

Adopted Rejected

# COMMITTEE REPORT

YES: 11  
NO: 0

## MR. SPEAKER:

Your Committee on Environmental Affairs, to which was referred House Bill 1279, 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:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 taxation and the environment.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 6-1.1-45 IS ADDED TO THE INDIANA CODE
- 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2005]:
- 8 **Chapter 45. Brownfield Tax Reduction or Waiver**
- 9 **Sec. 1. As used in this chapter:**
- 10 (1) "board" refers to the county property tax assessment
- 11 board of appeals;
- 12 (2) "brownfield" has the meaning set forth in IC 13-11-2-19.3;
- 13 (3) "contaminant" has the meaning set forth in IC 13-11-2-42;
- 14 (4) "delinquent tax liability" means:
- 15 (A) delinquent property taxes;
- 16 (B) delinquent special assessments;

- 1           **(C) interest;**  
 2           **(D) penalties; and**  
 3           **(E) costs;**  
 4           **assessed against a brownfield and entered on the tax duplicate**  
 5           **that a person seeks to have waived or reduced by filing a**  
 6           **petition under section 2 of this chapter;**  
 7           **(5) "department" refers to the department of local**  
 8           **government finance, unless the specific reference is to the**  
 9           **department of environmental management; and**  
 10          **(6) "fiscal body" refers to the fiscal body of:**  
 11           **(A) the city if the brownfield is located in a city;**  
 12           **(B) the town if the brownfield is located in a town; or**  
 13           **(C) the county if the brownfield is not located in a city or**  
 14           **town.**
- 15          **Sec. 2. A person that owns or desires to own a brownfield may**  
 16          **file a petition with the county auditor seeking a reduction or waiver**  
 17          **of the delinquent tax liability. The petition must:**
- 18           **(1) be on a form:**  
 19           **(A) prescribed by the state board of accounts; and**  
 20           **(B) approved by the department;**  
 21           **(2) state:**  
 22           **(A) the amount of the delinquent tax liability; and**  
 23           **(B) when the delinquent tax liability arose;**  
 24           **(3) describe:**  
 25           **(A) the manner in which; and**  
 26           **(B) when;**  
 27           **the petitioner acquired or proposes to acquire the brownfield;**  
 28           **(4) describe the conditions existing on the brownfield that**  
 29           **have prevented the sale or the transfer of title to the county;**  
 30           **(5) describe the plan of the petitioner for:**  
 31           **(A) addressing any contaminants on the brownfield; and**  
 32           **(B) the intended use of the brownfield;**  
 33           **(6) include a statement from the department of environmental**  
 34           **management that the property is a brownfield;**  
 35           **(7) state whether the petitioner:**  
 36           **(A) has had an ownership interest in an entity that**  
 37           **contributed; or**  
 38           **(B) has contributed;**

- 1           to the contaminant or contaminants on the brownfield;  
 2           **(8) state whether any part of the delinquent tax liability can**  
 3           **reasonably be collected from a person other than the**  
 4           **petitioner;**  
 5           **(9) state that the petitioner seeks:**  
 6                 **(A) a waiver of the delinquent tax liability; or**  
 7                 **(B) a reduction of the delinquent tax liability in a specified**  
 8                 **amount; and**  
 9           **(10) be accompanied by a fee in an amount established by the**  
 10           **county auditor for:**  
 11                 **(A) completing a title search; and**  
 12                 **(B) processing the petition.**

13           **Sec. 3. On receipt of a petition under section 2 of this chapter,**  
 14           **the county auditor shall determine whether the petition is complete.**  
 15           **If the petition is not complete, the county auditor shall return the**  
 16           **petition to the petitioner and describe the defects in the petition.**  
 17           **The petitioner may correct the defects and file the completed**  
 18           **petition with the county auditor. On receipt of a complete petition,**  
 19           **the county auditor shall forward a copy of the complete petition to:**  
 20                 **(1) the assessor of the township in which the brownfield is**  
 21                 **located;**  
 22                 **(2) the owner, if different from the petitioner;**  
 23                 **(3) all persons that have, as of the date of the filing of the**  
 24                 **petition, a substantial property interest of public record in the**  
 25                 **brownfield;**  
 26                 **(4) the board;**  
 27                 **(5) the fiscal body;**  
 28                 **(6) the department of environmental management; and**  
 29                 **(7) the department.**

30           **Sec. 4. On receipt of a complete petition as provided under**  
 31           **sections 2 and 3 of this chapter, the board shall at its earliest**  
 32           **opportunity conduct a public hearing on the petition. The board**  
 33           **shall give notice of the date, time, and place fixed for the hearing:**  
 34                 **(1) by mail to:**  
 35                         **(A) the petitioner;**  
 36                         **(B) the owner, if different from the petitioner;**

1 (C) all persons that have, as of the date the petition was  
2 filed, a substantial interest of public record in the  
3 brownfield; and

4 (D) the assessor of the township in which the brownfield is  
5 located; and

6 (2) under IC 5-3-1.

7 Sec. 5. (a) The board may recommend that the department  
8 grant the petition or that the department approve a reduction of  
9 the delinquent tax liability in an amount less than the amount  
10 sought by the petitioner if the board determines that:

11 (1) the brownfield was acquired or is proposed to be acquired  
12 as a result of:

13 (A) sale or abandonment in a bankruptcy proceeding;

14 (B) foreclosure or a sheriff's sale;

15 (C) receivership; or

16 (D) purchase from a political subdivision;

17 (2) the plan referred to in section 2(5) of this chapter is in the  
18 best interest of the community;

19 (3) the waiver or reduction of the delinquent tax liability:

20 (A) is in the public interest; and

21 (B) will facilitate development or use of the brownfield;

22 (4) the petitioner:

23 (A) has not had an ownership interest in an entity that  
24 contributed; and

25 (B) has not contributed;

26 to the contaminant or contaminants on the brownfield;

27 (5) the department of environmental management has  
28 determined that the property is a brownfield;

29 (6) if the petitioner is the owner of the brownfield, the  
30 delinquent tax liability sought to be waived or reduced arose  
31 before the petitioner's acquisition of the brownfield; and

32 (7) no part of the delinquent tax liability can reasonably be  
33 collected from a person other than the owner of the  
34 brownfield.

