

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WITHDRAWN	Noes _____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

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

MR. SPEAKER:

I move that Engrossed Senate Bill 431 be amended to read as follows:

1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 6-1.1-12-29 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE MARCH 1, 2007 (RETROACTIVE)]: Sec.  
5 29. (a) As used in this section, "organic waste biomass conversion  
6 unit" means tangible property:  
7           (1) not owned by a person primarily engaged in the  
8 generation or retail sale of electricity, gas, or thermal energy;  
9           (2) reported to the Indiana utility regulatory commission  
10 before construction begins, as required under IC 8-1-8.5-7;  
11 and  
12           (3) directly used to produce electricity of eighty (80)  
13 megawatts capacity or less from agricultural livestock waste  
14 nutrients (as defined in 26 U.S.C. 45) or other agriculture  
15 sources, including distiller's grains, kitchen waste, orchard  
16 tree crops, vineyard produce, grain, legumes, sugar, and other  
17 crop byproducts.  
18           The term includes metering devices, relays, locks and seals,  
19 breakers, automatic synchronizers, and other control and  
20 protective apparatus designated for safe, efficient, and reliable  
21 interconnection to an electric utility's system. The term does not  
22 include tangible property that uses fossil fuel in an amount  
23 exceeding the minimum amount of fossil fuel required for any  
24 necessary startup and flame stabilization.

1           ~~(a)~~ **(b)** For purposes of this section, "wind power device" means a  
 2 device, such as a windmill or a wind turbine, that is designed to utilize  
 3 the kinetic energy of moving air to provide mechanical energy or to  
 4 produce electricity.

5           ~~(b)~~ **(c)** The owner of real property, or a mobile home that is not  
 6 assessed as real property, that is equipped with:

7               **(1)** a wind power device; **or**

8               **(2) an organic waste biomass conversion unit;**

9 is entitled to an annual property tax deduction.

10          **(d)** The amount of the deduction equals the remainder of:

11               (1) the assessed value of the real property or mobile home with  
 12 the ~~wind power device~~ **tangible property described in**  
 13 **subsection (c)(1) or (c)(2)** included; minus

14               (2) the assessed value of the real property or mobile home without  
 15 the ~~wind power device~~ **tangible property described in**  
 16 **subsection (c)(1) or (c)(2).**

17          SECTION 2. IC 6-2.3-1-2.4 IS ADDED TO THE INDIANA CODE  
 18 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
 19 JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 2.4. "Commission"**  
 20 **refers to the Indiana utility regulatory commission.**

21          SECTION 3. IC 6-2.3-1-5.8 IS ADDED TO THE INDIANA CODE  
 22 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
 23 JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 5.8. "Organic waste**  
 24 **biomass conversion unit" has the meaning set forth in**  
 25 **IC 6-1.1-12-29.**

26          SECTION 4. IC 6-2.3-5.3 IS ADDED TO THE INDIANA CODE  
 27 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 28 JANUARY 1, 2007 (RETROACTIVE)]:

29               **Chapter 5.3. Credits**

30               **Sec. 1. A taxpayer is entitled to the credits against the taxpayer's**  
 31 **tax liability provided in this chapter.**

32               **Sec. 2. (a) If the amount of a credit granted under this chapter**  
 33 **for a taxpayer in a taxable year exceeds the taxpayer's tax liability**  
 34 **for that taxable year, the taxpayer may carry the excess over to not**  
 35 **more than three (3) subsequent taxable years. The amount of the**  
 36 **credit carryover from a taxable year shall be reduced to the extent**  
 37 **that the carryover is used by the taxpayer to obtain a credit under**  
 38 **this chapter for any subsequent taxable year.**

39               **(b) A taxpayer is not entitled to a carryback or refund of an**  
 40 **unused credit.**

41               **Sec. 3. To apply a credit granted under this chapter against the**  
 42 **taxpayer's tax liability, a taxpayer must claim the credit on the**  
 43 **taxpayer's tax return or returns in the manner prescribed by the**  
 44 **department. A taxpayer claiming a credit under this chapter shall**  
 45 **submit to the department any additional information that the**  
 46 **department determines is necessary for the department to**

1 determine whether the taxpayer is eligible for the credit.

