amount of investment for which a credit may be claimed may not exceed \$10,000,000 in a taxable year. Provides that if the aggregate amount of investment exceeds \$10,000,000, the credits are allocated according to the proportional amount of each taxpayer's investment.

Effective: January 1, 2001.

Simpson

January 10, 2000, read first time and referred to Committee on Planning and Economic Development.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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SENATE BILL No. 475



A BILL FOR AN ACT to amend the Indiana Code concerning taxation and investment.

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

1 SECTION 1. IC 6-3.1-22 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2001]:

4 **Chapter 22. Credit for Investment in Local Certified Equity**
5 **Pools**

6 **Sec. 1. As used in this chapter, "local certified equity pool" has**
7 **the meaning set forth in IC 28-16-2-9.**

8 **Sec. 2. As used in this chapter, "pass through entity" means:**

9 (1) a corporation that is exempt from the adjusted gross
10 income tax under IC 6-3-2-2.8(2); or

11 (2) a partnership.

12 **Sec. 3. As used in this chapter, "state tax liability" means a**
13 **taxpayer's total tax liability that is incurred under:**

- 14 (1) IC 6-2.1 (gross income tax);
- 15 (2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- 16 (3) IC 6-3-8 (supplemental net income tax);
- 17 (4) IC 6-5.5 (financial institutions tax); and



1 (5) IC 27-1-18-2 (insurance premiums tax);
 2 as computed after the application of the credits that under
 3 IC 6-3.1-1-2 are to be applied before the credit provided by this
 4 chapter.

5 Sec. 4. As used in this chapter, "taxpayer" means an individual
 6 or entity that has state tax liability.

7 Sec. 5. (a) A taxpayer that invests in a local certified equity pool
 8 is entitled to a credit against the taxpayer's state tax liability for
 9 the taxable year in which the taxpayer invests in the local certified
 10 equity pool.

11 (b) The amount of the credit allowed under subsection (a) is
 12 equal to the product of:

13 (1) the amount of the taxpayer's investment in a local certified
 14 equity pool; multiplied by

15 (2) thirty percent (30%).

16 Sec. 6. (a) If the amount determined under section 5(b) of this
 17 chapter for a taxpayer in a taxable year exceeds the taxpayer's
 18 state tax liability for that taxable year, the taxpayer may carry the
 19 excess over to the following taxable years. The amount of the credit
 20 carryover from a taxable year must be reduced to the extent that
 21 the carryover is used by the taxpayer to obtain a credit under this
 22 chapter for any subsequent taxable year. A taxpayer is not entitled
 23 to a carryback.

24 (b) A taxpayer is not entitled to a refund of any unused credit.

25 Sec. 7. The aggregate amount of investment for which tax
 26 credits are allowed under this chapter may not exceed ten million
 27 dollars (\$10,000,000) in a taxable year beginning after December
 28 31, 2000. Whenever the aggregate amount of investments in a
 29 taxable year exceeds ten million dollars (\$10,000,000), the credits
 30 allowed under this chapter are allocated according to the
 31 proportional amount of each taxpayer's investment.

32 Sec. 8. If a pass through entity does not have state income tax
 33 liability against which the tax credit may be applied, a shareholder
 34 or partner of the pass through entity is entitled to a tax credit equal
 35 to:

36 (1) the tax credit determined for the pass through entity for
 37 the taxable year; multiplied by

38 (2) the percentage of the pass through entity's distributive
 39 income to which the shareholder or partner is entitled.

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



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1 submit to the department proof of the taxpayer's investment in a
 2 local certified equity pool and all information that the department
 3 requires for the calculation of the credit provided by this chapter.

4 SECTION 2. IC 28-16 IS ADDED TO THE INDIANA CODE AS
 5 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2001]:

7 **ARTICLE 16. LOCAL CERTIFIED EQUITY POOLS**

8 **Chapter 1. Citation**

9 **Sec. 1.** This article may be cited as the Local Certified Equity
 10 Pool Law.

11 **Sec. 2.** The primary purpose of this article is to provide
 12 assistance in the formation of new and expansion of existing high
 13 growth potential businesses that create jobs in Indiana by
 14 providing an incentive for investment in local certified equity
 15 pools.

16 **Chapter 2. Definitions**

17 **Sec. 1.** The definitions in this chapter apply throughout this
 18 article.

19 **Sec. 2.** "Affiliate of a local certified equity pool" means the
 20 following:

21 (1) A person, directly or indirectly owning (whether through
 22 rights, options, convertible interests, or otherwise),
 23 controlling or holding power to vote ten percent (10%) or
 24 more of the outstanding voting securities or other ownership
 25 interests of the local certified equity pool.

