

**2015 DRAFTING REQUEST**

**Bill**

Received: **12/16/2014** Received By: **jkreye**  
Wanted: **As time permits** Same as LRB:  
For: **Administration-Budget 266-1923** By/Representing: **Quinn**  
May Contact: Drafter: **jkreye**  
Subject: **Econ. Development - WEDC** Addl. Drafters: **zwyatt**  
**Tax, Business - credits**

Extra Copies:

Submit via email: **YES**  
Requester's email:  
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**  
**michael.gallagher@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**  
**sbostatlanguage@webapps.wi.gov**

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**Pre Topic:**

DOA:.....Quinn, BB0305 -

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**Topic:**

Historic rehabilitation tax credit annual award cap and technical modifications

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	zwyatt 12/18/2014	wjackson 1/5/2015		_____			
/P1	jkreye 1/6/2015		jmurphy 1/5/2015	_____	sbasford 1/5/2015		State

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/P2	zwyatt 1/23/2015	wjackson 1/13/2015	jmurphy 1/14/2015	_____	srose 1/14/2015		State
/P3	jkreye 1/28/2015	csicilia 1/26/2015	rschluet 1/26/2015	_____	sbasford 1/26/2015		State
/P4	jkreye 1/28/2015	wjackson 1/28/2015	jfrantze 1/28/2015	_____	lparisi 1/28/2015		State
/P5			rschluet 1/28/2015	_____	lparisi 1/28/2015		State

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*J 15 JP*

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/P4		jdyer 1/28/2015	jfrantze 1/28/2015	_____	lparisi 1/28/2015		State

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*p5 WJ 1/28*

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*Handwritten signatures and initials:*  
A large handwritten signature, possibly "JKreye", is written over the "Typed" column for the second row.  
The initials "SP" are written in the bottom right area of the table.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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P3 <sup>1/26</sup> jst 15 <END>



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/P1		<i>P2WJ/B</i> jmurphy 1/5/2015		_____	sbasford 1/5/2015		State

*JMT*  
1/14

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**<END>**

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/?	zwyatt	plwy 1/5					State

*zwyatt*  
1/5

FE Sent For:

<END>

## Kreye, Joseph

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**From:** Hanaman, Cathlene  
**Sent:** Tuesday, December 16, 2014 8:33 AM  
**To:** Shovers, Marc; Kreye, Joseph  
**Subject:** FW: Statutory Language Drafting Request - BB0305  
**Attachments:** Historic Rehabilitation Credit Revisions Drafting Instructions- November 5 2014.docx

---

**From:** brian.quinn@wisconsin.gov [mailto:brian.quinn@wisconsin.gov]  
**Sent:** Monday, December 15, 2014 8:02 PM  
**To:** Hanaman, Cathlene  
**Cc:** Ziegler, Paul - DOA; Quinn, Brian D - DOA; Connor, Christopher B - DOA  
**Subject:** Statutory Language Drafting Request - BB0305

Biennial Budget: 2015-17

Topic: Historic Rehabilitation Tax Credit Annual Award Cap and Technical Modifications

Tracking Code: BB0305

SBO Team: TLGED

SBO Analyst: Quinn, Brian D - DOA  
Phone: (608) 266-1923  
E-mail: [brian.quinn@wisconsin.gov](mailto:brian.quinn@wisconsin.gov)

Agency Acronym: DOR

Agency Number: 566

Priority: Low

Intent:

Make the following changes to the Historic Rehabilitation Tax Credit.

1. Modify treatment of transferability to allow those not claiming the federal credit to claim the Wisconsin credit if it is transferred to them.
2. Limit the credit to non-governmental entities.
3. Limit annual credit awards to \$10 million.
4. Create a competitive awards process based on the following:
  - 1. How many permanent new jobs the rehabilitated property is likely to create.
  - 2. The return on state investment.
  - 3. The impact of the project on the local economy.

- 4. The probability that the rehabilitation or related investment would occur in the absence of the credit.
- 5. The number of credits that have been certified in the same county or municipality in recent years.

