

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 378**

Citations Affected: IC 5-28-6-3; IC 6-3.1.

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. Provides standards that the corporation must apply. Creates a \$20,000,000 overall cap for the biodiesel, blended biodiesel, and 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 of biodiesel or ethanol 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, and requires the taxpayer to enter into 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. **(This conference committee report does the following: (1) allows the Indiana economic development corporation to increase the credit cap for the production of biodiesel to \$5,000,000; (2) changes the requirement that a taxpayer maintain the level of the taxpayer's statewide payroll for the term of a tax credit for placing an integrated coal gasification powerplant into service to a requirement that a taxpayer maintain the level of the taxpayer's payroll at the location of the taxpayer's investment for the term of the tax credit; (3) adds a severability clause; and (4) makes technical corrections.)**

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

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 378 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-28-6-3 IS ADDED TO THE INDIANA CODE AS
- 3 A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3. (a) The general**
- 5 **assembly declares that the opportunity for the participation of**
- 6 **underutilized small businesses, especially women and minority**
- 7 **business enterprises, in the biodiesel and ethanol production**
- 8 **industries is essential if social and economic parity is to be obtained**
- 9 **by women and minority business persons and if the economy of**
- 10 **Indiana is to be stimulated as contemplated by this section,**
- 11 **IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this**
- 12 **chapter is encouraged to purchase goods and services from**
- 13 **underutilized small businesses, especially women and minority**
- 14 **business enterprises.**
- 15 **(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply**
- 16 **throughout this section. A term used in this section that is defined**
- 17 **in both IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:**
- 18 **(1) IC 6-3.1-27 whenever this section applies to the certification**
- 19 **of a person for a credit under IC 6-3.1-27; and**
- 20 **(2) IC 6-3.1-28 whenever this section applies to the certification**
- 21 **of a person for a credit under IC 6-3.1-28.**
- 22 **In addition, as used in this section, "person" refers to a taxpayer**

- 1 or a pass through entity.
- 2 (c) As used in this section, "minority" means a member of a
3 minority group (as defined in IC 4-13-16.5-1).
- 4 (d) As used in this section, "minority business enterprise" has the
5 meaning set forth in IC 4-13-16.5-1.
- 6 (e) As used in this section, "women's business enterprise" has the
7 meaning set forth in IC 4-13-16.5-1.3.
- 8 (f) A person that:
- 9 (1) begins construction of a facility or an expansion of a facility
10 for the production of biodiesel, blended biodiesel, or ethanol in
11 Indiana after February 28, 2005; and
- 12 (2) wishes to claim a tax credit with respect to that facility or
13 the expansion of a facility under any combination of
14 IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;
- 15 must apply to the corporation for a determination of the person's
16 eligibility for the tax credit.
- 17 (g) Subject to this section, the corporation shall issue to each
18 qualifying applicant a certification that:
- 19 (1) certifies the person as eligible for the tax credits for which
20 the person applied;
- 21 (2) identifies the facilities covered by the certification; and
- 22 (3) allocates to the person the lesser of:
- 23 (A) the maximum allowable credit for which the person is
24 eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11;
- 25 or
- 26 (B) a credit equal to the level of production demonstrated as
27 economically viable under the business plan submitted to the
28 corporation by the person.
- 29 (h) To qualify for certification under subsection (g), a person
30 must do the following:
- 31 (1) Submit an application for the credit on the forms and in the
32 manner prescribed by the corporation for the credit that is the
33 subject of the application.
- 34 (2) Demonstrate through a business plan and other information
35 presented to the corporation that the level of production
36 proposed by the person is feasible and economically viable. In
37 making a determination under this subdivision, the corporation
38 shall consider:
- 39 (A) whether the person is sufficiently capitalized to complete
40 the project;
- 41 (B) the person's credit rating;
- 42 (C) whether the person has sufficient technical expertise to
43 build and operate a facility; and
- 44 (D) other relevant financial information as determined by the
45 corporation.
- 46 (i) The corporation shall record the time of filing of each
47 application submitted under this section. The corporation shall
48 grant certifications under this section to qualifying applicants in
49 the chronological order in which the applications for the same type
50 of credit are filed until the maximum allowable credit for that type
51 of credit is fully allocated.

