



Reprinted
April 4, 2007

ENGROSSED HOUSE BILL No. 1722

DIGEST OF HB 1722 (Updated April 3, 2007 6:00 pm - DI 101)

Citations Affected: IC 6-3.1; IC 8-1; noncode.

Synopsis: Coal gasification tax credits and cost recovery. Provides that a taxpayer may not sell, assign, convey, or otherwise transfer an ethanol production tax credit. Provides that the total amount of ethanol production tax credits for taxpayers that produce at least 20,000,000 gallons of cellulosic ethanol in a year may not exceed \$20,000,000 for all taxpayers for all taxable years. Creates the Indiana fueled energy investment tax credit for taxpayers that place a new energy production facility that utilizes Indiana fuel into service. Specifies that the total amount of Indiana fueled energy investment tax credits may not exceed \$50,000,000 for all taxpayers and all taxable years. Specifies that for the proposed Indiana fueled energy investment tax credit and the existing coal gasification technology investment tax credit, the Indiana
(Continued next page)

Effective: Upon passage; July 1, 2007; January 1, 2008.

Stilwell, Battles, Whetstone, Crooks, Stevenson

(SENATE SPONSORS — HERSHMAN, ROGERS, TALLIAN, HUME,
HEINOLD)

January 23, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

January 26, 2007, amended, reported — Do Pass.

January 29, 2007, read second time, ordered engrossed.

January 30, 2007, engrossed. Read third time, passed. Yeas 84, nays 11.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Utilities and Regulatory Affairs.

March 15, 2007, amended, reported favorably — Do Pass.

April 3, 2007, read second time, amended, ordered engrossed.

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EH 1722—LS 7187/DI 114+



Digest Continued

economic development corporation is required to enter into an agreement with an applicant for a credit only if the corporation decides to award a tax credit to the applicant. Provides that a facility that produces synthesis gas as a substitute for natural gas is eligible for a coal gasification technology investment tax credit. Allows a taxpayer to assign part or all of a coal gasification technology investment tax credit to an electric utility that has entered a contract to purchase electricity or substitute natural gas from the taxpayer. Requires the utility regulatory commission (IURC) to allow a utility that purchases substitute natural gas (SNG) to recover any costs arising under the purchase contract through rate adjustments. Amends the definition of clean coal and energy projects to include a project using coal to produce substitute natural gas. Defines an SNG property interest as a right, title, and interest that: (1) is held by an energy utility; (2) is created by a qualified order of the IURC; and (3) entitles the energy utility to recover certain costs incurred in purchasing substitute natural gas under a qualified contract. Sets forth provisions governing: (1) the assignment of an SNG property interest; (2) the rights of assignees, financing entities, and SNG sellers; (3) the perfection of a lien and security interest in an SNG property interest; and (4) the obligations of an energy utility after the assignment of an SNG property interest.

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Reprinted
April 4, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1722

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

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

1 SECTION 1. IC 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2008]: Sec. 9.5. **Except as provided in**
4 **IC 6-3.1-28-11(c)**, the total amount of credits allowed under:
5 (1) section 8 of this chapter;
6 (2) section 9 of this chapter; and
7 (3) IC 6-3.1-28;
8 may not exceed fifty million dollars (\$50,000,000) for all taxpayers and
9 all taxable years beginning after December 31, 2004. The corporation
10 shall determine the maximum allowable amount for each type of credit,
11 which must be at least four million dollars (\$4,000,000) for each type
12 of credit.
13 SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of
15 the credit determined under this chapter for a taxpayer in a taxable year
16 exceeds the taxpayer's state tax liability for that taxable year, the
17 taxpayer may carry over the excess to the following taxable years. The

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1 amount of the credit carryover from a taxable year shall be reduced to
2 the extent that the carryover is used by the taxpayer to obtain a credit
3 under this chapter for any subsequent taxable year.

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

7 SECTION 3. IC 6-3.1-28-11, AS AMENDED BY P.L.122-2006,
8 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JANUARY 1, 2008]: Sec. 11. (a) **As used in this section, "cellulosic**
10 **ethanol" means ethanol derived solely from lignocellulosic or**
11 **hemicellulosic matter.**

12 (b) The corporation shall determine the maximum amount of credits
13 that a taxpayer (or if the person producing the ethanol is a pass through
14 entity, the shareholders, partners, or members of the pass through
15 entity) is eligible to receive under this section. The total amount of
16 credits allowed a taxpayer (or, if the person producing the ethanol is a
17 pass through entity, the shareholders, partners, or members of the pass
18 through entity) under this chapter may not exceed a total of the
19 following amounts for all taxable years:

20 (1) Two million dollars (\$2,000,000) in the case of a taxpayer
21 who produces at least forty million (40,000,000) but less than
22 sixty million (60,000,000) gallons of **grain** ethanol in a taxable
23 year.

24 (2) Three million dollars (\$3,000,000) in the case of a taxpayer
25 who produces at least sixty million (60,000,000) gallons of **grain**
26 ethanol in a taxable year.

27 (3) **Twenty million dollars (\$20,000,000) for all taxpayers for**
28 **all taxable years, in the case of tax credits for a taxpayer who**
29 **produces at least twenty million (20,000,000) gallons of**
30 **cellulosic ethanol in a taxable year.**

31 (c) **The total amount of tax credits allowed under this chapter**
32 **for a taxpayer who produces at least twenty million (20,000,000)**
33 **gallons of cellulosic ethanol is not subject to the maximum amount**
34 **of tax credits imposed by IC 6-3.1-27-9.5.**

35 SECTION 4. IC 6-3.1-29-6, AS ADDED BY P.L.191-2005,
36 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 UPON PASSAGE]: Sec. 6. As used in this chapter, "integrated coal
38 gasification powerplant" means a facility that satisfies all the following
39 requirements:

40 (1) The facility is located in Indiana and is a newly constructed
41 energy generating plant.

42 (2) The facility converts coal into synthesis gas that can be used

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- 1 as a fuel to generate energy **or as a substitute for natural gas.**
- 2 (3) The facility uses the synthesis gas as a fuel to generate electric
- 3 energy **or produces synthesis gas that can be used as a**
- 4 **substitute for natural gas.**
- 5 (4) The facility is dedicated primarily to serving Indiana retail
- 6 electric **or gas** utility consumers.

7 SECTION 5. IC 6-3.1-29-15, AS AMENDED BY P.L.122-2006,
 8 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 15. (a) **If the corporation decides to award**
 10 **a tax credit under this chapter to a taxpayer, and** subject to section
 11 16 of this chapter, the amount of the credit to which a taxpayer is
 12 entitled for a qualified investment in an integrated coal gasification
 13 powerplant is equal to the sum of the following:

- 14 (1) Ten percent (10%) of the taxpayer's qualified investment for
- 15 the first five hundred million dollars (\$500,000,000) invested.
- 16 (2) Five percent (5%) of the amount of the taxpayer's qualified
- 17 investment that exceeds five hundred million dollars
- 18 (\$500,000,000) only if the facility is dedicated primarily to
- 19 serving Indiana retail electric **or gas** utility consumers.

20 (b) Subject to section 16 of this chapter, the amount of the credit to
 21 which a taxpayer is entitled for a qualified investment in a fluidized
 22 bed combustion technology is equal to the sum of the following:

- 23 (1) Seven percent (7%) of the taxpayer's qualified investment for
- 24 the first five hundred million dollars (\$500,000,000) invested.
- 25 (2) Three percent (3%) of the amount of the taxpayer's qualified
- 26 investment that exceeds five hundred million dollars
- 27 (\$500,000,000).

