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WITHDRAWN	Noes _____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

HOUSE MOTION ____

MR. SPEAKER:

I move that House Bill 1251 be amended to read as follows:

Page 3, after line 14, begin a new paragraph and insert:

"SECTION 2. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]:

Chapter 34. Small Business Job Creation Tax Credit

Sec. 1. As used in this chapter, "base employment period" of a small business refers to the six (6) month period beginning January 1, 2009. However, if a small business began doing business in Indiana after January 1, 2009, the term refers to the initial period before January 1, 2011, not to exceed six (6) months, in which the small business employed full-time employees in Indiana in the trade or business of the small business.

Sec. 2. As used in this chapter, "department" refers to the department of state revenue or the department of insurance, whichever is obligated to administer the tax against which a tax credit is applied.

Sec. 3. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for consideration for at least thirty-five (35) hours each week, or renders any other standard of service generally accepted by custom or specified by contract as full-time employment; and

(2) earns income for service described in subdivision (1) that is subject to withholding under IC 6-3 (before the application

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

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

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

Sec. 6. 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. 7. As used in this chapter, "tax credit" refers to a tax credit granted by this chapter against state tax liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Be, at the time the small business initially employs the individual after December 31, 2010:

(A) an individual who is receiving state or federal unemployment insurance benefits or has exhausted the individual's eligibility for state or federal unemployment insurance benefits since last becoming unemployed; or

(B) a former member of the military services of the United States who served on active duty in any branch of the armed forces of the United States or National Guard and who at no time received a discharge or separation under other than honorable conditions, except corrected separation or discharge to read "honorable" as evidenced

by appropriate records presented from the United States Department of Defense or appropriate branch of the military service;

or both.

(3) Was not employed by:

(A) a related member (as defined in IC 6-3.1-13-8) of the small business; or

(B) another business entity that would be a related member (as defined in IC 6-3.1-13-8) of the small business if the other entity were a corporation;

within twelve (12) months of being initially employed by the small business.

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

(A) who is an employee of the small business or

(B) who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of:

(i) the small business;

(ii) a related member (as defined in IC 6-3.1-13-8) of the small business; or

(iii) another business entity that would be a related member (as defined in IC 6-3.1-13-8) of the small business if the other entity were a corporation.

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

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

(1) The economic development for a growing economy tax credits (IC 6-3.1-13) allowable to the taxpayer in a taxable year and attributable to the same employee for which a tax credit would otherwise be granted under this chapter.

(2) The Hoosier business investment tax credits (IC 6-3.1-26) allowable to the taxpayer in a taxable year and attributable to the same employee for which a tax credit would otherwise be granted under this chapter.

(3) The amount of federal or state training grants used in the taxable year to train an employee for which a tax credit would otherwise be granted under this chapter.

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

months after the qualified new employee was initially hired:

(1) the qualified new employee is terminated, laid off, or otherwise reclassified to a position that is not a full-time employment position with the small business; or

(2) the position created for the qualified new employee is eliminated.

For purposes of this section, the replacement, within a reasonable time as determined by the department, of a qualified new employee with another qualified new employee shall be treated as continuous employment of a qualified new employee from the date of the hiring or rehiring of the initial qualified new employee.

Sec. 17. The amount due to the department from a forfeiture under section 16 of this chapter shall be treated as due to the state on the date the taxpayer's annual return or informational return is due for the taxable year in which the reduction in employment occurred.

Sec. 18. (a) For purposes of this chapter, employment levels shall be determined using the total number of employees reported by the small business on the quarterly payroll report submitted by the small business to the department of workforce development. The department of workforce development shall give the information to the department on the schedule and in the form requested by the department.

(b) A small business shall use the method prescribed by the department to determine the average number of full-time employees or qualified new employees that the small business employed during a period.

Sec. 19. The department may adopt rules under IC 4-22-2, including rules adopted in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1, to implement this chapter.

Sec. 20. This chapter expires January 1, 2020.

SECTION 3. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1251 as printed February 1, 2011.)

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Representative Reske