26 (2) A person in whom at least ten percent (10%) of the
 27 outstanding voting securities or other ownership interests are
 28 directly or indirectly beneficially owned (whether through
 29 rights, options, convertible interests, or otherwise), controlled,
 30 or held with power to vote by the local certified equity pool.

31 (3) A person directly or indirectly controlling, controlled by,
 32 or under common control with the local certified equity pool.

33 (4) A partnership in which the local certified equity pool is a
 34 general partner.

35 (5) A person who is an officer, a director, or an agent of the
 36 local certified equity pool or an immediate family member of
 37 an officer, director, or agent.

38 **Sec. 3.** "Capital" means an investment of cash by an investor in
 39 a local certified equity pool that fully funds the purchase price of
 40 its equity interest in the local certified equity pool.

41 **Sec. 4.** "Capital in a qualified Indiana business" means the
 42 following acquired by a local certified equity pool as a result of a

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1 transfer of cash to a business:

2 (1) A debt.

3 (2) An equity.

4 (3) A hybrid security, including a debt instrument or security
5 that has the characteristics of debt but provides for
6 conversion into equity or equity participation instruments
7 such as options or warrants.

8 The term does not include a secured debt instrument.

9 Sec. 5. "Certification date" means the date on which a local
10 certified equity pool is designated by the department.

11 Sec. 6. "Certified investor" means a person with Indiana state
12 tax liability that contributes capital to a local certified equity pool.

13 Sec. 7. "Department" means the Indiana department of
14 financial institutions.

15 Sec. 8. "Director" means the director of the Indiana department
16 of financial institutions or a person acting under the supervision of
17 the director.

18 Sec. 9. "Local certified equity pool" means a for-profit
19 partnership, corporation, trust, or limited liability company that:

20 (1) is located, headquartered, and registered to conduct
21 business in Indiana;

22 (2) has as its primary business activity the investment of cash
23 in qualified Indiana businesses; and

24 (3) is certified by the department as meeting the criteria of
25 this article.

26 Sec. 10. "Person" means an individual or entity, including a
27 corporation, general or limited partnership, trust, or limited
28 liability company.

29 Sec. 11. "Qualified distribution" means a distribution or
30 payment to equity holders of a local certified equity pool in
31 connection with the following:

32 (1) The reasonable costs and expenses of forming, syndicating,
33 managing, and operating the local certified equity pool,
34 including an annual management fee in an amount that does
35 not exceed two and one-half percent (2.5%) of the capital of
36 the local certified equity pool, plus reasonable and necessary
37 fees paid for professional services (such as legal and
38 accounting services) related to the operation of the local
39 certified equity pool.

40 (2) A projected increase in the federal or state taxes of the
41 equity owners of a local certified equity pool resulting from
42 the earnings or other tax liability of the local certified equity

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1 pool to the extent that the increase is related to the ownership,
2 management, or operation of a local certified equity pool.

3 **Sec. 12. "Qualified Indiana business" means an independently**
4 **owned and operated business that:**

5 (1) is headquartered and located in Indiana; or

6 (2) has its principal business operations located in Indiana.

7 **Sec. 13. "Qualified investment" means an investment of cash by**
8 **a local certified equity pool in a manner that enables the local**
9 **certified equity pool to acquire capital in a qualified Indiana**
10 **business.**

11 **Chapter 3. Requirements of a Qualified Indiana Business**

12 **Sec. 1. A qualified Indiana business may not have more than two**
13 **hundred (200) employees. At least seventy percent (70%) of the**
14 **employees must be employed in Indiana.**

15 **Sec. 2. A qualified Indiana business must be involved in**
16 **commerce for the purpose of developing and manufacturing**
17 **products and systems, including high technology products and**
18 **systems such as computers, computer software, medical**
19 **equipment, biotechnology, telecommunications equipment and**
20 **products, processing or assembling all types of products,**
21 **conducting research and development, or providing services in**
22 **interstate commerce.**

23 **Sec. 3. A qualified Indiana business may not be involved in the**
24 **following enterprises:**

25 (1) Real estate.

26 (2) Real estate development.

27 (3) Insurance.

28 (4) Professional services provided by the following:

29 (A) Accountants.

30 (B) Lawyers.

31 (C) Physicians.