2 **Sec. 4. The amount of a credit granted under this chapter shall**  
3 **be disregarded by the commission in determining a taxpayer's**  
4 **rates.**

5 **Sec. 5. (a) A taxpayer that purchases electricity for resale at**  
6 **retail from an individual or entity that:**

- 7 (1) operates an organic waste biomass conversion unit; and  
8 (2) generates the electricity from the organic waste biomass  
9 conversion unit;

10 is entitled to a credit against the taxpayer's tax liability in the  
11 taxable year in which the electricity is received.

12 (b) The amount of the credit is equal to the result determined  
13 under STEP FOUR of the following formula:

14 **STEP ONE: Determine the rate per kilowatt hour that the**  
15 **taxpayer would be obligated to pay for the electricity under**  
16 **170 IAC 4-4.1-9 (as effective January 1, 2007), as applied**  
17 **without:**

18 (A) regard to whether the taxpayer is an electric utility (as  
19 defined in 170 IAC 4-4.1-1 (as effective January 1, 2007));  
20 and

21 (B) any changes resulting from the negotiation of a  
22 different rate between the taxpayer and the electric power  
23 producer.

24 **STEP TWO: Determine the greater of zero (0) or the**  
25 **difference determined by subtracting the STEP ONE amount**  
26 **from the rate per kilowatt hour that the taxpayer paid for the**  
27 **electricity.**

28 **STEP THREE: Determine the lesser of the following:**

29 (A) The STEP TWO result.

30 (B) The greater of zero (0) or fifty percent (50%) of the  
31 result determined by subtracting the STEP ONE amount  
32 from the average retail rate at which the taxpayer sells a  
33 kilowatt hour of electricity to residential customers (or all  
34 customers if the taxpayer does not sell electricity at retail  
35 to residential customers) during the same rating period.

36 **STEP FOUR: Determine the greater of zero (0) or the product**  
37 **determined by multiplying the STEP THREE result by the**  
38 **number of kilowatt hours purchased by the taxpayer during**  
39 **the rating period.**

40 SECTION 5. IC 6-3.1-27-4.5 IS ADDED TO THE INDIANA  
41 CODE AS A NEW SECTION TO READ AS FOLLOWS  
42 [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. As used in this chapter,**  
43 **"qualified investment" means the amount of a taxpayer's**  
44 **expenditures for:**

- 45 (1) the purchase of new equipment;  
46 (2) the purchase of new computers and related equipment;  
47 (3) costs associated with the modernization of existing

- 1 facilities;  
 2 (4) onsite infrastructure improvements;  
 3 (5) the construction of new facilities;  
 4 (6) costs associated with retooling existing machinery and  
 5 equipment;  
 6 (7) costs associated with the construction of special purpose  
 7 buildings and foundations; and  
 8 (8) costs of obtaining rights to use any patented process and  
 9 any related trademark, if the rights are acquired from an  
 10 entity that:  
 11 (A) does not have control of or a material, direct, or  
 12 indirect ownership interest in:  
 13 (i) the taxpayer that makes a qualified investment; or  
 14 (ii) another entity that has control of or a material,  
 15 direct, or indirect ownership interest in the taxpayer;  
 16 and  
 17 (B) is not an entity in which:  
 18 (i) the taxpayer that makes a qualified investment; or  
 19 (ii) another entity that has control of or a material,  
 20 direct, or indirect ownership interest in the taxpayer;  
 21 has control of or a material, direct, or indirect ownership  
 22 interest;  
 23 that are certified by the corporation under section 10.5 of this  
 24 chapter as being eligible for the credit under section 10.5 of this  
 25 chapter.  
 26 SECTION 6. IC 6-3.1-27-10.5 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2007]: **Sec. 10.5. (a) The amount of the credit**  
 29 **to which a taxpayer is entitled under this section is the amount of**  
 30 **the taxpayer's qualified investment that is placed in service in the**  
 31 **taxable year.**  
 32 **(b) To be entitled to a credit under this section, a taxpayer must**  
 33 **request that the corporation determine whether an expenditure is**  
 34 **a qualified investment. To make a request for a determination, a**  
 35 **taxpayer must file with the corporation an application in the form**  
 36 **and in the manner specified by the corporation. The application**  
 37 **must be filed with the corporation before the taxpayer takes a**  
 38 **substantial step toward improving the site where the qualified**  
 39 **investment will be placed in service.**  
 40 **(c) After receiving an application for a credit under this section,**  
 41 **the corporation shall review the application to determine whether**  
 42 **the proposed expenditure is a qualified investment described in**  
 43 **subsection (a) and the amount of the credit under this section to**  
 44 **which the applicant would be entitled. The corporation shall send**  
 45 **to the taxpayer and to the department of state revenue a letter:**  
 46 **(1) certifying that the taxpayer is entitled to claim the credit**  
 47 **under this section for a qualified investment; or**

