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FISCAL IMPACT STATEMENT

LS 7793 **NOTE PREPARED:** Jan 11, 2007
BILL NUMBER: SB 496 **BILL AMENDED:**

SUBJECT: Waste to Energy Tax Credits.

FIRST AUTHOR: Sen. Gard **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: The bill allows the Indiana Economic Development Corporation (IEDC) to award a Waste to Energy Tax Credit to a taxpayer that makes a qualified investment: (1) necessary to construct or otherwise place in service any waste to energy facility or equipment; or (2) to purchase, deliver, install, convert, or retool a waste to energy facility or equipment. It defines "waste to energy facility or equipment" to include a facility or equipment that is used by the owner of the facility or equipment to produce energy or reclaim energy from a waste resource, regardless of whether the energy produced or reclaimed is sold by the owner of the facility or equipment, used on-site by the owner of the facility or equipment, or otherwise used to provide energy that is used as fuel or used for nonfuel purposes by the owner of the facility or equipment or by another person. It also specifies that, for purposes of the tax credit provisions, "waste resource" includes open-loop biomass, closed-loop biomass, municipal solid waste, industrial waste, and any other any organic material from a plant (including corn and soybeans) or agricultural livestock waste nutrients

The bill provides that to be entitled to a credit, a taxpayer must request the IEDC to determine whether a proposed expenditure is a qualified investment. It requires the request to be made before the taxpayer takes a substantial step in making the qualified investment. It provides that if a taxpayer's proposed expenditure is a qualified investment, the IEDC may award a credit to the taxpayer. It also Specifies that the IEDC may not award more than: (1) $10,000,000 of credits in a particular taxable year; and (2) $2,000,000 of credits to any one taxpayer for all taxable years.

The bill requires the IEDC and a taxpayer that is awarded a credit to enter into an agreement. It requires the agreement to include: (1) a detailed description of the qualified investment; (2) the taxable year or years in which the credit may be claimed; (3) the credit amount that will be allowed for each taxable year; (4) a requirement that the taxpayer obtain from the Indiana utility regulatory commission any necessary approvals for the qualified investment; (5) a requirement that the taxpayer provide notice if the taxpayer assigns the credit; and (6) any other conditions, limitations, or requirements that the IEDC determines are appropriate. The bill also provides that the credit may be assigned.

Effective Date: January 1, 2008.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the new Waste to Energy Tax Credit proposed in this bill. The DOR's current level of resources should be sufficient to implement these changes.

Indiana Economic Development Corporation (IEDC): The bill requires the IEDC to administer the new Waste to Energy Tax Credit, including the tax credit application process, determinations of tax credits, and oversight of tax credit recipients to ensure compliance with tax credit agreements. The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks. The January 1, 2007, state position vacancy report indicates that the IEDC has 35 vacant full-time positions.

Explanation of State Revenues: *Summary:* This bill establishes the nonrefundable Waste to Energy Tax Credit that may be claimed by individual and corporate taxpayers, including pass through entities. The tax credit could potentially reduce state revenue from the Adjusted Gross Income (AGI) Tax, the Utility Receipts Tax, the Insurance Premiums Tax, and the Financial Institutions Tax. Upon approval and determination by the IEDC, the tax credit may be claimed by a taxpayer (or the taxpayer's assignee) who invests in facilities and equipment that produces energy or reclaims energy from various waste resources. The amount of credits that could potentially be claimed on an annual basis for qualified investment is indeterminable, and would depend on the potential for future investment in waste to energy facilities and credit determinations of the IEDC. The bill limits to $10.0 M the total amount of credits that may be awarded annually by the IEDC to all taxpayers. The tax credit is effective January 1, 2008, and could potentially begin affecting revenue in FY 2009.

Background Information: The Waste to Energy Tax Credit is to be awarded by the IEDC as a percentage of the investment a taxpayer makes in facilities and equipment that produce or reclaim energy from "waste resources" regardless of whether the energy is sold by the facility owner, used on-site, or otherwise used as fuel or for nonfuel purposes. The bill defines "waste resources" as: (1) Open-loop biomass; (2) closed-loop biomass; (3) municipal solid waste; (4) any organic plant material or agricultural livestock waste nutrients not included in (1) to (3); and (5) industrial waste. The bill requires a taxpayer to apply to the IEDC for approval of the tax credit and specifies various requirements relating to the application process. The bill requires the application to specify the purpose of the facilities and equipment and to include a binding agreement that the taxpayer, and the taxpayer's successors or assignees, agree not to use the facilities or equipment for any other purpose for a period agreed to by the taxpayer and the IEDC. The bill also requires a taxpayer that is awarded credits to enter into an agreement with the IEDC that includes:

(1) A description of the investment;
(2) the taxable year or years in which the credit may be claimed;
(3) the credit amount allowed for each taxable year;
(4) a requirement that the taxpayer obtain necessary approvals or certification from the Indiana Utility Regulatory Commission; and
(5) a requirement that the taxpayer notify the IEDC if any part of the tax credit is to be assigned to another taxpayer.

The bill provides for clawback of the tax credit if a taxpayer fails to comply with the tax credit agreement with the IEDC or other provisions of the bill. The bill also prohibits a taxpayer (including pass through entities and shareholders, partners, or members of pass through entities) from receiving the Waste to Energy Tax Credit if the taxpayer receives one of the following tax credits for the same project.

(1) Enterprise Zone Investment Cost Credit.
(2) Industrial Recovery (Dinosaur) Tax Credit.
(3) Military Base Recovery Tax Credit.
(4) Military Base Investment Cost Credit.
(5) Capital Investment Tax Credit.
(6) Community Revitalization Enhancement District (CRED) Tax Credit.
(7) Venture Capital Investment Tax Credit.
(8) Hoosier Business Investment Tax Credit.

The tax credit is nonrefundable, and may not be carried over or carried back. However, the tax credit may be assigned to another taxpayer. If the taxpayer is a pass through entity and does not have a tax liability, the credit could be taken by shareholders, partners, or members of the pass through entity in proportion to their distributive income from the pass through entity, or as otherwise agreed to by shareholders, partners, or members of the pass through entity. Since the credit is effective beginning in tax year 2008, the fiscal impact likely would not commence before FY 2009. However, tax credits awarded early in 2008 could potentially be used by taxpayers to reduce quarterly estimated payments affecting FY 2008 revenue. The bill limits to $10.0 M the amount of credits the IEDC may award to all taxpayers annually, with a limit of $2.0 M in tax credits that may be awarded to any one taxpayer for all taxable years.

Revenue from the Corporate AGI tax, the Utility Receipts Tax, the Insurance Premiums Tax, and the Financial Institutions Tax is deposited in the state General Fund. Eighty-six percent of the revenue from the Individual AGI Tax is deposited in the state General Fund, and 14% is deposited in the Property Tax Replacement Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Economic Development Corporation; Department of State Revenue; Indiana Utility Regulatory Commission.

Local Agencies Affected:

Information Sources:

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