28 SECTION 6. IC 6-3.1-29-19, AS AMENDED BY P.L.122-2006,
 29 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: Sec. 19. (a) **If the corporation decides to award**
 31 **a tax credit under this chapter to an applicant,** the corporation shall
 32 enter into an agreement with an applicant that is awarded a credit under
 33 this chapter. The agreement must include all the following:

- 34 (1) A detailed description of the project that is the subject of the
- 35 agreement.
- 36 (2) The first taxable year for which the credit may be claimed.
- 37 (3) The maximum tax credit amount that will be allowed for each
- 38 taxable year.
- 39 (4) A requirement that the taxpayer shall maintain operations at
- 40 the project location for at least ten (10) years during the term that
- 41 the tax credit is available.
- 42 (5) If the facility is an integrated coal gasification powerplant, a

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1 requirement that the taxpayer shall pay an average wage to its
 2 employees at the integrated coal gasification powerplant, other
 3 than highly compensated employees, in each taxable year that a
 4 tax credit is available, that equals at least one hundred twenty-five
 5 percent (125%) of the average county wage in the county in which
 6 the integrated coal gasification powerplant is located.

7 (6) For a project involving a qualified investment in ~~a~~ **an**
 8 **integrated** coal gasification powerplant, a requirement that the
 9 taxpayer will maintain at the location where the qualified
 10 investment is made, during the term of the tax credit, a total
 11 payroll that is at least equal to the payroll that existed on the date
 12 that the taxpayer placed the integrated coal gasification
 13 powerplant into service.

14 (7) A requirement that:

15 (A) one hundred percent (100%) of the coal used:

16 (i) at the integrated coal gasification powerplant, for a
 17 project involving a qualified investment in an integrated
 18 coal gasification powerplant; or

19 (ii) as fuel in a fluidized bed combustion unit, in a project
 20 involving a qualified investment in a fluidized bed
 21 combustion technology, if the unit is dedicated primarily to
 22 serving Indiana retail electric utility consumers;

23 must be Indiana coal; or

24 (B) seventy-five percent (75%) of the coal used as fuel in a
 25 fluidized bed combustion unit must be Indiana coal, in a
 26 project involving a qualified investment in a fluidized bed
 27 combustion technology, if the unit is not dedicated primarily
 28 to serving Indiana retail electric utility consumers.

29 (8) A requirement that the taxpayer obtain from the commission
 30 a determination under IC 8-1-8.5-2 that public convenience and
 31 necessity require, or will require:

32 (A) the construction of the taxpayer's integrated coal
 33 gasification powerplant, in the case of a project involving a
 34 qualified investment in an integrated coal gasification
 35 powerplant; or

36 (B) the installation of the taxpayer's fluidized bed combustion
 37 unit, in the case of a project involving a qualified investment
 38 in a fluidized bed combustion technology.

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

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1 If the corporation determines that the taxpayer is in compliance, the
2 corporation shall issue a certificate of compliance to the taxpayer.

3 SECTION 7. IC 6-3.1-29-20.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE UPON PASSAGE]: **Sec. 20.5. (a) Subject to subsection**
6 **(c), part or all of the credit to which a taxpayer is entitled under**
7 **section 15 of this chapter may be assigned by the taxpayer to one**
8 **(1) or more utilities that have entered into a contract that:**

- 9 (1) is approved by the Indiana utility regulatory commission;
- 10 (2) provides for the purchase electricity or substitute natural
- 11 gas (as defined in IC 8-1-2-42.1) by the utility from the
- 12 taxpayer; and
- 13 (3) expressly allows the assignment of tax credits under this
- 14 section.

15 A tax credit assigned to a utility under this section must be applied
16 against the utility's state tax liability in the order set forth in
17 section 14(b) of this chapter.

18 (b) Notwithstanding section 16 of this chapter, any part of a
19 taxpayer's credit under section 15 of this chapter that is assigned
20 by the taxpayer under this section must be taken in twenty (20)
21 annual installments, beginning with the year in which the taxpayer
22 places into service an integrated coal gasification powerplant or a
23 fluidized bed combustion technology.

24 (c) The part of a taxpayer's credit under section 15 of this
25 chapter that may be assigned by the taxpayer with respect to any
26 one (1) taxable year is subject to the following:

27 (1) The total amount of the taxpayer's credit under section 15
28 of this chapter that may be assigned by the taxpayer with
29 respect to the taxable year may not exceed the product of:

- 30 (A) the total credit amount to which the taxpayer is
- 31 entitled under section 15 of this chapter, divided by twenty
- 32 (20); multiplied by
- 33 (B) the percentage of Indiana coal used in the taxpayer's
- 34 integrated coal gasification powerplant or fluidized bed
- 35 combustion technology in the taxable year for which the
- 36 annual installment of the credit is allowed.

37 (2) The part of the amount determined under subdivision (1)
38 that may be assigned to any one (1) utility with respect to the
39 taxable year may not exceed the greater of:

- 40 (A) the utility's total state tax liability for the taxable year,
- 41 multiplied by twenty-five percent (25%); or
- 42 (B) the utility's total utility receipts tax liability for the

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taxable year.

(d) Any part of the taxpayer's credit under section 15 of this chapter that is assigned to one (1) or more utilities by a taxpayer under this section with respect to a taxable year may not be claimed by the taxpayer or the taxpayer's shareholders, partners, or members. However, any part of the credit to which the taxpayer is entitled under section 15 of this chapter and that is not assigned by the taxpayer with respect to the taxable year may be taken and applied by the taxpayer, or the taxpayer's shareholders, partners, or members, in accordance with sections 16 and 20 of this chapter.

SECTION 8. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]:

Chapter 34. Indiana Fueled Energy Investment Tax Credit

Sec. 1. As used in this chapter, "biomass" means any organic matter that is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes, including wood residues, forest thinnings, mill residue wood, clean construction and demolition waste (but excluding treated or painted lumber), animal wastes, municipal wastes, food wastes, and aquatic plants.

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

Sec. 3. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 4. As used in this chapter, "Indiana fuel" means either of the following:

- (1) Any of the following when the fuel is gasified, liquefied, or methanized:
 - (A) Biomass produced in Indiana.
 - (B) Indiana coal.
 - (C) Petroleum coke produced in Indiana.
 - (D) Oil shale located in Indiana.
- (2) Coal mine methane when used in the production of power.

Sec. 5. As used in this chapter, "office" means the office of energy and defense development.

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

- (1) all real and tangible personal property incorporated in and used as part of a facility used to produce energy from Indiana fuel; and
- (2) transmission equipment and other real and personal

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- 1 property located at the site of the energy production facility
2 that is employed specifically to serve the energy production
3 facility.
- 4 **Sec. 7. As used in this chapter, "pass through entity" means:**
5 (1) a corporation that is exempt from the adjusted gross
6 income tax under IC 6-3-2-2.8(2);
7 (2) a partnership;
8 (3) a limited liability company;
9 (4) a limited liability partnership;
10 (5) a corporation organized under IC 8-1-13; or
11 (6) a corporation organized under IC 23-17-1 that:
12 (A) is an electric cooperative; and
13 (B) has at least one (1) member that is a corporation
14 organized under IC 8-1-13.
- 15 **Sec. 8. As used in this chapter, "petroleum coke" means a**
16 **carbonaceous solid derived from the process of refining oil.**
- 17 **Sec. 9. As used in this chapter, "state tax liability" means the**
18 **taxpayer's total tax liability that is incurred under:**
19 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
20 (2) IC 27-1-18-2 (the insurance premiums tax);
21 (3) IC 6-5.5 (the financial institutions tax); and
22 (4) IC 6-2.3 (the utility receipts tax);
23 as computed after the application of the credits that, under
24 IC 6-3.1-1-2, are to be applied before the credit provided by this
25 chapter.
- 26 **Sec. 10. As used in this chapter, "taxpayer" means any person,**
27 **corporation, limited liability company, partnership, or other entity**
28 **that:**
29 (1) has any state tax liability; and
30 (2) makes a qualified investment.
- 31 **Sec. 11. (a) A taxpayer that:**
32 (1) is awarded a tax credit under this chapter by the
33 corporation; and
34 (2) complies with the conditions set forth in this chapter and
35 the agreement entered into by the corporation and the
36 taxpayer under this chapter;
37 is entitled to a credit against the taxpayer's state tax liability for a
38 taxable year in which the taxpayer places into service an energy
39 production facility using Indiana fuel and for the taxable years
40 provided in section 13 of this chapter.
41 (b) A tax credit awarded under this chapter must be applied
42 against the taxpayer's state tax liability in the following order:

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

9 Sec. 12. (a) If the corporation decides to award a tax credit
 10 under this chapter to a taxpayer, the amount of the credit to which
 11 the taxpayer is entitled for a qualified investment is equal to the
 12 product of:

- 13 (1) the amount of the taxpayer's qualified investment;
- 14 multiplied by
- 15 (2) ten percent (10%).

