HB 1545-1— Filed 04/03/2013, 12:04

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1545, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 3, delete "P.L.133-2012," and insert "SEA 162-2013, SECTION 5,".

Page 3, line 4, delete "SECTION 48,".

Page 3, between lines 13 and 14, begin a new line block indented and insert:

"~~(8)~~ **(7)** IC 6-3.1-31.9.

~~(9)~~ **(8)** IC 6-3.1-33.".

Page 5, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 6. IC 6-2.5-5-47 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 47. A transaction involving petroleum based fuel is exempt from the state gross retail tax if the person acquires the fuel for use in powering an aircraft.**".

Page 11, delete lines 31 through 37.

Page 12, delete lines 23 through 30, begin a new line block indented and insert:

"**(9) a logistics investment, as described in section 8.5 of this chapter;**".

Page 12, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 26. IC 6-3.1-26-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: **Sec. 8.5. (a) For purposes of this chapter, a "logistics investment" means an expenditure for one (1) or more of the following purposes:**

(1) 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.

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

(A) Upgrading 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 new 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.

(3) 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.

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

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

(A) Upgrading or building a new cargo building, apron, 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.

(6) 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, conveyors, 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. A logistics investment does not include an expenditure for maintenance expenses.

SECTION 27. IC 6-3.1-26-14, AS AMENDED BY P.L.199-2005, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 14. The total amount of a tax credit claimed for a taxable year under this chapter is a percentage determined by the corporation, not to exceed:

(1) ten percent (10%), of the amount of a qualified investment made by the taxpayer in Indiana during that taxable year, **if the qualified investment is not a logistics investment; and**

(2) twenty-five percent (25%) of the amount of a qualified investment made by the taxpayer in Indiana during that taxable year, if the qualified investment is a logistics investment. For purposes of this subdivision, the amount of a qualified investment that is used to determine the credit is limited to the difference of:

(A) the qualified investments made by the taxpayer during the taxable year; minus

(B) one hundred five percent (105%) of the average annual qualified investments made by the taxpayer during the two (2) taxable years immediately preceding the taxable year for which the credit is being claimed. However, if the qualified investments for the earlier year of the two (2) year average is zero (0) and the taxpayer has not claimed the credit for a year that precedes that year, the taxpayer shall subtract only one hundred five percent (105%) of the amount of the qualified investments made during the taxable year immediately preceding the taxable year for which the credit is being claimed.

The taxpayer may carry forward any unused credit **as provided in section 15 of this chapter.**

SECTION 28. IC 6-3.1-26-15, AS AMENDED BY P.L.199-2005, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 15. (a) A taxpayer may carry forward an unused credit for the number of years determined by the corporation, not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment.

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified investment; and

(2) carry forward a remainder for one (1) or more different qualified investments;

in the same taxable year.

~~(d) The total amount of each tax credit claimed under this chapter may not exceed ten percent (10%) of the qualified investment for which the tax credit is claimed.~~

SECTION 29. IC 6-3.1-26-17, AS AMENDED BY P.L.4-2005, SECTION 106, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 17. A person that proposes a project to:

(1) create new jobs or increase wage levels in Indiana; **or**

(2) substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy, in the case of a logistics investment being claimed by the applicant;

may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The director shall prescribe the form of the application.

SECTION 30. IC 6-3.1-26-18, AS AMENDED BY P.L.1-2006, SECTION 143, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 18. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

(1) The applicant's project will:

(A) raise the total earnings of employees of the applicant in Indiana; **or**

(B) substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall

Indiana economy, in the case of a logistics investment being claimed by the applicant.

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.

(3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not raising the total earnings of **the applicant's** employees in Indiana, **or other employees in Indiana in the case of a logistics investment being claimed by the applicant.**

(4) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(5) The credit is not prohibited by section 19 of this chapter.

(6) **In the case of a qualified investment that is not being claimed as a logistics investment by the applicant,** the average wage that will be paid by the taxpayer to its employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

SECTION 31. IC 6-3.1-26-20, AS AMENDED BY P.L.4-2005, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 20. **(a)** The corporation shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the corporation shall grant a credit only for the amount of the qualified investment that is directly related to:

(1) expanding the workforce in Indiana; **or**

(2) substantially enhancing the logistics industry and improving the overall Indiana economy.

