



Reprinted
February 1, 2006

HOUSE BILL No. 1381

DIGEST OF HB 1381 (Updated January 31, 2006 9:12 pm - DI 51)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Kindergarten tax credit. Provides a refundable income tax credit for education expenditures for a qualified dependent enrolled in a full day kindergarten at a school of choice (a nonpublic school that is voluntarily accredited or a public school where the child is required to pay transfer tuition) when a full day kindergarten program is not available at the public school where the qualified dependent has legal settlement. Permits a taxpayer to assign the income tax credit to a school of choice in satisfaction of the taxpayer's total educational expenditure obligation. Terminates the credit program in 2010.

Effective: January 1, 2006 (retroactive).

Behning, Messer

January 12, 2006, read first time and referred to Committee on Education.
January 25, 2006, amended, reported — Do Pass. Referred to the Committee on Ways and Means pursuant to House Rule 127.
January 26, 2006, amended, reported — Do Pass.
January 31, 2006, read second time, amended, ordered engrossed.

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Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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HOUSE BILL No. 1381

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 6-3.1-31 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2006 (RETROACTIVE)]:

4 **Chapter 31. Kindergarten Tax Credit**

5 **Sec. 1. As used in this chapter, "credit" refers to a tax credit**
6 **granted under this chapter against state tax liability.**

7 **Sec. 2. As used in this chapter, "current ADM" has the meaning**
8 **set forth in IC 21-3-1.6-1.1.**

9 **Sec. 3. As used in this chapter, "kindergarten program" means**
10 **full-day kindergarten program.**

11 **Sec. 4. As used in this chapter, "legal settlement" has the**
12 **meaning set forth in IC 20-18-2-11.**

13 **Sec. 5. As used in this chapter, "maximum permissible credit"**
14 **refers to the maximum credit determined under section 16 of this**
15 **chapter for a particular year.**

16 **Sec. 6. As used in this chapter, "public school" has the meaning**
17 **set forth in IC 20-18-2-15.**

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1 **Sec. 7.** As used in this chapter, "nonpublic school" has the
2 meaning set forth in IC 20-18-2-12.

3 **Sec. 8.** As used in this chapter, "qualified dependent" means an
4 individual who:

- 5 (1) is a dependent (as defined in Section 152 of the Internal
6 Revenue Code) of a qualified individual;
- 7 (2) has legal settlement in a school corporation located in
8 Indiana;
- 9 (3) is eligible by law to be enrolled in a kindergarten program
10 in a taxable year in which a qualified individual pays or
11 incurs a tuition expense; and
- 12 (4) is not provided a free, full day kindergarten program at
13 the assigned school in the dependent's school corporation of
14 legal settlement.

15 **Sec. 9.** As used in this chapter, "qualified individual" means an
16 individual who has an annual household income that is not more
17 than two hundred percent (200%) of the federal income poverty
18 level using the poverty guidelines updated periodically by the
19 United States Department of Health and Human Services under the
20 authority of 42 U.S.C. 9902(2).

21 **Sec. 10.** As used in this chapter, "school corporation" has the
22 meaning set forth in IC 20-18-2-16.

23 **Sec. 11.** As used in this chapter, "school of choice" means the
24 following:

- 25 (1) A nonpublic school (as defined in IC 20-18-2-12) that is:
 - 26 (A) located in Indiana; and
 - 27 (B) either voluntarily accredited:
 - 28 (i) under IC 20-31-4-2; or
 - 29 (ii) by a national or regional accreditation agency that is
30 approved by the Indiana state board of education.
- 31 (2) A public school (as defined in IC 20-18-2-15) in which an
32 eligible student is not entitled to enroll without the payment
33 of tuition or transfer tuition under IC 20-26-11-6.

34 **Sec. 12.** As used in this chapter, "state tax liability" refers to a
35 taxpayer's tax liability for adjusted gross income tax under IC 6-3.

36 **Sec. 13.** As used in this chapter, "tuition" means all charges
37 imposed by a school of choice to attend or be transported to or
38 from a kindergarten program (excluding charges covered by
39 textbook assistance under IC 20-33-5). The term includes transfer
40 tuition payable under IC 20-26-11-6.

41 **Sec. 14.** A qualified individual who pays or incurs in the
42 qualified individual's taxable year a tuition expense for enrolling

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a qualified dependent in a kindergarten program of a school of choice is entitled to a credit against the qualified individual's tax liability.

Sec. 15. The amount of the credit to which a qualified individual is entitled in a taxable year is the lesser of the following:

- (1) The qualified individual's tuition expense.
- (2) The maximum permissible credit permitted for a particular year.