35 (b) After the hearing and completion of any additional  
36 investigation of the brownfield or of the petitioner that the board  
37 considers necessary, the board shall:

- 1           **(1) give notice, by mail, to the parties listed in section 4(1) of**  
 2           **this chapter of the board's recommendation that:**  
 3               **(A) the fiscal body deny the petition; or**  
 4               **(B) the department:**  
 5                   **(i) deny the petition;**  
 6                   **(ii) waive the delinquent tax liability; or**  
 7                   **(iii) reduce the delinquent tax liability by a specified**  
 8                   **amount; and**  
 9           **(2) forward to the department and the fiscal body a copy of:**  
 10               **(A) the board's recommendation; and**  
 11               **(B) the documents submitted to or collected by the board**  
 12               **at the public hearing or during the course of the board's**  
 13               **investigation of the brownfield or of the petitioner.**

- 14           **Sec. 6. (a) The fiscal body shall at a regularly scheduled meeting:**  
 15               **(1) review the petition and all other materials submitted by**  
 16               **the board under section 5 of this chapter; and**  
 17               **(2) determine whether to:**  
 18                   **(A) deny the petition;**  
 19                   **(B) recommend that the department waive the delinquent**  
 20                   **tax liability; or**  
 21                   **(C) recommend that the department reduce the delinquent**  
 22                   **tax liability by a specified amount.**

23           **The fiscal body may recommend a reduction of the delinquent tax**  
 24           **liability in an amount that differs from the amount of reduction**  
 25           **recommended by the board.**

- 26           **(b) The fiscal body shall:**  
 27               **(1) publish notice under IC 5-3-1 of its consideration of the**  
 28               **petition under this section; and**  
 29               **(2) forward to the department written notice of its action**  
 30               **under this section.**

- 31           **Sec. 7. (a) On receipt by the department of a recommendation**  
 32           **by the fiscal body to waive or reduce the delinquent tax liability,**  
 33           **the department shall:**  
 34               **(1) review:**  
 35                   **(A) the petition and all other materials submitted by the**  
 36                   **board; and**  
 37                   **(B) the notice received from the fiscal body; and**  
 38               **(2) subject to subsection (b), determine whether to:**

- 1           **(A) deny the petition;**  
 2           **(B) waive the delinquent tax liability; or**  
 3           **(C) reduce the delinquent tax liability by a specified**  
 4           **amount.**

5           **The department may reduce the delinquent tax liability in an**  
 6           **amount that differs from the amount of reduction recommended by**  
 7           **the board or the fiscal body.**

8           **(b) The department's determination to waive or reduce the**  
 9           **delinquent tax liability under subsection (a) is subject to the**  
 10           **limitation in section 8(f)(2) of this chapter.**

11           **Sec. 8. (a) The department shall give notice of its determination**  
 12           **under section 7 of this chapter and the right to seek an appeal of**  
 13           **the determination by mail to:**

- 14           **(1) the petitioner;**  
 15           **(2) the owner, if different from the petitioner;**  
 16           **(3) all persons that have, as of the date the petition was filed**  
 17           **under section 2 of this chapter, a substantial property interest**  
 18           **of public record in the brownfield;**  
 19           **(4) the assessor of the township in which the brownfield is**  
 20           **located;**  
 21           **(5) the board;**  
 22           **(6) the fiscal body; and**  
 23           **(7) the county auditor.**

24           **(b) A person aggrieved by a determination of the department**  
 25           **under section 7 of this chapter may obtain an additional review by**  
 26           **the department and a public hearing by filing a petition for review**  
 27           **with the county auditor of the county in which the brownfield is**  
 28           **located not more than thirty (30) days after the department gives**  
 29           **notice of the determination under subsection (a). The county**  
 30           **auditor shall transmit the petition to the department not more than**  
 31           **ten (10) days after the petition is filed.**

32           **(c) On receipt by the department of a petition for review, the**  
 33           **department shall set a date, time, and place for a hearing. At least**  
 34           **ten (10) days before the date fixed for the hearing, the department**  
 35           **shall give notice by mail of the date, time, and place fixed for the**  
 36           **hearing to:**

- 37           **(1) the person that filed the appeal;**  
 38           **(2) the petitioner;**

