

SENATE BILL No. 405

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-16; IC 14-8-2-107; IC 14-21-1-37.

Synopsis: Historic rehabilitation income tax credit. Provides that the historic rehabilitation income tax credit may be assigned. Provides that the credit may be recaptured from the person who receives the certification or from an assignee to whom the property is transferred. Provides that the transfer of the property as a condominium will not cause the credit to be recaptured. (Current law provides the credit is recaptured if the property is transferred within five years of the completion of the rehabilitation or preservation.) Provides that the adjusted basis of the property is not reduced by the amount of credit if a person is entitled to a federal low income housing credit for the historic property. Increases the amount of the credit to 40% of qualified expenses for the rehabilitation or preservation of a historic property if the qualified expenses are less than \$2,000,000. (Current law provides that the amount of the credit equals 20% of qualified expenses.) Increases the credit to 40% of qualified expenses if the credit is awarded to rehabilitate or preserve a: (1) school; (2) hospital; or (3) project that receives a grant from the Indiana main street program. Increases the basis of qualified expenses for the preservation or rehabilitation of historic property which is located in a United States Housing and Urban Development qualified census tract or difficult to develop area. Provides that the division of historic preservation and archeology of the department of natural resources may collect a fee which equals 2.5% of qualified expenses for projects with over \$2,000,000 qualified expenses. Provides the fee is used to pay for administrative costs associated with certifying historic property for the tax credit. Establishes the historic rehabilitation credit fund. Provides
(Continued next page)

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Effective: Upon passage; July 1, 2009.

Merritt

January 12, 2009, read first time and referred to Committee on Tax and Fiscal Policy.



Digest Continued

that the fee collected by the division of historic preservation and archeology shall be deposited into the fund. Provides that money in the fund in excess of \$10,000,000 reverts to the state general fund at the end of a fiscal year. Repeals the annual state-wide limit for the credit.

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Introduced

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 405

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 6-3.1-16-1.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. (a) As used in this chapter,**
4 **"difficult development area" has the meaning set forth in Section**
5 **42(d)(5)(C)(iii) of the Internal Revenue Code.**

6 SECTION 2. IC 6-3.1-16-2.8 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2009]: **Sec. 2.8. As used in this chapter,**
9 **"person" means:**

- 10 (1) **an individual;**
- 11 (2) **a corporation;**
- 12 (3) **an S corporation;**
- 13 (4) **a partnership;**
- 14 (5) **a limited liability company;**
- 15 (6) **a limited liability partnership;**



(7) a nonprofit organization; or

(8) a joint venture.

SECTION 3. IC 6-3.1-16-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) As used in this chapter, "qualified census tract" has the meaning set forth in Section 42(d)(5)(C)(ii) of the Internal Revenue Code.**

SECTION 4. IC 6-3.1-16-6.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6.2. As used in this chapter, "taxpayer" means:**

(1) a person that:

(A) is the holder of a credit that is awarded or assigned under this chapter; and

(B) has a state tax liability against which any part of the credit may be applied; or

(2) a shareholder, partner, or member of a pass through entity that:

(A) is the holder of a credit that is awarded or assigned under this chapter; and

(B) does not have any state tax liability against which any part of the credit may be applied.

SECTION 5. IC 6-3.1-16-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a) Subject to section 14 of this chapter, A taxpayer is entitled to a credit against the taxpayer's state tax liability in the taxable year in which the taxpayer completes the preservation or rehabilitation of historic property and obtains the certifications required under section 8 of this chapter.**

(b) The amount of the credit is equal to twenty percent (20%) of the qualified expenditures that:

(1) the taxpayer makes for the preservation or rehabilitation of historic property; and

(2) are approved by the division.

(b) The credit applies to qualified expenditures that:

(1) the taxpayer makes for the preservation or rehabilitation of historic property; and

(2) are approved by the division.

(c) Except as provided in section 7.1 of this chapter, the amount of the credit is equal to the following:

(1) Forty percent (40%) of the qualified expenditures the taxpayer makes if the qualified expenditures are less than two million dollars (\$2,000,000).

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- 1 **(2) Forty percent (40%) of the qualified expenditures the**
- 2 **taxpayer makes if the property:**
- 3 **(A) is a school;**
- 4 **(B) is a hospital; or**
- 5 **(C) receives a grant under the main street program**
- 6 **established under IC 4-4-16-1.**
- 7 **(3) Twenty percent (20%) of the qualified expenditures the**
- 8 **taxpayer makes if the property does not qualify under**
- 9 **subdivision (1) or (2).**

10 ~~(c)~~ **(d)** In the case of a husband and wife who:

- 11 (1) own and rehabilitate a historic property jointly; and
- 12 (2) file separate tax returns;

13 the husband and wife may take the credit in equal shares or one (1)

14 spouse may take the whole credit.

