

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:

- 1 Page 1, line 1, delete "IC 4-23-5.5-17" and insert "IC 5-28-6-3".
- 2 Page 1, line 3, delete "17." and insert "3.".
- 3 Page 1, delete lines 14 through 17, begin a new line block indented
- 4 and insert:
 - 5 **(1) begins construction of a facility or an expansion of a**
 - 6 **facility for the production of biodiesel, blended biodiesel, or**
 - 7 **ethanol in Indiana after February 28, 2005; and**
 - 8 **(2) wishes to claim a tax credit with respect to that facility or**
 - 9 **the expansion of a facility under any combination of**
 - 10 **IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;".**
- 11 Page 2, delete line 1.
- 12 Page 2, line 2, delete "may" and insert "**must**".
- 13 Page 2, line 2, delete "board " and insert "**corporation**".
- 14 Page 2, line 3, delete "a" and insert "**the**".
- 15 Page 2, line 3, delete "under any combination of IC 6-3.1-27-8," and
- 16 insert ".".
- 17 Page 2, delete lines 4 through 32, begin a new paragraph and insert:
 - 18 **"(c) Subject to this section, the corporation shall issue to each**
 - 19 **qualifying applicant a certification that:**
 - 20 **(1) certifies the person as eligible for the tax credits for which**
 - 21 **the person applied;**

- 1 **(2) identifies the facilities covered by the certification; and**
 2 **(3) allocates to the person the lesser of:**
 3 **(A) the maximum allowable credit for which the person is**
 4 **eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or**
 5 **IC 6-3.1-28-11; or**
 6 **(B) a credit equal to the level of production demonstrated**
 7 **as economically viable under the business plan submitted**
 8 **to the corporation by the person.**
- 9 **(d) To qualify for certification under subsection (c), a person**
 10 **must do the following:**
- 11 **(1) Submit an application for the credit on the forms and in**
 12 **the manner prescribed by the corporation for the credit that**
 13 **is the subject of the application.**
- 14 **(2) Demonstrate through a business plan and other**
 15 **information presented to the corporation that the level of**
 16 **production proposed by the person is feasible and**
 17 **economically viable. In making a determination under this**
 18 **subdivision, the corporation shall consider:**
- 19 **(A) whether the person is sufficiently capitalized to**
 20 **complete the project;**
 21 **(B) the person's credit rating;**
 22 **(C) whether the person has sufficient technical expertise to**
 23 **build and operate a facility; and**
 24 **(D) other relevant financial information as determined by**
 25 **the corporation.**
- 26 **(e) The corporation shall record the time of filing of each**
 27 **application submitted under this section. The corporation shall**
 28 **grant certifications under this section to qualifying applicants in**
 29 **the chronological order in which the applications for the same type**
 30 **of credit are filed until the maximum allowable credit for that type**
 31 **of credit is fully allocated."**
- 32 Page 2, line 33, delete "board" and insert "**corporation**".
 33 Page 2, line 34, delete "board" and insert "**corporation**".
 34 Page 2, line 39, delete "board" and insert "**corporation**".
 35 Page 3, line 4, delete "board" and insert "**corporation**".
 36 Page 3, line 7, delete "board in rules adopted by the board" and
 37 insert "**corporation in rules adopted by the corporation**".
 38 Page 3, line 9, delete "board" and insert "**corporation**".
 39 Page 3, line 14, delete ""board"" and insert ""**corporation**"".
 40 Page 3, line 14, delete "recycling and" and insert "**economic**
 41 **development corporation.**".
 42 Page 3, delete line 15.

1 Page 3, delete lines 31 through 42.

2 Delete pages 4 through 5.

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

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

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

12 (2) the number of gallons of biodiesel:

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

14 and

15 (B) used to produce blended biodiesel.

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

19 (c) ~~(b)~~ The total amount of credits allowed a taxpayer (or, if the
20 person producing the biodiesel is a pass through entity, the
21 shareholders, partners, or members of the pass through entity)
22 under this section may not exceed ~~one~~ **three** million dollars
23 ~~(\$1,000,000)~~ **(\$3,000,000)** for ~~all taxpayers and~~ all taxable years.

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

31 (1) two cents (\$0.02); multiplied by

32 (2) the number of gallons of blended biodiesel:

33 (A) produced at the Indiana facility; and

34 (B) blended with biodiesel produced at a facility located in
35 Indiana.

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

39 (c) ~~(b)~~ The total amount of credits allowed a taxpayer (or, if the
40 person producing the blended biodiesel is a pass through entity, the
41 shareholders, partners, or members of the pass through entity)
42 under this section may not exceed ~~one~~ **three** million dollars

1 ~~(\$1,000,000)~~ **(\$3,000,000)** for all ~~taxpayers and all~~ taxable years.