- 1           **(3) the owner, if different from the petitioner;**  
 2           **(4) all persons that have, as of the date the petition is filed, a**  
 3           **substantial interest of public record in the brownfield;**  
 4           **(5) the assessor of the township in which the brownfield is**  
 5           **located;**  
 6           **(6) the board;**  
 7           **(7) the fiscal body; and**  
 8           **(8) the county auditor.**
- 9           **(d) After the hearing, the department shall give the parties listed**  
 10          **in subsection (c) notice by mail of the final determination of the**  
 11          **department. The department's final determination under this**  
 12          **subsection is subject to the limitation in subsection (f)(2).**
- 13          **(e) The petitioner under section 2 of this chapter shall provide**  
 14          **to the county auditor reasonable proof of ownership of the**  
 15          **brownfield:**
- 16               **(1) if a petition is not filed under subsection (b), at least thirty**  
 17               **(30) days but not more than one hundred twenty (120) days**  
 18               **after notice is given under subsection (a); or**  
 19               **(2) after notice is given under subsection (d) but not more**  
 20               **than ninety (90) days after notice is given under subsection**  
 21               **(d).**
- 22          **(f) The county auditor:**
- 23               **(1) shall reduce or remove the delinquent tax liability on the**  
 24               **tax duplicate in the amount stated in:**
- 25                       **(A) if a petition is not filed under subsection (b), the**  
 26                       **determination of the department under section 7 of this**  
 27                       **chapter; or**  
 28                       **(B) the final determination of the department under this**  
 29                       **section;**
- 30               **not more than thirty (30) days after receipt of the proof of**  
 31               **ownership required in subsection (e); and**  
 32               **(2) may not reduce or remove any delinquent tax liability on**  
 33               **the tax duplicate if the petitioner under section 2 of this**  
 34               **chapter fails to provide proof of ownership as required in**  
 35               **subsection (e).**
- 36          **Sec. 9. As provided in IC 6-1.5-5-1, a petitioner under section 2**  
 37          **of this chapter may initiate an appeal of the department's final**  
 38          **determination under section 8 of this chapter by filing a petition**

1       **with the county assessor not more than forty-five (45) days after the**  
 2       **department gives the petitioner notice of the final determination.**

3       SECTION 2. IC 6-1.5-5-1 IS AMENDED TO READ AS  
 4       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The Indiana  
 5       board shall conduct impartial review of all appeals of final  
 6       determinations of the department of local government finance made  
 7       under the following:

- 8           (1) IC 6-1.1-8.  
 9           (2) IC 6-1.1-14-11.  
 10          (3) IC 6-1.1-16.  
 11          (4) IC 6-1.1-26-2.  
 12          **(5) IC 6-1.1-45-6.**

13       (b) Each notice of final determination issued by the department of  
 14       local government finance under a statute listed in subsection (a) must  
 15       give the taxpayer notice of:

- 16           (1) the opportunity for review under this section; and  
 17           (2) the procedures the taxpayer must follow in order to obtain  
 18           review under this section.

19       (c) Except as provided in subsection (e), in order to obtain a review  
 20       by the Indiana board under this section, the taxpayer must file a petition  
 21       for review with the appropriate county assessor not later than forty-five  
 22       (45) days after the notice of the department of local government  
 23       finance's action is given to the taxpayer.

24       (d) The county assessor shall transmit a petition for review under  
 25       subsection (c) to the Indiana board not later than ten (10) days after the  
 26       petition is filed.

27       (e) In order to obtain a review by the Indiana board of an appeal of  
 28       a final determination of the department of local government finance  
 29       under IC 6-1.1-8-30, the public utility company must follow the  
 30       procedures in IC 6-1.1-8-30.

31       SECTION 3. IC 6-3.1-23-4 IS AMENDED TO READ AS  
 32       FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:  
 33       Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's  
 34       total tax liability incurred under:

- 35           (1) IC 6-2-5 (the state gross retail and use tax);  
 36           (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);  
 37           (3) IC 6-5-5 (the financial institutions tax); and  
 38           (4) IC 27-1-18-2 (the insurance premiums tax);



1 **for a listed tax (as defined in IC 6-8.1-1-1)**, as computed after the  
 2 application of the credits that under IC 6-3.1-1-2 are to be applied  
 3 before the credit provided by this chapter.

4 SECTION 4. IC 6-3.1-23-5 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

6 Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount  
 7 determined under section 6 of this chapter against the taxpayer's state  
 8 tax liability for a taxable year if the following requirements are  
 9 satisfied:

10 (1) The taxpayer does the following:

11 (A) Makes a qualified investment in that taxable year.

12 ~~(B) Makes a good faith attempt to recover the costs of the~~  
 13 ~~environmental damages from the liable parties.~~

14 ~~(C) (B) Submits a plan to the legislative body that: the~~  
 15 **following to the Indiana development finance authority:**

16 (i) ~~describes~~ **A description of** the taxpayer's proposed  
 17 redevelopment of the property.

18 (ii) ~~indicates~~ The sources and amounts of money to be used  
 19 for the remediation and proposed redevelopment of the  
 20 property. ~~and~~

21 (iii) ~~estimates~~ **An estimate of** the value of the remediation  
 22 and proposed redevelopment.

23 **(iv) A description documenting any good faith attempts**  
 24 **to recover the costs of the environmental damages from**  
 25 **liable parties.**

26 **(v) Proof of appropriate zoning for the intended reuse.**

27 **(vi) A letter supporting the proposed project and**  
 28 **redevelopment from the legislative body.**

29 **(vii) The documentation described in subsection (b).**

30 ~~(D) Certifies to the legislative body that the taxpayer:~~

31 ~~(i) has never had an ownership interest in an entity that~~  
 32 ~~contributed; and~~

33 ~~(ii) has not contributed;~~

34 ~~to contamination (as defined in IC 13-11-2-43) that is the~~  
 35 ~~subject of the voluntary remediation; as determined under the~~  
 36 ~~written standards adopted by the department of environmental~~  
 37 ~~management and the Indiana development finance authority.~~

1 (2) The legislative body, after holding a public hearing of which  
2 notice was given under IC 5-3-1, adopts a resolution:

3 (A) determining that:

- 4 (i) the estimate of the value of the remediation and proposed  
5 redevelopment included in the plan under subdivision  
6 (1)(C)(iii) is reasonable for projects of that nature; and  
7 (ii) the plan submitted under subdivision (1)(C) is in the best  
8 interest of the community;

9 (B) determining that the taxpayer:

- 10 (i) has never had an ownership interest in an entity that  
11 contributed; and  
12 (ii) has not contributed;

13 to contamination (as defined in IC 13-11-2-43) that is the  
14 subject of the voluntary remediation; as determined under the  
15 written standards adopted by the department of environmental  
16 management and the Indiana development finance authority;  
17 and

18 (C) approving the credit:

19 (3) (2) The department determines under section 15 of this chapter  
20 that the taxpayer's return claiming the credit is filed with the  
21 department before the maximum amount of credits allowed under  
22 this chapter is met.