15 SECTION 6. IC 6-3.1-16-7.1 IS ADDED TO THE INDIANA

16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

17 [EFFECTIVE JULY 1, 2009]: **Sec. 7.1. (a) This section applies only**

18 **to a person who applies for a credit for the preservation or**

19 **rehabilitation of historic property located in a:**

- 20 **(1) difficult development area; or**
- 21 **(2) qualified census tract.**
- 22 **(b) This section does not apply to the calculation of a fee under**
- 23 **IC 14-21-1-37.**

24 **(c) A person's qualified expenses used to calculate the tax credit**

25 **provided in section 7 of this chapter equals the person's total**

26 **qualified expenses multiplied by one and three-tenths (1.3).**

27 SECTION 7. IC 6-3.1-16-8 IS AMENDED TO READ AS

28 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. A taxpayer person**

29 **qualifies for a credit under section 7 of this chapter if all of the**

30 **following conditions are met:**

- 31 (1) The historic property is:
 - 32 (A) located in Indiana;
 - 33 (B) at least fifty (50) years old; and
 - 34 (C) except as provided in section 7(c) of this chapter, owned
 - 35 by the ~~taxpayer.~~ **person.**
- 36 (2) The division certifies that the historic property is listed in the
- 37 register of Indiana historic sites and historic structures.
- 38 (3) The division certifies that the ~~taxpayer~~ **person** submitted a
- 39 proposed preservation or rehabilitation plan to the division that
- 40 complies with the standards of the division.
- 41 (4) The division certifies that the preservation or rehabilitation
- 42 work that is the subject of the credit substantially complies with

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1 the proposed plan referred to in subdivision (3).
 2 (5) The preservation or rehabilitation work is completed in not
 3 more than:
 4 (A) two (2) years; or
 5 (B) five (5) years if the preservation or rehabilitation plan
 6 indicates that the preservation or rehabilitation is initially
 7 planned for completion in phases.
 8 The time in which work must be completed begins when the
 9 physical work of construction or destruction in preparation for
 10 construction begins.
 11 (6) The historic property is:
 12 (A) actively used in a trade or business;
 13 (B) held for the production of income; or
 14 (C) held for the rental or other use in the ordinary course of the
 15 ~~taxpayer's~~ **person's** trade or business.
 16 (7) The qualified expenditures for preservation or rehabilitation
 17 of the historic property exceed ten thousand dollars (\$10,000).
 18 **(8) The division certifies that a fee required under**
 19 **IC 14-21-1-37 has been paid.**
 20 SECTION 8. IC 6-3.1-16-9 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) The division shall
 22 provide the certifications referred to in section 8(3) and 8(4) of this
 23 chapter if a ~~taxpayer's~~ **person's** proposed preservation or rehabilitation
 24 plan complies with the standards of the division and the ~~taxpayer's~~
 25 **person's** preservation or rehabilitation work complies with the plan.
 26 (b) The ~~taxpayer~~ **person** may appeal a decision by the division
 27 under this chapter to the review board.
 28 SECTION 9. IC 6-3.1-16-11 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. **(a) This section**
 30 **does not apply to a person if the person is entitled to a credit under**
 31 **Section 42 of the Internal Revenue Code for the historic property.**
 32 **(b)** For purposes of IC 6-3, the adjusted basis of:
 33 (1) the structure, if the historic property is a structure; or
 34 (2) the entire property, if the historic property is not a structure;
 35 shall be reduced by the amount of a credit granted under this chapter.
 36 SECTION 10. IC 6-3.1-16-12 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) A credit claimed
 38 under this chapter shall be recaptured from the ~~taxpayer person who~~
 39 **receives the certifications referred to in section 8(3) and 8(4) of this**
 40 **chapter or, if applicable, from an assignee to which the property is**
 41 **transferred, if:**
 42 (1) the property is transferred, **other than:**

