
HOUSE BILL No. 1363

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-1.7-2; IC 5-28-31.

Synopsis: Rural renewable energy project financing. Permits the following entities to loan money or guarantee a loan for a renewable energy production project: (1) the state excise police, gaming agent, gaming control officer, and conservation officers' retirement plan; (2) the public employees' retirement fund trust fund; (3) the pension trust of the state police department; (4) the Indiana state teachers' retirement fund; (5) the Indiana judges' retirement fund; (6) the police officers' and firefighters' pension and disability fund; (7) the Indiana economic development corporation; and (8) the Indiana finance authority. Provides that a renewable energy production project is a rural development project undertaken to produce, sustain production of, or increase production of electricity, fuel, steam, or biofuel from a renewable energy resource.

Effective: July 1, 2011.

Grubb, Truitt

January 18, 2011, read first time and referred to Committee on Utilities and Energy.

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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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HOUSE BILL No. 1363



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 5-10-1.7-2, AS AMENDED BY P.L.181-2006,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 2. (a) **As used in this section, "renewable
4 energy production project" has the meaning set forth in
5 IC 5-28-31-19.6.**

6 (b) In addition to any other investment power given to a board, a
7 board may invest as much of its trust funds as are not required for
8 current disbursements in **any of the following:**

9 (1) Mortgage-backed bonds or notes issued by the Indiana
10 housing and community development authority under IC 5-20-1.

11 (2) **Bonds or other obligations of the Indiana finance authority
12 or the Indiana economic development corporation for a
13 renewable energy production project.**

14 (3) **Guarantees of obligations or credit enhancement
15 obligations, or both, for a renewable energy production
16 project, including guarantees from the agricultural loan and
17 rural development project guarantee fund.**



1 **(4) Bonds, notes, or other valid obligations of the Indiana**
 2 **finance authority that have been issued in conjunction with**
 3 **the authority's acquisition, development, or improvement of**
 4 **property or other interests for a renewable energy production**
 5 **project.**

6 SECTION 2. IC 5-28-31-2.7 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2011]: **Sec. 2.7. As used in this chapter, "biofuel" means any of**
 9 **the following when produced from organic waste biomass**
 10 **described in section 19.7(a)(5) of this chapter:**

- 11 **(1) Methane.**
 12 **(2) Biodiesel.**
 13 **(3) Ethanol.**
 14 **(4) Biobutanol.**
 15 **(5) Hydrogen.**

16 SECTION 3. IC 5-28-31-19.5 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2011]: **Sec. 19.5. As used in this chapter,**
 19 **"renewable energy production enterprise" means a person**
 20 **engaged in producing, sustaining production of, or increasing**
 21 **production of electricity, fuel, steam, or biofuel from a renewable**
 22 **energy resource.**

23 SECTION 4. IC 5-28-31-19.6 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2011]: **Sec. 19.6. As used in this chapter,**
 26 **"renewable energy production project" means a rural**
 27 **development project undertaken to produce, sustain production of,**
 28 **or increase production of electricity, fuel, steam, or biofuel from a**
 29 **renewable energy resource.**

30 SECTION 5. IC 5-28-31-19.7 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2011]: **Sec. 19.7. (a) As used in this chapter,**
 33 **"renewable energy resource" means an alternative source of**
 34 **renewable energy, including the following:**

- 35 **(1) Energy from wind.**
 36 **(2) Solar energy.**
 37 **(3) Photovoltaic cells and panels.**
 38 **(4) Dedicated crops grown for energy production.**
 39 **(5) Organic waste biomass, including any of the following**
 40 **organic matter that is available on a renewable basis:**
 41 **(A) Agricultural crops.**
 42 **(B) Agricultural wastes and residues.**