23 (b) In determining whether the redevelopment is in the best interest  
24 of the community, the legislative body must consider, among other  
25 things, whether the proposed development promotes:

- 26 (1) the development of housing;  
27 (2) the development of green space;  
28 (3) the development of high technology businesses; or  
29 (4) the creation or retention of high paying jobs.

30 (b) **The documentation referred to in subsection (a)(1)(B)(vii)**  
31 **consists of information that the taxpayer:**

- 32 (1) **has never had an ownership interest in an entity that**  
33 **caused or contributed to; and**  
34 (2) **has not caused or contributed to;**

35 **the release or threatened release of a hazardous substance, a**  
36 **contaminant, petroleum, or a petroleum product that is the subject**  
37 **of the remediation.**

38 (c) **The Indiana development finance authority shall:**

- 1           **(1) determine whether the taxpayer meets the requirements of**  
 2           **subsection (a)(1); and**  
 3           **(2) if the taxpayer meets the requirements of subsection (a)(1),**  
 4           **certify to the taxpayer that the taxpayer is eligible for the**  
 5           **credit allowed under this chapter.**

6           SECTION 5. IC 6-3.1-23-6 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:  
 8           Sec. 6. The amount of the credit allowed under this chapter **with**  
 9           **respect to each brownfield site** is equal to the lesser of:

- 10           (1) ~~one two~~ **two** hundred thousand dollars ~~(\$100,000);~~ **(\$200,000)**; or  
 11           (2) **the sum of:**  
 12                 **(A) ten one hundred** percent ~~(+0%)~~ **(100%)** multiplied by the  
 13                 **first one hundred thousand dollars (\$100,000)** of qualified  
 14                 investment made by the taxpayer during the taxable year; **plus**  
 15                 **(B) fifty percent (50%) multiplied by the amount of the**  
 16                 **qualified investment made by the taxpayer during the**  
 17                 **taxable year that exceeds one hundred thousand dollars**  
 18                 **(\$100,000).**

19           SECTION 6. IC 6-3.1-23-12 IS AMENDED TO READ AS  
 20           FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:  
 21           Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must  
 22           request the department of environmental management and the Indiana  
 23           development finance authority to determine if costs incurred in a  
 24           voluntary remediation involving a brownfield are qualified investments.

25           (b) The request under subsection (a) must be made before the costs  
 26           are incurred.

27           (c) Upon receipt of a request under subsection (a), the department of  
 28           environmental management and the Indiana development finance  
 29           authority shall:

- 30                 (1) examine the costs; ~~under the standards adopted by the~~  
 31                 ~~department of environmental management;~~ and  
 32                 (2) certify any costs that the department and the authority  
 33                 determine to be a qualified investment.

34           (d) Upon completion of a voluntary remediation for which costs  
 35           have been certified as a qualified investment under subsection (c), the  
 36           taxpayer:

- 37                 (1) shall notify the department of environmental management; and

1 (2) shall request from the department of environmental  
2 management:

3 (A) with respect to voluntary remediation conducted under  
4 IC 13-25-5, the certificate of completion issued by the  
5 commissioner under IC 13-25-5-16 for the voluntary  
6 remediation work plan under which the costs certified under  
7 subsection (c)(2) were incurred; or

8 (B) with respect to voluntary remediation not conducted under  
9 IC 13-25-5, a certification of the costs incurred for the  
10 voluntary remediation that are consistent with the costs  
11 certified under subsection (c)(2).

12 SECTION 7. IC 6-3.1-23-13 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

14 Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer  
15 must claim the credit on the taxpayer's state tax return or returns in the  
16 manner prescribed by the department of state revenue.

17 (b) The taxpayer shall submit the following to the department of  
18 state revenue:

19 (1) The certification of the qualified investment by the department  
20 of environmental management and the Indiana development  
21 finance authority under section 12(c) of this chapter.

22 (2) Either:

23 (A) an official copy of the certification referred to in section  
24 12(d)(2)(A) of this chapter; or

25 (B) the certification issued by the department of environmental  
26 management in response to a request under section 12(d)(2)(B)  
27 of this chapter.

28 (3) Proof of payment of the certified qualified investment.

29 ~~(4) A copy of the legislative body's resolution adopted under~~  
30 ~~section 5(a)(2) of this chapter.~~

31 **(4) The certification received by the taxpayer under section**  
32 **5(c) of this chapter.**

33 (5) Information that the department determines is necessary for the  
34 calculation of the credit provided by this chapter.

35 SECTION 8. IC 6-3.1-23-15 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

37 Sec. 15. (a) The amount of tax credits allowed under this chapter may  
38 not exceed ~~one two~~ million dollars ~~(\$1,000,000)~~ **(\$2,000,000)** in a state

1 fiscal year unless the Indiana development finance authority determines  
2 under subsection (e) that money is available for additional tax credits  
3 in a particular state fiscal year. However, if the maximum amount of tax  
4 credits allowed under this subsection exceeds the amount available in  
5 the subaccount of the environmental remediation revolving loan fund  
6 (IC 13-19-5), the maximum amount of tax credits allowed under this  
7 subsection is reduced to the amount available.