Sec. 16. The maximum permissible credit that may be granted for a qualified dependent on all tax returns for all taxable years ending in a particular year is the amount determined under STEP FOUR of the following formula, rounded to the nearest dollar (\$1):

STEP ONE: Determine, for the school corporation in which the qualified dependent has legal settlement on the first day of the qualified individual's taxable year, the state distribution for tuition support for basic programs, as determined under IC 21-3-1.7-8.2 after making any reductions in the distribution that were required under IC 21-3-1.7-9, in the year immediately preceding the year in which the qualified individual's taxable year began.

STEP TWO: Determine the current ADM for the school corporation in which the qualified dependent has legal settlement in the year immediately preceding the year in which the qualified individual's taxable year began.

STEP THREE: Determine the result of:

- (A) the STEP ONE amount; divided by
- (B) the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE result by the following:

- (A) Five-tenths (0.5) if the qualified individual pays or incurs a tuition expense in the qualified individual's taxable year for an entire school year (as defined in IC 20-18-2-17).
- (B) A lesser percentage determined under the rules adopted by the department of education, if the qualified individual pays or incurs a tuition expense in the qualified individual's taxable year for less than an entire school year (as defined in IC 20-18-2-17). The department of education shall adopt rules to establish a credit percentage schedule for the payment of credits for qualified dependents who do not enroll in or pay tuition to a participating school for an entire school year (as defined in IC 20-18-2-17). The

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1 schedule must be proportional to the educational services
2 received by the qualified dependent.

3 **Sec. 17. The department of education shall:**

4 (1) post the maximum permissible credit amounts applicable
5 to a year on the Internet web site of the department of
6 education; and

7 (2) certify the maximum permissible credit amounts
8 applicable to a year to the department of state revenue;
9 not later than May 1 in the year to which it applies. The
10 department of education shall maintain the information for a
11 particular year on the Internet web site for at least two (2) years.

12 **Sec. 18. (a) If the amount of the credit to which a qualified
13 individual is entitled in a taxable year exceeds the qualified
14 individual's tax liability for the taxable year, the qualified
15 individual may:**

16 (1) carry the excess over to the following taxable years; or

17 (2) be granted a refund of the excess amount.

18 The amount of the credit carryover from a taxable year shall be
19 reduced to the extent that the carryover is used by the taxpayer to
20 obtain a refund or a credit under this chapter for any subsequent
21 taxable year.

22 (b) A qualified individual is not entitled to a carryback of any
23 unused credit.

24 **Sec. 19. To qualify for a credit, a qualified individual must claim
25 the credit on the forms and in the manner prescribed by the
26 department of state revenue. The qualified individual must provide
27 the department of state revenue with the information necessary for
28 the department of state revenue to determine the amount of the
29 credit to which the qualified individual is entitled. The department
30 may prescribe an abbreviated form for a qualified individual who
31 would not otherwise file a tax return to receive a refund under this
32 chapter. The qualified individual must notify the school of choice
33 of the individual's intent to participate in the tax credit program
34 when enrolling the qualified student into a kindergarten program.**

35 **Sec. 20. A credit granted under this chapter may not be
36 considered in determining the eligibility of a qualified individual or
37 qualified dependent for Medicaid or any other entitlement
38 program.**

39 **Sec. 21. The amount of a credit granted under this chapter,
40 including the amount of a credit assigned to a school of choice,
41 shall be excluded from the adjusted gross income of a qualified
42 individual to the same extent that the amount is excluded from**

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1 federal gross income under Section 117 of the Internal Revenue
2 Code.

3 Sec. 22. A qualified individual shall be treated as paying or
4 incurring a tuition expense if the qualified individual assigns a
5 credit in accordance with this chapter to a school of choice in full
6 satisfaction of the qualified individual's obligation to pay a tuition
7 expense. However, the amount of the credit that a qualified
8 individual is entitled to apply against the qualified individual's tax
9 liability or to receive as a refund is reduced by the amount of the
10 credit that is assigned to a school of choice.

11 Sec. 23. (a) A school of choice may enter into an agreement with
12 a qualified individual to assign a credit in accordance with this
13 chapter to a school of choice in full satisfaction of the qualified
14 individual's obligation to pay tuition expense.

15 (b) The assignment of a credit in full satisfaction of the qualified
16 individual's obligation to pay tuition expense for a full school year
17 (as defined in IC 20-18-2-17) is valid even if some of the
18 educational services will be provided in the qualified individual's
19 taxable year that immediately follows the taxable year in which the
20 assignment is made.