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- 1 **(C) Wood and wood wastes, including the following:**
- 2 (i) **Wood residues.**
- 3 (ii) **Forest thinnings.**
- 4 (iii) **Mill residue wood.**
- 5 (iv) **Waste from clean construction and demolition.**
- 6 **(D) Animal wastes.**
- 7 **(E) Aquatic plants.**
- 8 **(6) Hydropower from existing dams.**
- 9 **(7) Fuel cells.**
- 10 **(8) Energy from waste to energy facilities producing steam**
- 11 **not used for the production of electricity.**

12 **(b) Except for energy described in subsection (a)(8), the term**
 13 **does not include energy from the incineration, burning, or heating**
 14 **of any of the following:**

- 15 **(1) Tires.**
- 16 **(2) General household, institutional, commercial, industrial**
 17 **lunchroom, office, or landscape waste.**
- 18 **(3) Treated or painted lumber.**

19 SECTION 6. IC 5-28-31-25, AS ADDED BY P.L.162-2007,
 20 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2011]: Sec. 25. It is found and declared that:

22 (1) There exists in Indiana an inadequate supply of affordable
 23 farm credit, ~~and~~ agricultural loan financing, **and renewable**
 24 **energy production project financing** at interest rates which are
 25 consistent with the needs of borrowers for farming, ~~and~~
 26 agricultural enterprises, **and renewable energy production**
 27 **enterprises**, which if not supplemented will make it difficult for
 28 farmers, ~~and other~~ agricultural enterprises, **and renewable**
 29 **energy production enterprises** to maintain or increase present
 30 employment levels and to maintain or increase crops, livestock,
 31 and business productivity, all of which will have an adverse effect
 32 upon the welfare of the citizens of Indiana and the economy of
 33 Indiana.

34 (2) There exists in particular in Indiana a need for affordable farm
 35 credit, and agricultural loan financing for new and young farmers,
 36 for small farmers, for family farm operations, and for farmers for
 37 whom loans in the conventional farm credit markets are either not
 38 available or not affordable at interest rates found in conventional
 39 farm credit markets. Alleviation of the problems described in this
 40 subdivision and subdivision (1) as they apply to the agricultural
 41 enterprises described in this ~~paragraph~~ **subdivision** is ~~the~~ **a**
 42 primary purpose of this chapter.

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(3) There also exists in particular in Indiana a need for affordable renewable energy production project financing for operators and owners for whom loans in the conventional credit markets are either not available or not affordable at interest rates found in conventional credit markets. Alleviation of the problems described in this subdivision and subdivision (1) as they apply to the renewable energy production projects is a primary purpose of this chapter.

~~(3)~~ **(4)** Such problems cannot be remedied through the operation of private enterprise alone, but can be alleviated through the creation of a governmental body to encourage the investment of private capital in the agricultural sector through the use of public financing as provided by this chapter for the purpose of making loans available at interest rates lower than those available in the conventional ~~farm~~ credit markets, and by coordinating and cooperating with farmers, ~~other~~ **renewable energy production enterprises**, and local communities, which is essential to alleviating these conditions and is in the public interest.

~~(4)~~ **(5)** Alleviating the conditions and problems by the encouragement of private investment through a governmental body is a public purpose and a use for which revenue bonds may be issued.

~~(5)~~ **(6)** The necessity for this chapter to protect the health, safety, morals, and general welfare of all the people of Indiana is declared as a matter of legislative determination.

SECTION 7. IC 5-28-31-32, AS ADDED BY P.L.162-2007, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 32. The agricultural loan and rural development project guarantee fund is established. The corporation shall use the guarantee fund as a nonlapsing, revolving fund for carrying out the provisions of the guarantee program. The corporation may expend money from the guarantee fund as the authority considers appropriate to carry out the purposes of this chapter and IC 4-4-11. The guarantee fund consists of the money appropriated to the guarantee fund by the general assembly, **money transferred to the guarantee fund under IC 5-10-1.7-2**, and money, property, and other things of value contributed to the guarantee fund by any other source. To this sum shall be charged those expenses of the corporation attributable and allocated by the corporation to the corporation's guarantee program, including interest, principal, and lease payments required by loan or lease defaults. To this sum shall be credited that income of the corporation

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1 attributable and allocated by the corporation to the corporation's
2 guarantee program, including guarantee premiums.

