

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 1 be amended to read as follows:

- 1 Page 36, between lines 8 and 9, begin a new paragraph and insert:
- 2 "SECTION 27. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2005 (RETROACTIVE)]:
- 5 **Chapter 31. State New Markets Tax Credit**
- 6 **Sec. 1. As used in this chapter, "applicable percentage" means**
- 7 **the following:**
- 8 **(1) One percent (1%) for the first three (3) credit allowance**
- 9 **dates.**
- 10 **(2) Two percent (2%) for the remainder of the credit**
- 11 **allowance dates.**
- 12 **Sec. 2. As used in this chapter, "certified equity investment"**
- 13 **refers to a qualified equity investment certified under this chapter**
- 14 **for a tax credit.**
- 15 **Sec. 3. As used in this chapter, "credit" refers to a state new**
- 16 **markets tax credit granted under this chapter against state tax**
- 17 **liability.**
- 18 **Sec. 4. As used in this chapter, "credit allowance date" means**
- 19 **the following with respect to any certified equity investment:**
- 20 **(1) The date on which the certified equity investment is**
- 21 **initially made.**
- 22 **(2) Each of the six (6) annual anniversary dates immediately**
- 23 **following the date described in subdivision (1).**
- 24 **Sec. 5. As used in this chapter, "holder", with respect to a credit**
- 25 **allowance date, refers to one (1) of the following:**

- 1           (1) The taxpayer or pass through entity that makes the  
2           original qualified equity investment, if the taxpayer or pass  
3           through entity owns the qualified equity investment on a  
4           credit allowance date.
- 5           (2) A subsequent taxpayer or pass through entity that owns  
6           the qualified equity investment on a credit allowance date.
- 7           **Sec. 6.** As used in this chapter, "pass through entity" means a:  
8           (1) corporation that is exempt from the adjusted gross income  
9           tax under IC 6-3-2-2.8(2);  
10           (2) partnership;  
11           (3) trust;  
12           (4) limited liability company; or  
13           (5) limited liability partnership.
- 14           **Sec. 7.** As used in this chapter, "qualified equity investment" has  
15           the meaning set forth in Section 45D of the Internal Revenue Code.
- 16           **Sec. 8** As used in this chapter, "qualified low-income community  
17           investments" has the meaning set forth in Section 45D of the  
18           Internal Revenue Code.
- 19           **Sec. 9.** As used in this chapter, "state tax liability" means a  
20           taxpayer's total tax liability that is incurred under:  
21           (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);  
22           (2) IC 27-1-18-2 (the insurance premiums tax); and  
23           (3) IC 6-5.5 (the financial institutions tax);  
24           as computed after the application of the credits that under  
25           IC 6-3.1-1-2 are to be applied before the credit provided by this  
26           chapter.
- 27           **Sec. 10.** As used in this chapter, "taxpayer" means an  
28           individual, a corporation, a partnership, or another entity that has  
29           any state tax liability.
- 30           **Sec. 11.** Subject to this chapter, a taxpayer that:  
31           (1) holds a certified equity investment on a credit allowance  
32           date; and  
33           (2) does not receive another credit under this article for the  
34           same certified equity investment;  
35           is entitled to a state new markets tax credit in the taxable year in  
36           which the credit allowance date occurs against the taxpayer's state  
37           tax liability for the taxable year.
- 38           **Sec. 12.** The amount of the credit in a taxable year is equal to the  
39           amount determined under STEP THREE of the following formula:  
40           **STEP ONE:** Determine the amount of the qualified equity  
41           investment that is:  
42           (A) held by the taxpayer on the credit allowance date in the  
43           taxable year; and  
44           (B) certified under this chapter as a certified equity  
45           investment.  
46           **STEP TWO:** Multiply the STEP ONE amount by the

1 applicable percentage for the credit allowance date.

2 **STEP THREE: Multiply the STEP TWO amount by:**

3 (A) the tax credit adjustment factor approved by the  
4 department of tourism and community development  
5 established by P.L.224-2003 under this chapter; or

6 (B) eighty-five hundredths (0.85), if clause (A) does not  
7 apply.

8 **Sec. 13. (a) If:**

9 (1) a pass through entity does not have state income tax  
10 liability against which the tax credit provided by this chapter  
11 may be applied; and

12 (2) the pass through entity would be eligible for a tax credit  
13 under this chapter if the pass through entity were a taxpayer;  
14 a shareholder, partner, or member of the pass through entity is  
15 entitled to a tax credit under this chapter.

16 (b) Subject to this chapter, the amount of the tax credit to which  
17 a shareholder, partner, or member of a pass through entity is  
18 entitled is equal to:

19 (1) the tax credit determined for the pass through entity for  
20 the taxable year as if the pass through entity were a taxpayer  
21 with state tax liability in the amount of the tax credit;  
22 multiplied by

23 (2) the percentage of the pass through entity's distributive  
24 income to which the shareholder, partner, or member is  
25 entitled.

26 **Sec. 14. (a) If the amount of the tax credit provided under this**  
27 **chapter for a taxpayer in a taxable year exceeds the taxpayer's**  
28 **state tax liability for that taxable year, the taxpayer may carry the**  
29 **excess over to not more than three (3) subsequent taxable years.**  
30 **The amount of the tax credit carryover from a taxable year shall**  
31 **be reduced to the extent that the carryover is used by the taxpayer**  
32 **to obtain a tax credit under this chapter for any subsequent taxable**  
33 **year.**

34 (b) A taxpayer is not entitled to a carryback or refund of any  
35 unused tax credit.

