

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1722 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 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006,
4 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 2008]: Sec. 9.5. **Except as provided in**
6 **IC 6-3.1-28-11(c)**, the total amount of credits allowed under:
7 (1) section 8 of this chapter;
8 (2) section 9 of this chapter; and
9 (3) IC 6-3.1-28;
10 may not exceed fifty million dollars (\$50,000,000) for all taxpayers and
11 all taxable years beginning after December 31, 2004. The corporation
12 shall determine the maximum allowable amount for each type of credit,
13 which must be at least four million dollars (\$4,000,000) for each type
14 of credit.
15 SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of
17 the credit determined under this chapter for a taxpayer in a taxable year
18 exceeds the taxpayer's state tax liability for that taxable year, the
19 taxpayer may carry over the excess to the following taxable years. The
20 amount of the credit carryover from a taxable year shall be reduced to
21 the extent that the carryover is used by the taxpayer to obtain a credit
22 under this chapter for any subsequent taxable year.
23 (b) A taxpayer is not entitled to a carryback or refund of any unused
24 credit. **A taxpayer may not sell, assign, convey, or otherwise**
25 **transfer the tax credit provided by this chapter.**
26 SECTION 3. IC 6-3.1-28-11, AS AMENDED BY P.L.122-2006,
27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JANUARY 1, 2008]: Sec. 11. **(a) As used in this section, "cellulosic**
29 **ethanol" means ethanol derived solely from lignocellulosic or**
30 **hemicellulosic matter.**
31 **(b)** The corporation shall determine the maximum amount of credits

1 that a taxpayer (or if the person producing the ethanol is a pass through
 2 entity, the shareholders, partners, or members of the pass through
 3 entity) is eligible to receive under this section. The total amount of
 4 credits allowed a taxpayer (or, if the person producing the ethanol is a
 5 pass through entity, the shareholders, partners, or members of the pass
 6 through entity) under this chapter may not exceed a total of the
 7 following amounts for all taxable years:

8 (1) Two million dollars (\$2,000,000) in the case of a taxpayer
 9 who produces at least forty million (40,000,000) but less than
 10 sixty million (60,000,000) gallons of **grain** ethanol in a taxable
 11 year.

12 (2) Three million dollars (\$3,000,000) in the case of a taxpayer
 13 who produces at least sixty million (60,000,000) gallons of **grain**
 14 ethanol in a taxable year.

15 (3) **Twenty million dollars (\$20,000,000) for all taxpayers for**
 16 **all taxable years, in the case of tax credits for a taxpayer who**
 17 **produces at least twenty million (20,000,000) gallons of**
 18 **cellulosic ethanol in a taxable year.**

19 (c) **The total amount of tax credits allowed under this chapter**
 20 **for a taxpayer who produces at least twenty million (20,000,000)**
 21 **gallons of cellulosic ethanol is not subject to the maximum amount**
 22 **of tax credits imposed by IC 6-3.1-27-9.5."**

23 Page 1, line 17, delete "Subject" and insert "**If the corporation**
 24 **decides to award a tax credit under this chapter to a taxpayer, and**
 25 **subject"**.

26 Page 2, line 20, delete "The" and insert "**If the corporation decides**
 27 **to award a tax credit under this chapter to an applicant, the"**.

28 Page 3, between lines 33 and 34, begin a new paragraph and insert:
 29 "SECTION 7. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JANUARY 1, 2008]:

32 **Chapter 34. Indiana Fueled Energy Investment Tax Credit**

33 **Sec. 1. As used in this chapter, "biomass" means any organic**
 34 **matter that is available on a renewable basis, including**
 35 **agricultural crops and agricultural wastes and residues, wood and**
 36 **wood wastes, including wood residues, forest thinnings, mill**
 37 **residue wood, clean construction and demolition waste (but**
 38 **excluding treated or painted lumber), animal wastes, municipal**
 39 **wastes, food wastes, and aquatic plants.**

40 **Sec. 2. As used in this chapter, "corporation" means the Indiana**
 41 **economic development corporation established by IC 5-28-3-1.**

42 **Sec. 3. As used in this chapter, "Indiana coal" has the meaning**
 43 **set forth in IC 4-4-30-4.**

44 **Sec. 4. As used in this chapter, "Indiana fuel" means either of**
 45 **the following:**

46 (1) **Any of the following when the fuel is gasified, liquefied, or**
 47 **methanized:**