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

5 (1) substantially comply with the business plan that is the basis
6 for the certification or allocation; or

7 (2) submit the information needed by the corporation to
8 determine whether the person has substantially complied with
9 the business plan that is the basis of the certification or
10 allocation.

11 If an allocation of a credit is terminated or reduced, the unused
12 credit becomes available for allocation to other qualifying
13 applicants in the chronological order in which the applications for
14 the same type of credit are filed until the maximum allowable
15 credit for that type of credit is fully allocated. The corporation may
16 approve an amendment to a business plan or a transfer of a
17 certificate of eligibility in conformity with the terms and conditions
18 specified by the corporation in rules adopted by the corporation
19 under IC 4-22-2.

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

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

27 SECTION 3. IC 6-3.1-27-3.2 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
29 JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3.2. As used in this
30 chapter, "distribute at retail" means to sell or otherwise distribute
31 for consideration to an end user in Indiana.**

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

37 (1) biodiesel;

38 (2) blended biodiesel that is blended with biodiesel produced at
39 a facility located in Indiana; or

40 (3) both biodiesel and blended biodiesel, as described in
41 subdivision (2).

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

49 (1) one dollar (\$1); multiplied by

50 (2) the number of gallons of biodiesel:

51 (A) produced at the Indiana facility during the taxable year; and

1 (B) used to produce blended biodiesel.

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

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

10 **(c) Notwithstanding subsection (b), the total amount of credits**
 11 **allowed a taxpayer (or if the person producing biodiesel is a pass**
 12 **through entity, the shareholders, partners, or members of the pass**
 13 **through entity) may be increased to an amount not to exceed a total**
 14 **of five million dollars (\$5,000,000) for all taxable years with the**
 15 **prior approval of the Indiana economic development corporation.**

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

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

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

31 (c) ~~(b)~~ **The total amount of credits allowed a taxpayer (or, if the**
 32 **person producing the blended biodiesel is a pass through entity, the**
 33 **shareholders, partners, or members of the pass through entity)**
 34 ~~under this section may not exceed one three million dollars~~
 35 ~~(\$1,000,000) (\$3,000,000) for all taxpayers and all taxable years.~~

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

- 40 (1) **section 8 of this chapter;**
 41 (2) **section 9 of this chapter; and**
 42 (3) **IC 6-3.1-28;**
 43 **may not exceed twenty million dollars (\$20,000,000) for all**
 44 **taxpayers and all taxable years. The corporation shall determine**
 45 **the maximum allowable amount for each type of credit, which must**
 46 **be at least four million dollars (\$4,000,000) for each credit.**

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

- 50 (1) is a dealer; and
 51 (2) operates a service station in Indiana at which distributes at

1 ~~retail~~ blended biodiesel is sold and dispensed through a metered
 2 ~~pump~~ in a taxable year;
 3 is entitled to a credit against the taxpayer's state tax liability.

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

6 (1) one cent (\$0.01); multiplied by

7 (2) the total number of gallons of blended biodiesel sold and
 8 dispensed through all the metered pumps located at a service
 9 station described in subsection (a)(2); **distributed at retail by the**
 10 **taxpayer in a taxable year.**

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

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

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

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

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

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

37 (1) Claim the credit on the taxpayer's state tax return or returns in
 38 the manner prescribed by the department. ~~The taxpayer shall~~

39 (2) **Provide a copy of the certificate of the corporation finding:**

40 **(A) that the taxpayer; or**

41 **(B) if the taxpayer is a shareholder, partner, or member of a**
 42 **pass through entity, that the pass through entity;**

43 **is eligible for the credit under IC 5-28-6-3.**

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

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

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

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

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

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

- 20 (1) Claim the credit on the taxpayer's state tax return or returns in
 21 the manner prescribed by the department.
- 22 (2) Provide a copy of the ~~board's~~ **corporation's** certificate finding:
 23 (A) that the ~~facility taxpayer~~; or
 24 (B) **if the taxpayer is a shareholder, partner, or member of a**
 25 **pass through entity, that the pass through entity;**
 26 is a ~~qualified facility eligible for the credit~~ under ~~IC 4-23-5.5-17~~.
 27 **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 credit
 30 provided by this chapter.