32 **Sec. 4. A qualified Indiana business may not be involved in retail**
33 **sales. However, a qualified Indiana business may engage in**
34 **developing or supporting electronic commerce using the Internet.**

35 **Sec. 5. If the two (2) year average gross sales of a business**
36 **during its last two (2) most recently complete fiscal years exceed**
37 **four million dollars (\$4,000,000), the business may not be classified**
38 **as a qualified Indiana business under this article.**

39 **Sec. 6. A business that is classified as a qualified Indiana**
40 **business at the time of the first investment in the business by a local**
41 **certified equity pool remains classified as a qualified Indiana**
42 **business for seven (7) years after the date of the first investment.**



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1 **The qualified Indiana business may receive follow-on investments**
 2 **from any local certified equity pool. A follow-on investment is a**
 3 **qualified investment even though the business may not meet the**
 4 **other qualifications of this chapter at the time of the follow-on**
 5 **investment.**

6 **Chapter 4. Local Certified Equity Pool Funding**

7 **Sec. 1. A local certified equity pool shall have a funding period**
 8 **of sixty (60) days from the date of receiving certification from the**
 9 **director. The aggregate amount of capital in the local certified**
 10 **equity pool approved by the director must be deposited in the local**
 11 **certified equity pool within the sixty (60) day funding period. A**
 12 **local certified equity pool shall notify the department in**
 13 **accordance with IC 28-16-6-5(1).**

14 **Chapter 5. Certification**

15 **Sec. 1. The department shall adopt rules under IC 4-22-2 to**
 16 **establish the procedures for making an application to become a**
 17 **local certified equity pool. The applicant shall pay a nonrefundable**
 18 **fee of seven thousand five hundred dollars (\$7,500) at the time of**
 19 **filing the application with the department. The application must**
 20 **include a criminal background investigation, fingerprint cards, and**
 21 **resumes detailing work related experience for all principals.**

22 **Sec. 2. (a) A local certified equity pool's initial capitalization at**
 23 **the time of seeking certification must equal at least five hundred**
 24 **thousand dollars (\$500,000).**

25 **(b) A local certified equity pool must maintain a liquid asset**
 26 **base of at least five hundred thousand dollars (\$500,000) at all**
 27 **times during the pool's participation in the program authorized by**
 28 **this article.**

29 **Sec. 3. (a) The department shall review the organizational**
 30 **documents for each applicant for certification and the business**
 31 **history of the applicant.**

32 **(b) The department shall determine that the local certified**
 33 **equity pool's cash, marketable securities, and other liquid assets**
 34 **are at least five hundred thousand dollars (\$500,000). The**
 35 **department shall determine that the liquid asset base of each local**
 36 **certified equity pool is at least five hundred thousand dollars**
 37 **(\$500,000) at all times during the pool's participation in the**
 38 **program authorized by this article.**

39 **Sec. 4. A principal of a local certified equity pool or a manager**
 40 **of the local certified equity pool must have at least five (5) years**
 41 **experience in the venture capital industry.**

42 **Sec. 5. An offering of material involving the sale of securities of**



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1 the local certified equity pool must include the following statement:

2 "By authorizing the formation of a local certified equity pool,
3 the State of Indiana does not endorse the quality of
4 management or the potential for earnings of a particular
5 company and is not liable for damages or losses to an investor
6 in the company. The use of the word "certified" in an offering
7 does not constitute a recommendation or endorsement of the
8 investment by the Indiana department of financial
9 institutions. Investments in a prospective local certified equity
10 pool before the time the pool is certified are not eligible for
11 the tax credit allowed under IC 6-3.1-22. If certain statutory
12 provisions (as specified in IC 28-16) are violated, the State of
13 Indiana may require forfeiture of unused tax credits and
14 repayment of used tax credits."

15 Sec. 6. Not later than sixty (60) days after the date of
16 application, the department shall either issue the certification or
17 shall refuse the certification and communicate in detail to the
18 applicant the grounds for the refusal, including the suggestions for
19 the removal of those grounds.

20 Sec. 7. An investor may not, individually or with or through one
21 (1) or more affiliates, be a managing general partner of or control
22 the direction of investments of a local certified equity pool. This
23 section does not preclude an investor or any other party from
24 exercising its legal rights and remedies (which may include interim
25 management of a local certified equity pool) if a local certified
26 equity pool is in default of its statutory obligations or its
27 contractual obligations to an investor or other party.

28 Chapter 6. Requirements for Continued Certification

29 Sec. 1. (a) To continue to be certified, a local certified equity
30 pool must make qualified investments according to the following
31 schedule:

32 (1) Not later than two (2) years after the date on which a local
33 certified equity pool is designated as a local certified equity
34 pool, at least twenty-five percent (25%) of its capital must be
35 placed in qualified investments.

36 (2) Not later than three (3) years after the date on which a
37 local certified equity pool is designated as a local certified
38 equity pool, at least forty percent (40%) of its capital must be
39 placed in qualified investments.