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1 **(A) to an assignee; or**
 2 **(B) as a condominium (as defined in IC 32-25-2-7);**
 3 less than five (5) years after completion of the certified
 4 preservation or rehabilitation work; or
 5 (2) less than five (5) years after completion of the certified
 6 preservation or rehabilitation, additional modifications to the
 7 property are undertaken that do not meet the standards of the
 8 division.
 9 (b) If the recapture of a credit is required under this section, an
 10 amount equal to the credit recaptured shall be added to the tax liability
 11 of the ~~taxpayer~~ **person who receives the certifications under section**
 12 **8 of this chapter or, if applicable, an assignee to which the property**
 13 **is transferred,** for the taxable year during which the credit is
 14 recaptured.
 15 SECTION 11. IC 6-3.1-16-13.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2009]: **Sec. 13.5. (a) The holder of a credit**
 18 **may assign any part of the credit to which the holder is entitled**
 19 **under this chapter to another person if the holder complies with**
 20 **this section.**
 21 **(b) The assignor must provide the assignee with a copy of the**
 22 **certifications by the division required under sections 8 and 9 of this**
 23 **chapter.**
 24 **(c) The assignor must provide written notification of the**
 25 **assignment to the:**
 26 **(1) division; and**
 27 **(2) department;**
 28 **not later than thirty (30) days after the assignment.**
 29 **(d) The notification provided under subsection (c) must contain:**
 30 **(1) the name of the assignor;**
 31 **(2) the name of the assignee;**
 32 **(3) the date of assignment;**
 33 **(4) the terms of the assignment; and**
 34 **(5) any information requested by the division or the**
 35 **department.**
 36 **(e) The assignor may assign a credit under this chapter to an**
 37 **assignee other than a holder of a credit under Section 47 of the**
 38 **Internal Revenue Code for the same property.**
 39 **(f) If any part of a credit is assigned under this section, the**
 40 **assignor and the assignee shall report the assignment on their state**
 41 **tax returns for the year in which the assignment is made, in the**
 42 **manner prescribed by the department.**

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1 SECTION 12. IC 6-3.1-16-13.7 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 13.7. The holder of a credit that**
4 **is assigned in conformity with this chapter is entitled to a credit**
5 **against the holder's state tax liability to the same extent as if the**
6 **holder were the person to which the credit was awarded.**

7 SECTION 13. IC 14-8-2-107, AS AMENDED BY P.L.85-2008,
8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2009]: Sec. 107. "Fund" has the following meaning:

- 10 (1) For purposes of IC 14-9-5, the meaning set forth in
11 IC 14-9-5-1.
- 12 (2) For purposes of IC 14-9-8-21, the meaning set forth in
13 IC 14-9-8-21.
- 14 (3) For purposes of IC 14-9-8-21.5, the meaning set forth in
15 IC 14-9-8-21.5.
- 16 (4) For purposes of IC 14-9-9, the meaning set forth in
17 IC 14-9-9-3.
- 18 (5) For purposes of IC 14-12-1, the meaning set forth in
19 IC 14-12-1-1.
- 20 (6) For purposes of IC 14-12-2, the meaning set forth in
21 IC 14-12-2-2.
- 22 (7) For purposes of IC 14-12-3, the meaning set forth in
23 IC 14-12-3-2.
- 24 (8) For purposes of IC 14-13-1, the meaning set forth in
25 IC 14-13-1-2.
- 26 (9) For purposes of IC 14-13-2, the meaning set forth in
27 IC 14-13-2-3.
- 28 (10) For purposes of IC 14-16-1, the meaning set forth in
29 IC 14-16-1-30.
- 30 (11) For purposes of IC 14-19-8, the meaning set forth in
31 IC 14-19-8-1.
- 32 (12) For purposes of IC 14-20-1, the meaning set forth in
33 IC 14-20-1-3.
- 34 (13) For purposes of IC 14-20-11, the meaning set forth in
35 IC 14-20-11-2.
- 36 **(14) For purposes of IC 14-21-1-37, the meaning set forth in**
37 **IC 14-21-1-37(a).**
- 38 ~~(14)~~ **(15)** For purposes of IC 14-21-4, the meaning set forth in
39 IC 14-21-4-10.
- 40 ~~(15)~~ **(16)** For purposes of IC 14-22-3, the meaning set forth in
41 IC 14-22-3-1.
- 42 ~~(16)~~ **(17)** For purposes of IC 14-22-4, the meaning set forth in