(b) The total amount of credits that the corporation may approve under this chapter for a state fiscal year for all taxpayers for all qualified investments is:

(1) fifty million dollars ($50,000,000) for credits based on a qualified investment that is not being claimed as a logistics investment; and

(2) ten million dollars ($10,000,000) for credits based on a

qualified investment that is being claimed as a logistics investment.

(c) A person that desires to claim a tax credit for a qualified investment shall file with the department, in the form that the department may prescribe, an application:

(1) stating separately the amount of the credit awards for qualified investments that have been granted to the taxpayer by the corporation that will be claimed as a credit that is covered by:

(A) subsection (b)(1); and

(B) subsection (b)(2);

(2) stating separately the amount sought to be claimed as a credit that is covered by:

(A) subsection (b)(1); and

(B) subsection (b)(2); and

(3) identifying whether the credit will be claimed during the state fiscal year in which the application is filed or the immediately succeeding state fiscal year.

(d) The department shall separately record the time of filing of each application for a credit award for a qualified investment covered by subsection (b)(1) and for a qualified investment covered by subsection (b)(2) and shall, except as provided in subsection (e), approve the credit to the taxpayer in the chronological order in which the application is filed in the state fiscal year. The department shall promptly notify an applicant whether, or the extent to which, the tax credit is allowable in the state fiscal year proposed by the taxpayer.

(e) If the total credit awards for qualified investments that are covered by:

(1) subsection (b)(1); and

(2) subsection (b)(2);

including carryover credit awards covered by each subsection for a previous state fiscal year, equal the maximum amount allowable in the state fiscal year, an application for such a credit award that is filed later for that same state fiscal year may not be granted by the department. However, if an applicant for which a credit has been awarded and applied for with the department fails to claim the credit, an amount equal to the credit previously applied for but

not claimed may be allowed to the next eligible applicant or applicants until the total amount has been allowed.

SECTION 32. IC 6-3.1-26-21, AS AMENDED BY P.L.4-2005, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 21. The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, the average wage of all employees at the location where the qualified investment is made, **if the qualified investment is not being claimed as a logistics investment by the applicant,** and any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) **This subdivision applies only to a qualified investment that is not being claimed as a logistics investment by the applicant.** A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees in each taxable year that a tax credit is available that equals at least one

hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of its useful life for federal income tax purposes or ten (10) years.

(11) **This subdivision applies only to a qualified investment that is not being claimed as a logistics investment by the applicant.** A requirement that the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the corporation determines are appropriate.

SECTION 33. IC 6-3.1-26-25, AS AMENDED BY P.L.4-2005, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 25. **(a)** On a biennial basis, the corporation shall provide for an evaluation of the tax credit program. The evaluation must include an assessment of the effectiveness of the program in creating new jobs and increasing wages in Indiana and of the revenue impact of the program and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each odd-numbered year. The report provided to the president pro tempore of the senate and the speaker of the house of representatives must be in an electronic format under IC 5-14-6.

(b) The department shall report, not later than December 15 each year, to the budget committee concerning the use of the credit for logistic investments under this chapter. The report must include the following with regard to the previous state fiscal year for logistics investments:

(1) Summary information regarding the taxpayers and the use of the credit, including the amount of credits approved, the number of taxpayers applying for the credit and claiming the credit, the number of employees who are employed in Indiana by the taxpayers claiming the credit, the amount and type of new qualified expenditures for which the credit was granted, the total dollar amount of new credits claimed and the average amount of the credit claimed per taxpayer, the amount of credits to be carried forward to a subsequent taxable year, and the percentage of the total credits claimed as compared to the total adjusted gross income of all the taxpayers claiming the credit.

(2) The name and address of each taxpayer claiming the credit and the amount of the credit applied for by and granted to each taxpayer.".

Delete page 13.

Page 14, delete lines 1 through 26.

Page 17, after line 28, begin a new paragraph and insert:

"SECTION 37. [EFFECTIVE JANUARY 1, 2014] **(a) IC 6-3.1-26-8, IC 6-3.1-26-8.5, IC 6-3.1-26-14, IC 6-3.1-26-17, IC 6-3.1-26-18, IC 6-3.1-26-20, IC 6-3.1-26-21, and IC 6-3.1-26-25, all as amended by this act, apply to taxable years beginning after December 31, 2013.**

(b) This SECTION expires January 1, 2017.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1545 as printed February 18, 2013.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 3.

Hershman **Chairperson**