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# SENATE BILL No. 496

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-1-3; IC 6-3.1-31.

**Synopsis:** Waste to energy tax credits. 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. 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. 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. Provides that to be entitled to a credit, a taxpayer must request the IEDC to determine whether a proposed expenditure is a qualified investment. Requires the request to be made before the taxpayer takes a substantial step in making the qualified investment. Provides that if a taxpayer's proposed expenditure is a qualified investment, the IEDC may award a credit to the taxpayer. 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. Requires the IEDC and a taxpayer that is awarded a credit to  
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**Effective:** January 1, 2008.

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## Gard, Hershman, Heinold

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January 18, 2007, read first time and referred to Committee on Tax and Fiscal Policy.

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enter into an agreement. 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. Provides that the credit may be assigned.

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Introduced

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.

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## SENATE BILL No. 496

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

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

- 1 SECTION 1. IC 6-3.1-1-3, AS ADDED BY P.L.199-2005,  
2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2008]: Sec. 3. A taxpayer (as defined in the following  
4 laws), pass through entity (as defined in the following laws), or  
5 shareholder, partner, or member of a pass through entity may not be  
6 granted more than one (1) tax credit under the following laws for the  
7 same project:  
8 (1) IC 6-3.1-10 (enterprise zone investment cost credit).  
9 (2) IC 6-3.1-11 (industrial recovery tax credit).  
10 (3) IC 6-3.1-11.5 (military base recovery tax credit).  
11 (4) IC 6-3.1-11.6 (military base investment cost credit).  
12 (5) IC 6-3.1-13.5 (capital investment tax credit).  
13 (6) IC 6-3.1-19 (community revitalization enhancement district  
14 tax credit).  
15 (7) IC 6-3.1-24 (venture capital investment tax credit).



(8) IC 6-3.1-26 (Hoosier business investment tax credit).

**(9) IC 6-3.1-31 (waste to energy tax credit).**

If a taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity has been granted more than one (1) tax credit for the same project, the taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity must elect to apply only one (1) of the tax credits in the manner and form prescribed by the department.

SECTION 2. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]:

**Chapter 31. Waste to Energy Tax Credits**

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

**Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation.**

**Sec. 3. As used in this chapter, "credit" refers to a credit against state tax liability that is awarded by the corporation to a taxpayer under this chapter.**

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

**Sec. 5. 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 is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**

**Sec. 6. As used in this chapter, "qualified investment" means the amount of a taxpayer's expenditures:**

- (1) that are necessary to construct or otherwise place in service any waste to energy facility or equipment; or**
- (2) that are to purchase, deliver, install, convert, modify, or retool a facility or equipment (including a waste conversion unit and any equipment used for interconnection with an electric utility's system or gas utility's system) that is or will be used as part of any waste to energy facility or equipment.**

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

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1 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);  
 2 (2) IC 6-2.3 (the utility receipts tax);  
 3 (3) IC 27-1-18-2 (the insurance premiums tax); and  
 4 (4) IC 6-5.5 (the financial institutions tax);  
 5 as computed after the application of the credits that under  
 6 IC 6-3.1-1-2 are to be applied before the credit provided by this  
 7 chapter.

8 Sec. 8. As used in this chapter, "waste to energy facility or  
 9 equipment" means a facility or equipment that:

10 (1) is:

11 (A) first placed in service in Indiana after December 31,  
 12 2007; or

13 (B) placed in service in Indiana after December 31, 2007,  
 14 after any conversion, modification, or retooling;

15 (2) has obtained any necessary approvals from the  
 16 commission; and

17 (3) is used by the owner of the facility or equipment to:

18 (A) produce energy; or

19 (B) reclaim energy;

20 from a waste resource, regardless of whether the energy  
 21 produced or reclaimed is sold by the owner of the facility or  
 22 equipment, used on-site by the owner of the facility or  
 23 equipment, or otherwise used to provide energy that is used  
 24 as fuel or used for nonfuel purposes by the owner of the  
 25 facility or equipment or by another person.

26 Sec. 9. As used in this chapter, "waste resource" means any of  
 27 the following:

28 (1) Open-loop biomass (as defined in Section 45 of the Internal  
 29 Revenue Code).

30 (2) Closed-loop biomass (as defined in Section 45 of the  
 31 Internal Revenue Code).

32 (3) Municipal solid waste (as defined in Section 45 of the  
 33 Internal Revenue Code).

34 (4) To the extent not included under subdivisions (1) through  
 35 (3):

36 (A) any organic material from a plant, including corn and  
 37 soybeans; and

38 (B) agricultural livestock waste nutrients (as defined in  
 39 Section 45 of the Internal Revenue Code).

40 (5) Industrial waste.

41 Sec. 10. (a) Subject to the provisions of this chapter, a taxpayer  
 42 that makes a qualified investment in Indiana may be awarded a

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1 credit under this chapter.

2 (b) To be entitled to a credit, a taxpayer must request that the  
3 corporation determine whether a proposed expenditure is a  
4 qualified investment. To make a request for a determination, a  
5 taxpayer must file with the corporation an application in the form  
6 and in the manner specified by the corporation. The application  
7 must be filed with the corporation before the taxpayer takes a  
8 substantial step in making the qualified investment.