21 (c) An agreement must be in the form prescribed by the
22 department of state revenue.

23 Sec. 24. A school of choice that is assigned a qualified
24 individual's credit is entitled to a credit against the school of
25 choice's tax liability for the taxable year for which the school of
26 choice would have recognized income if the qualified individual
27 had paid tuition.

28 Sec. 25. The amount of the assigned credit is the least of the
29 following:

- 30 (1) The tuition rate that the school of choice regularly charges
- 31 for the kindergarten services provided to students in the same
- 32 classification as the qualified dependent.
- 33 (2) The actual amount of the obligation to the school of choice
- 34 that the qualified individual would have been required to pay
- 35 to the school of choice if the qualified individual had not
- 36 assigned the credit.
- 37 (3) The maximum permissible credit permitted for the year in
- 38 which the school year (as defined in IC 20-18-2-17) in which
- 39 the qualified dependent enrolled begins.
- 40 (4) If the school of choice is the school corporation in which
- 41 the qualified dependent has legal settlement, the amount of
- 42 excess costs incurred by the school corporation to educate the

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1 qualified dependent in a public school outside the qualified
2 dependent's attendance area, as determined under the rules
3 of the department.

4 Sec. 26. (a) If the amount of an assigned credit exceeds the tax
5 liability of a school of choice for a taxable year, the school of choice
6 may:

- 7 (1) carry the excess over to the following taxable years; or
- 8 (2) receive a refund of the excess amount.

9 The amount of a credit carryover for any subsequent year is
10 reduced to the extent that the school of choice applies the credit to
11 tax liability in a taxable year or the school of choice receives a
12 refund.

13 (b) A school of choice is not entitled to a carryback of an unused
14 credit. A shareholder, partner, or member of the school of choice
15 is not entitled to a pass through of a school of choice's assigned
16 credit.

17 Sec. 27. To qualify to use an assigned credit, a school of choice
18 must claim the assigned credit on the forms and in the manner
19 prescribed by the department of state revenue. The school of choice
20 must provide the department of state revenue with the information
21 necessary for the department of state revenue to determine the
22 amount of the assigned credits to which the school of choice is
23 entitled. The department may prescribe an abbreviated form for
24 a school of choice that would not otherwise file a tax return to
25 receive a refund under this chapter.

26 Sec. 28. The amount of an assigned credit shall be treated as
27 income to a school of choice to the same extent as if the qualified
28 individual assigning the credit had paid tuition to the school of
29 choice.

30 Sec. 29. Before August 2 in each year, the department of state
31 revenue shall distribute to the department of education an
32 informational report that contains at least the following
33 information:

- 34 (1) The number of qualified dependents for whom credits
35 were granted in the immediately preceding year.
- 36 (2) The number of nonpublic schools providing a
37 kindergarten program to qualified dependents for whom
38 credits were granted in the immediately preceding year.
- 39 (3) The number of school corporations providing a
40 kindergarten program to qualified dependents for whom
41 credits were granted in the immediately preceding year.

42 Sec. 30. Acceptance by a nonpublic school of a credit does not

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1 provide any governmental entity or agency with jurisdiction,
 2 authority, or control over the nonpublic school that is not
 3 otherwise granted by law.
 4 **Sec. 31. This chapter applies only to taxable years ending before**
 5 **January 1, 2011.**
 6 **Sec. 32. A school of choice may not charge a qualified individual**
 7 **any tuition or fees beyond the value of the credit granted under this**
 8 **chapter.**
 9 **Sec. 33. A school of choice may use funds from sources other**
 10 **than the qualified individual to supplement the value of the credit.**
 11 SECTION 2. [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]
 12 IC 6-3.1-31, as added by this act, applies to school years (as defined
 13 in IC 20-18-2-17) beginning after June 30, 2006, and to taxable
 14 years beginning after December 31, 2005.
 15 SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1381, 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 3, delete lines 41 through 42.

Page 4, delete lines 1 through 3.