16 (b) The total amount of tax credits awarded under this chapter
 17 may not exceed fifty million dollars (\$50,000,000) for all taxpayers
 18 and all taxable years.

19 Sec. 13. (a) A credit awarded under section 11 of this chapter
 20 must be taken in ten (10) annual installments, beginning with the
 21 year in which the taxpayer places into service the taxpayer's
 22 energy production facility.

23 (b) The amount of an annual installment of the credit awarded
 24 under section 11 of this chapter is equal to the quotient of:

- 25 (1) the credit amount determined under section 12 of this
- 26 chapter; divided by
- 27 (2) ten (10).

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

32 Sec. 14. (a) If a pass through entity is entitled to a credit under
 33 this chapter but does not have state tax liability against which the
 34 credit may be applied, an individual who is a shareholder, partner,
 35 or member of the pass through entity is entitled to a credit equal
 36 to:

- 37 (1) the credit determined for the pass through entity for the
- 38 taxable year; multiplied by
- 39 (2) in the case of a pass through entity described in:
- 40 (A) section 7(1), 7(2), 7(3), or 7(4) of this chapter, the
- 41 percentage of the pass through entity's distributive income
- 42 to which the shareholder, partner, or member is entitled;

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or
(B) section 7(5) or 7(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified investment.

Sec. 15. The amount of a credit claimed under this chapter may not exceed a qualified taxpayer's state tax liability. A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

Sec. 16. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

Sec. 17. (a) A taxpayer that proposes to place a new energy production facility utilizing Indiana fuel into service may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

(b) The office shall provide any technical assistance requested by the corporation in the administration of this chapter.

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

Sec. 19. (a) If the corporation decides to award a tax credit under this chapter to an applicant, the corporation shall enter into an agreement with the applicant. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The amount of the tax credit that, subject to section 15 of this chapter, will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.
- (5) A requirement that the taxpayer shall pay an average wage to its employees at the energy production facility, other than highly compensated employees, in each taxable year that

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a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the energy production facility is located.

(6) A requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the energy production facility into service.

(7) A requirement that one hundred percent (100%) of the fuel used at the energy production facility must be Indiana fuel.

(8) A requirement that the energy production facility will comply with any energy efficiency or emission standard recommended by the office and imposed by the corporation.

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

Sec. 20. To receive the credit awarded by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department a copy of the taxpayer's certificate of compliance issued under section 19 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 9. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 42.1. (a) As used in this section, "substitute natural gas" means pipeline quality gas produced by a facility in Indiana that uses a gasification process to convert coal from the geological formation known as the Illinois Basin into a gas capable of being used:

(1) by a utility to supply gas utility service to end use consumers in Indiana; or

(2) as a fuel used by a utility to produce electric power to supply electric utility service to end use consumers in Indiana.

(b) As used in this section, "customer choice program" means a program under which certain residential and commercial gas consumers located in the service area of a gas utility may:

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- (1) elect to purchase their gas supply from a provider other than the gas utility in the service area; and**
- (2) receive transportation service from the gas utility in the service area for the delivery of the gas purchased under subdivision (1) to the consumer's premises.**
- (c) Subject to IC 8-1-8.9 and notwithstanding any other law, if the commission approves a contract for the purchase of substitute natural gas, or electricity generated in connection with the production of substitute natural gas, by a utility, the commission shall allow the utility to recover the following costs on a timely basis throughout the term of the contract:**
 - (1) All costs incurred in connection with and resulting from the utility's purchases under the contract, including the cost of the substitute natural gas and related costs for generation, transmission, transportation, and storage services.**
 - (2) All costs the utility incurs in obtaining replacement gas, if the seller fails to deliver substitute natural gas required to be delivered under the contract, including the price of the gas, and related transportation, storage, and hedging costs, to the extent those costs are not paid by the seller.**
 - (3) Upon petition by the utility, any other costs the commission finds are reasonably necessary in association with the contract.**
- (d) Any costs recovered under subsection (c):**
 - (1) are in addition to the recovery of other costs; and**
 - (2) shall be made through an adjustment under section 42 of this chapter, or another rate adjustment mechanism that allows for comparable timely cost recovery.**
- (e) If a customer choice program is implemented, expanded, or renewed for a utility during the term of a contract approved by the commission under subsection (c) that has the effect of reducing the utility's sales volumes, a condition of the authorization of that program must be the proportionate assignment of the gas or electric utility's substitute natural gas purchase obligation to the service providers in the customer choice program.**
- (f) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the term of a contract approved under this section that adversely affects a utility's right to timely recover costs under this section, or to otherwise fully recover such costs.**
- (g) With respect to utilities that are parties to a contract for the purchase of substitute natural gas approved by the commission**

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1 under this section, the state covenants and agrees that so long as
 2 such contract is in effect the state will not limit, alter, or impair a
 3 utility's right to recover costs as provided in this section.
 4 Notwithstanding any other law, neither the commission nor any
 5 other state agency, political subdivision, or governmental unit may
 6 take any action that would have the effect of limiting, altering, or
 7 impairing a utility's rights to recover costs as provided in this
 8 section.

9 SECTION 10. IC 8-1-8.8-1 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The general
 11 assembly makes the following findings:

12 (1) Growth of Indiana's population and economic base has created
 13 a need for new energy **production or** generating facilities in
 14 Indiana.

15 (2) The development of a robust and diverse portfolio of energy
 16 **production or** generating capacity, including **coal gasification**
 17 **and** the use of renewable energy resources, is needed if Indiana
 18 is to continue to be successful in attracting new businesses and
 19 jobs.

20 (3) Indiana has considerable natural resources that are currently
 21 underutilized and could support development of new energy
 22 **production or** generating facilities, **including coal gasification**
 23 **facilities**, at an affordable price.

24 (4) Certain regions of the state, such as southern Indiana, could
 25 benefit greatly from new employment opportunities created by
 26 development of new energy **production or** generating facilities
 27 utilizing the plentiful supply of coal from the geological formation
 28 known as the Illinois basin.

29 (5) Technology can be deployed that allows high sulfur coal from
 30 the geological formation known as the Illinois Basin to be burned
 31 **or gasified** efficiently while meeting strict state and federal air
 32 quality limitations. Specifically, the state should encourage the
 33 use of advanced clean coal technology, such as coal gasification.

34 (6) It is in the public interest for the state to encourage the
 35 construction of new energy **production or** generating facilities
 36 that increase the in-state capacity to provide for current and
 37 anticipated energy demand at a competitive price.

38 (b) The purpose of this chapter is to enhance Indiana's energy
 39 security and reliability by ensuring all of the following:

40 (1) Indiana's energy **production or** generating capacity continues
 41 to be adequate to provide for Indiana's current and future energy
 42 needs, including the support of the state's economic development

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1 efforts.