1           **(2) stating the reason why the taxpayer is not entitled to claim**  
 2           **the credit.**

3           **If a taxpayer receives a credit under this section, the property for**  
 4           **which the credit was granted must be placed in service not more**  
 5           **than five (5) years after the corporation issues a letter under this**  
 6           **section certifying that the taxpayer is entitled to claim the credit.**

7           **(d) If a taxpayer receives a credit under this section and does**  
 8           **not make the qualified investment (or a part of the qualified**  
 9           **investment) for which the credit was granted within the time**  
 10           **required by subsection (c), the corporation may require the**  
 11           **taxpayer to repay the following:**

12           **(1) The additional amount of state tax liability that would**  
 13           **have been paid by the taxpayer if the credit had not been**  
 14           **granted for the qualified investment (or part of the qualified**  
 15           **investment) that was not made by the taxpayer within the**  
 16           **time required by subsection (c).**

17           **(2) Interest at a rate established under IC 6-8.1-10-1(c) on the**  
 18           **additional amount of state tax liability referred to in**  
 19           **subdivision (1).**

20           **(e) The corporation shall determine the maximum amount of**  
 21           **credits to which a taxpayer is entitled under this section. The**  
 22           **corporation may not grant under this section more than ten million**  
 23           **dollars (\$10,000,000) in credits for all taxpayers for all taxable**  
 24           **years. The corporation may not grant under this section more than**  
 25           **two million dollars (\$2,000,000) in credits to any one (1) taxpayer**  
 26           **or for any one (1) location for all taxable years.**

27           SECTION 7. IC 6-3.1-27-13, AS AMENDED BY P.L.191-2005,  
 28           SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29           JULY 1, 2007]: Sec. 13. To receive the credit provided by this chapter,  
 30           a taxpayer must do the following:

31           (1) Claim the credit on the taxpayer's state tax return or returns in  
 32           the manner prescribed by the department.

33           (2) Provide a copy of the certificate of the corporation finding:  
 34           (A) that the taxpayer; or  
 35           (B) if the taxpayer is a shareholder, partner, or member of a  
 36           pass through entity, that the pass through entity;  
 37           is eligible for the credit under IC 5-28-6-3 **or section 10.5 of this**  
 38           **chapter.**

39           (3) Submit to the department proof of all information that the  
 40           department determines is necessary for the calculation of the  
 41           credit provided by this chapter.

42           The department may require a pass through entity to provide  
 43           informational reports that the department determines necessary for the  
 44           department to calculate the percentage of a credit provided by this  
 45           chapter to which a shareholder, partner, or member of the pass through  
 46           entity is entitled."

47           Page 17, between lines 25 and 26, begin a new paragraph and insert:

1           "SECTION 37. [EFFECTIVE JANUARY 1, 2007  
2 (RETROACTIVE)]: (a) **IC 6-1.1-12-29, as amended by this act,**  
3 **applies only to property taxes first due and payable after**  
4 **December 31, 2007.**

5           **(b) IC 6-2.3-5.3, as added by this act, applies only to taxable**  
6 **years beginning after December 31, 2006.**

7           **(c) IC 6-3.1-27-10.5, as added by this act, applies only to**  
8 **qualified investments placed in service after December 31, 2007."**

9           Renumber all SECTIONS consecutively.

(Reference is to ESB 431 as printed March 30, 2007.)

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Representative Grubb