- 1 (A) Biomass produced in Indiana.
 2 (B) Indiana coal.
 3 (C) Petroleum coke produced in Indiana.
 4 (D) Oil shale located in Indiana.
 5 (2) Coal mine methane when used in the production of power.
- 6 Sec. 5. As used in this chapter, "office" means the office of
 7 energy and defense development.
- 8 Sec. 6. As used in this chapter, "qualified investment" means a
 9 taxpayer's expenditures for:
 10 (1) all real and tangible personal property incorporated in
 11 and used as part of a facility used to produce energy from
 12 Indiana fuel; and
 13 (2) transmission equipment and other real and personal
 14 property located at the site of the energy production facility
 15 that is employed specifically to serve the energy production
 16 facility.
- 17 Sec. 7. As used in this chapter, "pass through entity" means:
 18 (1) a corporation that is exempt from the adjusted gross
 19 income tax under IC 6-3-2-2.8(2);
 20 (2) a partnership;
 21 (3) a limited liability company;
 22 (4) a limited liability partnership;
 23 (5) a corporation organized under IC 8-1-13; or
 24 (6) a corporation organized under IC 23-17-1 that:
 25 (A) is an electric cooperative; and
 26 (B) has at least one (1) member that is a corporation
 27 organized under IC 8-1-13.
- 28 Sec. 8. As used in this chapter, "petroleum coke" means a
 29 carbonaceous solid derived from the process of refining oil.
- 30 Sec. 9. As used in this chapter, "state tax liability" means the
 31 taxpayer's total tax liability that is incurred under:
 32 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
 33 (2) IC 27-1-18-2 (the insurance premiums tax);
 34 (3) IC 6-5.5 (the financial institutions tax); and
 35 (4) IC 6-2.3 (the utility receipts tax);
 36 as computed after the application of the credits that, under
 37 IC 6-3.1-1-2, are to be applied before the credit provided by this
 38 chapter.
- 39 Sec. 10. As used in this chapter, "taxpayer" means any person,
 40 corporation, limited liability company, partnership, or other entity
 41 that:
 42 (1) has any state tax liability; and
 43 (2) makes a qualified investment.
- 44 Sec. 11. (a) A taxpayer that:
 45 (1) is awarded a tax credit under this chapter by the
 46 corporation; and
 47 (2) complies with the conditions set forth in this chapter and
 48 the agreement entered into by the corporation and the

1 taxpayer under this chapter;
 2 is entitled to a credit against the taxpayer's state tax liability for a
 3 taxable year in which the taxpayer places into service an energy
 4 production facility using Indiana fuel and for the taxable years
 5 provided in section 13 of this chapter.

6 (b) A tax credit awarded under this chapter must be applied
 7 against the taxpayer's state tax liability in the following order:

8 (1) Against the taxpayer's liability incurred under IC 6-3-1
 9 through IC 6-3-7 (the adjusted gross income tax).

10 (2) Against the taxpayer's liability incurred under IC 6-5.5
 11 (the financial institutions tax).

12 (3) Against the taxpayer's liability incurred under
 13 IC 27-1-18-2 (the insurance premiums tax).

14 (4) Against the taxpayer's liability incurred under IC 6-2.3
 15 (the utility receipts tax).

16 Sec. 12. (a) If the corporation decides to award a tax credit
 17 under this chapter to a taxpayer, the amount of the credit to which
 18 the taxpayer is entitled for a qualified investment is equal to the
 19 product of:

20 (1) the amount of the taxpayer's qualified investment;
 21 multiplied by

22 (2) ten percent (10%).

23 (b) The total amount of tax credits awarded under this chapter
 24 may not exceed fifty million dollars (\$50,000,000) for all taxpayers
 25 and all taxable years.

26 Sec. 13. (a) A credit awarded under section 11 of this chapter
 27 must be taken in ten (10) annual installments, beginning with the
 28 year in which the taxpayer places into service the taxpayer's
 29 energy production facility.

30 (b) The amount of an annual installment of the credit awarded
 31 under section 11 of this chapter is equal to the quotient of:

32 (1) the credit amount determined under section 12 of this
 33 chapter; divided by

34 (2) ten (10).

35 (c) If the credit allowed by this chapter is available to a member
 36 of an affiliated group of corporations filing a consolidated return
 37 under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied
 38 against the state tax liability of the affiliated group.

39 Sec. 14. (a) If a pass through entity is entitled to a credit under
 40 this chapter but does not have state tax liability against which the
 41 credit may be applied, an individual who is a shareholder, partner,
 42 or member of the pass through entity is entitled to a credit equal
 43 to:

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

46 (2) in the case of a pass through entity described in:

47 (A) section 7(1), 7(2), 7(3), or 7(4) of this chapter, the
 48 percentage of the pass through entity's distributive income

1 to which the shareholder, partner, or member is entitled;
2 or
3 **(B) section 7(5) or 7(6) of this chapter, the relative**
4 **percentage of the corporation's patronage dividends**
5 **allocable to the member for the taxable year.**

6 **(b) The credit provided under subsection (a) is in addition to a**
7 **tax credit to which a shareholder, partner, or member of a pass**
8 **through entity is otherwise entitled under this chapter. However,**
9 **a pass through entity and an individual who is a shareholder,**
10 **partner, or member of the pass through entity may not claim more**
11 **than one (1) credit for the same qualified investment.**

