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# HOUSE BILL No. 1438

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1.

**Synopsis:** Renewable energy investment tax credit. Establishes a renewable energy production facility investment tax credit. Provides that the tax credit is equal to 10% of a taxpayer's investment in a renewable energy production facility. Permits the tax credit to be claimed beginning in the taxable year in which the renewable energy production facility is placed into service. Requires the credit to be claimed in ten annual installments. Requires a taxpayer and the Indiana economic development corporation to enter into a tax credit agreement.

**Effective:** July 1, 2009.

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### Grubb, Friend

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January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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## HOUSE BILL No. 1438

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

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

- 1 SECTION 1. IC 6-3.1-1-3, AS AMENDED BY P.L.223-2007,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 3. A taxpayer (as defined in the following laws),  
4 pass through entity (as defined in the following laws), or shareholder,  
5 partner, or member of a pass through entity may not be granted more  
6 than one (1) tax credit under the following laws for the same project:  
7 (1) IC 6-3.1-10 (enterprise zone investment cost credit).  
8 (2) IC 6-3.1-11 (industrial recovery tax credit).  
9 (3) IC 6-3.1-11.5 (military base recovery tax credit).  
10 (4) IC 6-3.1-11.6 (military base investment cost credit).  
11 (5) IC 6-3.1-13.5 (capital investment tax credit).  
12 (6) IC 6-3.1-19 (community revitalization enhancement district  
13 tax credit).  
14 (7) IC 6-3.1-24 (venture capital investment tax credit).  
15 (8) IC 6-3.1-26 (Hoosier business investment tax credit).  
16 (9) IC 6-3.1-31.9 (Hoosier alternative fuel vehicle manufacturer  
17 tax credit).



1           **(10) IC 6-3.1-33 (renewable energy production facility**  
 2           **investment tax credit).**

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

9           SECTION 2. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE  
 10          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 11          JULY 1, 2009]:

12          **Chapter 33. Renewable Energy Production Facility Investment**  
 13          **Tax Credit**

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

17          **Sec. 2. 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; or**  
 22               **(4) a limited liability partnership.**

23          **Sec. 3. As used in this chapter, "qualified investment" means a**  
 24          **taxpayer's expenditures for one (1) or more of the following:**  
 25               **(1) Real and personal property incorporated in and used as a**  
 26               **part of a renewable energy production facility.**  
 27               **(2) Transmission equipment, including communications**  
 28               **equipment, and other real and personal property located at**  
 29               **the site of a renewable energy production facility that is used**  
 30               **specifically to serve the renewable energy production facility.**  
 31               **(3) Onsite and offsite infrastructure that is installed to serve**  
 32               **the renewable energy production facility.**

33          **Sec. 4. As used in this chapter, "renewable energy production**  
 34          **facility" means a facility used to produce electricity, fuel, or steam**  
 35          **from a renewable energy resource.**

36          **Sec. 5. (a) As used in this chapter, "renewable energy resource"**  
 37          **means an alternative source of renewable energy, including the**  
 38          **following:**  
 39               **(1) Energy from wind.**  
 40               **(2) Solar energy.**  
 41               **(3) Photovoltaic cells and panels.**  
 42               **(4) Dedicated crops grown for energy production.**

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- 1           **(5) Organic waste biomass, including any of the following**
- 2           **organic matter that is available on a renewable basis:**
- 3           **(A) Agricultural crops.**
- 4           **(B) Agricultural wastes and residues.**
- 5           **(C) Wood and wood wastes, including the following:**
- 6           **(i) Wood residues.**
- 7           **(ii) Forest thinnings.**
- 8           **(iii) Mill residue wood.**
- 9           **(iv) Waste from clean construction and demolition.**
- 10          **(D) Animal wastes.**
- 11          **(E) Aquatic plants.**
- 12          **(6) Hydropower from existing dams.**
- 13          **(7) Fuel cells.**
- 14          **(8) Energy used to produce steam that is:**
- 15               **(A) generated from waste material; and**
- 16               **(B) primarily consumed by the taxpayer.**
- 17          **(b) Except for energy described in subsection (a)(8), the term**
- 18          **does not include energy from the incineration, burning, or heating**
- 19          **of any of the following:**
- 20               **(1) Tires.**
- 21               **(2) General household, institutional, commercial, industrial**
- 22               **lunchroom, office, or landscape waste.**
- 23          **Sec. 6. As used in this chapter, "state tax liability" means a**
- 24          **taxpayer's total tax liability that is incurred under:**
- 25               **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**
- 26               **(2) IC 6-5.5 (the financial institutions tax); and**
- 27               **(3) IC 27-1-18-2 (the insurance premiums tax);**
- 28          **as computed after the application of the credits that under**
- 29          **IC 6-3.1-1-2 are to be applied before the credit provided by this**
- 30          **chapter.**
- 31          **Sec. 7. As used in this chapter, "taxpayer" means an individual,**
- 32          **corporation, partnership, limited liability company, or limited**
- 33          **liability partnership or other business entity that has any state tax**
- 34          **liability.**
- 35          **Sec. 8. For purposes of this chapter, the terms "biomass",**
- 36          **"renewable energy resource", and "wood waste" do not include**
- 37          **treated or painted lumber.**
- 38          **Sec. 9. (a) A taxpayer that:**
- 39               **(1) is awarded a tax credit by the corporation under section 14**
- 40               **of this chapter; and**
- 41               **(2) complies with the conditions set forth in this chapter and**
- 42               **the agreement between the corporation and the taxpayer that**

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1 is required by section 14 of 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 a renewable  
 4 energy production facility and for the taxable years described in  
 5 section 11 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 (c) If the credit allowed by this chapter is available to a member  
 15 of an affiliated group of corporations filing a consolidated return  
 16 under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied  
 17 against the state tax liability of the affiliated group.