2 (2) The vast and underutilized coal resources of the Illinois Basin

3 are used as a fuel source for new energy **production or**

4 generating facilities.

5 (3) The electric transmission **and gas transportation** system

6 within Indiana ~~is~~ **are** upgraded to distribute additional amounts of

7 electricity **and gas** more efficiently.

8 (4) Jobs are created as new energy **production or** generating

9 facilities are built in regions throughout Indiana.

10 SECTION 11. IC 8-1-8.8-2, AS AMENDED BY P.L.174-2005,

11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

12 UPON PASSAGE]: Sec. 2. As used in this chapter, "clean coal and

13 energy projects" means any of the following:

14 (1) Any of the following projects:

15 (A) Projects at new energy **production or** generating facilities

16 that employ the use of clean coal technology and that ~~are~~

17 ~~fueled~~ **produce energy, including substitute natural gas,**

18 primarily by ~~from~~ coal or gases, derived from coal from the

19 geological formation known as the Illinois Basin.

20 (B) Projects to provide advanced technologies that reduce

21 regulated air emissions from existing energy **production or**

22 generating plants that are fueled primarily by coal or gases

23 from coal from the ~~geologic~~ **geological** formation known as

24 the Illinois Basin, such as flue gas desulfurization and

25 selective catalytic reduction equipment.

26 (C) Projects to provide electric transmission facilities to serve

27 a new energy **production or** generating facility.

28 **(D) Projects that produce substitute natural gas from**

29 **Indiana coal by construction and operation of a coal**

30 **gasification facility.**

31 (2) Projects to develop alternative energy sources, including

32 renewable energy projects **and coal gasification facilities.**

33 (3) The purchase of fuels produced by a coal gasification facility.

34 (4) Projects described in subdivisions (1) through (3) that use coal

35 bed methane.

36 SECTION 12. IC 8-1-8.8-3 IS AMENDED TO READ AS

37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this

38 chapter, "clean coal technology" means a technology (including

39 precombustion treatment of coal):

40 (1) that is used in a new or existing energy **production or**

41 generating facility and directly or indirectly reduces **or avoids**

42 airborne emissions of sulfur, mercury, or nitrogen oxides or other

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1 regulated air emissions associated with the combustion or use of
 2 coal; and
 3 (2) that either:
 4 (A) was not in general commercial use at the same or greater
 5 scale in new or existing facilities in the United States at the
 6 time of enactment of the federal Clean Air Act Amendments
 7 of 1990 (P.L.101-549); or
 8 (B) has been selected by the United States Department of
 9 Energy for funding **or loan guaranty** under ~~its an~~ Innovative
 10 Clean Coal Technology **or loan guaranty** program **under the**
 11 **Energy Policy Act of 2005, or any successor program**, and
 12 is finally approved for such funding **or loan guaranty** on or
 13 after the date of enactment of the federal Clean Air Act
 14 Amendments of 1990 (P.L.101-549).

15 SECTION 13. IC 8-1-8.8-4 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this
 17 chapter, "coal gasification facility" means a facility in Indiana that uses
 18 a manufacturing process that converts coal into a clean gas that can be
 19 used as a fuel to generate energy **or substitute natural gas**.

20 SECTION 14. IC 8-1-8.8-6 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this
 22 chapter, "eligible business" means an energy utility (as defined in
 23 IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

- 24 (1) proposes to construct or repower a new energy **production or**
 25 generating facility;
- 26 (2) proposes to construct or repower a project described in section
 27 2(1) or 2(2) of this chapter;
- 28 (3) undertakes a project to develop alternative energy sources,
 29 including renewable energy projects; or
- 30 (4) purchases fuels produced by a coal gasification facility.

31 SECTION 15. IC 8-1-8.8-8 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in
 33 this chapter, "new energy generating facility" refers to a **generation or**
 34 **coal gasification** facility that satisfies all of the following:

- 35 (1) The facility ~~is fueled~~ **produces energy** primarily ~~by~~ **from** coal
 36 or gases from coal from the ~~geologic~~ **geological** formation known
 37 as the Illinois Basin.
- 38 (2) The facility is a:
 39 (A) newly constructed or newly repowered energy generation
 40 plant; or
 41 (B) newly constructed generation capacity expansion at an
 42 existing facility;

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1 dedicated primarily to serving Indiana retail customers.
 2 (3) The repowering, construction, or expansion of the facility was
 3 begun by an Indiana utility after July 1, 2002.
 4 (4) Except for a facility that is a clean coal and energy project
 5 under section 2(2) of this chapter, the facility has an aggregate
 6 rated electric generating capacity of at least one hundred (100)
 7 megawatts for all units at one (1) site or a generating capacity of
 8 at least four hundred thousand (400,000) pounds per hour of
 9 steam.
 10 (b) The term includes the transmission lines, **gas transportation**
 11 **facilities**, and associated equipment employed specifically to serve a
 12 new energy generating **or coal gasification** facility.
 13 SECTION 16. IC 8-1-8.8-9 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this
 15 chapter, "qualified utility system property" means any new energy
 16 generating **or coal gasification** facility used, or to be used, in whole or
 17 in part, ~~on a utility system by an energy utility~~ to provide retail energy
 18 service (as defined in IC 8-1-2.5-3) regardless of whether that service
 19 is provided under IC 8-1-2.5 or another provision of this article.
 20 SECTION 17. IC 8-1-8.8-10 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this
 22 chapter, "renewable energy resources" means alternative sources of
 23 renewable energy, including the following:
 24 (1) Energy from wind.
 25 (2) Solar energy.
 26 (3) Photovoltaic cells and panels.
 27 (4) Dedicated crops grown for energy production.
 28 (5) ~~Organic waste~~ Biomass (as defined by IC 6-3.1-34-1).
 29 (6) Hydropower from existing dams.
 30 (7) Fuel cells.
 31 (8) Energy from waste to energy facilities producing steam not
 32 used for the production of electricity.
 33 (b) Except for energy described in subsection (a)(8), the term does
 34 not include energy from the incinerations, burning, or heating of any of
 35 the following:
 36 ~~(1) Waste wood.~~
 37 ~~(2) (1) Tires.~~
 38 ~~(3) (2) General household, institutional, commercial, industrial~~
 39 ~~lunchroom, office, or landscape waste.~~
 40 ~~(4) Construction or demolition debris.~~
 41 SECTION 18. IC 8-1-8.8-12 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The

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1 commission shall provide financial incentives to eligible businesses for
2 new energy **producing and** generating facilities in the form of timely
3 recovery of the costs incurred in connection with the construction,
4 repowering, expansion, operation, or maintenance of the facilities.

5 (b) An eligible business seeking authority to timely recover the costs
6 described in subsection (a) must apply to the commission for approval
7 of a rate adjustment mechanism in the manner determined by the
8 commission.

9 (c) An application must include the following:

10 (1) A schedule for the completion of construction, repowering, or
11 expansion of the new energy generating **or coal gasification**
12 facility for which rate relief is sought.

13 (2) Copies of the most recent integrated resource plan filed with
14 the commission, **if applicable.**

15 (3) The amount of capital investment by the eligible business in
16 the new energy generating **or coal gasification** facility.

17 (4) Other information the commission considers necessary.

18 (d) The commission shall allow an eligible business to recover the
19 costs associated with qualified utility system property if the eligible
20 business provides substantial documentation that the expected costs
21 associated with qualified utility system property and the schedule for
22 incurring those costs are reasonable and necessary.

23 (e) The commission shall allow an eligible business to recover the
24 costs associated with the purchase of fuels produced by a coal
25 gasification facility if the eligible business provides substantial
26 documentation that the costs associated with the purchase are
27 reasonable and necessary.

