



Reprinted
March 23, 2005

ENGROSSED
SENATE BILL No. 378

DIGEST OF SB 378 (Updated March 22, 2005 6:33 pm - DI 58)

Citations Affected: IC 5-28; IC 6-3.1; noncode.

Synopsis: Biodiesel, ethanol, and coal gasification. Provides that the Indiana economic development corporation reviews and approves applications for the biodiesel, blended biodiesel, and ethanol income tax credits. Provide standards that the corporation must apply. Creates a \$20,000,000 overall cap for the biodiesel, blended biodiesel, and (Continued next page)

Effective: January 1, 2005 (retroactive); upon passage; January 1, 2006.

**Weatherwax, Kenley, Waterman,
Heinold, Hershman, Jackman, Hume,
Skinner, Landske, Alting**
(HOUSE SPONSORS — WOODRUFF, HEIM, STILWELL, BORDERS,
DAVIS, THOMAS)

January 11, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
February 24, 2005, amended, reported favorably — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.
March 1, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 10, 2005, read first time and referred to Committee on Ways and Means.
March 17, 2005, amended, reported — Do Pass.
March 22, 2005, read second time, amended, ordered engrossed.

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ethanol producer credits. Allows the corporation to allocate the maximum credits for all taxpayers for all taxable years so long as each credit has a cap of at least \$4,000,000. Establishes a credit cap for a particular producer at \$3,000,000 for all taxable years but allows the Indiana economic development corporation to increase this cap to \$5,000,000. Allows credit carryovers for six taxable years. Provides for the expiration of the blended biodiesel retailer credit as of January 1, 2007. Extends the blended diesel retail sales tax credits to dealers that distribute blended diesel at retail by a means other than a metered pump. Provides a tax credit for a taxpayer who places into service an integrated coal gasification powerplant. Requires the taxpayer to enter an agreement with the economic development corporation requiring the taxpayer to use Indiana coal and satisfy other requirements relating to the operation of the powerplant. Provides for allocating the credit among co-owners of a integrated coal gasification powerplant or owners of a pass-through entity. Corrects an internal reference. Makes other related changes.

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Reprinted
March 23, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 378

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

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

1 SECTION 1. IC 5-28-6-3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3. (a) The general
4 assembly declares that the opportunity for the participation of
5 underutilized small businesses, especially women and minority
6 business enterprises, in the biodiesel and ethanol production
7 industries is essential if social and economic parity is to be obtained
8 by women and minority business persons and if the economy of
9 Indiana is to be stimulated as contemplated by this section,
10 IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this
11 chapter is encouraged to purchase goods and services from
12 underutilized small businesses, especially women and minority
13 business enterprises.**

14 **(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply
15 throughout this section. A term used in this section that is defined
16 in both IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:**

17 **(1) IC 6-3.1-27 whenever this section applies to the**

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1 certification of a person for a credit under IC 6-3.1-27; and
 2 (2) IC 6-3.1-28 whenever this section applies to the
 3 certification of a person for a credit under IC 6-3.1-28.
 4 In addition, as used in this section, "person" refers to a taxpayer
 5 or a pass through entity.
 6 (c) As used in this section, "minority" means a member of a
 7 minority group (as defined in IC 4-13-16.5-1).
 8 (d) As used in this section, "minority business enterprise" has
 9 the meaning set forth in IC 4-13-16.5-1.
 10 (e) As used in this section, "women's business enterprise" has
 11 the meaning set forth in IC 4-13-16.5-1.3.
 12 (f) A person that:
 13 (1) begins construction of a facility or an expansion of a
 14 facility for the production of biodiesel, blended biodiesel, or
 15 ethanol in Indiana after February 28, 2005; and
 16 (2) wishes to claim a tax credit with respect to that facility or
 17 the expansion of a facility under any combination of
 18 IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;
 19 must apply to the corporation for a determination of the person's
 20 eligibility for the tax credit.
 21 (g) Subject to this section, the corporation shall issue to each
 22 qualifying applicant a certification that:
 23 (1) certifies the person as eligible for the tax credits for which
 24 the person applied;
 25 (2) identifies the facilities covered by the certification; and
 26 (3) allocates to the person the lesser of:
 27 (A) the maximum allowable credit for which the person is
 28 eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or
 29 IC 6-3.1-28-11; or
 30 (B) a credit equal to the level of production demonstrated
 31 as economically viable under the business plan submitted
 32 to the corporation by the person.
 33 (h) To qualify for certification under subsection (g), a person
 34 must do the following:
 35 (1) Submit an application for the credit on the forms and in
 36 the manner prescribed by the corporation for the credit that
 37 is the subject of the application.
 38 (2) Demonstrate through a business plan and other
 39 information presented to the corporation that the level of
 40 production proposed by the person is feasible and
 41 economically viable. In making a determination under this
 42 subdivision, the corporation shall consider:

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- 1 (A) whether the person is sufficiently capitalized to
- 2 complete the project;
- 3 (B) the person's credit rating;
- 4 (C) whether the person has sufficient technical expertise to
- 5 build and operate a facility; and
- 6 (D) other relevant financial information as determined by
- 7 the corporation.

8 (i) The corporation shall record the time of filing of each
 9 application submitted under this section. The corporation shall
 10 grant certifications under this section to qualifying applicants in
 11 the chronological order in which the applications for the same type
 12 of credit are filed until the maximum allowable credit for that type
 13 of credit is fully allocated.

14 (j) The corporation may terminate a certification or reduce an
 15 allocation of a credit granted under this section only if the
 16 corporation determines, after a hearing, that the person granted
 17 the certification or allocation has failed to:

- 18 (1) substantially comply with the business plan that is the
- 19 basis for the certification or allocation; or
- 20 (2) submit the information needed by the corporation to
- 21 determine whether the person has substantially complied with
- 22 the business plan that is the basis of the certification or
- 23 allocation.

