HOUSE BILL No. 1591

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1.

Synopsis: Renewable energy investment tax credit. Establishes the renewable energy investment tax credit for individuals or businesses that make a qualified investment in a project located in Indiana that will generate energy from renewable energy resources. Limits the receipt of multiple credits for the same investment made to produce renewable energy. Provides that the credit may be assigned.

Effective: January 1, 2008.

Knollman, Gutwein

January 23, 2007, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1591

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

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

SECTION 1. IC 6-3.1-1-3, AS ADDED BY P.L.199-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. A taxpayer (as defined in the following laws), pass through entity (as defined in the following laws), or shareholder, partner, or member of a pass through entity may not be granted more than one (1) tax credit under the following laws for the same project:

(1) IC 6-3.1-10 (enterprise zone investment cost credit).
(2) IC 6-3.1-11 (industrial recovery tax credit).
(3) IC 6-3.1-11.5 (military base recovery tax credit).
(4) IC 6-3.1-11.6 (military base investment cost credit).
(5) IC 6-3.1-13.5 (capital investment tax credit).
(6) IC 6-3.1-19 (community revitalization enhancement district tax credit).
(7) IC 6-3.1-24 (venture capital investment tax credit).
(8) IC 6-3.1-26 (Hoosier business investment tax credit).
(9) IC 6-3.1-27 (biodiesel or blended diesel tax credits).

(10) IC 6-3.1-28 (ethanol production tax credit).

(11) IC 6-3.1-31 (renewable energy investment tax credit).

If a taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity has been granted more than one (1) tax credit for the same project, the taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity must elect to apply only one (1) of the tax credits in the manner and form prescribed by the department.

SECTION 2. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]:

Chapter 31. Renewable Energy Investment Tax Credit

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation.

Sec. 3. As used in this chapter, "credit" refers to a credit against state tax liability that is awarded by the corporation to a person under this chapter.

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "office" refers to the office of energy and defense development within the office of the lieutenant governor.

Sec. 6. As used in this chapter, "pass through entity" means:

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

(2) a partnership;

(3) a limited liability company;

(4) a limited liability partnership;

(5) a corporation organized under IC 8-1-13; or

(6) a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 7. As used in this chapter, "person" refers to an individual, a corporation, a pass through entity, or any other entity that may sue and be sued.

Sec. 8. As used in this chapter, "project" means a facility, software, or equipment that is placed in service in Indiana and directly used to produce:

(1) electricity; or

(2) a liquid fuel that is suitable for use in an internal

combustion engine;
from a renewable energy resource.

Sec. 9. As used in this chapter, "qualified investment" means the amount of a person's expenditures for a project that is located in Indiana.

Sec. 10. As used in this chapter, "renewable energy resource" means any of the following:

(1) Wind.
(2) Solar energy.
(3) Open-loop biomass (as defined in Section 45 of the Internal Revenue Code).
(4) Corn, soybeans, or other organic material from a plant.
(5) Municipal solid waste (as defined in Section 45 of the Internal Revenue Code).
(6) Geothermal energy.
(7) Small irrigation power (as defined in Section 45 of the Internal Revenue Code).
(8) Qualified hydropower production (as defined in Section 45 of the Internal Revenue Code).
(9) Industrial waste gas.
(10) Hydrogen.
(11) Another alternative renewable energy source approved by the corporation after consultation with the office.

Sec. 11. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
(2) IC 6-2.3 (the utility receipts tax);
(3) IC 27-1-18-2 (the insurance premiums tax); and
(4) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 12. As used in this chapter, "taxpayer" means:

(1) a person that:
(A) is the holder of a credit that is awarded or assigned under this chapter; and
(B) has a state tax liability against which any part of the credit may be applied; or
(2) a shareholder, partner, or member of a pass through entity that:
(A) is the holder of a credit that is awarded or assigned under this chapter; and

(B) does not have any state tax liability against which any part of the credit may be applied.

Sec. 13. (a) The corporation may award a credit to a person that makes a qualified investment in Indiana.

(b) The corporation, in consultation with the office, may adopt rules under IC 4-22-2 and guidelines to implement this chapter.

Sec. 14. The total amount of a credit that may be awarded under this chapter to a person for a taxable year is a percentage determined by the corporation, not to exceed ten percent (10%) of the amount of a qualified investment made by the person for a project that is placed in service in the taxable year.

Sec. 15. A person that desires to apply for the credit provided in this chapter shall apply to the corporation in the manner prescribed by the corporation.

Sec. 16. A person that proposes to make a qualified investment in Indiana must apply to the corporation for the credit under this chapter before the person makes the qualified investment, and the corporation and the person may enter into an agreement under which the person will be awarded a credit in accordance with this chapter. The corporation shall prescribe the form of the application used under this section.

Sec. 17. After receiving an application under section 16 of this chapter, the corporation may enter into an agreement with the applicant under section 18 of this chapter and award a credit to the applicant if the corporation determines that all the following conditions exist:

(1) The applicant's proposed investment is a qualified investment.