18 Sec. 10. Subject to section 13 of this chapter, a tax credit  
 19 awarded under this chapter is equal to the product of:

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

22 (2) ten percent (10%).

23 Sec. 11. (a) A credit awarded under this chapter must be taken  
 24 in ten (10) annual installments beginning with the taxable year in  
 25 which the taxpayer places into service the taxpayer's renewable  
 26 energy production facility.

27 (b) Subject to section 13 of this chapter, the amount of each  
 28 annual installment is equal to the quotient of:

29 (1) the credit amount determined under section 10 of this  
 30 chapter; divided by

31 (2) ten (10).

32 Sec. 12. (a) If a pass through entity is entitled to a credit under  
 33 section 9 of this chapter but does not have state tax liability against  
 34 which the tax credit may be applied, an individual who is a  
 35 shareholder, partner, or member of the pass through entity is  
 36 entitled to a tax credit equal to:

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

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

42 (b) The credit provided under subsection (a) is in addition to a

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1 tax credit to which a shareholder, partner, or member of a pass  
 2 through entity is otherwise entitled under this chapter. However,  
 3 a pass through entity and an individual who is a shareholder,  
 4 partner, or member of the pass through entity may not claim more  
 5 than one (1) credit for the same qualified investment.

6 Sec. 13. (a) The amount of an annual installment of a credit  
 7 awarded under section 9 of this chapter may not exceed the  
 8 taxpayer's state tax liability for that taxable year. The amount of  
 9 an unused installment may be carried over to succeeding taxable  
 10 years and claimed in addition to any installment allowed for a  
 11 particular taxable year. Each time that the unused installment is  
 12 carried over to a succeeding taxable year, the installment is to be  
 13 reduced by the amount that was claimed during the immediately  
 14 preceding taxable year. The amount of the unused installment may  
 15 be carried forward and applied to succeeding taxable years for ten  
 16 (10) taxable years following the taxable year in which part of the  
 17 installment was unused.

18 (b) A tax credit earned by a taxpayer under this article in a  
 19 particular taxable year shall be applied against the taxpayer's tax  
 20 liability for that taxable year before any credit carryover is applied  
 21 against that liability under subsection (a).

22 (c) A taxpayer is not entitled to any carryback or refund of any  
 23 unused credit.

24 Sec. 14. (a) To become eligible for a tax credit under this  
 25 chapter, a taxpayer that proposes to place a renewable energy  
 26 production facility into service must apply to the corporation on a  
 27 form prescribed by the corporation. The application required by  
 28 this section is due before the taxpayer makes a qualified  
 29 investment.

30 (b) The corporation may award a tax credit to the applicant if  
 31 the corporation:

32 (1) approves the taxpayer's application for a tax credit under  
 33 this chapter; and

34 (2) determines that the taxpayer's proposed qualified  
 35 investment satisfies the requirements of this chapter.

36 (c) The corporation's decision to award a tax credit under this  
 37 chapter to an applicant must be set forth in a written agreement  
 38 between the corporation and the applicant.

39 Sec. 15. The agreement required by section 14 of this chapter  
 40 must include each of the following:

41 (1) A detailed description of the taxpayer's planned renewable  
 42 energy production facility.

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(2) The taxable year in which the taxpayer expects to place into service a renewable energy production facility.

(3) The estimated total amount of the taxpayer's qualified investment.

(4) The estimated amount of the tax credit that the taxpayer expects to claim in each taxable year described in section 11 of this chapter.

(5) A requirement that the taxpayer shall maintain operations at the renewable energy production facility described in subdivision (1) for at least the ten (10) taxable years described in section 11 of this chapter.

**Sec. 16.** The corporation annually shall determine whether a taxpayer that is awarded a tax credit under this chapter is in compliance with the terms of the agreement required by section 14 of this chapter. The corporation shall issue a certificate of compliance to each taxpayer that the corporation determines is in compliance with the terms of the agreement between the taxpayer and the corporation.

**Sec. 17.** If the corporation determines that a taxpayer is not in compliance with the agreement required by section 14 of this section for a particular taxable year, the taxpayer is ineligible to receive an annual installment of the tax credit awarded under this chapter for that particular taxable year.

**Sec. 18.** A taxpayer may sell, assign, convey, or otherwise transfer a tax credit provided under this chapter.

**Sec. 19.** To receive the tax credit awarded under this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. For each taxable year for which the taxpayer wishes to receive an annual installment of the tax credit awarded under this chapter, the taxpayer shall submit to the department:

- (1) a copy of the taxpayer's certificate of compliance received under section 16 of this chapter for that taxable year; and
- (2) any other information that the department determines is necessary to calculate the amount of the annual installment.

**Sec. 20.** The office of energy and defense development shall provide any technical assistance requested by the corporation in the administration of this chapter.

**Sec. 21.** A tax credit awarded under this chapter may be claimed for a taxable year beginning after December 31, 2009.

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