8 (b) The department shall record the time of filing of each return  
9 claiming a credit under section 13 of this chapter and shall, except as  
10 provided in subsection (c), grant the credit to the taxpayer, if the  
11 taxpayer otherwise qualifies for a tax credit under this chapter, in the  
12 chronological order in which the return is filed in the state fiscal year.

13 (c) If the total credits approved under this section equal the  
14 maximum amount allowable in a state fiscal year, a return claiming the  
15 credit filed later in that same fiscal year may not be approved.  
16 However, if an applicant for whom a credit has been approved fails to  
17 file the information required by section 13 of this chapter, an amount  
18 equal to the credit previously allowed or set aside for the applicant may  
19 be allowed to the next eligible applicant or applicants until the total  
20 amount has been allowed. In addition, the department may, if the  
21 applicant so requests, approve a credit application, in whole or in part,  
22 with respect to the next succeeding state fiscal year.

23 (d) The department of state revenue shall report the total credits  
24 granted under this chapter for each state fiscal year to the Indiana  
25 development finance authority. The Indiana development finance  
26 authority shall transfer to the state general fund an amount equal to the  
27 total credits granted from the subaccount of the environmental  
28 remediation revolving loan fund (IC 13-19-5).

29 (e) At the end of each state fiscal year, the Indiana development  
30 finance authority may determine whether money is available in the  
31 ~~subaccount of the~~ environmental remediation revolving loan fund  
32 (IC 13-19-5) to provide tax credits in excess of the amount set forth in  
33 subsection (a) in the subsequent state fiscal year.

34 (f) Before ~~December 31~~ **June 30** of each year, the Indiana  
35 development finance authority may assess the demand for tax credits  
36 under this chapter and determine whether the need for other brownfield  
37 activities is greater than the need for tax credits. If the Indiana  
38 development finance authority determines that the need for other

1 brownfield activities is greater than the need for tax credits, the  
 2 authority may set aside up to three-fourths (3/4) of the amount of  
 3 allowable tax credits for the subsequent state fiscal year and use it for  
 4 other brownfield projects.

5 (g) Except as provided in subsection (h), the Indiana development  
 6 finance authority may use money set aside under subsection (f) for any  
 7 permissible purpose.

8 (h) Money specifically appropriated for tax credits may not be set  
 9 aside for another use.

10 SECTION 9. IC 6-3.1-23-16 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:  
 12 Sec. 16. A tax credit may not be allowed under this chapter for a  
 13 taxable year that begins after December 31, ~~2005~~ **2007**. However, this  
 14 section does not affect the ability of a taxpayer to carry forward the  
 15 excess of a tax credit claimed for a taxable year that begins before  
 16 January 1, ~~2006~~ **2008**, under section 11 of this chapter.

17 SECTION 10. IC 13-11-2-150 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 150. (a) "Owner", for  
 19 purposes of IC 13-23 (except as provided in ~~subsection~~ **subsections** (b)  
 20 **and (c)**) means:

21 (1) for an underground storage tank that:

22 (A) was:

23 ~~(A)~~ (i) in use on November 8, 1984; or

24 ~~(B)~~ (ii) brought into use after November 8, 1984;

25 for the storage, use, or dispensing of regulated substances, a  
 26 person who owns the underground storage tank; or

27 ~~(2) for an underground storage tank that (B) is:~~

28 ~~(A)~~ (i) in use before November 8, 1984; but

29 ~~(B)~~ (ii) no longer in use on November 8, 1984;

30 a person who owned the tank immediately before the  
 31 discontinuation of the tank's use; or

32 **(2) a person who conveyed ownership or control of the**  
 33 **underground storage tank to a political subdivision (as**  
 34 **defined in IC 36-1-2-13) or unit of federal or state government**  
 35 **because of:**

36 **(A) bankruptcy;**

37 **(B) foreclosure;**

- 1           **(C) tax delinquency, including a conveyance under**
- 2           **IC 6-1.1-24 or IC 6-1.1-25;**
- 3           **(D) abandonment;**
- 4           **(E) the exercise of eminent domain, including any purchase**
- 5           **of property once an offer to purchase has been tendered**
- 6           **under IC 32-24-1-5;**
- 7           **(F) receivership;**
- 8           **(G) other circumstances in which a political subdivision or**
- 9           **unit of federal or state government involuntarily acquired**
- 10           **ownership or control because of the political subdivision's**
- 11           **or unit's function as sovereign; or**
- 12           **(H) any other means to conduct remedial actions on a**
- 13           **brownfield;**
- 14           **if the person was a person described in subdivision (1)**
- 15           **immediately before the person conveyed ownership or control**
- 16           **of the underground storage tank.**
- 17           (b) "Owner", for purposes of IC 13-23-13, does not include a person
- 18           who:
  - 19           (1) does not participate in the management of an underground
  - 20           storage tank;
  - 21           (2) is otherwise not engaged in the:
    - 22           (A) production;
    - 23           (B) refining; and
    - 24           (C) marketing;
  - 25           of regulated substances; and
  - 26           (3) holds indicia of ownership primarily to protect the owner's
  - 27           security interest in the tank.
- 28           (c) "Owner", for purposes of IC 13-23, does not include a
- 29           political subdivision (as defined in IC 36-1-2-13) or unit of federal
- 30           or state government that acquired ownership or control of an
- 31           underground storage tank because of:
  - 32           (1) bankruptcy;
  - 33           (2) foreclosure;
  - 34           (3) tax delinquency, including an acquisition under
  - 35           IC 6-1.1-24 or IC 6-1.1-25;
  - 36           (4) abandonment;