24 If an allocation of a credit is terminated or reduced, the unused
 25 credit becomes available for allocation to other qualifying
 26 applicants in the chronological order in which the applications for
 27 the same type of credit are filed until the maximum allowable
 28 credit for that type of credit is fully allocated. The corporation may
 29 approve an amendment to a business plan or a transfer of a
 30 certificate of eligibility in conformity with the terms and conditions
 31 specified by the corporation in rules adopted by the corporation
 32 under IC 4-22-2.

33 (k) The corporation shall give the department of state revenue
 34 written notice of each action taken under this section.

35 SECTION 2. IC 6-3.1-27-2.5 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 2.5. As**
 38 **used in this chapter, "corporation" refers to the Indiana economic**
 39 **development corporation.**

40 SECTION 3. IC 6-3.1-27-3.2 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3.2. As**

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1 used in this chapter, "distribute at retail" means to sell or
2 otherwise distribute for consideration to an end user in Indiana.

3 SECTION 4. IC 6-3.1-27-3.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3.5. As**
6 **used in this chapter, "facility" refers to a facility that is located in**
7 **Indiana and is for the production of:**

- 8 (1) biodiesel;
9 (2) blended biodiesel that is blended with biodiesel produced
10 at a facility located in Indiana; or
11 (3) both biodiesel and blended biodiesel, as described in
12 subdivision (2).

13 SECTION 5. IC 6-3.1-27-8 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
15 **Sec. 8. (a) Subject to section 9.5 of this chapter, a taxpayer that has**
16 **been certified by the corporation as eligible for a credit under this**
17 **section and** produces biodiesel at a facility located in Indiana is
18 entitled to a credit against the taxpayer's state tax liability equal to the
19 product of:

- 20 (1) one dollar (\$1); multiplied by
21 (2) the number of gallons of biodiesel:
22 (A) produced at the Indiana facility during the taxable year;
23 and
24 (B) used to produce blended biodiesel.

25 (b) The credit provided by this section shall be reduced by any
26 credit or subsidy that the taxpayer is entitled to receive from the federal
27 government for the production of biodiesel by the taxpayer.

28 (c) (b) The total amount of credits allowed a taxpayer (or, if the
29 person producing the biodiesel is a pass through entity, the
30 shareholders, partners, or members of the pass through entity)
31 under this section may not exceed ~~one~~ **three** million dollars
32 (~~\$1,000,000~~) (**\$3,000,000**) for ~~all taxpayers and~~ all taxable years.

33 SECTION 6. IC 6-3.1-27-9 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
35 **Sec. 9. (a) Subject to section 9.5 of this chapter, a taxpayer that has**
36 **been certified by the corporation as eligible for a credit under this**
37 **section and** produces blended biodiesel at a facility located in Indiana
38 is entitled to a credit against the taxpayer's state tax liability equal to
39 the product of:

- 40 (1) two cents (\$0.02); multiplied by
41 (2) the number of gallons of blended biodiesel:
42 (A) produced at the Indiana facility; and

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1 (B) blended with biodiesel produced at a facility located in
2 Indiana.

3 (b) The credit provided by this section shall be reduced by any
4 credit or subsidy that the taxpayer is entitled to receive from the federal
5 government for the production of blended biodiesel by the taxpayer.

6 (c) (b) The total amount of credits allowed a taxpayer (or, if the
7 person producing the blended biodiesel is a pass through entity, the
8 shareholders, partners, or members of the pass through entity)
9 under this section may not exceed ~~one~~ **three** million dollars
10 (~~\$1,000,000~~) **(\$3,000,000)** for all taxpayers and all taxable years.

11 SECTION 7. IC 6-3.1-27-9.5 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 9.5. The**
14 **total amount of credits allowed under:**

- 15 (1) section 8 of this chapter;
 - 16 (2) section 9 of this chapter; and
 - 17 (3) IC 6-3.1-28;
- 18 may not exceed twenty million dollars (\$20,000,000) for all
19 taxpayers and all taxable years. The corporation shall determine
20 the maximum allowable amount for each type of credit, which
21 must be at least four million dollars (\$4,000,000) for each credit.

22 SECTION 8. IC 6-3.1-27-10 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
24 Sec. 10. (a) A taxpayer that:

- 25 (1) is a dealer; and
- 26 (2) operates a service station in Indiana at which **distributes at**
27 **retail** blended biodiesel is sold and dispensed through a metered
28 **pump** in a taxable year;

29 is entitled to a credit against the taxpayer's state tax liability.

30 (b) The amount of the credit allowed under this section is the
31 product of:

- 32 (1) one cent (\$0.01); multiplied by
- 33 (2) the total number of gallons of blended biodiesel ~~sold and~~
34 **dispensed distributed at retail in a taxable year.** ~~through all the~~
35 ~~metered pumps located at a service station described in~~
36 ~~subsection (a)(2).~~

37 (c) The credit allowed under this section must be computed
38 separately for each service station operated by the taxpayer that meets
39 the requirements of subsection (a)(2).

40 (d) (c) The total amount of credits allowed under this section may
41 not exceed one million dollars (\$1,000,000) for all taxpayers and all
42 taxable years.

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1 (d) A credit under this section may not be taken for blended
2 biodiesel distributed at retail after December 31, 2006.

3 SECTION 9. IC 6-3.1-27-12 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 12. (a) If the
5 amount of the credit determined under this chapter for a taxpayer in a
6 taxable year exceeds the taxpayer's state tax liability for that taxable
7 year, the taxpayer may carry over the excess to the following taxable
8 years. The amount of the credit carryover from a taxable year shall be
9 reduced to the extent that the carryover is used by the taxpayer to
10 obtain a credit under this chapter for any subsequent taxable year. A
11 credit may not be carried forward for more than six (6) taxable
12 years following the taxable year in which the taxpayer was first
13 entitled to claim the credit.

14 (b) A taxpayer is not entitled to a carryback or refund of any unused
15 credit. A taxpayer may not sell, assign, convey, or otherwise
16 transfer the tax credit provided by this chapter.