(2) The applicant's project is economically sound and will benefit the citizens of Indiana by providing alternative energy sources.

(3) Awarding the credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

Sec. 18. An applicant, to be awarded a credit under this chapter, must enter into a written agreement with the corporation under this section. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The maximum credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant obtain from the commission a certificate under IC 8-1-8.5-2 that public convenience and necessity require or will require the construction, purchase, or lease of the project.

(5) A requirement that if the credit is awarded, the holder of the credit shall provide written notification to the corporation under section 21(c) of this chapter not less than thirty (30) days before assigning any part of the credit to an assignee.

(6) Any other performance conditions that the corporation determines to be appropriate.

Sec. 19. (a) The corporation shall issue to a person awarded a credit under this chapter a certificate of verification that certifies:

(1) the percentage of the person's qualified investment that is eligible for a credit under this chapter; and

(2) the amount of the credit.

(b) In determining the credit amount that should be awarded to a person under this chapter, the corporation shall grant a credit only for the amount of the person's qualified investment that is directly related to promoting projects in Indiana.

Sec. 20. A taxpayer that is the holder of a credit awarded under this chapter for a qualified investment in a project is entitled to a credit against the taxpayer's state tax liability in the taxable year in which the project is placed in service if the taxpayer complies with:

(1) the conditions set forth in this chapter; and

(2) the agreement with the corporation entered into under section 18 of this chapter concerning the qualified investment.

Sec. 21. (a) The holder of a credit may assign any part of the credit to which the holder is entitled under this chapter to another person if the holder complies with this section.

(b) The assignor must provide the assignee with a copy of the certificate of verification provided by the corporation under section 19 of this chapter.

(c) The assignor must provide written notification of the assignment to the corporation not less than thirty (30) days before the assignment.

(d) If any part of a credit is assigned under this section, the assignor and the assignee shall report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department.

(e) The taxpayer assigning a credit under this section shall not receive value in connection with the assignment that exceeds the

value of the part of the credit assigned.

Sec. 22. (a) The holder of a credit that is assigned in conformity with this chapter is entitled to a credit against the holder's state tax liability to the same extent as if the holder were the person to which the credit was awarded.

(b) A credit that is assigned under this chapter remains subject to:

(1) this chapter; and

(2) the terms and conditions of the agreement with the corporation entered into under section 18 of this chapter concerning the qualified investment.

Sec. 23. If a pass through entity is the holder of a credit and does not have a state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit equal to an amount permitted by an agreement between the partners, members, or shareholders or in an amount equal to:

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

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

Sec. 24. A taxpayer may not carry over to a succeeding taxable year or carry back to a previous taxable year any part of the credit awarded under this chapter that exceeds the taxpayer's state tax liability for the taxable year for which the credit is awarded. A taxpayer is not entitled to a refund of any unused credit.

Sec. 25. A taxpayer claiming a credit under this chapter shall submit to the department a copy of the certificate of verification issued by the corporation under section 19 of this chapter for the credit for each taxable year the taxpayer claims a credit. However, failure to submit a copy of the certificate of verification does not invalidate a claim for a credit if the taxpayer provides a copy of the corporation's certificate upon the department's request for verification of the credit.

Sec. 26. (a) If the corporation determines that a person that was awarded a credit under this chapter has not complied with:

(1) the requirements of the agreement with the corporation entered into under section 18 of this chapter; or

(2) any of the provisions of this chapter;

the corporation shall, after giving the person an opportunity to explain the noncompliance, notify the department of the

noncompliance and request an assessment.

(b) After receiving notice of a person's noncompliance under subsection (a), the department, with the assistance of the corporation, shall:

(1) determine the amount of the assessment to be imposed on the person, which may not exceed the sum of any previously allowed credits under this chapter; and

(2) make an assessment under IC 6-8.1.

(c) An assessment may be made under this section against any taxpayer that applied any part of the credit against any of the taxpayer's state tax liability. The amount assessed against a taxpayer may not exceed the amount of the credit applied by the taxpayer against the taxpayer's state tax liability.

Sec. 27. (a) On or before March 31 of each year, the corporation shall submit a report on the tax credit program under this chapter to the office. The report must include:

(1) information on the number of agreements that were entered into under this chapter during the preceding calendar year;

(2) a description of the project that is the subject of each agreement;

(3) an update on the status of projects under agreements entered into before the preceding calendar year; and

(4) the sum of the credits awarded under this chapter.

(b) A copy of the report prepared under this section shall be transmitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

Sec. 28. (a) The corporation shall provide for an evaluation of the tax credit program on a biennial basis. The evaluation:

(1) must include an assessment of:

(A) the effectiveness of the program in fostering investment in the generation of energy from renewable resources in Indiana; and

(B) the revenue impact of the program; and

(2) may include a review of the practices and experiences of other states with similar programs.

(b) The corporation shall submit a report on each biennial evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each odd-numbered year. The report provided to the president pro tempore of the senate and the

speaker of the house of representatives must be in an electronic format under IC 5-14-6.