9 (c) An application filed with the corporation under this section  
10 must:

11 (1) propose to make the qualified investment within the time  
12 specified by the corporation; and

13 (2) include an agreement that is binding on the taxpayer and  
14 the taxpayer's successors or assignees to:

15 (A) not use the facility or equipment for which the  
16 qualified investment is made for any purpose other than  
17 the purpose specified in the agreement for at least the  
18 period that is agreed upon by the taxpayer and the  
19 corporation; and

20 (B) provide information to the corporation in the form and  
21 in the manner requested by the corporation when the  
22 taxpayer makes the qualified investment.

23 Sec. 11. (a) If the corporation receives an application for a credit  
24 under section 10 of this chapter, the corporation shall review the  
25 application to determine:

26 (1) whether the proposed expenditure is a qualified  
27 investment; and

28 (2) in the discretion of the corporation, the amount of the  
29 credit to which the applicant is entitled.

30 (b) The amount of a credit shall be calculated as a percentage of  
31 a taxpayer's qualified investment, subject to any limits and  
32 requirements specified by the corporation.

33 (c) If the corporation:

34 (1) determines that a taxpayer qualifies for a credit and, in the  
35 corporation's discretion, should be awarded a credit; and

36 (2) the corporation has not awarded credits exceeding the  
37 limits under section 12 of this chapter, the corporation may  
38 award a credit to the taxpayer.

39 Sec. 12. (a) The total amount of credits that may be awarded to  
40 all taxpayers in a particular taxable year may not exceed ten  
41 million dollars (\$10,000,000).

42 (b) The corporation may not award more than two million

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1 dollars (\$2,000,000) of credits to any one (1) taxpayer for all  
2 taxable years.

3 Sec. 13. The corporation and a taxpayer that is awarded a credit  
4 must enter into an agreement before the taxpayer may claim the  
5 credit. The agreement must include all the following:

6 (1) A detailed description of the qualified investment for  
7 which the credit is awarded.

8 (2) The taxable year or years in which the credit may be  
9 claimed.

10 (3) The credit amount that will be allowed for each taxable  
11 year.

12 (4) A requirement that the taxpayer obtain from the  
13 commission any necessary approvals or certificates required  
14 for the qualified investment.

15 (5) A requirement that the taxpayer must provide written  
16 notification to the corporation not less than thirty (30) days  
17 before the taxpayer assigns any part of the credit to an  
18 assignee.

19 (6) Any other conditions, limitations, or requirements that the  
20 corporation determines are appropriate.

21 Sec. 14. If the corporation awards a credit to the taxpayer, the  
22 corporation shall issue to the taxpayer a certificate:

23 (1) verifying that, subject to any provisions of this chapter and  
24 the agreement under section 13 of this chapter, the taxpayer's  
25 qualified investment is eligible for a credit; and

26 (2) specifying the amount of the credit and the taxable year or  
27 years in which the credit may be claimed.

28 Sec. 15. A taxpayer that:

29 (1) is awarded a credit;

30 (2) enters into an agreement under section 13 of this chapter;

31 (3) makes the qualified investment for which the credit is  
32 awarded; and

33 (4) complies with the conditions of this chapter and the  
34 agreement under section 13 of this chapter;

35 is entitled to a credit against the taxpayer's state tax liability in the  
36 taxable year specified by the corporation in the agreement under  
37 section 13 of this chapter. The amount of the credit is equal to the  
38 amount specified by the corporation in the agreement under  
39 section 13 of this chapter

40 Sec. 16. If a taxpayer claims a credit and does not comply with  
41 the conditions of this chapter and the agreement under section 13  
42 of this chapter, the corporation may require the taxpayer to repay

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the following:

(1) The additional amount of state tax liability that would have been paid by the taxpayer if the credit had not been granted for the qualified investment.

(2) Interest at a rate established under IC 6-8.1-10-1(c) on the additional amount of state tax liability under subdivision (1).

Sec. 17. (a) A taxpayer that has been awarded a credit may assign any part of the credit to which the taxpayer is entitled under this chapter to another person.

(b) The assignor shall provide the assignee with a copy of:

(1) the agreement under section 13 of this chapter; and

(2) the certificate issued under section 14 of this chapter.

(c) The assignor must provide written notification to the corporation not less than thirty (30) days before the assignment of the credit. The assignor and the assignee must report the assignment of the credit on their state tax return for the year in which the assignment is made, in the manner prescribed by the department. A taxpayer may not receive value in connection with the assignment of the credit that exceeds the value of the part of the credit assigned.

Sec. 18. A person that is assigned a credit in conformity with this chapter is entitled to a credit against the person's state tax liability to the same extent as if the person were the taxpayer to which the credit was awarded. The credit remains subject to:

(1) this chapter; and

(2) the agreement under section 13 of this chapter.

Sec. 19. If a pass through entity is awarded a credit and does not have a state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit equal to an amount permitted by an agreement between the partners, members, or shareholders or in an amount equal to:

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 20. (a) A taxpayer may not carry over to a succeeding taxable year or carry back to a previous taxable year any part of the credit that exceeds the taxpayer's state tax liability for the taxable year for which the credit is awarded.

(b) A taxpayer is not entitled to a refund of any unused credit.

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1           **Sec. 21. A taxpayer claiming a credit shall submit to the**  
2 **department a copy of the certificate issued under section 14 of this**  
3 **chapter. However, failure to submit a copy of the certificate does**  
4 **not invalidate a claim for a credit if the taxpayer provides a copy**  
5 **of the corporation's certificate upon the department's request for**  
6 **verification of the credit.**

7           **SECTION 3. [EFFECTIVE JANUARY 1, 2008] IC 6-3.1-31, as**  
8 **added by this act, applies to taxable years beginning after**  
9 **December 31, 2007.**

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