17 SECTION 10. IC 6-3.1-27-13 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
19 Sec. 13. To receive the credit provided by this chapter, a taxpayer must
20 do the following:

- 21 (1) Claim the credit on the taxpayer's state tax return or returns in
22 the manner prescribed by the department. ~~The taxpayer shall~~
- 23 (2) Provide a copy of the certificate of the corporation finding:
 - 24 (A) that the taxpayer; or
 - 25 (B) if the taxpayer is a shareholder, partner, or member of
26 a pass through entity, that the pass through entity;
27 is eligible for the credit under IC 5-28-6-3.
- 28 (3) Submit to the department proof of all information that the
29 department determines is necessary for the calculation of the
30 credit provided by this chapter.

31 The department may require a pass through entity to provide the
32 informational reports that the department determines necessary
33 for the department to calculate the percentage of a credit provided
34 by this chapter to which a shareholder, partner, or member of the
35 pass through entity is entitled.

36 SECTION 11. IC 6-3.1-28-1 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
38 Sec. 1. As used in this chapter, ~~"board"~~ "corporation" refers to the
39 Indiana recycling and energy development board economic
40 development corporation created by ~~IC 4-23-5.5-2~~ IC 5-28-3-1.

41 SECTION 12. IC 6-3.1-28-7 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

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1 Sec. 7. Subject to **IC 6-3.1-27-9.5** and section 11 of this chapter, a
 2 taxpayer that **has been certified by the corporation as eligible for a**
 3 **credit under this section and** produces ethanol at a facility is entitled
 4 to a credit against the taxpayer's state tax liability equal to the product
 5 of:

- 6 (1) twelve and one-half cents (\$.125); multiplied by
 7 (2) the number of gallons of ethanol produced at the Indiana
 8 facility.

9 SECTION 13. IC 6-3.1-28-10 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 11 Sec. 10. To receive the credit provided by this chapter, a taxpayer must
 12 do the following:

- 13 (1) Claim the credit on the taxpayer's state tax return or returns in
 14 the manner prescribed by the department.
 15 (2) Provide a copy of the ~~board's~~ **corporation's** certificate
 16 finding:

17 (A) that the ~~facility taxpayer~~; or
 18 (B) **if the taxpayer is a shareholder, partner, or member of**
 19 **a pass through entity, that the pass through entity;**
 20 is a ~~qualified facility~~ **eligible for the credit** under ~~IC 4-23-5.5-17.~~
 21 **IC 5-28-6-3.**

- 22 (3) Submit to the department proof of all information that the
 23 department determines is necessary for the calculation of the
 24 credit provided by this chapter.

25 **The department may require a pass through entity to provide the**
 26 **informational reports that the department determines necessary**
 27 **for the department to calculate the percentage of the credit**
 28 **provided by this chapter to which a shareholder, partner, or**
 29 **member of the pass through entity is entitled.**

30 SECTION 14. IC 6-3.1-28-11 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 32 Sec. 11. (a) The total amount of credits allowed a taxpayer (**or, if the**
 33 **person producing the ethanol is a pass through entity, the**
 34 **shareholders, partners, or members of the pass through entity)**
 35 under this chapter may not exceed a total of ~~five~~ **three** million dollars
 36 (~~\$5,000,000~~) **(\$3,000,000)** for all taxable years.

37 (b) **Notwithstanding subsection (a) of this section, the total**
 38 **amount of credits allowed a taxpayer (or, if the person producing**
 39 **ethanol is a pass through entity, the shareholders, partners, or**
 40 **members of the pass through entity) may increase to an amount**
 41 **not to exceed a total of five million dollars (\$5,000,000) for all**
 42 **taxable years with the prior approval of the Indiana economic**

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development corporation.

(b) The total amount of credits allowed under this chapter may not exceed ten million dollars (\$10,000,000) for all taxpayers and all taxable years.

SECTION 15. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Coal Gasification Technology Investment Tax Credit

Sec. 1. The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the coal gasification industry is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this chapter. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 6. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all the following requirements:

- (1) The facility is located in Indiana and is a newly constructed energy generating plant.
- (2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy.
- (3) The facility uses the synthesis gas as a fuel to generate electric energy.
- (4) The facility is dedicated primarily to serving Indiana retail electric utility consumers.

Sec. 7. As used in this chapter, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1.)

Sec. 8. As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

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1 **Sec. 9. As used in this chapter, "pass through entity" means:**
 2 **(1) a corporation that is exempt from the adjusted gross**
 3 **income tax under IC 6-3-2-2.8(2);**
 4 **(2) a partnership;**
 5 **(3) a limited liability company;**
 6 **(4) a limited liability partnership;**
 7 **(5) a corporation organized under IC 8-1-13; or**
 8 **(6) a corporation organized under IC 23-17-1 that is an**
 9 **electric cooperative and that has at least one (1) member that**
 10 **is a corporation organized under IC 8-1-13.**

11 **Sec. 10. As used in this chapter, "qualified investment" means**
 12 **a taxpayer's expenditures for:**
 13 **(1) all real and tangible personal property incorporated in**
 14 **and used as part of an integrated coal gasification**
 15 **powerplant; and**
 16 **(2) transmission equipment and other real and personal**
 17 **property located at the site of an integrated coal gasification**
 18 **powerplant that is employed specifically to serve the**
 19 **integrated coal gasification powerplant.**

20 **Sec. 11. As used in this chapter, "state tax liability" means a**
 21 **taxpayer's total tax liability that is incurred under:**
 22 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**
 23 **(2) IC 6-5.5 (the financial institutions tax);**
 24 **(3) IC 27-1-18-2 (the insurance premiums tax); and**
 25 **(4) IC 6-2.3 (the utility receipts tax);**
 26 **as computed after the application of the credits that under**
 27 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
 28 **chapter.**

29 **Sec. 12. As used in this chapter, "taxpayer" means a person, a**
 30 **corporation, a partnership, or other entity that makes a qualified**
 31 **investment.**

32 **Sec. 13. As used in this section, "women's business enterprise"**
 33 **has the meaning set forth in IC 4-13-16.5-1.3.**

34 **Sec. 14. (a) A taxpayer that:**
 35 **(1) is awarded a tax credit under this chapter by the**
 36 **corporation; and**
 37 **(2) complies with the conditions set forth in this chapter and**
 38 **the agreement entered into by the corporation and the**
 39 **taxpayer under this chapter;**
 40 **is entitled to a credit against the taxpayer's state tax liability for a**
 41 **taxable year in which the taxpayer places into service an integrated**
 42 **coal gasification powerplant and for the taxable years provided in**

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section 16 of this chapter.