28 (f) A retail rate adjustment mechanism proposed by an eligible
29 business under this section may be based on actual or forecasted data.
30 If forecast data is used, the retail rate adjustment mechanism must
31 contain a reconciliation mechanism to correct for any variance between
32 the forecasted costs and the actual costs.

33 SECTION 19. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006,
34 SECTION 151, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall
36 file a monthly report with the lieutenant governor stating the following
37 information:

38 (1) The amount of Illinois Basin coal, if any, purchased during the
39 previous month for use in a new energy generating **or coal**
40 **gasification** facility.

41 (2) The amount of any fuel produced by a coal gasification facility
42 and purchased by the eligible business during the previous month.

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1 (3) Any other information the lieutenant governor may reasonably
 2 require.
 3 SECTION 20. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE
 4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 5 UPON PASSAGE]:
 6 **Chapter 8.9. Financing of Substitute Natural Gas Costs**
 7 **Sec. 1. (a) As used in this chapter, "assignee" means any**
 8 **individual, corporation, or other legal entity to which an SNG**
 9 **property interest is transferred.**
 10 **(b) The term includes an assignee of a person described in**
 11 **subsection (a).**
 12 **Sec. 2. As used in this chapter, "commission" refers to the**
 13 **Indiana utility regulatory commission created by IC 8-1-1-2.**
 14 **Sec. 3. As used in this chapter, "energy utility" has the meaning**
 15 **set forth in IC 8-1-2.5-2.**
 16 **Sec. 4. As used in this chapter, "financing entity" means a**
 17 **person that provides:**
 18 **(1) equity financing; or**
 19 **(2) debt financing;**
 20 **that is secured by an SNG property interest.**
 21 **Sec. 5. As used in this chapter, "qualified contract" means a**
 22 **contract with a term of at least thirty (30) years for the sale of**
 23 **substitute natural gas to an energy utility.**
 24 **Sec. 6. As used in this chapter, "qualified cost" means any cost**
 25 **incurred by an energy utility in purchasing substitute natural gas**
 26 **under a qualified contract.**
 27 **Sec. 7. As used in this chapter, "qualified order" means a final**
 28 **and irrevocable order that:**
 29 **(1) is issued by the commission; and**
 30 **(2) approves a qualified contract adopted in accordance with**
 31 **this chapter and IC 8-1-2-42.1.**
 32 **Sec. 8. As used in this chapter, "substitute natural gas" or**
 33 **"SNG" has the meaning set forth in IC 8-1-2-42.1(a).**
 34 **Sec. 9. As used in this chapter, "SNG property interest" means**
 35 **the right, title, and interest that:**
 36 **(1) is held by an energy utility or its assignee;**
 37 **(2) is created by a qualified order; and**
 38 **(3) entitles the energy utility or its assignee to recover**
 39 **qualified costs under IC 8-1-2-42.1.**
 40 **Sec. 10. As used in this chapter, "SNG seller" means any**
 41 **individual, corporation, or other legal entity that engages in the**
 42 **production and sale of substitute natural gas.**

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1 **Sec. 11. (a) Notwithstanding any other law, the commission may,**
2 **in accordance with this chapter and IC 8-1-2-42.1, issue a qualified**
3 **order that:**

- 4 (1) **approves the terms of a qualified contract; and**
5 (2) **authorizes the recovery of qualified costs by an energy**
6 **utility from its customers.**

7 **(b) A qualified order issued under this section may not be:**

- 8 (1) **rescinded;**
9 (2) **nullified; or**
10 (3) **modified;**

11 **in such a manner that reduces or otherwise impairs the value of an**
12 **SNG property interest.**

13 **Sec. 12. (a) An SNG property interest, including any right to**
14 **future purchases of substitute natural gas during the term of a**
15 **qualified contract, constitutes a present property right.**

16 **(b) Qualified costs recovered by an energy utility under a**
17 **qualified order constitute proceeds of only the SNG property**
18 **interest that is created by the qualified order.**

19 **(c) If the commission issues a qualified order under section 11**
20 **of this chapter, the state covenants and agrees, for the benefit of**
21 **the energy utility and any assignee or financing entity involved,**
22 **that the state will not take or permit any action that would:**

- 23 (1) **reduce or otherwise impair the value of the SNG property**
24 **interest created by the qualified order; or**
25 (2) **limit, alter, or impair:**
26 (A) **the qualified order;**
27 (B) **the SNG property interest created by the qualified**
28 **order; or**
29 (C) **qualified costs that are:**
30 (i) **imposed on and collected by the energy utility; and**
31 (ii) **remitted to the SNG seller;**

32 **under the terms of the qualified contract;**
33 **until the qualified contract has been performed in full.**

34 **Sec. 13. (a) An energy utility may assign an SNG property**
35 **interest to an assignee, including:**

- 36 (1) **another party to the qualified contract; or**
37 (2) **a financing entity.**

38 **An assignee may in turn assign an SNG property interest to a**
39 **financing entity that provides financing to the assignee.**

40 **(b) An assignment to a financing entity under this section may**
41 **be:**

- 42 (1) **an absolute assignment of the SNG property interest; or**

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1 (2) an assignment of the SNG property interest as collateral
 2 for an obligation owed to the financing entity.
 3 (c) An assignee under this section may enforce the SNG
 4 property interest by all applicable legal and equitable means.
 5 (d) Any amounts collected by an energy utility in connection
 6 with the sale, transfer, or disposition of substitute natural gas
 7 under a qualified contract that forms the basis of an SNG property
 8 interest assigned under this section constitutes the property of the
 9 assignee. Pending the transfer of the SNG property interest to the
 10 assignee, the amounts described in this subsection shall be:
 11 (1) segregated by the energy utility; and
 12 (2) held in trust for the benefit of the assignee;
 13 subject to the terms of the qualified contract that forms the basis
 14 of the SNG property interest that is being assigned.
 15 Sec. 14. The interest of an assignee in:
 16 (1) an SNG property interest transferred to the assignee
 17 under section 13 of this chapter; and
 18 (2) any revenues or collections arising from the SNG property
 19 interest transferred;
 20 are not subject to setoff by the energy utility that transferred the
 21 SNG property interest, or by any other person, in connection with
 22 any bankruptcy proceeding involving the energy utility.
 23 Sec. 15. (a) If an agreement by an energy utility or an assignee
 24 to assign an SNG property interest expressly states that the
 25 assignment is a sale or is otherwise an absolute transfer:
 26 (1) the resulting transaction:
 27 (A) is a true sale; and
 28 (B) is not a secured transaction; and
 29 (2) title, both legal and equitable, passes to the person to
 30 which the SNG property interest is assigned.
 31 (b) A transaction resulting from an agreement described in
 32 subsection (a) is a true sale regardless of whether:
 33 (1) the assignee has recourse against the assignor; or
 34 (2) the agreement provides for any of the following:
 35 (A) The assignor's retention of an equity interest in the
 36 SNG property interest transferred.
 37 (B) Continuing obligations of the energy utility under the
 38 qualified contract, including the obligation of the energy
 39 utility to serve as the collector of qualified costs.
 40 (C) The treatment of the transfer as a financing for tax,
 41 financial reporting, or other purposes.
 42 Sec. 16. (a) An SNG property interest does not constitute an

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1 account or a general intangible under IC 26-1-9.1-102. The
2 creation, granting, perfection, and enforcement of liens and
3 security interests in SNG property interests are governed by this
4 chapter and not by IC 26-1-9.1.