- 1           **(5) the exercise of eminent domain, including any purchase of**  
 2           **property once an offer to purchase has been tendered under**  
 3           **IC 32-24-1-5;**  
 4           **(6) receivership;**  
 5           **(7) other circumstances in which the political subdivision or**  
 6           **unit of federal or state government involuntarily acquired**  
 7           **ownership or control because of the political subdivision's or**  
 8           **unit's function as sovereign;**  
 9           **(8) transfer from another political subdivision or unit of**  
 10           **federal or state government; or**  
 11           **(9) any other means to conduct remedial actions on a**  
 12           **brownfield;**

13           **unless the political subdivision or unit of federal or state**  
 14           **government causes or contributes to the release or threatened**  
 15           **release of a substance, in which case the political subdivision or**  
 16           **unit of federal or state government is subject to IC 13-23 in the**  
 17           **same manner and to the same extent as a nongovernmental entity**  
 18           **under IC 13-23.**

19           SECTION 11. IC 13-11-2-151 IS AMENDED TO READ AS  
 20           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 151. (a) "Owner or  
 21           operator", for purposes of IC 13-24-1, means the following:

- 22           (1) For a petroleum facility, a person who owns or operates the  
 23           facility.  
 24           (2) For a **petroleum** facility where title or control has been  
 25           conveyed because of:  
 26           (A) bankruptcy;  
 27           (B) foreclosure;  
 28           (C) tax delinquency, **including a conveyance under**  
 29           **IC 6-1.1-24 or IC 6-1.1-25;**  
 30           (D) abandonment; **or**  
 31           **(E) the exercise of eminent domain, including any purchase**  
 32           **of property once an offer to purchase has been tendered**  
 33           **under IC 32-24-1-5;**  
 34           **(F) receivership;**  
 35           **(G) other circumstances in which a political subdivision (as**  
 36           **defined in IC 36-1-2-13) or unit of federal or state**  
 37           **government involuntarily acquired title or control because**



1                   **of the political subdivision's or unit's function as sovereign;**  
 2                   **or**  
 3                   **(H) ~~a similar~~ any other means to conduct remedial actions**  
 4                   **on a brownfield;**  
 5                   to a **political subdivision or** unit of **federal or** state ~~or local~~  
 6                   government, a person who owned, operated, or otherwise  
 7                   controlled the **petroleum** facility immediately before title or  
 8                   control was conveyed.

9                   (b) Subject to subsection (c), the term does not include a **political**  
 10                  **subdivision or** unit of federal **or** state ~~or local~~ government that  
 11                  acquired ownership or control ~~involuntarily of the facility~~ through:

12                  (1) bankruptcy;  
 13                  **(2) foreclosure;**  
 14                  ~~(2)~~ **(3) tax delinquency, including an acquisition under**  
 15                  **IC 6-1.1-24 or IC 6-1.1-25;**  
 16                  ~~(3)~~ **(4) abandonment; or**  
 17                  **(5) the exercise of eminent domain, including any purchase of**  
 18                  **property once an offer to purchase has been tendered under**  
 19                  **IC 32-24-1-5;**  
 20                  **(6) receivership;**  
 21                  ~~(4)~~ **(7) other circumstances in which the political subdivision or**  
 22                  **unit of federal or state** government ~~unit~~ involuntarily acquired  
 23                  title because of the **political subdivision's or** unit's function as  
 24                  sovereign;  
 25                  **(8) transfer from another political subdivision or unit of**  
 26                  **federal or state government; or**  
 27                  **(9) any other means to conduct remedial actions on a**  
 28                  **brownfield.**

29                  (c) The term includes a **political subdivision or** unit of federal **or**  
 30                  state ~~or local~~ government that causes or contributes to the release or  
 31                  threatened release of a substance, **in which case the political**  
 32                  **subdivision or** unit of federal **or** state ~~or local~~ government is subject to  
 33                  IC 13-24-1:

34                  (1) in the same manner; and  
 35                  (2) to the same extent;  
 36                  as a nongovernmental entity under IC 13-24-1.

37                  (d) The term does not include a person who:  
 38                  (1) does not participate in the management of a petroleum facility;

- 1 (2) is otherwise not engaged in the:
- 2 (A) production;
- 3 (B) refining; and
- 4 (C) marketing;
- 5 of petroleum; and
- 6 (3) holds evidence of ownership in a petroleum facility, primarily
- 7 to protect the owner's security interest in the petroleum facility.

8 SECTION 12. IC 13-23-6-2 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The sources of  
 10 money for the fund are as follows:

- 11 (1) Grants made by the United States Environmental Protection
- 12 Agency to the state under cooperative agreements under Section
- 13 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C.
- 14 6991b(h)(7)).
- 15 (2) Costs recovered by the state under IC 13-23-13-8 in
- 16 connection with any corrective action undertaken under
- 17 IC 13-23-13-2 with respect to a release of petroleum.
- 18 (3) Costs recovered by the state in connection with the
- 19 enforcement of this article with respect to any release of
- 20 petroleum.
- 21 (4) Appropriations made by the general assembly, gifts, and
- 22 donations intended for deposit in the fund.
- 23 (5) Penalties imposed under IC 13-23-14 and fifty percent (50%)
- 24 of penalties imposed under IC 13-23-12 against owners and
- 25 operators of underground petroleum storage tanks.
- 26 ~~(6) Revenue from the underground petroleum storage tank~~
- 27 ~~registration fee deposited in the fund under IC 13-23-12-4.~~

28 SECTION 13. IC 13-23-12-4 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The department of  
 30 state revenue shall collect fees paid under this chapter and deposit the  
 31 fees as follows:

- 32 (1) ~~Fees~~ **The ninety dollar (\$90) fee** paid in connection with
- 33 underground petroleum storage tanks shall be deposited as
- 34 follows:
- 35 (A) ~~Forty-five dollars (\$45) shall be deposited~~ in the excess
- 36 liability trust fund.
- 37 (B) ~~Forty-five dollars (\$45) shall be deposited in the petroleum~~
- 38 ~~trust fund.~~

1 (2) Fees paid in connection with underground storage tanks used  
 2 to contain regulated substances other than petroleum shall be  
 3 deposited as follows:

4 (A) Forty-five dollars (\$45) shall be deposited in the hazardous  
 5 substances response trust fund.

