SENATE BILL No. 222

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-22-2-37.1; IC 6-3.1-34.

Synopsis: Transportation and logistics income tax credit. Provides an income tax credit for expenditures made by a taxpayer for one or more of the following purposes: (1) Implementing homeland security measures to comply with federal homeland security requirements, as certified by the department of homeland security. (2) Making improvements to real property located in Indiana that are related to constructing a new or modernizing an existing transportation or logistical distribution facility. (3) Improving the transportation of goods by highway, rail, water, or air. (4) Making warehouse upgrades or improving logistical distribution. Requires the department of homeland security in consultation with the department of state revenue to adopt rules to implement a certification process for homeland security expenditures. Provides that the credit is 50% of the expenditures made by the taxpayer during the taxable year. Limits the credit that may be claimed for a taxable year to the taxpayer's state tax liability for that taxable year. Allows the taxpayer to carryover any unused credit for nine years. Provides that the credit may not be refunded, carried back, or transferred to another taxpayer.

Effective: Upon passage; January 1, 2012.

Wyss, Hershman

January 5, 2011, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 222

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

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

SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.1-2010, SECTION 8, AS AMENDED BY P.L.35-2010, SECTION 2, AND AS AMENDED BY P.L.113-2010, SECTION 9, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by or other date provided by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, IC 4-33-4-14, *IC 4-33-22-12,* or IC 4-35-4-2.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

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(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.
(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.
(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-17-10-9.
(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.
(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34 (repealed).
(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33 (repealed).
(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).
(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) (repealed) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.
(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.
(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.
(30) A rule adopted by the Indiana finance authority:
(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;
(B) under IC 8-15-2-17.2(a)(10):
(i) establishing enforcement procedures; and
(ii) making assessments for failure to pay required tolls;
(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or
(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.
(31) An emergency rule adopted by the board of the Indiana health informatics corporation under IC 5-31-5-8.
~~*(32) An emergency rule adopted by the state athletic commission under IC 25-9-1-4.5.*~~
(32) ~~*(33)*~~ An emergency rule adopted by the department of child services under IC 31-25-2-21, IC 31-27-2-4, IC 31-27-4-2, or

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IC 31-27-4-3.

~~(34)~~ *(33)* An emergency rule adopted by the Indiana real estate commission under IC 25-34.1-2-5(15).

~~(35)~~ **(34)** *A rule adopted by the department of financial institutions under IC 24-4.4-1-101 and determined necessary to meet an emergency.*

(35) An emergency rule adopted by the department of homeland security to implement IC 6-3.1-34.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time that the rule is accepted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13),

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(a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

(m) A rule described in subsection (a)(5) or (a)(6) expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.

SECTION 2. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]:

Chapter 34. Transportation and Logistics Tax Credit

Sec. 1. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 2. As used in this chapter, "qualified expenditure" means

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an expenditure described in section 6 of this chapter.

Sec. 3. 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. 4. As used in this chapter, "taxpayer" means an individual, a corporation, a pass through entity, or other entity that has state tax liability.

Sec. 5. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability in a taxable year for making a qualified expenditure. An expenditure that:

(1) is used by the taxpayer for a special tax benefit or tax credit or other economic development incentive under any other law; or

(2) pertains to property owned by the taxpayer that:

(A) receives any other special tax benefit or economic development incentive under any other law, including a property tax abatement, deduction, or credit; or

(B) will be located in an allocation area;

is not a qualified expenditure and may not be used as the basis for the credit under this chapter.

(b) The amount of a taxpayer's credit under this chapter for a taxable year equals fifty percent (50%) of the qualified expenditure made by the taxpayer during that taxable year.

Sec. 6. For purposes of this chapter, a qualified expenditure is an expenditure for one (1) or more of the following purposes:

(1) Implementing a homeland security measure to comply with federal homeland security requirements, limited to the following:

(A) Gates, fencing, and checkpoints.

(B) Tank and grain elevator access restrictions.

(C) Tunnel emergency access restrictions.

(D) Security alarms.