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- 1 IC 14-22-4-1.
 2 ~~(17)~~ **(18)** For purposes of IC 14-22-5, the meaning set forth in
 3 IC 14-22-5-1.
 4 ~~(18)~~ **(19)** For purposes of IC 14-22-8, the meaning set forth in
 5 IC 14-22-8-1.
 6 ~~(19)~~ **(20)** For purposes of IC 14-22-34, the meaning set forth in
 7 IC 14-22-34-2.
 8 ~~(20)~~ **(21)** For purposes of IC 14-23-3, the meaning set forth in
 9 IC 14-23-3-1.
 10 ~~(21)~~ **(22)** For purposes of IC 14-24-4.5, the meaning set forth in
 11 IC 14-24-4.5-2(5).
 12 ~~(22)~~ **(23)** For purposes of IC 14-25-2-4, the meaning set forth in
 13 IC 14-25-2-4.
 14 ~~(23)~~ **(24)** For purposes of IC 14-25-10, the meaning set forth in
 15 IC 14-25-10-1.
 16 ~~(24)~~ **(25)** For purposes of IC 14-25-11-19, the meaning set forth
 17 in IC 14-25-11-19.
 18 ~~(25)~~ **(26)** For purposes of IC 14-25.5, the meaning set forth in
 19 IC 14-25.5-1-3.
 20 ~~(26)~~ **(27)** For purposes of IC 14-28-5, the meaning set forth in
 21 IC 14-28-5-2.
 22 ~~(27)~~ **(28)** For purposes of IC 14-31-2, the meaning set forth in
 23 IC 14-31-2-5.
 24 ~~(28)~~ **(29)** For purposes of IC 14-25-12, the meaning set forth in
 25 IC 14-25-12-1.
 26 ~~(29)~~ **(30)** For purposes of IC 14-32-8, the meaning set forth in
 27 IC 14-32-8-1.
 28 ~~(30)~~ **(31)** For purposes of IC 14-33-14, the meaning set forth in
 29 IC 14-33-14-3.
 30 ~~(31)~~ **(32)** For purposes of IC 14-33-21, the meaning set forth in
 31 IC 14-33-21-1.
 32 ~~(32)~~ **(33)** For purposes of IC 14-34-6-15, the meaning set forth in
 33 IC 14-34-6-15.
 34 ~~(33)~~ **(34)** For purposes of IC 14-34-14, the meaning set forth in
 35 IC 14-34-14-1.
 36 ~~(34)~~ **(35)** For purposes of IC 14-37-10, the meaning set forth in
 37 IC 14-37-10-1.

38 SECTION 14. IC 14-21-1-37 IS ADDED TO THE INDIANA
 39 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2009]: **Sec. 37. (a) As used in this section,**
 41 **"fund" refers to the historic rehabilitation credit fund established**
 42 **in subsection (d).**

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- 1 (b) As used in this section, "person" has the meaning set forth
- 2 in IC 6-3.1-16-2.8.
- 3 (c) As used in this section, "qualified expenditures" has the
- 4 meaning set forth in IC 6-3.1-16-4.
- 5 (d) The historic rehabilitation credit fund is established to fund
- 6 administrative costs associated with making certifications under
- 7 IC 6-3.1-16-8.
- 8 (e) The fund consists of the following:
- 9 (1) Fees collected under this section.
- 10 (2) Appropriations by the general assembly.
- 11 (3) Money transferred to the fund from other funds.
- 12 (4) Money from any other source deposited in the fund.
- 13 (f) The director shall manage the fund. The fund shall be used
- 14 for administrative costs:
- 15 (1) of the fund; and
- 16 (2) associated with making certifications under IC 6-3.1-16-8.
- 17 (g) Money in the fund at the end of a state fiscal year does not
- 18 revert to the state general fund or any other fund. However, if the
- 19 amount of money in the fund at the end of a particular fiscal year
- 20 exceeds ten million dollars (\$10,000,000), the treasurer shall
- 21 transfer the excess from the fund into the state general fund.
- 22 (h) The treasurer of state shall invest the money in the fund not
- 23 currently needed to meet the obligations of the fund in the same
- 24 manner as other public trust funds are invested. Interest that
- 25 accrues from these investments shall be deposited in the fund.
- 26 (i) The division shall charge a person a fee to provide
- 27 certifications under IC 6-3.1-16-8 if the qualified expenses to
- 28 preserve or rehabilitate a historic property exceed two million
- 29 dollars (\$2,000,000). The amount of the fee is two and five-tenths
- 30 percent (2.5%) of the amount of qualified expenses.
- 31 SECTION 15. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 32 JULY 1, 2009]: IC 6-3.1-16-6.1; IC 6-3.1-16-14.
- 33 SECTION 16. [EFFECTIVE UPON PASSAGE] The department
- 34 of state revenue or the department of natural resources may adopt
- 35 temporary rules in the manner provided for the adoption of
- 36 emergency rules under IC 4-22-2-37.1 to implement this act. A
- 37 temporary rule adopted under this SECTION expires on the
- 38 earliest of the following:
- 39 (1) The date that the department of state revenue or the
- 40 department of natural resources adopts another temporary
- 41 rule under this SECTION that repeals, amends, or supersedes
- 42 the previously adopted temporary rule.

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1 **(2) The date that the department of state revenue or the**
2 **department of natural resources adopts a permanent rule**
3 **under IC 4-22-2 that repeals, amends, or supersedes the**
4 **previously adopted temporary rule.**
5 **(3) The date specified in the temporary rule.**
6 **(4) December 31, 2010.**
7 **SECTION 17. An emergency is declared for this act.**

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