3 SECTION 8. IC 5-28-31-34, AS ADDED BY P.L.162-2007,
4 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]: Sec. 34. The conditions referred to in section 33 of this
6 chapter are as follows:

7 (1) No new or additional guarantee of a loan or lease under
8 section 33, 35, or 40 of this chapter may be entered into if the
9 guarantee would cause the outstanding aggregate guarantee
10 obligations with respect to all loans and leases guaranteed under
11 sections 33, 35, and 40 of this chapter to exceed eight (8) times
12 the amount of money in the guarantee fund.

13 (2) **This subdivision does not apply to a renewable energy
14 production project.** The amount of all guarantees by the
15 corporation of loans or leases to or for the benefit of any single
16 agricultural enterprise or rural development project may not
17 exceed three hundred thousand dollars (\$300,000), less the
18 outstanding aggregate principal balance under any loans made
19 and owed to the corporation under section 40 of this chapter to or
20 for the benefit of the enterprise or rural development project.

21 (3) A guarantee of a loan secured by either real estate or a real
22 estate lease may not exceed ninety percent (90%) of the unpaid
23 principal balance of the loan from time to time outstanding or
24 ninety percent (90%) of the amount of any lease payment, as
25 applicable, and the original principal amount of the loan or the
26 total amount of the lease payments, as applicable, may not exceed
27 ninety percent (90%) of the appraised fair market value of the real
28 estate.

29 (4) A guarantee of a loan secured by personal property or of a
30 personal property lease may not exceed seventy-five percent
31 (75%) of the unpaid principal balance of the loan from time to
32 time outstanding or seventy-five percent (75%) of the amount of
33 any lease payment, as applicable, and the original principal
34 amount of the loan or the total amount of the lease payments, as
35 applicable, may not exceed seventy-five percent (75%) of the
36 appraised fair market value of the personal property.

37 (5) A guarantee involving both real estate and personal property
38 may not exceed the percentage proportionate to each type of
39 property.

40 (6) To be eligible for a guarantee under this section, a loan or
41 lease must:

42 (A) be one that is to be made to and held by a lender or lessor

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- 1 approved by the corporation as responsible and able to service
- 2 the loan or lease properly;
- 3 (B) involve a principal obligation or lease payments, as
- 4 applicable, which may include initial service charges and
- 5 appraisal, inspection, and other fees approved by the
- 6 corporation;
- 7 (C) have a maturity or term satisfactory to the corporation but
- 8 in no case later than twenty (20) years after the date of the
- 9 guarantee;
- 10 (D) contain payment terms satisfactory to the corporation
- 11 requiring periodic payments by the developer or user,
- 12 including principal and interest payments, cost of local
- 13 property taxes and assessments, land lease rentals, if any,
- 14 insurance on the property, as applicable, and the guarantee
- 15 premiums that are fixed by the corporation; and
- 16 (E) contain terms and provisions with respect to property
- 17 insurance, repairs, alterations, payment of taxes and
- 18 assessments, default reserves, delinquency charges, default
- 19 remedies, anticipation of maturity, additional and secondary
- 20 liens, and other matters that the corporation prescribes.

21 SECTION 9. IC 5-28-31-35, AS ADDED BY P.L.162-2007,
 22 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2011]: Sec. 35. **(a) This section does not apply to a
 24 renewable energy production project.**

25 **(b)** The corporation may guarantee an unsecured loan for working
 26 capital purposes if the corporation determines, under criteria that the
 27 corporation establishes, that:

- 28 (1) the loan for working capital is for an agricultural enterprise or
- 29 a rural development project; and
- 30 (2) the loan for working capital will lead directly to increased
- 31 production or job creation or retention through sales of products
- 32 or provision of services to federal, state, or local government or
- 33 private business or individuals or through exports to foreign
- 34 markets.