(b) A tax credit awarded under this chapter must be applied against the taxpayer's state tax liability in the following order:

- (1) Against the taxpayer's liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax).
- (2) Against the taxpayer's liability incurred under IC 6-5.5 (the financial institutions tax).
- (3) Against the taxpayer's liability incurred under IC 27-1-18-2 (the insurance premiums tax).
- (4) Against the taxpayer's liability incurred under IC 6-2.3 (the utility receipts tax).

Sec. 15. Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled is equal to the sum of the following:

- (1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.
- (2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).

Sec. 16. (a) A credit awarded under section 15 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant.

(b) The amount of an annual installment of the credit awarded under section 15 of this chapter is equal to the amount determined in the last of the following STEPS:

STEP ONE: Determine the lesser of:

- (A) the credit amount determined under section 15 of this chapter, divided by ten (10); or
- (B) the greater of:
 - (i) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or
 - (ii) the taxpayer's liability for the utility receipts tax imposed under IC 6-2.3 for the taxable year.

STEP TWO: Multiply the STEP ONE amount by the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant in the taxable year for which the annual installment of the credit is allowed.

(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied

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against the state tax liability of the affiliated group.

Sec. 17. A person that proposes to place a new integrated coal gasification powerplant into service 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 corporation shall prescribe the form of the application.

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 the taxpayer's proposed investment satisfies the requirements of this chapter.

Sec. 19. (a) 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 maximum tax credit amount that will be allowed for each taxable year.
- (4) 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.
- (5) A requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.
- (6) A requirement that the taxpayer will maintain during the term of the tax credit a total payroll paid to Indiana residents that is at least equal to the payroll level that existed before the qualified investment was made.
- (7) A requirement that the taxpayer shall use Indiana coal at the taxpayer's integrated coal gasification powerplant.
- (8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require, the construction of the taxpayer's integrated coal gasification powerplant.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall

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1 annually determine whether the taxpayer is in compliance with the
2 agreement. If the corporation determines that the taxpayer is in
3 compliance, the corporation shall issue a certificate of compliance
4 to the taxpayer.

5 Sec. 20. (a) This section applies if a qualified investment is made
6 by a pass through entity or by taxpayers who are co-owners of an
7 integrated coal gasification powerplant.

8 (b) If the credit allowed by this chapter for a taxable year is
9 greater than the state tax liability of the pass through entity against
10 which the tax credit may be applied, a shareholder, partner, or
11 member of the pass through entity is entitled to a tax credit equal
12 to:

13 (1) the tax credit determined for the pass through entity for
14 the taxable year in excess of the pass through entity's state tax
15 liability for the taxable year; multiplied by

16 (2) in the case of a pass through entity described in:

17 (i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the
18 percentage of the pass through entity's distributive income
19 to which the shareholder, partner, or member is entitled;
20 and

21 (ii) section 9(5) or 9(6) of this chapter, the relative
22 percentage of the corporation's patronage dividends
23 allocable to the member for the taxable year.

24 (c) If an integrated coal gasification powerplant is co-owned by
25 two or more taxpayers, the amount of the credit which may be
26 allowed to a co-owner in a taxable year is equal to:

27 (1) the tax credit determined under sections 15 and 16 of this
28 chapter with respect to the total qualified investment in the
29 integrated coal gasification powerplant; multiplied by

30 (2) the co-owner's percentage of ownership in the integrated
31 coal gasification powerplant.

32 (d) The amount of an annual installment of the credit allowed to
33 a shareholder, partner, or member of a pass through entity or a co-
34 owner shall be determined under section 16 of this chapter
35 modified as follows:

36 (1) STEP ONE (A) shall be based on the percentage of the
37 credit allowed to the shareholder, partner, member or co-owner
38 under this section.

39 (2) STEP ONE (B) shall be based on the state tax liability
40 or liability for utilities receipts tax of the shareholder, partner,
41 member or co-owner.

42 Sec. 21. To receive the credit awarded by this chapter, a

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1 taxpayer must claim the credit on the taxpayer's annual state tax
2 return or returns in the manner prescribed by the department. The
3 taxpayer shall submit to the department a copy of the commission's
4 determination required under section 19 of this chapter, a copy of
5 the taxpayer's certificate of compliance issued under section 19 of
6 this chapter, and all information that the department determines
7 is necessary for the calculation of the credit provided by this
8 chapter.

9 SECTION 16. IC 6-3.1-27-5 IS REPEALED [EFFECTIVE
10 JANUARY 1, 2005 (RETROACTIVE)].

11 SECTION 17. [EFFECTIVE JANUARY 1, 2006] IC 6-3.1-29, as
12 added by this act, applies to taxable years beginning after
13 December 31, 2005.

14 SECTION 18. [EFFECTIVE UPON PASSAGE] The following
15 apply only to taxable years beginning after December 31, 2004:

- 16 (1) IC 5-28-6-3, as added by this act.
- 17 (2) IC 6-3.1-27-8, IC 6-3.1-27-9, IC 6-3.1-27-10,
18 IC 6-3.1-27-12, IC 6-3.1-27-13, IC 6-3.1-28-7, IC 6-3.1-28-10,
19 and IC 6-3.1-28-11, all as amended by this act.
- 20 (3) The repeal of IC 6-3.1-27-5 by this act.

