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WITHDRAWN	Noes _______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

HOUSE MOTION ____

MR. SPEAKER:

I move that House Bill 1347 be amended to read as follows:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]:

Chapter 33. Renewable Energy Technology Manufacturer Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2010.

Sec. 2. As used in this chapter, "the corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 3. As used in this chapter, "director" has the meaning set forth in IC 6-3.1-13-3.

Sec. 4. As used in this chapter, "highly compensated employee" has the meaning set forth in Section 414(q) of the Internal Revenue Code.

Sec. 5. As used in this chapter, "new employee" has the meaning set forth in IC 6-3.1-13-6.

Sec. 6. As used in this chapter, "qualified investment" means the amount of a taxpayer's expenditures in Indiana that are reasonable

and necessary for the manufacture or assembly of renewable energy technology.

Sec. 7. As used in this chapter, "renewable energy technology" means the following:

(1) Solar panels that convert sunlight into electricity.

(2) Solar technologies that use optical techniques to generate heat to power turbines or heat engines for the production of electricity.

(3) Wind turbines that convert wind energy into electricity.

(4) Electrochemical devices, known as fuel cells, that combine hydrogen and oxygen to produce electricity.

(5) Anaerobic digestion systems in which organic waste is composted to produce gases that are burned as fuel to produce electricity.

(6) Geothermal energy systems, including geothermal systems for:

(A) the generation of electricity; or

(B) heating and cooling.

Sec. 8. 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 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (the insurance premiums 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. 9. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 10. The corporation may make credit awards under this chapter to:

(1) foster job creation and higher wages;

(2) reduce dependency upon energy sources imported into the United States; and

(3) reduce air pollution;

as the result of the manufacture or assembly of renewable energy technology in Indiana.

Sec. 11. Each taxable year, a taxpayer that:

(1) is awarded a tax credit under this chapter by the corporation; and

(2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability for the taxable year.

Sec. 12. The amount of the tax credit provided by this chapter for a taxable year is an amount equal to:

(1) a percentage determined by the corporation, not to exceed fifteen percent (15%); multiplied by

(2) the amount of the qualified investment made by the taxpayer in Indiana during the taxable year.

Sec. 13. (a) A taxpayer may carry forward an unused credit for the number of years determined by the corporation, not to exceed nine (9) consecutive taxable years, beginning with the taxable year immediately following the taxable year in which the taxpayer makes the qualified investment.

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified investment; and

(2) carry forward a remainder for one (1) or more different qualified investments;

in the same taxable year.

(d) The total amount of each tax credit claimed under this chapter may not exceed fifteen percent (15%) of the qualified investment for which the tax credit is claimed.

(e) A taxpayer may not carry back an unused credit provided by this chapter to a taxable year before the taxable year in which the taxpayer makes the qualified investment. A taxpayer may not claim a refund for an unused credit provided by this chapter.

Sec. 14. A person that proposes a project to manufacture or assemble renewable energy technology that would create new jobs, increase wage levels, or involve substantial capital investment in Indiana may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

Sec. 15. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

(1) The applicant's project will raise the total earnings of employees of the applicant in Indiana.

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.

(3) The manufacture or assembly of renewable energy technology by the applicant will reduce air pollution.

(4) The manufacture or assembly of renewable energy technology by the applicant will reduce dependence by the United States on foreign energy sources.

(5) Receiving the tax credit is a major factor in the applicant's

decision to go forward with the project.

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

(7) The credit is not prohibited by section 16 of this chapter.

(8) The average wage that will be paid by the taxpayer to the applicant's employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 16. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. Determinations under this section shall be made by the corporation.

Sec. 17. The corporation shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the corporation shall grant a credit only for the amount of the qualified investment that is directly related to expanding:

(1) the workforce in Indiana; or

(2) the capital investment in Indiana.

Sec. 18. The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. 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 amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

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

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

(6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, the average wage of all employees at the location where the qualified investment is made, and any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify

with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of:

(A) the useful life of the qualified investment for federal income tax purposes; or

(B) ten (10) years.

(11) A requirement that the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the corporation determines are appropriate.

Sec. 19. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

Sec. 20. If the director determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the Indiana economic development corporation and the department of state revenue of the noncompliance and request an assessment. The department of state revenue, with the assistance of the director, shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter. After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 21. On or before March 31 each year, the director shall submit a report to the corporation on the tax credit program established by this chapter. The report must include information

on the number of agreements that were entered into under this chapter during the preceding calendar year, a description of the project that is the subject of each agreement, an update on the status of projects under agreements entered into before the preceding calendar year, and the sum of the credits awarded under this chapter. A copy of the report 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. 22. On a biennial basis, the corporation shall provide for an evaluation of the tax credit program established by this chapter. The evaluation must include an assessment of the effectiveness of the program in creating new jobs and increasing wages in Indiana and of the revenue impact of the program and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the 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.

Sec. 23. Notwithstanding the other provisions of this chapter, the corporation may not approve a credit for a qualified investment made after December 31, 2012. However, this section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before January 1, 2013, forward to a taxable year beginning after December 31, 2012, in the manner provided by section 13 of this chapter.

SECTION 2. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]:

Chapter 34. Business Renewable Energy Investment Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2010.

Sec. 2. As used in this chapter, "business entity" means:

(1) an individual engaged in a trade or business;

(2) a partnership;

(3) a limited liability company;

(4) a limited liability partnership; or

(5) a corporation.