35 The working capital loan guarantee may not exceed two hundred
 36 thousand dollars (\$200,000) for any single agricultural enterprise or
 37 rural development project and may be in addition to any other
 38 guarantees of the corporation under this section. The guaranteed terms
 39 must include a time limit for working capital loan guarantees that may
 40 not exceed eighteen (18) months. However, the guarantees are
 41 renewable. A working capital loan guarantee may not exceed eighty
 42 percent (80%) of the unpaid principal balance from time to time

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1 outstanding of the loan being guaranteed. The corporation may impose
 2 additional terms that the corporation considers appropriate for any
 3 particular agricultural enterprise or rural development project.

4 SECTION 10. IC 5-28-31-40, AS ADDED BY P.L.162-2007,
 5 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 40. To further the purposes of this chapter, and in
 7 addition to the corporation's other powers under this chapter, the
 8 corporation may, upon a written finding as described in section 33 of
 9 this chapter, also make direct loans from money in the guarantee fund
 10 to or for the benefit of any agricultural enterprise or rural development
 11 project upon the terms and conditions that the corporation prescribes.
 12 Loans made under this section are subject to the following conditions:

13 (1) No new or additional loan may be made if the loan:

14 (A) would cause the then outstanding aggregate guarantee
 15 obligations with respect to all loans and leases guaranteed
 16 under this section and sections 33 and 35 of this chapter to
 17 exceed eight (8) times the amount of money then in the
 18 guarantee fund; or

19 (B) would cause the then outstanding aggregate principal
 20 balance of all loans made under this section **to an agricultural**
 21 **enterprise or rural development project other than a**
 22 **renewable energy production enterprise** and then owing to
 23 the corporation to exceed twenty percent (20%) of the amount
 24 of money then in the guarantee fund.

25 (2) **This subdivision does not apply to a renewable energy**
 26 **production project.** The principal amount of a loan under this
 27 section to or for the benefit of an enterprise or rural development
 28 project may not exceed two hundred thousand dollars (\$200,000),
 29 less the then outstanding total guarantee obligations with respect
 30 to any loans or leases guaranteed under this section and sections
 31 33 and 35 of this chapter to or for the benefit of that enterprise or
 32 rural development project.

33 (3) With respect to any loan made under this section, a loan
 34 agreement with the corporation must contain the following terms:

35 (A) A requirement that the loan proceeds be used for specified
 36 purposes consistent with and in furtherance of the purposes of
 37 the corporation under this chapter.

38 (B) The term of the loan, which must be not later than twenty
 39 (20) years after the date of the loan.

40 (C) The repayment schedule.

41 (D) The interest rate or rates of the loan, which may include
 42 variations in the rate, but which may not be less than the

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1 amount necessary to cover all expenses of the corporation in
 2 making the loan.
 3 (E) Any other terms and provisions that the corporation
 4 requires.
 5 (4) Any loan agreement under this section may also contain a
 6 requirement that the loan be insured directly or indirectly by a
 7 loan insurer or be guaranteed by a loan guarantor and a
 8 requirement of any other type or types of security or collateral that
 9 the corporation considers to be reasonable or necessary.
 10 (5) A loan made under this section may be sold by the
 11 corporation, and the corporation may permit other lenders to
 12 participate in any loan made under this section, at the time or
 13 times and upon the terms and conditions that the corporation
 14 considers reasonable or necessary. A loan sold or in which other
 15 lenders participate may be guaranteed by the corporation upon
 16 terms and conditions established by the corporation.
 17 SECTION 11. IC 5-28-31-45, AS ADDED BY P.L.162-2007,
 18 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2011]: Sec. 45. (a) Before carrying out any of the powers
 20 granted under section 26, section 29, or sections 32 through 43 of this
 21 chapter, the corporation may adopt rules under IC 4-22-2 governing its
 22 activities authorized under this chapter, including rules relating to the
 23 following:
 24 (1) Procedures for the submission of requests or invitations and
 25 proposals for making loans to lenders and the investment in and
 26 purchase, assignment, and sale of loans.
 27 (2) The reinvestment by lenders of the proceeds or an equivalent
 28 amount, from any loan to lenders or the investment in or purchase
 29 by the corporation or the authority or the assignment or sale of
 30 loans to the corporation or the authority, in loans to provide
 31 agricultural enterprises or rural development projects.
 32 (3) The number of agricultural projects and rural development
 33 projects, location of the projects, and other characteristics of
 34 agricultural enterprises and rural development projects, including
 35 to the extent reasonably possible assurance that the agricultural
 36 enterprises or rural development projects to be financed by an
 37 issue of bonds or series of issues will improve employment
 38 conditions and enhance the welfare of persons in the agricultural
 39 sector, as determined by the corporation, to be financed directly
 40 or indirectly by the corporation and the authority under section
 41 26, section 29, or sections 32 through 43 of this chapter.
 42 (4) Rates, fees, charges, and other terms and conditions of