5 (b) A valid and enforceable lien and security interest in an SNG
6 property interest may be created only by the execution and
7 delivery of a security agreement with a financing entity in
8 connection with the issuance of indebtedness. The security interest
9 attaches automatically from the time that value is received for the
10 indebtedness secured by the SNG property interest and, upon
11 perfection through the filing of notice with the secretary of state:

- 12 (1) constitutes a continuously perfected lien and security
- 13 interest in the SNG property interest and all proceeds of the
- 14 SNG property interest, whether or not accrued;
- 15 (2) has priority in the order of its filing; and
- 16 (3) takes precedence over any subsequent judicial lien or
- 17 other creditor's lien.

18 If notice is filed with the secretary of state not later than ten (10)
19 days after value is received for the indebtedness, the security
20 interest is perfected retroactive to the date the value was received.
21 If notice is not filed with the secretary of state within ten (10) days
22 after value is received for the indebtedness, the security interest is
23 perfected as of the date of filing.

24 (c) Transfer of an SNG property interest to an assignee is
25 perfected against all third parties, including subsequent judicial or
26 other lien creditors, upon:

- 27 (1) the delivery of transfer documents to the assignee; and
- 28 (2) the filing of notice with the secretary of state in accordance
- 29 with subsection (b).

30 However, if notice of the transfer is not filed with the secretary of
31 state within ten (10) days after the delivery of the transfer
32 documentation, the transfer of the SNG property interest is not
33 perfected against third parties until the notice is filed.

34 (d) The priority of a lien and security interest under this section
35 is not impaired by either of the following:

- 36 (1) A later modification of the qualified order creating the
- 37 SNG property interest being transferred.
- 38 (2) The commingling of other funds with funds collected in
- 39 connection with a qualified contract. Any other security
- 40 interest that may apply to funds collected in connection with
- 41 a qualified contract terminates when the funds are
- 42 transferred to a segregated account for the benefit of the

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1 assignee or a financing entity. If an SNG property interest has
 2 been transferred to an assignee, any proceeds from the SNG
 3 property interest shall be held in trust for the assignee.

4 (e) If a default or termination occurs in connection with a
 5 financing secured by an SNG property interest, the financing entity
 6 or its representative may foreclose on or otherwise enforce its lien
 7 and security interest in the SNG property interest as if the
 8 financing entity were a secured party under IC 26-1-9.1. Amounts
 9 arising from the qualified contract that is the basis of the SNG
 10 property interest shall be transferred to a separate account for the
 11 financing entity's benefit and are subject to the financing entity's
 12 security interest and lien.

13 Sec. 17. An assignee or a financing party is not considered an
 14 energy utility solely by virtue of its participation in any transaction
 15 described in this chapter.

16 Sec. 18. Any entity that becomes a successor to an energy utility,
 17 as the result of:

- 18 (1) any bankruptcy, reorganization, or other insolvency
 19 proceeding;
- 20 (2) any merger, sale, or transfer involving the energy utility;
 21 or
- 22 (3) the operation of law;

23 or for any other reason, shall perform and satisfy any obligations
 24 of the energy utility incurred under this chapter in the same
 25 manner and to the same extent as the energy utility would have
 26 been obligated to perform, including the obligation to pay to an
 27 assignee any funds collected by the energy utility in connection
 28 with the SNG property interest assigned to the assignee.

29 Sec. 19. An SNG seller that is an assignee may contract with the
 30 energy utility, in the qualified contract or in another contract, for
 31 the performance of services related to the sale of substitute natural
 32 gas under the qualified contract, including:

- 33 (1) the transportation and distribution of substitute natural
 34 gas; and
- 35 (2) billing, collection, and other related services;

36 according to terms and conditions that reasonably compensate the
 37 energy utility for its services and adequately secure payment to the
 38 SNG seller.

39 Sec. 20. If an energy utility makes a true sale of an SNG
 40 property interest to an SNG seller under section 15 of this chapter,
 41 the SNG seller:

- 42 (1) retains title to all substitute natural gas distributed by the

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1 energy utility to the energy utility's retail end use customers;
 2 (2) is entitled to all amounts collected by the energy utility
 3 from its retail end use customers for the distribution of the
 4 substitute natural gas, subject to the terms of the qualified
 5 contract; and
 6 (3) has the same rights to payments made by the energy
 7 utility's retail end use customers as does the energy utility that
 8 provides the substitute natural gas to those customers.

9 SECTION 21. [EFFECTIVE UPON PASSAGE] The general
 10 assembly finds the following:

11 (1) The development of coal gasification facilities in Indiana
 12 that would use local coal resources for the production of
 13 substitute natural gas is in the public interest for purposes of:

- 14 (A) reducing the reliance of Indiana energy utilities on gas
 15 imports;
- 16 (B) mitigating price and supply risk;
- 17 (C) improving price stability; and
- 18 (D) promoting economic development and job creation.

19 (2) Coal gasification is encouraged by federal policies
 20 intended to increase the energy independence of the United
 21 States, including through the availability of tax incentives and
 22 loan guarantees.

23 (3) Indiana has the necessary resources and infrastructure
 24 suitable for development of coal gasification facilities.

25 (4) The receipt of federal incentives for the development,
 26 construction, and financing of new coal gasification facilities
 27 in Indiana will be enhanced by Indiana energy utilities
 28 entering into long term contracts for the purchase of
 29 substitute natural gas produced by such facilities.

30 (5) It is necessary to allow Indiana energy utilities to recover,
 31 through rate adjustments for the utility's customers, costs
 32 incurred from entering into supply contracts for substitute
 33 natural gas in order to promote the creation of such contracts
 34 without causing Indiana energy utilities to incur undue risk.

35 SECTION 22. [EFFECTIVE JANUARY 1, 2008] (a)
 36 IC 6-3.1-28-11, as amended by this act, applies to taxable years
 37 beginning after December 31, 2007.

38 (b) IC 6-3.1-34, as added by this act, applies to taxable years
 39 beginning after December 31, 2007.

40 SECTION 23. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1722, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 1, line 14, after "electric" insert "**or gas**".
- Page 3, delete lines 34 through 42.
- Page 4, delete lines 1 through 33.
- Page 6, delete lines 11 through 16.
- Page 6, line 35, delete "Indiana".
- Page 6, line 35, delete ".".
- Page 6, line 35, reset in roman "from the geological".
- Page 6, reset in roman line 36.
- Page 6, line 37, delete "Indiana".
- Page 6, line 38, reset in roman "from the geological formation known as the Illinois Basin".
- Page 7, line 11, delete "Indiana".
- Page 7, line 11, reset in roman "of the".
- Page 7, line 12, reset in roman "Illinois Basin".
- Page 7, line 27, delete "Indiana".
- Page 7, line 27, delete ".".
- Page 7, reset in roman line 28.
- Page 7, line 32, delete "Indiana".
- Page 7, line 32, delete ",".
- Page 7, line 32, reset in roman "from the".
- Page 7, line 32, after "geologic" insert "**geological**".
- Page 7, line 32, reset in roman "formation known as the".
- Page 7, line 33, reset in roman "Illinois Basin,".
- Page 8, line 8, after "reduces" insert "**or eliminates**".
- Page 9, line 2, delete "Indiana".
- Page 9, line 2, delete ".".
- Page 9, line 2, reset in roman "from the".
- Page 9, line 2, after "geologic" insert "**geological**".
- Page 9, line 2, reset in roman "formation known".
- Page 9, reset in roman line 3.
- Page 10, line 25, reset in roman "Illinois Basin".

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Page 10, line 25, delete "Indiana".
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to HB 1722 as introduced.)

CROOKS, Chair

Committee Vote: yeas 11, nays 0.

SENATE MOTION

Madam President: I move that Senator Rogers be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Tallian be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred House Bill No. 1722, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 37, after "means" insert "**pipeline quality**".

Page 3, line 38, delete "manufacturing" and insert "**gasification**".