21 A person who would have been eligible for a credit for the
22 production of biodiesel, blended biodiesel, or ethanol in 2005 under
23 IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7, as effective before
24 their amendment by this act, is eligible for the credit in 2005 only
25 if the person complies with this act. However, a person that would
26 have been eligible for a credit in 2005 under IC 6-3.1-27-10, as
27 effective before its amendment by this act, continues to be eligible
28 for the credit through any taxable year beginning before the
29 effective date of this SECTION as if this act had not been enacted,
30 except for IC 6-3.1-27-12, as amended by this act. The amount of
31 the credits taken by a taxpayer under IC 6-3.1-28-10, as effective
32 before the enactment of this act, reduces the maximum allowable
33 credit available under IC 6-3.1-28-10, as amended by this act.

34 SECTION 19. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Heinold be added as coauthor of Senate Bill 378.

WEATHERWAX



SENATE MOTION

Madam President: I move that Senator Hershman be added as coauthor of Senate Bill 378.

WEATHERWAX



SENATE MOTION

Madam President: I move that Senator Jackman be removed as second author of Senate Bill 378.

JACKMAN



SENATE MOTION

Madam President: I move that Senator Kenley be added as second author and Senators Jackman, Hume, Skinner, Landske and Alting be added as coauthors of Senate Bill 378.

WEATHERWAX

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 378, 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 1, line 1, delete "IC 4-23-5.5-17" and insert "IC 5-28-6-3".

Page 1, line 3, delete "17." and insert "3.".

Page 1, delete lines 14 through 17, begin a new line block indented and insert:

(1) begins construction of a facility or an expansion of a facility for the production of biodiesel, blended biodiesel, or ethanol in Indiana after February 28, 2005; and

(2) wishes to claim a tax credit with respect to that facility or the expansion of a facility under any combination of IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;"

Page 2, delete line 1.

Page 2, line 2, delete "may" and insert "**must**".

Page 2, line 2, delete "board " and insert "**corporation**".

Page 2, line 3, delete "a" and insert "**the**".

Page 2, line 3, delete "under any combination of IC 6-3.1-27-8," and insert ".".

Page 2, delete lines 4 through 32, begin a new paragraph and insert:

"(c) Subject to this section, the corporation shall issue to each qualifying applicant a certification that:

(1) certifies the person as eligible for the tax credits for which the person applied;

(2) identifies the facilities covered by the certification; and

(3) allocates to the person the lesser of:

(A) the maximum allowable credit for which the person is eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11; or

(B) a credit equal to the level of production demonstrated as economically viable under the business plan submitted to the corporation by the person.

(d) To qualify for certification under subsection (c), a person must do the following:

(1) Submit an application for the credit on the forms and in the manner prescribed by the corporation for the credit that is the subject of the application.

(2) Demonstrate through a business plan and other information presented to the corporation that the level of production proposed by the person is feasible and

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economically viable. In making a determination under this subdivision, the corporation shall consider:

- (A) whether the person is sufficiently capitalized to complete the project;
- (B) the person's credit rating;
- (C) whether the person has sufficient technical expertise to build and operate a facility; and
- (D) other relevant financial information as determined by the corporation.

(e) The corporation shall record the time of filing of each application submitted under this section. The corporation shall grant certifications under this section to qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated."

Page 2, line 33, delete "board" and insert "corporation".

Page 2, line 34, delete "board" and insert "corporation".

Page 2, line 39, delete "board" and insert "corporation".

Page 3, line 4, delete "board" and insert "corporation".

Page 3, line 7, delete "board in rules adopted by the board" and insert "corporation in rules adopted by the corporation".

Page 3, line 9, delete "board" and insert "corporation".

Page 3, line 14, delete ""board"" and insert ""corporation"".

Page 3, line 14, delete "recycling and" and insert "economic development corporation."

Page 3, delete line 15.

Page 3, delete lines 31 through 42.

Delete pages 4 through 5.

Page 6, before line 1, begin a new paragraph and insert:

"SECTION 5. IC 6-3.1-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 8. (a) **Subject to section 9.5 of this chapter**, a taxpayer that **has been certified by the corporation as eligible for a credit under this section** and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of gallons of biodiesel:
 - (A) produced at the Indiana facility during the taxable year; and
 - (B) used to produce blended biodiesel.

(b) The credit provided by this section shall be reduced by any

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credit or subsidy that the taxpayer is entitled to receive from the federal government for the production of biodiesel by the taxpayer.

(c) **(b)** The total amount of credits allowed a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed ~~one~~ **three** million dollars (~~\$1,000,000~~) **(\$3,000,000)** for all taxpayers and all taxable years.

SECTION 6. IC 6-3.1-27-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 9. (a) **Subject to section 9.5 of this chapter**, a taxpayer that **has been certified by the corporation as eligible for a credit under this section and** produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
 - (A) produced at the Indiana facility; and
 - (B) blended with biodiesel produced at a facility located in Indiana.

(b) The credit provided by this section shall be reduced by any credit or subsidy that the taxpayer is entitled to receive from the federal government for the production of blended biodiesel by the taxpayer.

(c) **(b)** The total amount of credits allowed a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed ~~one~~ **three** million dollars (~~\$1,000,000~~) **(\$3,000,000)** for all taxpayers and all taxable years.

SECTION 7. IC 6-3.1-27-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 9.5. The total amount of credits allowed under:**

- (1) section 8 of this chapter;
- (2) section 9 of this chapter; and
- (3) IC 6-3.1-28;

may not exceed twenty million dollars (\$20,000,000) for all taxpayers and all taxable years. The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars (\$4,000,000) for each credit.