Finally, WEDC shall develop rules to administer the competitive awards process.

See attachment for drafting instructions.

Attachments: True

Please send completed drafts to [SBOStatlanguage@webapps.wi.gov](mailto:SBOStatlanguage@webapps.wi.gov)

**Legislative Proposal Summary  
Wisconsin Department of Revenue**

**December 5, 2014**

**Historic Rehabilitation Credit Improvements**

*Correction to transferability flaw in statute:*

1. Amend ss. 71.07(9m)(cm), 71.28(6)(cm), and 71.47(6)(cm), Wis. Stats., to read:

Any credit claimed under this subsection for Wisconsin purposes shall be claimed at the same time as for federal purposes. This paragraph does not apply to a credit that is transferred under par. (h).

*Limit credit to non-government entities:*

2. Renumber sec. 238.17 as 238.17(1a).
3. Create sec 238.17(1)(b) to:

Beginning after December 31, 2015, the United States, the state and all counties, cities, villages, towns, school districts, technical college districts, joint local water authorities created under s. 66.0823, long-term care districts under s. 46.2895, housing authorities under subch. XII of ch. 66, or other political units of this state may not be certified under this section.

*Creation of a statewide project cap:*

4. Create sec. 238.17(2) to:

Beginning after December 31, 2015, the corporation may certify up to \$10,000,000 in tax benefits under this section in any calendar year, as provided in sub. (3).

*Creation of a competitive application process:*

5. Create sec. 238.17(3) to:

In determining whether to certify an eligible activity under s. 71.07 (9m), 71.28 (6), or 71.47 (6), the corporation shall consider all of the following:

1. How many permanent new jobs the rehabilitated property is likely to create.
  2. The return on state investment.
  3. The impact of the project on the local economy.
  4. The probability that the rehabilitation or related investment would occur in the absence of the credit.
  5. The number of credits that have been certified in the same county or municipality in recent years.
6. Create sec. 238.17(4) to:

The corporation shall adopt policies for the administration of this section, including the following:

1. Forms and procedures by which applicants may apply for certification.
2. Certifying a credit, including use of the factors under sub. (3).
3. Reporting requirements for certified claimants.
4. Reasons for revoking a business's certification.



NOTE

DOA:.....Quinn, BB0305 – Historic rehabilitation tax credit annual award cap and technical modifications

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

⊕ Under current law, a person who claims the supplement to the federal historic rehabilitation tax credit must claim the credit for state purposes at the same time that the federal credit would be claimed for federal purposes. Under the bill, a credit that is transferred from one taxpayer to another does not have to be claimed for state purposes at the same time as for federal purposes.

**COMMERCE AND ECONOMIC DEVELOPMENT**

**ECONOMIC DEVELOPMENT**

Under current law, WEDC may certify a person to claim a state tax credit to supplement the federal historic rehabilitation tax credit. Under the bill, WEDC may certify up to \$10,000,000 in any year for this tax credit and must adopt policies and procedures for evaluating claims and certifying credits.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Anal: Space

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**



## SECTION 1

1 SECTION 1. 71.07 (9m) (cm) of the statutes is amended to read:

2 71.07 (9m) (cm) Any Except for a credit transferred under par. (h), a credit  
3 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
4 time as for federal purposes.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; s. 35.17 correction in (3q) (b) (intro.), (5n) (a) (intro.).

5 SECTION 2. 71.28 (6) (cm) of the statutes is amended to read:

6 71.28 (6) (cm) Any Except for a credit transferred under par. (h), a credit  
7 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
8 time as for federal purposes.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 3, 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145, 165; 2013 a. 166 ss. 26, 77.

9 SECTION 3. 71.47 (6) (cm) of the statutes is amended to read:

10 71.47 (6) (cm) Any Except for a credit transferred under par. (h), a credit  
11 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
12 time as for federal purposes.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 3, 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 ss. 80, 81; 2013 a. 20, 62, 116, 145.