Page 3, line 38, after "coal" insert "**from the geological formation known as the Illinois Basin**".

Page 4, line 4, delete "an" and insert "**a**".

Page 4, line 10, delete "Notwithstanding" and insert "**Subject to IC 8-1-8.9 and notwithstanding**".

Page 4, line 11, after "gas" insert "**, or electricity generated in**



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connection with the production of substitute natural gas,".

Page 4, line 17, delete "transportation" and insert "**generation, transmission, transportation,**".

Page 7, line 1, delete "eliminates" and insert "**avoids**".

Page 9, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 14. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.9. Financing of Substitute Natural Gas Costs

Sec. 1. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an SNG property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. As used in this chapter, "financing entity" means a person that provides:

- (1) equity financing; or**
- (2) debt financing;**

that is secured by an SNG property interest.

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

- (1) is issued by the commission; and**
- (2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.**

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

- (1) is held by an energy utility or its assignee;**
- (2) is created by a qualified order; and**
- (3) entitles the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.**

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Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

- (1) approves the terms of a qualified contract; and
 - (2) authorizes the recovery of qualified costs by an energy utility from its customers.
- (b)** A qualified order issued under this section may not be:
- (1) rescinded;
 - (2) nullified; or
 - (3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a qualified order constitute proceeds of only the SNG property interest that is created by the qualified order.

(c) If the commission issues a qualified order under section 11 of this chapter, the state covenants and agrees, for the benefit of the energy utility and any assignee or financing entity involved, that the state will not take or permit any action that would:

- (1) reduce or otherwise impair the value of the SNG property interest created by the qualified order; or
- (2) limit, alter, or impair:
 - (A) the qualified order;
 - (B) the SNG property interest created by the qualified order; or
 - (C) qualified costs that are:
 - (i) imposed on and collected by the energy utility; and
 - (ii) remitted to the SNG seller;
 under the terms of the qualified contract;
 until the qualified contract has been performed in full.

Sec. 13. (a) An energy utility may assign an SNG property interest to an assignee, including:

- (1) another party to the qualified contract; or
- (2) a financing entity.

An assignee may in turn assign an SNG property interest to a financing entity that provides financing to the assignee.

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(b) An assignment to a financing entity under this section may be:

- (1) an absolute assignment of the SNG property interest; or
- (2) an assignment of the SNG property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the SNG property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of substitute natural gas under a qualified contract that forms the basis of an SNG property interest assigned under this section constitutes the property of the assignee. Pending the transfer of the SNG property interest to the assignee, the amounts described in this subsection shall be:

- (1) segregated by the energy utility; and
- (2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the SNG property interest that is being assigned.

Sec. 14. The interest of an assignee in:

- (1) an SNG property interest transferred to the assignee under section 13 of this chapter; and
- (2) any revenues or collections arising from the SNG property interest transferred;

are not subject to setoff by the energy utility that transferred the SNG property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an SNG property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

- (1) the resulting transaction:
 - (A) is a true sale; and
 - (B) is not a secured transaction; and
- (2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

- (1) the assignee has recourse against the assignor; or
- (2) the agreement provides for any of the following:
 - (A) The assignor's retention of an equity interest in the SNG property interest transferred.
 - (B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

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(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

- (1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;**
- (2) has priority in the order of its filing; and**
- (3) takes precedence over any subsequent judicial lien or other creditor's lien.**

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

(c) Transfer of an SNG property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

- (1) the delivery of transfer documents to the assignee; and**
- (2) the filing of notice with the secretary of state in accordance with subsection (b).**

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the SNG property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

- (1) A later modification of the qualified order creating the SNG property interest being transferred.**
- (2) The commingling of other funds with funds collected in connection with a qualified contract. Any other security**

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interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an SNG property interest has been transferred to an assignee, any proceeds from the SNG property interest shall be held in trust for the assignee.

(e) If a default or termination occurs in connection with a financing secured by an SNG property interest, the financing entity or its representative may foreclose on or otherwise enforce its lien and security interest in the SNG property interest as if the financing entity were a secured party under IC 26-1-9.1. Amounts arising from the qualified contract that is the basis of the SNG property interest shall be transferred to a separate account for the financing entity's benefit and are subject to the financing entity's security interest and lien.

Sec. 17. An assignee or a financing party is not considered an energy utility solely by virtue of its participation in any transaction described in this chapter.

Sec. 18. Any entity that becomes a successor to an energy utility, as the result of:

- (1) any bankruptcy, reorganization, or other insolvency proceeding;
- (2) any merger, sale, or transfer involving the energy utility; or
- (3) the operation of law;

or for any other reason, shall perform and satisfy any obligations of the energy utility incurred under this chapter in the same manner and to the same extent as the energy utility would have been obligated to perform, including the obligation to pay to an assignee any funds collected by the energy utility in connection with the SNG property interest assigned to the assignee.

Sec. 19. An SNG seller that is an assignee may contract with the energy utility, in the qualified contract or in another contract, for the performance of services related to the sale of substitute natural gas under the qualified contract, including:

- (1) the transportation and distribution of substitute natural gas; and
- (2) billing, collection, and other related services;

according to terms and conditions that reasonably compensate the energy utility for its services and adequately secure payment to the SNG seller.

Sec. 20. If an energy utility makes a true sale of an SNG

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property interest to an SNG seller under section 15 of this chapter, the SNG seller:

- (1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;
- (2) is entitled to all amounts collected by the energy utility from its retail end use customers for the distribution of the substitute natural gas, subject to the terms of the qualified contract; and
- (3) has the same rights to payments made by the energy utility's retail end use customers as does the energy utility that provides the substitute natural gas to those customers."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1722 as printed January 26, 2007.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senator Tallian be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Hume be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Heinold be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

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Report of the Senate
Committee on Ethics

Madam President: Pursuant to Senate Rule 94, the Senate Committee on Ethics met on March 20, 2007, to render an advisory opinion with regard to the question raised by Senator Lubbers about her participation in the upcoming vote on Engrossed House Bill 1722 due to a potential conflict of interest.

The Senate Committee on Ethics has considered the facts presented by Senator Lubbers and hereby recommends that Senator Lubbers be excused from participation in all votes pertaining to Engrossed House Bill 1722 because of her potential conflict of interest with regard to the legislation. The vote of the Committee was 4-0.

DILLON, Chair

Report of the President
Pro Tempore

Madam President: I hereby report that Senator Lubbers has been excused from voting on EHB 1722 pursuant to the Report of the Committee on Ethics adopted on March 27, 2007.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1722 be amended to read as follows:

Page 3, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 4. IC 6-3.1-29-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 20.5. (a) Subject to subsection (c), part or all of the credit to which a taxpayer is entitled under section 15 of this chapter may be assigned by the taxpayer to one (1) or more utilities that have entered into a contract that:**

- (1) is approved by the Indiana utility regulatory commission;**
- (2) provides for the purchase electricity or substitute natural gas (as defined in IC 8-1-2-42.1) by the utility from the taxpayer; and**



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(3) expressly allows the assignment of tax credits under this section.

A tax credit assigned to a utility under this section must be applied against the utility's state tax liability in the order set forth in section 14(b) of this chapter.

(b) Notwithstanding section 16 of this chapter, any part of a taxpayer's credit under section 15 of this chapter that is assigned by the taxpayer under this section must be taken in twenty (20) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology.

(c) The part of a taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to any one (1) taxable year is subject to the following:

(1) The total amount of the taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to the taxable year may not exceed the product of:

(A) the total credit amount to which the taxpayer is entitled under section 15 of this chapter, divided by twenty (20); multiplied by

(B) the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant or fluidized bed combustion technology in the taxable year for which the annual installment of the credit is allowed.