SECTION 8. IC 6-3.1-27-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 10. (a) A taxpayer that:

- (1) is a dealer; and

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(2) ~~operates a service station in Indiana at which distributes at retail blended biodiesel is sold and dispensed through a metered pump~~ in a taxable year;
is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the product of:

- (1) one cent (\$0.01); multiplied by
- (2) ~~the total number of gallons of blended biodiesel sold and dispensed distributed at retail in a taxable year. through all the metered pumps located at a service station described in subsection (a)(2):~~

~~(c)~~ (c) The credit allowed under this section must be computed separately for each service station operated by the taxpayer that meets the requirements of subsection (a)(2):

~~(d)~~ (c) The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.

(d) A credit under this section may not be taken for blended biodiesel distributed at retail after December 31, 2006.

SECTION 9. IC 6-3.1-27-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 12. (a) If the amount of the credit determined 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 over the excess to the following 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 taxpayer to obtain a credit under this chapter for any subsequent taxable year. **A credit may not be carried forward for more than six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit.**

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. **A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.**

SECTION 10. IC 6-3.1-27-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 13. To receive the credit provided by this chapter, a taxpayer must **do the following:**

- (1) Claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. ~~The taxpayer shall~~
- (2) **Provide a copy of the certificate of the corporation finding:**
 - (A) **that the taxpayer; or**
 - (B) **if the taxpayer is a shareholder, partner, or member of**

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a pass through entity, that the pass through entity; is eligible for the credit under IC 4-23-5.5-17.

(3) Submit to the department proof of all information that the department determines is necessary for the calculation of the credit provided by this chapter.

The department may require a pass through entity to provide the informational reports that the department determines necessary for the department to calculate the percentage of a credit provided by this chapter to which a shareholder, partner, or member of the pass through entity is entitled.

SECTION 11. IC 6-3.1-28-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 1. As used in this chapter, "~~board~~" **"corporation"** refers to the Indiana ~~recycling and energy development board economic development corporation~~ created by ~~IC 4-23-5.5-2~~. **IC 5-28-3-1.**

SECTION 12. IC 6-3.1-28-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 7. Subject to **IC 6-3.1-27-9.5** and section 11 of this chapter, a taxpayer that **has been certified by the corporation as eligible for a credit under this section and** produces ethanol at a facility is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) twelve and one-half cents (\$.125); multiplied by
- (2) the number of gallons of ethanol produced at the Indiana facility."

Page 6, line 7, strike "board's" and insert "**corporation's**".

Page 6, line 11, strike "IC 4-23-5.5-17." and insert "**IC 5-28-6-3**".

Page 6, delete lines 20 through 29, begin a new paragraph and insert:

"SECTION 14. IC 6-3.1-28-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 11. (a) The total amount of credits allowed a taxpayer (**or, if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity**) under this chapter may not exceed a total of ~~five~~ **three** million dollars (~~\$5,000,000~~) (**\$3,000,000**) for all taxable years.

(b) ~~The total amount of credits allowed under this chapter may not exceed ten million dollars (\$10,000,000) for all taxpayers and all taxable years.~~

SECTION 15. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

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Chapter 29. Coal Gasification Technology Investment Tax Credit

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 3. As used in this chapter, "department" refers to the department of state revenue.

Sec. 4. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 5. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all of the following requirements:

- (1) The facility is a newly constructed energy generating plant.
- (2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy.
- (3) The facility uses the synthesis gas as a fuel to generate electric energy.
- (4) The facility is dedicated primarily to serving Indiana retail electric utility consumers.

Sec. 6. As used in this chapter, "qualified investment" means a taxpayer's expenditures for:

- (1) all real and tangible personal property incorporated in and used as part of an integrated coal gasification powerplant; and
- (2) transmission equipment located at the site of an integrated coal gasification powerplant that is employed specifically to serve the integrated coal gasification powerplant.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-2.3 (the utility receipts tax);
- (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (3) IC 27-1-18-2 (the insurance premiums tax); and
- (4) 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. 8. As used in this chapter, "taxpayer" means a person, corporation, partnership, or another entity that has any state tax liability.

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Sec. 9. A taxpayer that:

- (1) is awarded a tax credit under this chapter by the corporation; and**
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;**

is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an integrated coal gasification powerplant.

Sec. 10. (a) Subject to subsection (b) and section 11 of this chapter, the amount of the credit to which a taxpayer is entitled is equal to the sum of the following:

- (1) Five percent (5%) of the taxpayer's qualified investment for the first two hundred fifty million dollars (\$250,000,000) invested.**
- (2) Two and one-half percent (2.5%) of the amount of the taxpayer's qualified investment that exceeds two hundred fifty million dollars (\$250,000,000).**

(b) Subject to section 11 of this chapter and the corporation's determination under section 14(b) of this chapter, if at least ninety-five percent (95%) of the coal used by the taxpayer at the taxpayer's integrated coal gasification plant powerplant is Indiana coal, the taxpayer is entitled to a credit in an amount equal to the sum of the following:

- (1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.**
- (2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).**

Sec. 11. (a) A credit awarded under section 10 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the credit is granted.

(b) The amount of an annual installment of the credit awarded under section 10 of this chapter is equal to the lesser of:

- (1) the credit amount determined under section 10 of this chapter, divided by ten (10); or**
- (2) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%).**

(c) If the amount determined under this section for a taxable year exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess credit for a period not to

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exceed the six (6) taxable years following the taxable year of the excess but not past the sixth taxable year after the taxpayer's ten (10) year installment period ends.

(d) A taxpayer is not entitled to a carryback or refund of any unused credit. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

Sec. 12. A person that proposes to place a new integrated coal gasification powerplant into service 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 corporation shall prescribe the form of the application.

Sec. 13. 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 the taxpayer's proposed investment satisfies the requirements of this chapter.