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

6 (1) **section 8 of this chapter;**

7 (2) **section 9 of this chapter; and**

8 (3) **IC 6-3.1-28;**

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

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

16 (1) is a dealer; and

17 (2) ~~operates a service station in Indiana at which distributes at~~
18 ~~retail blended biodiesel is sold and dispensed through a metered~~
19 ~~pump in a taxable year;~~

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

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

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

24 (2) the total number of gallons of blended biodiesel ~~sold and~~
25 ~~dispensed distributed at retail in a taxable year. through all the~~
26 ~~metered pumps located at a service station described in subsection~~
27 ~~(a)(2).~~

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

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

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

36 SECTION 9. IC 6-3.1-27-12 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 12. (a) If the
38 amount of the credit determined under this chapter for a taxpayer in a
39 taxable year exceeds the taxpayer's state tax liability for that taxable
40 year, the taxpayer may carry over the excess to the following taxable
41 years. The amount of the credit carryover from a taxable year shall be
42 reduced to the extent that the carryover is used by the taxpayer to

1 obtain a credit under this chapter for any subsequent taxable year. A
 2 **credit may not be carried forward for more than six (6) taxable**
 3 **years following the taxable year in which the taxpayer was first**
 4 **entitled to claim the credit.**

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

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

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

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

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

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

18 **is eligible for the credit under IC 4-23-5.5-17.**

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

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

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

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

39 (1) twelve and one-half cents (\$.125); multiplied by

40 (2) the number of gallons of ethanol produced at the Indiana
 41 facility.".

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

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

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

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

5 Sec. 11. (a) The total amount of credits allowed a taxpayer (**or, if the**
6 **person producing the ethanol is a pass through entity, the**
7 **shareholders, partners, or members of the pass through entity**)
8 under this chapter may not exceed a total of ~~five~~ **three** million dollars
9 (~~\$5,000,000~~) (**\$3,000,000**) for all taxable years.

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

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

16 **Chapter 29. Coal Gasification Technology Investment Tax**
17 **Credit**

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

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

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

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

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

30 (1) **The facility is a newly constructed energy generating plant.**

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

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

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

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

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

41 (2) **transmission equipment located at the site of an integrated**
42 **coal gasification powerplant that is employed specifically to**

1 serve the integrated coal gasification powerplant.

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

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

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

11 **Sec. 8.** As used in this chapter, "taxpayer" means a person,
12 corporation, partnership, or another entity that has any state tax
13 liability.

14 **Sec. 9.** A taxpayer that:

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

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

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

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

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

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

1 **(\$500,000,000).**

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

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

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

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

11 **(c) If the amount determined under this section for a taxable**
 12 **year exceeds the taxpayer's state tax liability for the taxable year,**
 13 **the taxpayer may carry over the excess credit for a period not to**
 14 **exceed the six (6) taxable years following the taxable year of the**
 15 **excess but not past the sixth taxable year after the taxpayer's ten**
 16 **(10) year installment period ends.**

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

20 **Sec. 12. A person that proposes to place a new integrated coal**
 21 **gasification powerplant into service may apply to the corporation**
 22 **before the taxpayer makes the qualified investment to enter into an**
 23 **agreement for a tax credit under this chapter. The corporation**
 24 **shall prescribe the form of the application.**

25 **Sec. 13. After receipt of an application, the corporation may**
 26 **enter into an agreement with the applicant for a credit under this**
 27 **chapter if the corporation determines that the taxpayer's proposed**
 28 **investment satisfies the requirements of this chapter.**

29 **Sec. 14. (a) The corporation shall enter into an agreement with**
 30 **an applicant that is awarded a credit under this chapter. The**
 31 **agreement must include all the following:**

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

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

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

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

40 **(5) A requirement that the taxpayer shall pay an average wage**
 41 **to all its employees other than highly compensated employees**
 42 **(as defined in Section 414(q) of the Internal Revenue Code) in**

1 each taxable year that a tax credit is available that equals at
2 least one hundred fifty percent (150%) of the average county
3 wage in the county in which the integrated coal gasification
4 powerplant is located.

5 **(6) A requirement that the taxpayer shall provide written**
6 **notification to the corporation not more than thirty (30) days**
7 **after the taxpayer makes or receives a proposal that would**
8 **transfer the taxpayer's state tax liability obligations to a**
9 **successor taxpayer.**

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

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

19 **(1) whether the taxpayer is in compliance with the agreement;**
20 **and**

21 **(2) whether at least ninety-five percent (95%) of the coal used**
22 **by the taxpayer at the taxpayer's integrated coal gasification**
23 **plant powerplant during the taxable year covered by the**
24 **corporation's determination was Indiana coal.**

25 **If the corporation determines that the taxpayer is in compliance,**
26 **the corporation shall issue a certificate of compliance to the**
27 **taxpayer. The certificate must indicate whether at least ninety-five**
28 **percent (95%) of the coal that the taxpayer used at the taxpayer's**
29 **integrated coal gasification plant powerplant during the taxable**
30 **year was Indiana coal. If the corporation determines that the**
31 **taxpayer is in compliance with subdivision (1) but not in**
32 **compliance with subdivision (2) for a taxable year, the corporation**
33 **shall issue a certificate of compliance to the taxpayer that specifies**
34 **the subdivision (2) noncompliance and the credit amount shall be**
35 **calculated under section 10(a) of this chapter instead of section**
36 **10(b) of this chapter for that taxable year.**

37 **Sec. 15. To receive the credit awarded by this chapter, a**
38 **taxpayer must claim the credit on the taxpayer's annual state tax**
39 **return or returns in the manner prescribed by the department. The**
40 **taxpayer shall submit to the department a copy of the commission's**
41 **determination required under section 14 of this chapter, a copy of**
42 **the taxpayer's certificate of compliance issued under section 14 of**

1 **this chapter, and all information that the department determines**
 2 **is necessary for the calculation of the credit provided by this**
 3 **chapter."**

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

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

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

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

12 Re-number all SECTIONS consecutively.
 (Reference is to SB 378 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 11, Nays 0.

Senator Kenley, Chairperson