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

36 SECTION 14. IC 6-3.1-28-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 38 Sec. 11. (a) The total amount of credits allowed a taxpayer (**or, if the**
 39 **person producing the ethanol is a pass through entity, the**
 40 **shareholders, partners, or members of the pass through entity)**
 41 under this chapter may not exceed a total of ~~five three~~ million dollars
 42 (~~\$5,000,000~~) **(\$3,000,000)** for all taxable years.

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

46 (b) **Notwithstanding subsection (a), the total amount of credits**
 47 **allowed a taxpayer (or if the person producing ethanol is a pass**
 48 **through entity, the shareholders, partners, or members of the pass**
 49 **through entity) may be increased to an amount not to exceed a total**
 50 **of five million dollars (\$5,000,000) for all taxable years with the**
 51 **prior approval of the Indiana economic development corporation.**

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

4 **Chapter 29. Coal Gasification Technology Investment Tax Credit**

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

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

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

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

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

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

26 (1) **The facility is located in Indiana and is a newly constructed**
27 **energy generating plant.**

28 (2) **The facility converts coal into synthesis gas that can be used**
29 **as a fuel to generate energy.**

30 (3) **The facility uses the synthesis gas as a fuel to generate**
31 **electric energy.**

32 (4) **The facility is dedicated primarily to serving Indiana retail**
33 **electric utility consumers.**

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

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

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

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

41 (2) **a partnership;**

42 (3) **a limited liability company;**

43 (4) **a limited liability partnership;**

44 (5) **a corporation organized under IC 8-1-13; or**

45 (6) **a corporation organized under IC 23-17-1 that is an electric**
46 **cooperative and that has at least one (1) member that is a**
47 **corporation organized under IC 8-1-13.**

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

50 (1) **all real and tangible personal property incorporated in and**
51 **used as part of an integrated coal gasification powerplant; and**

1 (2) transmission equipment and other real and personal
2 property located at the site of an integrated coal gasification
3 powerplant that is employed specifically to serve the integrated
4 coal gasification powerplant.

5 **Sec. 11.** As used in this chapter, "state tax liability" means a
6 taxpayer's total tax liability that is incurred under:

- 7 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 8 (2) IC 6-5.5 (the financial institutions tax);
- 9 (3) IC 27-1-18-2 (the insurance premiums tax); and
- 10 (4) IC 6-2.3 (the utility receipts tax);

11 as computed after the application of the credits that under
12 IC 6-3.1-1-2 are to be applied before the credit provided by this
13 chapter.

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

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

19 **Sec. 14. (a)** A taxpayer that:

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

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

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

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

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

- 42 (1) Ten percent (10%) of the taxpayer's qualified investment
43 for the first five hundred million dollars (\$500,000,000)
44 invested.
- 45 (2) Five percent (5%) of the amount of the taxpayer's qualified
46 investment that exceeds five hundred million dollars
47 (\$500,000,000).

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

1 **(b) Subject to section 20 of this chapter, the amount of an annual**
 2 **installment of the credit awarded under section 15 of this chapter**
 3 **is equal to the amount determined in the last of the following**
 4 **STEPS:**

5 **STEP ONE: Determine the lesser of:**

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

8 **(B) the greater of:**

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

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

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

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

21 **Sec. 17. A person that proposes to place a new integrated coal**
 22 **gasification powerplant into service may apply to the corporation**
 23 **before the taxpayer makes the qualified investment to enter into an**
 24 **agreement for a tax credit under this chapter. The corporation**
 25 **shall prescribe the form of the application.**

26 **Sec. 18. After receipt of an application, the corporation may enter**
 27 **into an agreement with the applicant for a credit under this chapter**
 28 **if the corporation determines that the taxpayer's proposed**
 29 **investment satisfies the requirements of this chapter.**

30 **Sec. 19. (a) The corporation shall enter into an agreement with an**
 31 **applicant that is awarded a credit under this chapter. The**
 32 **agreement must include all the following:**

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

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

36 **(3) The maximum tax credit amount that will be allowed for**
 37 **each taxable year.**

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

41 **(5) A requirement that the taxpayer shall pay an average wage**
 42 **to its employees at the integrated coal gasification powerplant,**
 43 **other than highly compensated employees, in each taxable year**
 44 **that a tax credit is available that equals at least one hundred**
 45 **twenty-five percent (125%) of the average county wage in the**
 46 **county in which the integrated coal gasification powerplant is**
 47 **located.**

48 **(6) A requirement that the taxpayer will maintain at the**
 49 **location where the qualified investment is made, during the**
 50 **term of the tax credit, a total payroll that is at least equal to the**
 51 **payroll that existed on the date that the taxpayer placed the**

1 integrated coal gasification powerplant into service.