40 (3) Not later than four (4) years after the date on which a local
41 certified equity pool is designated as a local certified equity
42 pool, at least fifty percent (50%) of its total capital must be



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1 placed in qualified investments.

2 (b) A local certified equity pool may not make an investment in
3 an affiliate of the local certified equity pool. For purposes of this
4 subsection, if a legal entity is not an affiliate before a local certified
5 equity pool initially invests in the entity, it will not be an affiliate if
6 a local certified equity pool provides additional investment in the
7 entity after its initial investment.

8 **Sec. 2.** All capital that is not required to be placed in a qualified
9 investment or that has been placed in qualified investments and
10 can be received by the local certified equity pool may be held or
11 invested in a manner as the local certified equity pool considers
12 appropriate. The proceeds of capital received by a local certified
13 equity pool after it was originally placed in a qualified investment
14 may be placed again in a qualified investment. Capital reinvested
15 under this section counts toward the requirements of section 1 of
16 this chapter.

17 **Sec. 3.** A qualified investment may not be made at a cost to a
18 local certified equity pool of more than fifteen percent (15%) of the
19 total capital of the local certified equity pool at the time of
20 investment.

21 **Sec. 4.** The aggregate cumulative amount of all qualified
22 investments made by the local certified equity pool from the date
23 of its certification must be considered in the calculation of the
24 percentage requirements under section 1(a) of this chapter.

25 **Sec. 5.** A local certified equity pool shall provide the following
26 to the department:

- 27 (1) As soon as is practicable after the receipt of capital:
28 (A) the name of each investor from which the capital was
29 received;
30 (B) the amount of each investor's investment of capital;
31 and
32 (C) the date on which the capital was received.
- 33 (2) Before March 31:
34 (A) the amount of the local certified equity pool's capital at
35 the end of the immediately preceding year;
36 (B) whether or not the local certified equity pool has
37 invested more than fifteen percent (15%) of the total
38 capital under management in any one (1) company; and
39 (C) all qualified investments that the local certified equity
40 pool made during the previous calendar year.
- 41 (3) Before March 31, for each qualified investment made by
42 the local certified equity pool:



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- 1 (A) the number of employees of each qualified business in
- 2 which it made investments at the time of investment and as
- 3 of the end of the immediately preceding year;
- 4 (B) the annual payroll of each qualified business in which
- 5 it made investments at the time of investment and as of the
- 6 end of the immediately preceding year; and
- 7 (C) the classification of each qualified business in which it
- 8 made investments according to industry sector.
- 9 (4) Within ninety (90) days after the end of the fiscal year,
- 10 annual audited financial statements that include an opinion of
- 11 an independent certified public accountant.

12 **Sec. 6.** The audit required under section 5(4) of this chapter
 13 must address the methods of operation and conduct of the business
 14 of the local certified equity pool to determine if:

- 15 (1) the local certified equity pool is complying with the
- 16 statutes and program rules; and
- 17 (2) the funds received by the local certified equity pool
- 18 have been invested as required within the time limits set
- 19 forth in section 1(a) of this chapter.

20 **Sec. 7.** On or before January 31, a local certified equity pool
 21 shall pay an annual, nonrefundable certification fee of five
 22 thousand dollars (\$5,000) to the department. However, the
 23 department may not require a certification fee under this section
 24 until at least six (6) months after the initial certification date of a
 25 local certified equity pool.

26 **Chapter 7. Distributions**

27 **Sec. 1.** A local certified equity pool may make qualified
 28 distributions as defined in IC 28-16-2-10 at any time.

29 **Sec. 2.** Except as provided in section 3 of this chapter, a local
 30 certified equity pool may not make distributions, other than
 31 qualified distributions, unless the local certified equity pool has
 32 placed an amount cumulatively equal to one hundred percent
 33 (100%) of its capital in qualified investments.

34 **Sec. 3.** Distributions or payments to debt holders of a local
 35 certified equity pool may be made without restriction with respect
 36 to debt owed to them by a local certified equity pool. A debt holder
 37 that is also an investor or equity holder of a local certified equity
 38 pool may receive distributions or payments with respect to the debt
 39 without restriction.

40 **Chapter 8. Decertification**

41 **Sec. 1.** (a) The department shall conduct an annual review of
 42 each local certified equity pool to determine if the local certified

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1 equity pool is abiding by the requirements of certification. The
 2 department shall advise the local certified equity pool as to the
 3 certification status of its qualified investments. The department
 4 shall ensure that no investment has been made in violation of this
 5 article.

6 (b) The cost of the annual review shall be paid from the annual
 7 certification fee paid under IC 28-16-6-7.

