

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1183 be amended to read as follows:

- 1 Page 4, after line 1, begin a new paragraph and insert:
- 2 "SECTION 3. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2011 (RETROACTIVE)]:
- 5 **Chapter 34. Small Business Job Creation Tax Credit**
- 6 **Sec. 1. As used in this chapter, "base employment period" of a**
- 7 **small business refers to the six (6) month period beginning January**
- 8 **1, 2009. However, if a small business began doing business in**
- 9 **Indiana after January 1, 2009, the term refers to the initial period**
- 10 **before January 1, 2011, not to exceed six (6) months, in which the**
- 11 **small business employed full-time employees in Indiana in the**
- 12 **trade or business of the small business.**
- 13 **Sec. 2. As used in this chapter, "department" refers to the**
- 14 **department of state revenue or the department of insurance,**
- 15 **whichever is obligated to administer the tax against which a tax**
- 16 **credit is applied.**
- 17 **Sec. 3. As used in this chapter, "full-time employee" means an**
- 18 **individual who:**
- 19 **(1) is employed for consideration for at least thirty-five (35)**
- 20 **hours each week, or renders any other standard of service**
- 21 **generally accepted by custom or specified by contract as**
- 22 **full-time employment; and**
- 23 **(2) earns income for service described in subdivision (1) that**
- 24 **is subject to withholding under IC 6-3 (before the application**

1 of any earned income tax credit) in an amount that is the
 2 equivalent of at least two hundred percent (200%) of the
 3 federal hourly minimum wage in effect during the week of
 4 employment.

5 **Sec. 4.** As used in this chapter, "qualified new employee" refers
 6 to a full-time employee described in section 14 of this chapter.

7 **Sec. 5.** As used in this chapter, "small business" refers to a small
 8 business (as defined in IC 5-28-2-6) that was in existence and
 9 employed full-time employees in Indiana in the trade or business
 10 of the small business before January 1, 2011.

11 **Sec. 6.** As used in this chapter, "state tax liability" means a
 12 taxpayer's total tax liability that is incurred under:

- 13 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 14 (2) IC 27-1-18-2 (the insurance premiums tax); and
- 15 (3) IC 6-5.5 (the financial institutions tax);

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

19 **Sec. 7.** As used in this chapter, "tax credit" refers to a tax credit
 20 granted by this chapter against state tax liability.

21 **Sec. 8.** As used in this chapter, "taxpayer" means an individual
 22 or entity that has state tax liability.

23 **Sec. 9. (a)** This section applies only to taxable years beginning
 24 after December 31, 2010, and before January 1, 2014.

25 **(b)** Subject to this chapter, a small business that employs a
 26 qualified new employee in Indiana in a taxable year is eligible for
 27 a tax credit against the state tax liability imposed against the small
 28 business for the taxable year if, on average, the small business
 29 employed a greater number of full-time employees in Indiana in
 30 the taxable year than the small business employed in Indiana, on
 31 average, in the small business's base employment period.

32 **Sec. 10.** The amount of the tax credit to which a small business
 33 is entitled in a taxable year is equal to the lesser of the following:

34 (1) Three thousand dollars (\$3,000) multiplied by the lesser
 35 of:

36 (A) the average number of qualified new employees that
 37 the small business employed in Indiana during the taxable
 38 year in the trade or business of the small business; or

39 (B) the average number of additional full-time employees
 40 that the small business employed in Indiana in the trade or
 41 business of the small business during the taxable year in
 42 excess of the average number of full-time employees that
 43 the small business employed in Indiana in the trade or
 44 business of the small business during the small business's
 45 base employment period.

46 (2) One hundred thousand dollars (\$100,000).

47 However, if the taxable year of the small business is less than

1 twelve (12) months, the three thousand dollar (\$3,000) and one
2 hundred thousand dollar (\$100,000) amounts are reduced in
3 proportion to the amount by which the taxable year of the small
4 business is shortened.

5 Sec. 11. (a) If the amount of a tax credit to which a small
6 business is entitled in a taxable year exceeds the small business's
7 state tax liability for that taxable year, the small business may
8 carry the excess over to not more than three (3) subsequent taxable
9 years. The amount of the credit carryover from a taxable year shall
10 be reduced to the extent that the carryover is used by the small
11 business to obtain a credit under this chapter for any subsequent
12 taxable year.

13 (b) A small business is not entitled to a carryback or refund of
14 any unused credit.

15 Sec. 12. If a small business is a pass through entity that does not
16 have state tax liability against which a tax credit may be applied,
17 a shareholder, partner, fiduciary, or member of the pass through
18 entity is entitled to a tax credit equal to:

19 (1) the tax credit that the pass through entity would be
20 entitled to for the taxable year if the pass through entity were
21 a taxpayer; multiplied by

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

25 Sec. 13. To receive a tax credit, a taxpayer must claim the credit
26 on the taxpayer's annual state tax return or returns in the manner
27 prescribed by the department. The taxpayer shall maintain the
28 records required by the department for the period specified by the
29 department to substantiate the taxpayer's eligibility for a tax
30 credit.