13 SECTION 4. 238.17 of the statutes is renumbered 238.17 (1) and amended to  
14 read:

15 238.17 (1) **Historic rehabilitation tax credit.** For taxable years beginning  
16 after December 31, 2013, the corporation may certify a person to claim a tax credit  
17 under s. 71.07 (9m), 71.28 (6), or 71.47 (6), if the corporation determines that the  
18 person is conducting an eligible activity under s. ~~71.07 (9m), 71.28 (6), or 71.47 (6)~~  
19 preservation or rehabilitation project. No person may claim a tax credit under s.  
20 71.07 (9m), 71.28 (6), or 71.47 (6) without first being certified under this section. The  
21 corporation shall notify the department of revenue no later than January 15 of each  
22 year of the amount of the credits certified under this section and the name, address,

1 and tax identification number of each person certified to claim the credit. The  
2 corporation shall notify the department of revenue of any revoked certification no  
3 later than 2 months after the revocation date.

4 **History:** 2013 a. 62.

4 **SECTION 5.** 238.17 (2) of the statutes is created to read:

5 238.17 (2) The corporation may certify up to \$10,000,000 in tax credits under  
6 sub. (1) in any calendar year.

7 **SECTION 6.** 238.17 (3) of the statutes is created to read:

8 238.17 (3) In determining whether to certify a person for a tax credit under sub.  
9 (1), the corporation shall consider all of the following with respect to the activity for  
10 which the tax credit is claimed:

11 (a) The number of full-time jobs that may be created.

12 (b) The anticipated benefit to the state of the activity relative to the cost to the  
13 state of the tax credit.

14 (c) The projected impact of the activity on the local economy.

15 (d) Whether the activity or investments associated with the activity would  
16 occur without the tax credit.

17 (e) The number of tax credits that have been certified under sub. (1) in the same  
18 county or municipality in prior years.

19 **SECTION 7.** 238.17 (4) of the statutes is created to read:

20 238.17 (4) The corporation shall adopt policies and procedures for the  
21 administration of this section, including all of the following:

22 (a) Process by which applicants may apply for certification under sub (1). <sup>3</sup>

23 (b) Certification of the tax credit, in accordance with sub. (3).

24 (c) Reporting requirements for certified claimants.

1 (d) Process and criteria for revocation of certification.

2 **SECTION 9337. Initial applicability; Revenue.** ✓

3 (1) HISTORIC REHABILITATION CREDIT. The treatment of sections 71.07 (9m) (cm),  
4 71.28 (6) (cm), and 71.47 (6) (cm) of the statutes first applies to taxable years  
5 beginning after December 31, 2014.

6 **SECTION 9450. Effective dates; Wisconsin Economic Development**  
7 **Corporation.** *The renumbering and amendment of section 238.17<sup>of the statutes</sup> and*

8 (1) HISTORIC REHABILITATION TAX CREDIT. *The creation of section 238.17 (1) (b)*  
9 *and (2) of the statutes takes effect on January 1, 2016.*

10 (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0935/?dn  
JK&ZDW:/:....

wij

Date

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13

ATTN: Brian Quinn

Please review the attached draft carefully to ensure it is consistent with your intent.

I did not create s. 238.17 (1) (b) as requested. Taxes are not imposed against the governmental entities listed and they are accordingly ineligible for tax credits. A nonprofit entity may sell or transfer certain tax credits (see, e.g., s. 71.07 (9m) (h)), but the transfer must be to another person who is subject to imposed taxes.

STEF

Please let me know if you would like any changes to the draft or if you have any questions.

Zachary Wyatt  
Legislative Attorney  
(608) 267-3362  
zachary.wyatt@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0935/P1dn  
JK&ZDW:wlj:jm

January 5, 2015

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Zachary Wyatt  
Legislative Attorney  
(608) 267-3362  
zachary.wyatt@legis.wisconsin.gov

**Kreye, Joseph**

---

**From:** Quinn, Brian D - DOA <Brian.Quinn@wisconsin.gov>  
**Sent:** Monday, January 05, 2015 2:12 PM  
**To:** Kreye, Joseph  
**Subject:** Historic Rehabilitation Credit Cap BB0305

Joe,

On the issue with the governmental entities, apparently what has happened is that a housing authority was able to receive credits that it subsequently sold to a private entity, or something along those lines. DOR's request was to prevent that sort of occurrence from happening. I don't know as a general proposition how frequently this will come up, but this was a concern the department had.