6 (B) Two hundred dollars (\$200) shall be deposited in the  
 7 excess liability trust fund.

8 SECTION 14. IC 13-25-4-8 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Except as  
 10 provided in subsection (b), (c), or (d), a person that is liable under  
 11 Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

12 (1) the costs of removal or remedial action incurred by the  
 13 commissioner consistent with the national contingency plan;

14 (2) the costs of any health assessment or health effects study  
 15 carried out by or on behalf of the commissioner under Section  
 16 104(i) of CERCLA (42 U.S.C. 9604(i)); or

17 (3) damages for:

18 (A) injury to;

19 (B) destruction of; or

20 (C) loss of;

21 natural resources of Indiana;

22 is liable, in the same manner and to the same extent, to the state under  
 23 this section.

24 (b) The exceptions provided by Section 107(b) of CERCLA (42  
 25 U.S.C. 9607(b)) to liability otherwise imposed by Section 107(a) of  
 26 CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability  
 27 otherwise imposed under subsection (a).

28 (c) Notwithstanding any liability imposed by the environmental  
 29 management laws, a lender, a secured or unsecured creditor, or a  
 30 fiduciary is not liable under the environmental management laws, in  
 31 connection with the release or threatened release of a hazardous  
 32 substance from a facility unless the lender, the fiduciary, or creditor has  
 33 participated in the management of the hazardous substance at the  
 34 facility.

35 (d) Notwithstanding any liability imposed by the environmental  
 36 management laws, the liability of a fiduciary for a release or threatened  
 37 release of a hazardous substance from a facility that is held by the  
 38 fiduciary in its fiduciary capacity may be satisfied only from the assets

1 held by the fiduciary in the same estate or trust as the facility that gives  
2 rise to the liability.

3 (e) **Except as provided in subsection (g)**, a political subdivision (as  
4 defined in IC 36-1-2-13) **or unit of federal or state government** is not  
5 liable to the state under this section for costs or damages associated  
6 with the presence of a hazardous substance on, in, or at a property in  
7 which the political subdivision **or unit of federal or state government**  
8 acquired an interest in the property **because of:**

9 (1) ~~under IC 6-1.1-24 or IC 6-1.1-25; bankruptcy; abandonment;~~  
10 ~~or other circumstances in which the political subdivision~~  
11 ~~involuntarily acquired an interest in the property; or~~

12 (2) ~~to conduct remedial actions on a brownfield;~~  
13 ~~after the hazardous substance was disposed of or placed on, in, or at the~~  
14 ~~property.~~

15 (2) **foreclosure;**

16 (3) **tax delinquency, including an acquisition under**  
17 **IC 6-1.1-24 or IC 6-1.1-25;**

18 (4) **abandonment;**

19 (5) **the exercise of eminent domain, including any purchase of**  
20 **property once an offer to purchase has been tendered under**  
21 **IC 32-24-1-5;**

22 (6) **receivership;**

23 (7) **other circumstances in which the political subdivision or**  
24 **unit of federal or state government involuntarily acquired an**  
25 **interest in the property because of the political subdivision's**  
26 **or unit's function as sovereign;**

27 (8) **transfer from another political subdivision or unit of**  
28 **federal or state government; or**

29 (9) **any other means to conduct remedial actions on a**  
30 **brownfield.**

31 (f) **If a transfer of an interest in property as described in**  
32 **subsection (e) occurs, a person who owned, operated, or otherwise**  
33 **controlled the property immediately before the political subdivision**  
34 **or unit of federal or state government acquired the interest in the**  
35 **property remains liable under this section:**

36 (1) **in the same manner; and**

37 (2) **to the same extent;**

1 **as the person was liable immediately before the person's interest in**  
2 **the property was acquired by the political subdivision or unit of**  
3 **federal or state government.**

4 **(g) Notwithstanding subsection (e), a political subdivision or unit**  
5 **of federal or state government that causes or contributes to the**  
6 **release or threatened release of a hazardous substance on, in, or at**  
7 **a property remains subject to this section:**

8 **(1) in the same manner; and**

9 **(2) to the same extent;**

10 **as a nongovernmental entity under this section.**

11 SECTION 15. IC 34-13-3-3 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A governmental  
13 entity or an employee acting within the scope of the employee's  
14 employment is not liable if a loss results from the following:

15 (1) The natural condition of unimproved property.

16 (2) The condition of a reservoir, dam, canal, conduit, drain, or  
17 similar structure when used by a person for a purpose that is not  
18 foreseeable.

19 (3) The temporary condition of a public thoroughfare or extreme  
20 sport area that results from weather.

21 (4) The condition of an unpaved road, trail, or footpath, the  
22 purpose of which is to provide access to a recreation or scenic  
23 area.