31 Sec. 14. To be a qualified new employee in a particular taxable
32 year, an individual must meet all of the following criteria:

33 (1) Have been initially hired into a position as a full-time
34 employee by the small business for the first time after
35 December 31, 2010.

36 (2) Be, at the time the small business initially employs the
37 individual after December 31, 2010, one or both of the
38 following:

39 (A) An individual who is receiving state or federal
40 unemployment insurance benefits or has exhausted the
41 individual's eligibility for state or federal unemployment
42 insurance benefits since last becoming unemployed.

43 (B) A former member of the military services of the United
44 States who served on active duty in any branch of the
45 armed forces of the United States or National Guard and
46 who at no time received a discharge or separation under
47 other than honorable conditions, except corrected

1 separation or discharge to read "honorable" as evidenced
 2 by appropriate records presented from the United States
 3 Department of Defense or appropriate branch of the
 4 military service.

5 (3) Was not employed by:
 6 (A) a related member (as defined in IC 6-3.1-13-8) of the
 7 small business; or
 8 (B) another business entity that would be a related member
 9 (as defined in IC 6-3.1-13-8) of the small business if the
 10 other entity were a corporation;
 11 within twelve (12) months of being initially employed by the
 12 small business.

13 (4) Is not a child, grandchild, parent, or spouse (other than a
 14 spouse who is legally separated from the individual) of any
 15 individual:

16 (A) who is an employee of the small business; or
 17 (B) who has a direct or an indirect ownership interest of at
 18 least five percent (5%) in the profits, capital, or value of:
 19 (i) the small business;
 20 (ii) a related member (as defined in IC 6-3.1-13-8) of the
 21 small business; or
 22 (iii) another business entity that would be a related
 23 member (as defined in IC 6-3.1-13-8) of the small
 24 business if the other entity were a corporation.

25 For purposes of this subdivision, an ownership interest shall
 26 be determined in accordance with Section 1563 of the Internal
 27 Revenue Code and regulations prescribed under Section 1563
 28 of the Internal Revenue Code.

29 **Sec. 15.** The tax credit to which a taxpayer would otherwise be
 30 entitled under this chapter in a taxable year is reduced by the sum
 31 of the following tax credits received for the same qualified new
 32 employee:

33 (1) The economic development for a growing economy tax
 34 credits (IC 6-3.1-13) allowable to the taxpayer in a taxable
 35 year and attributable to the same employee for which a tax
 36 credit would otherwise be granted under this chapter.
 37 (2) The Hoosier business investment tax credits (IC 6-3.1-26)
 38 allowable to the taxpayer in a taxable year and attributable to
 39 the same employee for which a tax credit would otherwise be
 40 granted under this chapter.
 41 (3) The amount of federal or state training grants used in the
 42 taxable year to train an employee for which a tax credit would
 43 otherwise be granted under this chapter.

44 **Sec. 16.** A small business (or if section 12 of this chapter applies,
 45 a shareholder, partner, or member of a small business) forfeits fifty
 46 percent (50%) of the amount of the tax credits attributable to the
 47 employment of a qualified new employee if, within eighteen (18)

- 1 months after the qualified new employee was initially hired:
 2 (1) the qualified new employee is terminated, laid off, or
 3 otherwise reclassified to a position that is not a full-time
 4 employment position with the small business; or
 5 (2) the position created for the qualified new employee is
 6 eliminated.
- 7 For purposes of this section, the replacement, within a reasonable
 8 time as determined by the department, of a qualified new employee
 9 with another qualified new employee shall be treated as continuous
 10 employment of a qualified new employee from the date of the
 11 hiring or rehiring of the initial qualified new employee.
- 12 **Sec. 17.** The amount due to the department from a forfeiture
 13 under section 16 of this chapter shall be treated as due to the state
 14 on the date the taxpayer's annual return or informational return
 15 is due for the taxable year in which the reduction in employment
 16 occurred.
- 17 **Sec. 18. (a)** For purposes of this chapter, employment levels
 18 shall be determined using the total number of employees reported
 19 by the small business on the quarterly payroll report submitted by
 20 the small business to the department of workforce development.
 21 The department of workforce development shall give the
 22 information to the department on the schedule and in the form
 23 requested by the department.
- 24 **(b)** A small business shall use the method prescribed by the
 25 department to determine the average number of full-time
 26 employees or qualified new employees that the small business
 27 employed during a period.
- 28 **Sec. 19.** The department may adopt rules under IC 4-22-2,
 29 including rules adopted in the manner provided for the adoption
 30 of emergency rules under IC 4-22-2-37.1, to implement this
 31 chapter.
- 32 **Sec. 20.** This chapter expires January 1, 2020.
 33 SECTION 4. An emergency is declared for this act."
 34 Renumber all SECTIONS consecutively.
 (Reference is to HB 1183 as printed January 25, 2011.)

Representative Reske