(2) The part of the amount determined under subdivision (1) that may be assigned to any one (1) utility with respect to the taxable year may not exceed the greater of:

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

(B) the utility's total utility receipts tax liability for the taxable year.

(d) Any part of the taxpayer's credit under section 15 of this chapter that is assigned to one (1) or more utilities by a taxpayer under this section with respect to a taxable year may not be claimed by the taxpayer or the taxpayer's shareholders, partners, or members. However, any part of the credit to which the taxpayer is entitled under section 15 of this chapter and that is not assigned by the taxpayer with respect to the taxable year may be taken and applied by the taxpayer, or the taxpayer's shareholders, partners,

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or members, in accordance with sections 16 and 20 of this chapter."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1722 as printed March 16, 2007.)

HERSHMAN

SENATE MOTION

Madam President: I move that Engrossed House Bill 1722 be amended to read as follows:

"Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 9.5. **Except as provided in IC 6-3.1-28-11(c)**, the total amount of credits allowed under:

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

may not exceed fifty million dollars (\$50,000,000) for all taxpayers and all taxable years beginning after December 31, 2004. The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars (\$4,000,000) for each type of credit.

SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

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

SECTION 3. IC 6-3.1-28-11, AS AMENDED BY P.L.122-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 11. (a) **As used in this section, "cellulosic ethanol" means ethanol derived solely from lignocellulosic or hemicellulosic matter.**

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(b) The corporation shall determine the maximum amount of credits that a taxpayer (or if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section. The total amount of credits allowed a taxpayer (or, if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) under this chapter may not exceed a total of the following amounts for all taxable years:

(1) Two million dollars (\$2,000,000) in the case of a taxpayer who produces at least forty million (40,000,000) but less than sixty million (60,000,000) gallons of **grain** ethanol in a taxable year.

(2) Three million dollars (\$3,000,000) in the case of a taxpayer who produces at least sixty million (60,000,000) gallons of **grain** ethanol in a taxable year.

(3) Twenty million dollars (\$20,000,000) for all taxpayers for all taxable years, in the case of tax credits for a taxpayer who produces at least twenty million (20,000,000) gallons of cellulosic ethanol in a taxable year.

(c) **The total amount of tax credits allowed under this chapter for a taxpayer who produces at least twenty million (20,000,000) gallons of cellulosic ethanol is not subject to the maximum amount of tax credits imposed by IC 6-3.1-27-9.5."**

Page 1, line 17, delete "Subject" and insert "**If the corporation decides to award a tax credit under this chapter to a taxpayer, and subject**".

Page 2, line 20, delete "The" and insert "**If the corporation decides to award a tax credit under this chapter to an applicant, the**".

Page 3, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 7. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]:

Chapter 34. Indiana Fueled Energy Investment Tax Credit

Sec. 1. As used in this chapter, "biomass" means any organic matter that is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes, including wood residues, forest thinnings, mill residue wood, clean construction and demolition waste (but excluding treated or painted lumber), animal wastes, municipal wastes, food wastes, and aquatic plants.

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



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Sec. 3. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 4. As used in this chapter, "Indiana fuel" means either of the following:

(1) Any of the following when the fuel is gasified, liquefied, or methanized:

- (A) Biomass produced in Indiana.
- (B) Indiana coal.
- (C) Petroleum coke produced in Indiana.
- (D) Oil shale located in Indiana.

(2) Coal mine methane when used in the production of power.

Sec. 5. As used in this chapter, "office" means the office of energy and defense development.

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

- (1) all real and tangible personal property incorporated in and used as part of a facility used to produce energy from Indiana fuel; and
- (2) transmission equipment and other real and personal property located at the site of the energy production facility that is employed specifically to serve the energy production facility.

Sec. 7. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company;
- (4) a limited liability partnership;
- (5) a corporation organized under IC 8-1-13; or
- (6) a corporation organized under IC 23-17-1 that:
 - (A) is an electric cooperative; and
 - (B) has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 8. As used in this chapter, "petroleum coke" means a carbonaceous solid derived from the process of refining oil.

Sec. 9. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

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

as computed after the application of the credits that, under

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IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 10. As used in this chapter, "taxpayer" means any person, corporation, limited liability company, partnership, or other entity that:

- (1) has any state tax liability; and
- (2) makes a qualified investment.

Sec. 11. (a) A taxpayer that:

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

is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an energy production facility using Indiana fuel and for the taxable years provided in section 13 of this chapter.

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

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

Sec. 12. (a) If the corporation decides to award a tax credit under this chapter to a taxpayer, the amount of the credit to which the taxpayer is entitled for a qualified investment is equal to the product of:

- (1) the amount of the taxpayer's qualified investment; multiplied by
- (2) ten percent (10%).

(b) The total amount of tax credits awarded under this chapter may not exceed fifty million dollars (\$50,000,000) for all taxpayers and all taxable years.

Sec. 13. (a) A credit awarded under section 11 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into service the taxpayer's energy production facility.

(b) The amount of an annual installment of the credit awarded

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under section 11 of this chapter is equal to the quotient of:

- (1) the credit amount determined under section 12 of this chapter; divided by
- (2) ten (10).

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

Sec. 14. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the credit may be applied, an individual who is a shareholder, partner, or member of the pass through entity is entitled to a credit equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) in the case of a pass through entity described in:
 - (A) section 7(1), 7(2), 7(3), or 7(4) of this chapter, the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled; or
 - (B) section 7(5) or 7(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified investment.

Sec. 15. The amount of a credit claimed under this chapter may not exceed a qualified taxpayer's state tax liability. A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

Sec. 16. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

Sec. 17. (a) A taxpayer that proposes to place a new energy production facility utilizing Indiana fuel into service may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

(b) The office shall provide any technical assistance requested by the corporation in the administration of this chapter.

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

Sec. 19. (a) If the corporation decides to award a tax credit under this chapter to an applicant, the corporation shall enter into an agreement with the applicant. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The amount of the tax credit that, subject to section 15 of this chapter, will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.
- (5) A requirement that the taxpayer shall pay an average wage to its employees at the energy production facility, other than highly compensated employees, in each taxable year that a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the energy production facility is located.
- (6) A requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the energy production facility into service.
- (7) A requirement that one hundred percent (100%) of the fuel used at the energy production facility must be Indiana fuel.
- (8) A requirement that the energy production facility will comply with any energy efficiency or emission standard recommended by the office and imposed by the corporation.

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

Sec. 20. To receive the credit awarded by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax

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return or returns in the manner prescribed by the department. The taxpayer shall submit to the department a copy of the taxpayer's certificate of compliance issued under section 19 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter."

Page 8, between lines 24 and 25, begin a new paragraph and insert:

"SECTION 16. IC 8-1-8.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:

- (1) Energy from wind.
- (2) Solar energy.
- (3) Photovoltaic cells and panels.
- (4) Dedicated crops grown for energy production.
- (5) ~~Organic waste~~ Biomass (as defined by IC 6-3.1-34-1).
- (6) Hydropower from existing dams.
- (7) Fuel cells.
- (8) Energy from waste to energy facilities producing steam not used for the production of electricity.

(b) Except for energy described in subsection (a)(8), the term does not include energy from the incinerations, burning, or heating of any of the following:

- ~~(1) Waste wood.~~
- ~~(2) (1) Tires.~~
- ~~(3) (2) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.~~
- ~~(4) Construction or demolition debris."~~

Page 15, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 21. [EFFECTIVE JANUARY 1, 2008] (a) **IC 6-3.1-28-11, as amended by this act, applies to taxable years beginning after December 31, 2007.**

(b) IC 6-3.1-34, as added by this act, applies to taxable years beginning after December 31, 2007."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1722 as printed March 16, 2007.)

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