Sec. 14. (a) 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 maximum tax credit amount that will be allowed for each taxable year.
- (4) 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.
- (5) A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees (as defined in Section 414(q) of the Internal Revenue Code) in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the average county wage in the county in which the integrated coal gasification powerplant is located.
- (6) A requirement that the taxpayer shall provide written notification to 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.
- (7) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require, the construction of the taxpayer's integrated coal gasification

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powerplant.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine:

- (1) whether the taxpayer is in compliance with the agreement; and
- (2) whether at least ninety-five percent (95%) of the coal used by the taxpayer at the taxpayer's integrated coal gasification plant powerplant during the taxable year covered by the corporation's determination was Indiana coal.

If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer. The certificate must indicate whether at least ninety-five percent (95%) of the coal that the taxpayer used at the taxpayer's integrated coal gasification plant powerplant during the taxable year was Indiana coal. If the corporation determines that the taxpayer is in compliance with subdivision (1) but not in compliance with subdivision (2) for a taxable year, the corporation shall issue a certificate of compliance to the taxpayer that specifies the subdivision (2) noncompliance and the credit amount shall be calculated under section 10(a) of this chapter instead of section 10(b) of this chapter for that taxable year.

Sec. 15. To receive the credit awarded by this chapter, 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 submit to the department a copy of the commission's determination required under section 14 of this chapter, a copy of the taxpayer's certificate of compliance issued under section 14 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter."

Page 6, between lines 31 and 32, begin a new paragraph and insert: "SECTION 17. [EFFECTIVE JANUARY 1, 2006] IC 6-3.1-29, as added by this act, applies to taxable years beginning after December 31, 2005."

Page 6, line 34, delete "IC 4-23-5.5-27," insert "IC 5-29-6-3,".

Page 6, line 35, after "IC 6-3.1-27-10," insert "IC 6-3.1-27-12,".

Page 7, line 5, delete "enacted." and insert "enacted, except for IC 6-3.1-27-12, as amended by this act.".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 378 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 378 be amended to read as follows:

Page 8, between lines 6 and 7, begin a new paragraph and insert:

"Sec. 6. As used in this chapter, "pass through entity" means:

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

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership."

Page 8, line 7, delete "6." and insert "7."

Page 8, line 12, after "equipment" insert **"and other real and personal property"**.

Page 8, line 15, delete "7." and insert "8."

Page 8, delete line 17.

Page 8, line 18, delete "(2)" and insert **"(1)"**.

Page 8, line 19, delete "(3)" and insert **"(2)"**.

Page 8, line 20, delete "(4)" and insert **"(3)"**.

Page 8, line 24, delete "8." and insert **"9."**

Page 8, line 27, delete "9." and insert **"10."**

Page 8, line 35, after "powerplant" insert **"and for the taxable years provided in section 12 of this chapter"**.

Page 8, line 36, delete "10." and insert **"11."**

Page 8, line 36, delete "(a)".

Page 8, line 36, delete "subsection (b) and".

Page 8, line 36, delete "11" and insert **"12"**.

Page 8, delete lines 39 through 42.

Page 9, delete lines 1 through 8.

Page 9, line 15, delete "11." and insert **"12."**

Page 9, line 15, delete "10" and insert **"11"**.

Page 9, line 17, delete "credit is granted." and insert **"taxpayer places into service an integrated coal gasification powerplant."**

Page 9, line 19, delete "10" and insert **"11"**.

Page 9, line 20, delete "10" and insert **"11"**.

Page 9, delete lines 24 through 32, begin a new line block indented and insert:

"(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-3-4-14, the credit shall be applied against the state tax liability of the affiliated group."

Page 9, line 33, delete "12." and insert **"13."**

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Page 9, line 38, delete "13." and insert "14."

Page 9, line 42, delete "14." and insert "15."

Page 10, line 12, delete "all".

Page 10, line 12, after "its employees" insert "**at the integrated coal gasification powerplant,**".

Page 10, line 14, after "Code)" insert ",."

Page 10, line 19, delete "not more than thirty (30) days" and insert "**and the department at least forty-five (45) days before executing any agreement**".

Page 10, line 20, delete "after the taxpayer makes or receives a proposal".

Page 10, between lines 27 and 28, begin a new line block indented and insert:

"(8) A requirement that the taxpayer shall use Indiana coal at the taxpayer's integrated coal gasification powerplant."

Page 10, line 31, delete ":" and insert "**whether the taxpayer is in compliance with the agreement.**".

Page 10, delete lines 32 through 37.

Page 10, line 40, delete "The certificate must indicate whether at least ninety-five".

Page 10, delete lines 41 through 42, begin a new paragraph and insert:

"Sec. 16. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member 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, partner, or member is entitled."

Page 11, delete lines 1 through 7.

Page 11, line 8, delete "15." and insert "17."

Page 11, line 12, delete "14" and insert "15".

Page 11, line 13, delete "14" and insert "15".

(Reference is to SB 378 as printed February 25, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 378, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "The definitions in" and insert "**The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the biodiesel and ethanol production industries is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this section, IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.**".

Page 1, delete line 4.

Page 1, line 5, before "used" begin a new paragraph and insert:

"(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply throughout this section. A term".

Page 1, between lines 12 and 13, begin a new paragraph and insert:

"(c) As used in this section, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1).

(d) As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

(e) As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3."

Page 1, line 13, delete "(b)" and insert "**(f)**".

Page 2, line 5, delete "(c)" and insert "**(g)**".

Page 2, line 17, delete "(d)" and insert "**(h)**".

Page 2, line 17, delete "(c)," and insert "**(g),"**".

Page 2, line 34, delete "(e)" and insert "**(i)**".

Page 2, line 40, delete "(f)" and insert "**(j)**".

Page 3, line 17, delete "(g)" and insert "**(k)**".

Page 6, line 11, delete "IC 4-23-5.5-17." and insert "**IC 5-28-6-3.**".