8 **Sec. 2.** A material violation of IC 28-16-6 is grounds for
 9 decertification of a local certified equity pool. If the department
 10 determines that a local certified equity pool is not in compliance
 11 with the requirements for continuing certification, the department
 12 shall provide written notice to the officers of the local certified
 13 equity pool and the board of directors, managers, trustees, or
 14 general partners that the local certified equity pool may be
 15 decertified one hundred twenty (120) days after the date of mailing
 16 of the notice unless the local certified equity pool corrects the
 17 deficiencies and is again in compliance with the requirements for
 18 certification.

19 **Sec. 3.** If a local certified equity pool is still not in compliance
 20 with the requirements of IC 28-16-6 at the end of the one hundred
 21 twenty (120) day period described in section 2 of this chapter, the
 22 department may send a notice of decertification to the local
 23 certified equity pool and to all other appropriate state agencies.

24 **Sec. 4.** If a local certified equity pool is decertified before
 25 meeting the requirements of IC 28-16-6-1, the state shall recapture
 26 the tax credits previously claimed by a certified investor under
 27 IC 6-3.1-22, and all future credits to be claimed by a certified
 28 investor with respect to its investment in the local certified equity
 29 pool are forfeited.

30 **Sec. 5.** If a local certified equity pool is decertified after it has
 31 met the requirements of IC 28-16-6-1, the tax credits claimed by a
 32 certified investor under IC 6-3.1-22:

33 (1) for the taxable year of the certified investor in which the
 34 decertification arose; and

35 (2) for the future taxable years of the certified investor;
 36 are subject to recapture. However, tax credits obtained by a
 37 certified investor with respect to the certified investor's tax years
 38 that ended before the decertification occurred may not be
 39 recaptured by the state.

40 **Sec. 6.** Once a local certified equity pool has invested one
 41 hundred percent (100%) of its capital in qualified Indiana
 42 businesses, all future tax credits to be claimed by certified investors



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1 with respect to the local certified equity pool under this article are
2 not subject to recapture.

3 **Sec. 7.** Once a local certified equity pool has invested one
4 hundred percent (100%) of its capital in qualified Indiana
5 businesses and has met all other requirements of this article, the
6 company is no longer subject to regulation by the department with
7 the exception of the reporting requirements of IC 28-16-6-5(3).

8 **Sec. 8.** The department shall send written notice to the address
9 of each certified investor whose tax credit has been subject to
10 recapture, using the address shown on the last application for a tax
11 credit under IC 6-3.1-22.

12 **Sec. 9.** The department may revoke the certification of a local
13 certified equity pool if a material representation to the department
14 in connection with the application process proves to have been
15 falsely made or if the application materially violates any
16 requirement established by the department under this article.

17 **Chapter 9. Reports**

18 **Sec. 1.** Before June 1 of each year, the director shall submit a
19 report to the legislative services agency. The report must include
20 the following:

- 21 (1) The number of local certified equity pools holding capital.
22 (2) The amount of capital invested in each local certified
23 equity pool.
24 (3) The cumulative amount that each certified local certified
25 equity pool has invested in qualified Indiana businesses.
26 (4) The performance of each local certified equity pool with
27 regard to the requirements of IC 28-16-6-1.
28 (5) The classification of companies in which each local
29 certified equity pool has invested according to industry sector,
30 as defined by the department.
31 (6) The total number of jobs of each qualified Indiana
32 business before and after the qualified investments made by
33 the local certified equity pool.
34 (7) The annual payroll of each qualified Indiana business
35 before and after the qualified investments made by the local
36 certified equity pool.
37 (8) The name of each local certified equity pool that is
38 decertified or has its certification revoked, together with the
39 reasons for the decertification or revocation.

40 **Chapter 10. Program Evaluation**

41 **Sec. 1.** On a biennial basis, the department shall provide for an
42 evaluation of the local certified equity pool program, giving first

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1 priority to using the Indiana economic development council,
 2 established under IC 4-3-14-4. The evaluation must include an
 3 assessment of the effectiveness of the program in creating new jobs
 4 in Indiana and of the revenue impact of the program, and may
 5 include a review of the practices and experiences of other states
 6 with similar programs. The director shall submit a report on the
 7 evaluation to the legislative services agency before November 1 in
 8 each odd-numbered year.

9 **Chapter 11. Rulemaking**

10 **Sec. 1. The department shall adopt rules under IC 4-22-2 to**
 11 **implement this article.**

12 **SECTION 3. [EFFECTIVE JANUARY 1, 2001] IC 6-3.1-22, as**
 13 **added by this act, applies only to taxable years that begin after**
 14 **December 31, 2000.**

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