36 **Sec. 15. (a) To receive the tax credit for a qualified investment**  
37 **under this chapter, a taxpayer or a pass through entity must:**

38 (1) make a qualified equity investment; and

39 (2) be certified by the department of tourism and community  
40 development to receive a tax credit for the qualified equity  
41 investment.

42 (b) The department of tourism and community development  
43 shall establish a program to certify qualified equity investments as  
44 eligible for a tax credit.

45 (c) The amount of tax credits allowed under this chapter may  
46 not exceed one million dollars (\$1,000,000) in a state fiscal year.

1 Applicants for a tax credit that:

- 2 (1) make a qualified equity investment;  
3 (2) are eligible to receive a federal tax credit under Section  
4 45D of the Internal Revenue Code for the qualified equity  
5 investment; and  
6 (3) apply to the department of tourism and community  
7 development in the manner and on the form prescribed by the  
8 department of tourism and community development;

9 shall be certified for a tax credit in the amount of each applicant's  
10 qualified equity investment in the order in which the applicants  
11 apply to the department of tourism and community development  
12 for tax credits until the maximum amount of tax credits allowed  
13 under this section for a state fiscal year has been allocated among  
14 qualifying applicants. However, the department of tourism and  
15 community development may provide a procedure for an applicant  
16 denied a tax credit solely as a result of the cap imposed by this  
17 subsection to be given priority in the award of a tax credit in a  
18 subsequent state fiscal year.

19 (d) The certification of a tax credit under this section applies  
20 only to credit allowance dates that occur after the certification is  
21 made.

22 (e) If the state new markets tax credits allocated to the taxpayer  
23 or pass through entity is disallowed or recaptured under this  
24 chapter, the department of tourism and community development  
25 may reallocate the unused tax credits to another qualified applicant  
26 in the order in which qualifying applications are filed with the  
27 department of tourism and community development.

28 Sec. 16. (a) A taxpayer or pass through entity that holds a  
29 certified equity investment may apply to the department of tourism  
30 and community development to establish the tax credit adjustment  
31 factor that applies to the taxpayer or pass through entity.

32 (b) The department of tourism and community development  
33 shall establish a program to approve tax credit adjustment factors  
34 under this section for qualifying applicants. The department of  
35 tourism and community development may provide a procedure for  
36 combining an application for a tax credit for a qualified investment  
37 under section 15 of this chapter with an application for a tax credit  
38 adjustment factor under this section.

39 (c) If the applicant applies for the tax credit adjustment factor  
40 in the manner and on the form prescribed by the department of  
41 tourism and community development, the department of tourism  
42 and community development shall approve a tax credit adjustment  
43 factor for the applicant that is equal to the percentage of the  
44 aggregate gross assets of the entity in which the certified equity  
45 investment was made that the department of tourism and  
46 community development determines are invested by the entity in

1 qualified low income community investments.

2 (d) An approval granted under this section applies to the taxable  
3 years specified by the department of tourism and community  
4 development.

5 Sec. 17. To receive the tax credit under this chapter, a taxpayer  
6 must claim the credit on the taxpayer's annual state tax return or  
7 returns in the manner prescribed by the department. A taxpayer  
8 claiming a credit under this chapter shall submit to the department  
9 a copy of the certification letter issued by the department of  
10 tourism and community development under section 15 of this  
11 chapter and any state new markets tax credit adjustment approval  
12 letter provided under this chapter. The taxpayer shall submit to the  
13 department the information that the department determines is  
14 necessary for the department to determine whether the taxpayer is  
15 eligible for the tax credit.

16 Sec. 18. (a) The holder of a certified equity investment shall  
17 notify the department and the department of tourism and  
18 community development if the federal tax credit granted for the  
19 certified equity investment under Section 45D of the Internal  
20 Revenue Code is disallowed or otherwise recaptured under Section  
21 45D of the Internal Revenue Code.

22 (b) If the federal tax credit is disallowed or otherwise  
23 recaptured, the department or the department of tourism and  
24 community development may:

- 25 (1) disallow the use of a part of the unused tax credits;  
26 (2) recapture a part of the tax credit that has been applied to  
27 the state tax liability of a taxpayer; or  
28 (3) both disallow under subdivision (1) and recapture under  
29 subdivision (2).

30 The percentage of the tax credit that may be disallowed and  
31 recaptured under this subsection is equal to the percentage of the  
32 total federal credit that is disallowed or otherwise recaptured  
33 under Section 45D of the Internal Revenue Code.

34 Sec. 19. The department or the department of tourism and  
35 community development, or both, may adopt under IC 4-22-2 any  
36 rules that may be necessary to carry out the purposes of this  
37 chapter, including rules to facilitate the transfer of credits earned  
38 under this chapter."

39 Page 61, between lines 20 and 21, begin a new paragraph and insert:  
40 "SECTION 44. [EFFECTIVE JANUARY 1, 2005  
41 (RETROACTIVE)]: The definitions in IC 6-3.1-31, as added by this  
42 act, apply throughout this SECTION. IC 6-3.1-29, as added by this  
43 act, applies only to:

- 44 (1) qualified equity investments made; and  
45 (2) taxable years beginning;  
46 after December 31, 2004."

- 1      Renumber all SECTIONS consecutively.  
         (Reference is to ESB 1 as printed March 15, 2005.)

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Representative Crawford