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1 originating or servicing loans in order to protect against
2 realization of an excessive financial return or benefit by the
3 originator or servicer.

4 (5) The type and amount of collateral or security to be provided
5 to assure repayment of loans made or guaranteed by the
6 corporation and the fees to be charged under sections 32 through
7 43 of this chapter.

8 (6) The type of collateral, payment bonds, performance bonds, or
9 other security to be provided for any loans made by a lender for
10 construction loans.

11 (7) The nature and amount of fees to be charged by the
12 corporation or the authority to provide for expenses and reserves
13 of the corporation or the authority.

14 (8) Standards and requirements for the allocation of available
15 money among lenders and the determination of the maturities,
16 terms, conditions, and interest rates for loans made, purchased,
17 sold, assigned, or committed under section 26, section 29, or
18 sections 32 through 43 of this chapter.

19 (9) Commitment requirements for agricultural financing by
20 lenders involving money provided directly or indirectly by the
21 corporation or the authority.

22 (10) Any other matters related to the duties or exercise of the
23 corporation's or the authority's powers or duties under this
24 chapter.

25 (b) In adopting rules governing its activities, the corporation shall
26 consider the following factors relative to eligibility of borrowers for
27 loans made or guaranteed under this chapter:

28 (1) The length of time any borrower has been engaged in the
29 business of agriculture or development.

30 (2) The net income of any borrower in the preceding year or
31 years.

32 (3) The net worth of any borrower.

33 (4) The availability or feasibility of alternative financing methods
34 for any borrower.

35 **(c) This subsection does not apply to a renewable energy
36 production project. The following entities may not be borrowers:**

37 **(1) A corporation that has more than ten (10) shareholders.**

38 **(2) A corporation that has any shareholder that is a
39 corporation, a subsidiary of a corporation, or a subsidiary of
40 a subsidiary of a corporation with more than ten (10)
41 shareholders.**

42 **(3) A partnership, joint venture, firm, limited liability**

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1 **company, or association that has any member who is a**
 2 **corporation, a subsidiary of a corporation, or a subsidiary of**
 3 **a subsidiary of a corporation with more than ten (10)**
 4 **shareholders.**
 5 ~~(c)~~ **(d) This subsection applies to a renewable energy production**
 6 **project.** The following entities may not be borrowers:
 7 (1) A corporation that has more than ~~ten (10)~~ **one hundred (100)**
 8 shareholders.
 9 (2) A corporation that has any shareholder that is a corporation,
 10 a subsidiary of a corporation, or a subsidiary of a subsidiary of a
 11 corporation with more than ~~ten (10)~~ **one hundred (100)**
 12 shareholders.
 13 (3) A partnership, joint venture, firm, limited liability company,
 14 or association that has any member who is a corporation, a
 15 subsidiary of a corporation, or a subsidiary of a subsidiary of a
 16 corporation with more than ~~ten (10)~~ **one hundred (100)**
 17 shareholders.

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