Page 7, delete lines 24 through 42, begin a new paragraph and insert:

"SECTION 15. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Coal Gasification Technology Investment Tax



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Credit

Sec. 1. The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the coal gasification industry is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this chapter. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 6. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all the following requirements:

- (1) The facility is located in Indiana and is a newly constructed energy generating plant.
- (2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy.
- (3) The facility uses the synthesis gas as a fuel to generate electric energy.
- (4) The facility is dedicated primarily to serving Indiana retail electric utility consumers.

Sec. 7. As used in this chapter, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1.)

Sec. 8. As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

Sec. 9. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company;
- (4) a limited liability partnership;
- (5) a corporation organized under IC 8-1-13; or
- (6) a corporation organized under IC 23-17-1 that is an

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electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 10. As used in this chapter, "qualified investment" means a taxpayer's expenditures for:

- (1) all real and tangible personal property incorporated in and used as part of an integrated coal gasification powerplant; and
- (2) transmission equipment and other real and personal property located at the site of an integrated coal gasification powerplant that is employed specifically to serve the integrated coal gasification powerplant.

Sec. 11. 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 6-5.5 (the financial institutions tax);
- (3) IC 27-1-18-2 (the insurance premiums tax); and
- (4) IC 6-2.3 (the utility receipts 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. 12. As used in this chapter, "taxpayer" means a person, a corporation, a partnership, or other entity that has any state tax liability.

Sec. 13. As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

Sec. 14. (a) A taxpayer that:

- (1) is awarded a tax credit under this chapter by the corporation; and
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an integrated coal gasification powerplant and for the taxable years provided in section 16 of this chapter.

(b) A tax credit awarded under this chapter must be applied against the taxpayer's state tax liability in the following order:

- (1) Against the taxpayer's liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax).
- (2) Against the taxpayer's liability incurred under IC 6-5.5 (the financial institutions tax).
- (3) Against the taxpayer's liability incurred under

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IC 27-1-18-2 (the insurance premiums tax).

(4) Against the taxpayer's liability incurred under IC 6-2.3 (the utility receipts tax).

Sec. 15. Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled is equal to the sum of the following:

(1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.

(2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).

Sec. 16. (a) A credit awarded under section 15 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant.

(b) The amount of an annual installment of the credit awarded under section 15 of this chapter is equal to the amount determined in the last of the following STEPS:

STEP ONE: Determine the lesser of:

(A) the credit amount determined under section 15 of this chapter, divided by ten (10); or

(B) the greater of:

(i) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or

(ii) the taxpayer's liability for the utility receipts tax imposed under IC 6-2.3 for the taxable year.

STEP TWO: Multiply the STEP ONE amount by the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant in the taxable year for which the annual installment of the credit is allowed.

(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied against the state tax liability of the affiliated group.

Sec. 17. A person that proposes to place a new integrated coal gasification powerplant into service 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 corporation shall prescribe the form of the application.

Sec. 18. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this

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chapter if the corporation determines that the taxpayer's proposed investment satisfies the requirements of this chapter.

Sec. 19. (a) 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 maximum tax credit amount that will be allowed for each taxable year.
- (4) 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.
- (5) A requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.
- (6) A requirement that the taxpayer will maintain during the term of the tax credit a total payroll paid to Indiana residents that is at least equal to the payroll level that existed before the qualified investment was made.
- (7) A requirement that the taxpayer shall use Indiana coal at the taxpayer's integrated coal gasification powerplant.
- (8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require, the construction of the taxpayer's integrated coal gasification powerplant.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

Sec. 20. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

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(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) in the case of a pass through entity described in:

(i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled; and

(ii) section 9(5) or 9(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

Sec. 21. To receive the credit awarded by this chapter, 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 submit to the department a copy of the commission's determination required under section 19 of this chapter, a copy of the taxpayer's certificate of compliance issued under section 19 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter."

Delete pages 8 through 10.

Page 11, delete lines 1 through 4.

Page 11, line 12, delete "IC 5-29-6-3," and insert "IC 5-28-6-3,".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 378 as reprinted March 1, 2005.)

ESPICH, Chair

Committee Vote: yeas 22, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 378 be amended to read as follows:

Page 7, line 32, reset in roman "(a)".

Page 7, between lines 36 and 37, begin a new paragraph and insert:

"(b) Notwithstanding subsection (a) of this section, the total amount of credits allowed a taxpayer (or, if the person producing ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) may increase to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation."

(Reference is to Engrossed Senate Bill 378 as printed March 18, 2005.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 378 be amended to read as follows:

Page 9, line 23, delete "has any state tax" and insert "**makes a qualified investment.**".

Page 9, delete line 24.

Page 11, line 40, after "20." insert "**(a) This section applies if a qualified investment is made by a pass through entity or by taxpayers who are co-owners of an integrated coal gasification powerplant.**".

Page 11, line 40, delete "If a pass through entity does not have" and insert:

"(b) If the credit allowed by this chapter for a taxable year is greater than the".

Page 11, line 40, after "state tax liability" insert "**of the pass through entity**".

Page 12, line 3, after "year" insert "**in excess of the pass through entity's state tax liability for the taxable year**".

Page 12, between lines 11 and 12, begin a new paragraph and insert:

"(c) If an integrated coal gasification powerplant is co-owned by two or more taxpayers, the amount of the credit which may be allowed to a co-owner in a taxable year is equal to:



- (1) the tax credit determined under sections 15 and 16 of this chapter with respect to the total qualified investment in the integrated coal gasification powerplant; multiplied by**
- (2) the co-owner's percentage of ownership in the integrated coal gasification powerplant.**

(d) The amount of an annual installment of the credit allowed to a shareholder, partner, or member of a pass through entity or a co-owner shall be determined under section 16 of this chapter modified as follows:

(1) STEP ONE (A) shall be based on the percentage of the credit allowed to the shareholder, partner, member or co-owner under this section.

(2) STEP ONE (B) shall be based on the state tax liability or liability for utilities receipts tax of the shareholder, partner, member or co-owner."

(Reference is to ESB 378 as printed March 18, 2005.)

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