Page 7, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 2. IC 21-3-1.7-8.2, AS AMENDED BY P.L.246-2005, SECTION 199, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 8.2. (a) Notwithstanding IC 21-3-1.6 and subject to section 9 of this chapter, the state distribution for a calendar year for tuition support for basic programs for each school corporation equals the result determined using the following formula:

STEP ONE: For a:

(A) school corporation not described in clause (B), determine the school corporation's result under STEP SEVEN of section 6.7(c) of this chapter for the calendar year; and

(B) school corporation that has target revenue per adjusted ADM for a calendar year that is equal to the amount under section 6.7(c) STEP ONE of this chapter, determine the sum of:

- (i) the school corporation's result under section 6.7(c) STEP ONE of this chapter for the calendar year multiplied by the school corporation's adjusted ADM for the current year; plus
- (ii) the amount of the annual decrease in federal aid to impacted areas from the year preceding the ensuing calendar year by three (3) years to the year preceding the ensuing calendar year by two (2) years; plus
- (iii) the part of the maximum general fund levy for the year that equals the original amount of the levy imposed by the school corporation to cover the costs of opening a new school facility or reopening an existing facility during the preceding year.

STEP TWO: This STEP applies to a school corporation that is not a charter school. Determine the sum of:

(A) the school corporation's tuition support levy; plus

(B) the school corporation's excise tax revenue for the year that precedes the current year by one (1) year.

STEP THREE: This STEP applies to a charter school. Determine the product of:

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- (A) the amount determined under section 6.7(c) STEP SEVEN of this chapter for the charter school; multiplied by
- (B) thirty-five hundredths (0.35).

STEP FOUR: Determine the difference between:

- (A) the STEP ONE amount; minus
- (B) the STEP TWO or STEP THREE amount, as applicable.

STEP FIVE: Determine the result of:

- (A) the STEP FOUR result; minus**
- (B) the amount determined under subsection (c).**

(b) If the state tuition support determined for a school corporation under this section is negative, the school corporation is not entitled to any state tuition support. In addition, the school corporation's maximum general fund levy under IC 6-1.1-19-1.5 shall be reduced by the amount of the negative result.

(c) The amount to be used under subsection (a) STEP FIVE (B) is the greater of:

- (1) zero (0); or**
- (2) the amount by which the department of education determines the school corporation's state tuition support distribution would be reduced as a result of the enrollment of qualified dependents (as defined in IC 6-3.1-31-8) in a school of choice (as defined in IC 6-3.1-31-11) rather than the school corporation if section 6.6 of this chapter did not apply to the school corporation.**

The department of education shall base a determination described in subdivision (2) on an analysis of the effects of IC 6-3.1-31 on the trend of enrollment of eligible pupils and qualified dependents (as defined in IC 6-3.1-31-8) in kindergarten in each attendance area of the school corporation. The department of education shall review the methodology used in the analysis with the budget committee."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1381 as introduced.)

BEHNING, Chair

Committee Vote: yeas 6, nays 5.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1381, 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 10, delete "a half-day or".

Page 3, delete lines 28 through 40, begin a new line double block indented and insert:

"(A) Five-tenths (0.5) if the qualified individual pays or incurs a tuition expense in the qualified individual's taxable year for an entire school year (as defined in IC 20-18-2-17).

(B) A lesser percentage determined under the rules adopted by the department of education, if the qualified individual pays or incurs a tuition expense in the qualified individual's taxable year for less than an entire school year (as defined in IC 20-18-2-17). The department of education shall adopt rules to establish a credit percentage schedule for the payment of credits for qualified dependents who do not enroll in or pay tuition to a participating school for an entire school year (as defined in IC 20-18-2-17). The schedule must be proportional to the educational services received by the qualified dependent."

Page 6, delete lines 40 through 42.

Delete page 7.

Page 8, delete lines 1 through 20.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1381 as printed January 26, 2006.)

ESPICH, Chair

Committee Vote: yeas 15, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1381 be amended to read as follows:

Page 6, between lines 41 and 42, begin a new paragraph and insert:

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"Sec. 31. This chapter applies only to taxable years ending before January 1, 2011."

(Reference is to HB 1381 as printed January 27, 2006.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1381 be amended to read as follows:

Page 2, line 8, delete "and".

Page 2, line 11, delete "." and insert "; and".

Page 2, between lines 11 and 12, begin a new line block indented and insert:

"(4) is not provided a free, full day kindergarten program at the assigned school in the dependent's school corporation of legal settlement."

Page 2, delete line 27.

Page 2, run in lines 26 and 28.

Page 4, line 30, after "." insert **"The qualified individual must notify the school of choice of the individual's intent to participate in the tax credit program when enrolling the qualified student into a kindergarten program."**

Page 6, between lines 41 and 42, begin a new paragraph and insert:

"Sec. 31. A school of choice may not charge a qualified individual any tuition or fees beyond the value of the credit granted under this chapter.

Sec. 32. A school of choice may use funds from sources other than the qualified individual to supplement the value of the credit."

(Reference is to HB 1381 as printed January 27, 2006.)

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