24 (5) The design, construction, control, operation, or normal  
25 condition of an extreme sport area, if all entrances to the extreme  
26 sport area are marked with:

27 (A) a set of rules governing the use of the extreme sport area;

28 (B) a warning concerning the hazards and dangers associated  
29 with the use of the extreme sport area; and

30 (C) a statement that the extreme sport area may be used only  
31 by persons operating extreme sport equipment.

32 This subdivision shall not be construed to relieve a governmental  
33 entity from liability for the continuing duty to maintain extreme  
34 sports areas in a reasonably safe condition.

35 (6) The initiation of a judicial or an administrative proceeding.

36 (7) The performance of a discretionary function; however, the  
37 provision of medical or optical care as provided in IC 34-6-2-38  
38 shall be considered as a ministerial act.

- 1 (8) The adoption and enforcement of or failure to adopt or enforce  
 2 a law (including rules and regulations), unless the act of  
 3 enforcement constitutes false arrest or false imprisonment.
- 4 (9) An act or omission performed in good faith and without malice  
 5 under the apparent authority of a statute which is invalid if the  
 6 employee would not have been liable had the statute been valid.
- 7 (10) The act or omission of anyone other than the governmental  
 8 entity or the governmental entity's employee.
- 9 (11) The issuance, denial, suspension, or revocation of, or failure  
 10 or refusal to issue, deny, suspend, or revoke any permit, license,  
 11 certificate, approval, order, or similar authorization, where the  
 12 authority is discretionary under the law.
- 13 (12) Failure to make an inspection, or making an inadequate or  
 14 negligent inspection, of any property, other than the property of  
 15 a governmental entity, to determine whether the property  
 16 complied with or violates any law or contains a hazard to health  
 17 or safety.
- 18 (13) Entry upon any property where the entry is expressly or  
 19 impliedly authorized by law.
- 20 (14) Misrepresentation if unintentional.
- 21 (15) Theft by another person of money in the employee's official  
 22 custody, unless the loss was sustained because of the employee's  
 23 own negligent or wrongful act or omission.
- 24 (16) Injury to the property of a person under the jurisdiction and  
 25 control of the department of correction if the person has not  
 26 exhausted the administrative remedies and procedures provided by  
 27 section 7 of this chapter.
- 28 (17) Injury to the person or property of a person under supervision  
 29 of a governmental entity and who is:
- 30 (A) on probation; or
- 31 (B) assigned to an alcohol and drug services program under  
 32 IC 12-23, a minimum security release program under  
 33 IC 11-10-8, a pretrial conditional release program under  
 34 IC 35-33-8, or a community corrections program under  
 35 IC 11-12.
- 36 (18) Design of a highway (as defined in IC 9-13-2-73) if the  
 37 claimed loss occurs at least twenty (20) years after the public  
 38 highway was designed or substantially redesigned; except that this

1 subdivision shall not be construed to relieve a responsible  
 2 governmental entity from the continuing duty to provide and  
 3 maintain public highways in a reasonably safe condition.

4 (19) Development, adoption, implementation, operation,  
 5 maintenance, or use of an enhanced emergency communication  
 6 system.

7 (20) Injury to a student or a student's property by an employee of  
 8 a school corporation if the employee is acting reasonably under a  
 9 discipline policy adopted under IC 20-8.1-5.1-7(b).

10 (21) An error resulting from or caused by a failure to recognize  
 11 the year 1999, 2000, or a subsequent year, including an incorrect  
 12 date or incorrect mechanical or electronic interpretation of a date,  
 13 that is produced, calculated, or generated by:

- 14 (A) a computer;
- 15 (B) an information system; or
- 16 (C) equipment using microchips;

17 that is owned or operated by a governmental entity. However, this  
 18 subdivision does not apply to acts or omissions amounting to  
 19 gross negligence, willful or wanton misconduct, or intentional  
 20 misconduct. For purposes of this subdivision, evidence of gross  
 21 negligence may be established by a party by showing failure of a  
 22 governmental entity to undertake an effort to review, analyze,  
 23 remediate, and test its electronic information systems or by  
 24 showing failure of a governmental entity to abate, upon notice, an  
 25 electronic information system error that caused damage or loss.  
 26 However, this subdivision expires June 30, 2003.

27 (22) An act or omission performed in good faith under the  
 28 apparent authority of a court order described in IC 35-46-1-15.1  
 29 that is invalid, including an arrest or imprisonment related to the  
 30 enforcement of the court order, if the governmental entity or  
 31 employee would not have been liable had the court order been  
 32 valid.

33 **(23) An act taken to investigate or remediate hazardous**  
 34 **substances, petroleum, or other pollutants associated with a**  
 35 **brownfield (as defined in IC 13-11-2-19.3) unless:**

- 36 (A) the loss is a result of reckless conduct; or

1           **(B) the governmental entity was responsible for the initial**  
2           **placement of the hazardous substances, petroleum, or**  
3           **other pollutants on the brownfield.**

4           SECTION 16. [EFFECTIVE UPON PASSAGE] (a) **IC 6-3.1-23-4,**  
5           **IC 6-1.1-23-5, IC 6-3.1-23-6, IC 6-1.1-23-12, IC 6-1.1-23-13,**  
6           **IC 6-3.1-23-15, and IC 6-1.1-23-16, all as amended by this act,**  
7           **apply to reportable periods beginning after December 31, 2004.**

8           **(b) The department of state revenue shall implement this act to**  
9           **allow the application of the statutes referred to in subsection (a), all**  
10           **as amended by this act, to reportable periods beginning after**  
11           **December 31, 2004.**

12           SECTION 17. **An emergency is declared for this act.**  
              (Reference is to HB 1279 as introduced.)

**and when so amended that said bill do pass.**

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Representative Wolkins