Sec. 3. As used in this chapter, "IEDC" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 4. 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 trust;
(4) a limited liability company; or
(5) a limited liability partnership.

Sec. 5. As used in this chapter, "qualified capital investment" means an expenditure for depreciable property that conforms to the terms and conditions of a credit award by the IEDC under this chapter. The term does not include an expenditure for inventory.

Sec. 6. As used in this chapter, "renewable or alternative energy technology" means the following:
(1) Solar panels that convert sunlight into electricity.
(2) Solar technologies that use optical techniques to generate heat to power turbines or heat engines for the production of electricity.
(3) Wind turbines that convert wind energy into electricity.
(4) Electrochemical devices, known as fuel cells, that combine hydrogen and oxygen to produce electricity.
(5) Anaerobic digestion systems in which organic waste is composted to produce gases that are burned as fuel to produce electricity.
(6) Geothermal energy systems, including geothermal systems for:
(A) the generation of electricity; or
(B) heating and cooling.
(7) Commercial building technologies that contribute to certification under any of the following standards or rating systems:
(A) Green Globes.
(B) Leadership in Energy and Environmental Design (LEED).
(C) An American National Standards Institute (ANSI) green building standard.

Sec. 7. 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 27-1-18-2 (the insurance premiums tax); and
(3) 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. 8. Each taxable year beginning after December 31, 2010, a business entity that meets the terms of a credit award agreement entered into under section 14 of this chapter is entitled to a credit against the business entity's state tax liability for amounts that the business entity expends during the taxable year for a qualified capital investment in renewable or alternative energy technology. The amount of the credit is:

(1) the percentage awarded to the business entity by the IEDC, not to exceed ten percent (10%); multiplied by

(2) the amount of the business entity's qualified capital investment in renewable or alternative energy technology for the taxable year.

Sec. 9. (a) A taxpayer may carry forward an unused credit provided by this chapter for the number of years determined by the IEDC, not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified capital investment.

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified capital investment; and

(2) carry forward a remainder for one (1) or more different qualified capital investments;

in the same taxable year.

(d) A taxpayer may not carry back an unused credit provided by this chapter to a taxable year before the taxable year in which the taxpayer makes the qualified capital investment. A taxpayer may not claim a refund for an unused credit provided by this chapter.

Sec. 10. If a pass through entity does not have state tax liability against which the tax credit provided by this chapter may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the amount of the tax 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 or partner is entitled.

Sec. 11. The IEDC may approve credit awards under this chapter to encourage business entities to make capital investments in renewable or alternative energy technology in Indiana.

Sec. 12. A business entity may apply to the IEDC for a credit award under this chapter for a proposed capital investment in renewable or alternative energy technology in Indiana. The IEDC shall prescribe the form of the application.

Sec. 13. (a) The IEDC may not make a credit award under this chapter unless the proposed capital investment in renewable or alternative energy technology conforms with the following requirements:

(1) The proposed capital investment is located in Indiana.

(2) The proposed capital investment consists of depreciable property that implements a renewable or alternative energy technology.

(b) The IEDC may make a credit award under this chapter only for proposed capital investments in renewable or alternative energy technology. The IEDC may not make credit awards under this chapter for investments in renewable or alternative energy technology that are accomplished before the date on which the business entity's application is submitted to the IEDC. If an investment in renewable or alternative energy technology is partially completed before the date on which the business entity's application is submitted to the IEDC, the IEDC may make a credit award for the part of the investment that occurs on or after the date on which the business entity's application is submitted to the IEDC.

Sec. 14. (a) After receipt of an application, the IEDC shall review the application to determine whether the requirements of section 13 of this chapter are met. If the IEDC determines that the proposed capital investment in renewable or alternative energy technology is not eligible for a credit award, the IEDC promptly shall issue a letter notifying the applicant that the application is denied.

(b) If the IEDC determines that a proposed capital investment in renewable or alternative energy technology is eligible for a credit award, the IEDC promptly shall prepare a credit award agreement that specifies the terms of the credit award. The credit award agreement must contain the following provisions:

(1) An award of the credit percentage to be applied under section 8 of this chapter.

(2) A provision that requires the applicant business entity to remain for ten (10) years at the location where the renewable or alternative energy technology is installed.

(3) Any other reasonable provision that the IEDC determines is advisable.

After the IEDC has prepared the credit award agreement, the IEDC promptly shall send a letter of notification along with the credit award agreement to the applicant business entity.

(c) A business entity is not eligible for the credit provided by this chapter unless the business entity enters into a credit award agreement with the IEDC.

Sec. 15. The department may require a taxpayer claiming a credit under this chapter to submit supporting documentation with the taxpayer's return.

Sec. 16. If the IEDC suspects that a taxpayer who has received a credit under this chapter is not complying with the requirements of the taxpayer's credit award agreement or this chapter, the IEDC shall give the taxpayer an opportunity to explain the noncompliance. If the IEDC determines that the taxpayer is not complying with the requirements of the credit award agreement or this chapter, the IEDC shall notify the department of the

noncompliance and request an assessment. The department, with the assistance of the IEDC, shall determine the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter, and shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 17. Notwithstanding the other provisions of this chapter, the IEDC may not approve an application for a credit award under this chapter after December 31, 2012. However, this section does not prevent a taxpayer from carrying forward an unused tax credit attributable to a qualified capital investment made before January 1, 2013, to a taxable year beginning after December 31, 2012, in the manner provided by section 9 of this chapter.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1347 as printed February 3, 2009.)

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Representative Koch