12 **Sec. 15. The amount of a credit claimed under this chapter may**
13 **not exceed a qualified taxpayer's state tax liability. A taxpayer is**
14 **not entitled to a carryback, carryover, or refund of an unused**
15 **credit.**

16 **Sec. 16. A taxpayer may not sell, assign, convey, or otherwise**
17 **transfer the tax credit provided by this chapter.**

18 **Sec. 17. (a) A taxpayer that proposes to place a new energy**
19 **production facility utilizing Indiana fuel into service may apply to**
20 **the corporation before the taxpayer makes the qualified investment**
21 **to enter into an agreement for a tax credit under this chapter. The**
22 **corporation shall prescribe the form of the application.**

23 **(b) The office shall provide any technical assistance requested**
24 **by the corporation in the administration of this chapter.**

25 **Sec. 18. After receipt of an application, the corporation may**
26 **enter into an agreement with the applicant for a credit under this**
27 **chapter if the corporation determines that the taxpayer's proposed**
28 **investment satisfies the requirements of this chapter.**

29 **Sec. 19. (a) If the corporation decides to award a tax credit**
30 **under this chapter to an applicant, the corporation shall enter into**
31 **an agreement with the applicant. The agreement must include all**
32 **the following:**

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

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

36 **(3) The amount of the tax credit that, subject to section 15 of**
37 **this chapter, will be allowed for each taxable year.**

38 **(4) A requirement that the taxpayer shall maintain operations**
39 **at the project location for at least ten (10) years during the**
40 **term that the tax credit is available.**

41 **(5) A requirement that the taxpayer shall pay an average**
42 **wage to its employees at the energy production facility, other**
43 **than highly compensated employees, in each taxable year that**
44 **a tax credit is available, that equals at least one hundred**
45 **twenty-five percent (125%) of the average county wage in the**
46 **county in which the energy production facility is located.**

47 **(6) A requirement that the taxpayer will maintain at the**
48 **location where the qualified investment is made, during the**

1 term of the tax credit, a total payroll that is at least equal to
 2 the payroll that existed on the date that the taxpayer placed
 3 the energy production facility into service.

4 (7) A requirement that one hundred percent (100%) of the
 5 fuel used at the energy production facility must be Indiana
 6 fuel.

7 (8) A requirement that the energy production facility will
 8 comply with any energy efficiency or emission standard
 9 recommended by the office and imposed by the corporation.

10 (b) A taxpayer must comply with the terms of the agreement
 11 described in subsection (a) to receive an annual installment of the
 12 tax credit awarded under this chapter. The corporation shall
 13 annually determine whether the taxpayer is in compliance with the
 14 agreement. If the corporation determines that the taxpayer is in
 15 compliance, the corporation shall issue a certificate of compliance
 16 to the taxpayer.

17 Sec. 20. To receive the credit awarded by this chapter, a
 18 taxpayer must claim the credit on the taxpayer's annual state tax
 19 return or returns in the manner prescribed by the department. The
 20 taxpayer shall submit to the department a copy of the taxpayer's
 21 certificate of compliance issued under section 19 of this chapter,
 22 and all information that the department determines is necessary
 23 for the calculation of the credit provided by this chapter."

24 Page 8, between lines 24 and 25, begin a new paragraph and insert:
 25 "SECTION 16. IC 8-1-8.8-10 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this
 27 chapter, "renewable energy resources" means alternative sources of
 28 renewable energy, including the following:

- 29 (1) Energy from wind.
- 30 (2) Solar energy.
- 31 (3) Photovoltaic cells and panels.
- 32 (4) Dedicated crops grown for energy production.
- 33 (5) ~~Organic waste~~ Biomass (as defined by IC 6-3.1-34-1).
- 34 (6) Hydropower from existing dams.
- 35 (7) Fuel cells.
- 36 (8) Energy from waste to energy facilities producing steam not
 37 used for the production of electricity.

38 (b) Except for energy described in subsection (a)(8), the term does
 39 not include energy from the incinerations, burning, or heating of any of
 40 the following:

- 41 ~~(1) Waste wood.~~
- 42 ~~(2)~~ (1) Tires.
- 43 ~~(3)~~ (2) General household, institutional, commercial, industrial
 44 lunchroom, office, or landscape waste.
- 45 ~~(4) Construction or demolition debris."~~

46 Page 15, between lines 18 and 19, begin a new paragraph and insert:
 47 "SECTION 21. [EFFECTIVE JANUARY 1, 2008] (a)

1 **IC 6-3.1-28-11, as amended by this act, applies to taxable years**
2 **beginning after December 31, 2007.**

3 **(b) IC 6-3.1-34, as added by this act, applies to taxable years**
4 **beginning after December 31, 2007."**

5 Renumber all SECTIONS consecutively.

(Reference is to EHB 1722 as printed March 16, 2007.)

Senator HERSHMAN