2 (7) A requirement that the taxpayer shall use Indiana coal at
3 the taxpayer's integrated coal gasification powerplant.

4 (8) A requirement that the taxpayer obtain from the
5 commission a determination under IC 8-1-8.5-2 that public
6 convenience and necessity require, or will require, the
7 construction of the taxpayer's integrated coal gasification
8 powerplant.

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

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

19 (b) If the credit allowed by this chapter for a taxable year is
20 greater than the state tax liability of the pass through entity against
21 which the tax credit may be applied, a shareholder, partner, or
22 member of the pass through entity is entitled to a tax credit equal
23 to:

24 (1) the tax credit determined for the pass through entity for the
25 taxable year in excess of the pass through entity's state tax
26 liability for the taxable year; multiplied by

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

- 28 (i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the
29 percentage of the pass through entity's distributive income to
30 which the shareholder, partner, or member is entitled; and
31 (ii) section 9(5) or 9(6) of this chapter, the relative percentage
32 of the corporation's patronage dividends allocable to the
33 member for the taxable year.

34 (c) If an integrated coal gasification powerplant is co-owned by
35 two (2) or more taxpayers, the amount of the credit that may be
36 allowed to a co-owner in a taxable year is equal to:

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

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

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

46 (1) Section 16(b) STEP ONE (A) of this chapter shall be based
47 on the percentage of the credit allowed to the shareholder,
48 partner, member, or co-owner under this section.

49 (2) Section 16(b) STEP ONE (B) of this chapter shall be based
50 on the:

51 (A) state tax liability; or

1 **(B) utilities receipts tax liability;**
 2 **of the shareholder, partner, member, or co-owner.**

3 **Sec. 21. To receive the credit awarded by this chapter, a taxpayer**
 4 **must claim the credit on the taxpayer's annual state tax return or**
 5 **returns in the manner prescribed by the department. The taxpayer**
 6 **shall submit to the department a copy of the commission's**
 7 **determination required under section 19 of this chapter, a copy of**
 8 **the taxpayer's certificate of compliance issued under section 19 of**
 9 **this chapter, and all information that the department determines**
 10 **is necessary for the calculation of the credit provided by this**
 11 **chapter.**

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

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

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

19 **(1) IC 5-28-6-3, as added by this act.**

20 **(2) IC 6-3.1-27-8, IC 6-3.1-27-9, IC 6-3.1-27-10, IC 6-3.1-27-12,**
 21 **IC 6-3.1-27-13, IC 6-3.1-28-7, IC 6-3.1-28-10, and**
 22 **IC 6-3.1-28-11, all as amended by this act.**

23 **(3) The repeal of IC 6-3.1-27-5 by this act.**

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

37 SECTION 19. [EFFECTIVE JANUARY 1, 2006] **Each individual**
 38 **provision of this act is fully severable. If a provision requiring an**
 39 **agreement executed under IC 6-3.1-29-19, as added by this act, to**
 40 **include a particular term is declared invalid, the invalidity of the**
 41 **provision does not affect the validity of:**

42 **(1) the other provisions of IC 6-3.1-29, as added by this act;**

43 **(2) the other terms of the agreement executed under**
 44 **IC 6-3.1-29-19, as added by this act; or**

45 **(3) a tax credit awarded under IC 6-3.1-29, as added by this**
 46 **act.**

47 SECTION 20. **An emergency is declared for this act.**
 (Reference is to ESB 378 as reprinted March 23, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 378

Signed by:

Senator Weatherwax
Chairperson

Representative Woodruff

Senator Hume

Representative Stilwell

Senate Conferees

House Conferees