(E) Lighting and motion sensors.

(F) Heavy duty locks.

(G) Valve locks for anhydrous ammonia nurse tanks.

(H) Employee security training.

A taxpayer must obtain the certification of the department of

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homeland security (IC 10-19-2-1) that an expenditure under this subdivision is a qualified expenditure for purposes of this chapter before claiming the tax credit. The department of homeland security in consultation with the department shall adopt rules, under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement a certification process for purposes of this subdivision.

(2) Making an improvement to real property located in Indiana that is related to constructing a new, or modernizing an existing, transportation or logistical distribution facility.

(3) Improving the transportation of goods on Indiana highways, limited to the following:

(A) Upgrading to terminal facilities that serve tractors (as defined in IC 9-13-2-180) and semitrailers (as defined in IC 9-13-2-164).

(B) Improving paved access to terminal facilities.

(C) Adding maintenance areas.

(D) Purchasing new shop equipment having a useful life of at least five (5) years, such as diagnostic equipment, oil delivery systems, air compressors, and truck lifts.

(4) Improving the transportation of goods by rail, limited to the following:

(A) Upgrading or building mainline, secondary, yard, and spur trackage.

(B) Upgrading or replacing bridges to obtain higher load bearing capability.

(C) Upgrading or replacing grade crossings to increase visibility for motorists, including improvements to roadway surfaces, signage and traffic signals, and signal system upgrades and replacements to meet Federal Railroad Administration Positive Train Control regulations.

(D) Upgrading fueling facilities, including upgrading fueling and sanding locomotives or tanks, pumps, piping, containment areas, track pans, lighting, and security.

(E) Upgrading team track facilities, including railroad owned warehouses, loading docks, and transfer stations for loading and unloading freight.

(F) Upgrading shop facilities, including upgrading structures, inspection pits, drop pits, cranes, employee fall protection, lighting, climate control, and break rooms.

(5) Improving the transportation of goods by water, limited to

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the following:

(A) Upgrading or replacing a permanent waterside dock.

(B) Upgrading or building a new terminal facility that serves waterborne transportation.

(C) Improving paved access to a waterborne terminal facility.

(D) Purchasing new equipment having a useful life of at least five (5) years, including diagnostic equipment, an oil delivery system, an air compressor, or a barge lift.

(6) Improving the transportation of goods by air, limited to the following:

(A) Upgrading or building a new cargo building, hangar, warehouse facility, freight forwarding facility, cross-dock distribution facility, or aircraft maintenance facility.

(B) Improving paved access to a terminal or cargo facility.

(C) Upgrading a fueling facility.

(7) Improving warehousing and logistical capabilities, limited to the following:

(A) Upgrading warehousing facilities, including upgrading loading dock doors and loading dock plates, fueling equipment, fueling installations, or dolly drop pads for trailers.

(B) Improving logistical distribution by purchasing new equipment, limited to the following:

(i) Picking modules (systems of racks, conveyor, and controllers).

(ii) Racking equipment.

(iii) Warehouse management systems, including scanning or coding equipment.

(iv) Security equipment.

(v) Temperature control and monitoring equipment.

(vi) Dock levelers and pallet levelers and inverters.

(vii) Conveyors and related controllers, scales, and like equipment.

(viii) Packaging equipment.

(ix) Moving, separating, sorting, and picking equipment.

Sec. 7. (a) If the amount the credit under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. However, the carryover period may not exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the

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qualified expenditure. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

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

(c) A taxpayer may not assign, convey, sell, or otherwise transfer the credit to any other taxpayer.

Sec. 8. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) 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. 9. To receive the credit provided by this chapter, a taxpayer must claim the credit in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit and for the determination of whether an expenditure is a qualified expenditure.

SECTION 3. [EFFECTIVE JANUARY 1, 2012] **(a) IC 6-3.1-34, as added by this act, applies to taxable years beginning after December 31, 2011.**

(b) This SECTION expires January 1, 2014.

SECTION 4. **An emergency is declared for this act.**

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