---

Brian Quinn  
Executive Policy and Budget Analyst - Senior  
Wisconsin Department of Administration  
Division of Executive Budget and Finance  
(608)-266-1923  
Brian.quinn@wisconsin.gov

CRB-935



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0935/P1

JK&ZDW:wlj:jm

Stays

DOA:.....Quinn, BB0305 – Historic rehabilitation tax credit annual award cap and technical modifications

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

in 1-6-15

D-N

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

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**TAXATION**

Insert A-JK

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 71.07 (9m) (cm) of the statutes is amended to read:

2           71.07 (9m) (cm) Any Except for a credit transferred under par. (h), a credit  
3 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
4 time as for federal purposes.

5       **SECTION 2.** 71.28 (6) (cm) of the statutes is amended to read:

6           71.28 (6) (cm) Any Except for a credit transferred under par. (h), a credit  
7 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
8 time as for federal purposes.

9       **SECTION 3.** 71.47 (6) (cm) of the statutes is amended to read:

10           71.47 (6) (cm) Any Except for a credit transferred under par. (h), a credit  
11 claimed under this subsection for Wisconsin purposes shall be claimed at the same  
12 time as for federal purposes.

13       **SECTION 4.** 238.17 of the statutes is renumbered 238.17 (1) and amended to  
14 read:

15           238.17 (1) <sup>(a)</sup> For taxable years beginning after December 31, 2013, the  
16 corporation may certify a person to claim a tax credit under s. 71.07 (9m), 71.28 (6),  
17 or 71.47 (6), if the corporation determines that the person is conducting an eligible  
18 activity under s. 71.07 (9m), 71.28 (6), or 71.47 (6) preservation or rehabilitation  
19 project. No person may claim a tax credit under s. 71.07 (9m), 71.28 (6), or 71.47 (6)  
20 without first being certified under this section subsection. The corporation shall  
21 notify the department of revenue no later than January 15 of each year of the amount



1 of the credits certified under this ~~section~~ subsection and the name, address, and tax  
2 identification number of each person certified to claim the credit. The corporation  
3 shall notify the department of revenue of any revoked certification no later than 2  
4 months after the revocation date.

5 **SECTION 5.** 238.17 (2) of the statutes is created to read:

6 238.17 (2) The corporation may certify up to \$10,000,000 in tax credits under  
7 sub. (1) in any calendar year.

8 **SECTION 6.** 238.17 (3) of the statutes is created to read:

9 238.17 (3) In determining whether to certify a person for a tax credit under sub.  
10 (1), the corporation shall consider all of the following with respect to the activity for  
11 which the tax credit is claimed:

12 (a) The number of full-time jobs that may be created.

13 (b) The anticipated benefit to the state of the activity relative to the cost to the  
14 state of the tax credit.

15 (c) The projected impact of the activity on the local economy.

16 (d) Whether the activity or investments associated with the activity would  
17 occur without the tax credit.

18 (e) The number of tax credits that have been certified under sub. (1) in the same  
19 county or municipality in prior years.

20 **SECTION 7.** 238.17 (4) of the statutes is created to read:

21 238.17 (4) The corporation shall adopt policies and procedures for the  
22 administration of this section, including all of the following:

23 (a) Process by which applicants may apply for certification under sub. (1).

24 (b) Certification of the tax credit, in accordance with sub. (3).

25 (c) Reporting requirements for certified claimants.

Insert  
3-4/14

1 (d) Process and criteria for revocation of certification.

2 **SECTION 9337. Initial applicability; Revenue.**

3 (1) HISTORIC REHABILITATION CREDIT. The treatment of sections 71.07 (9m) (cm),  
4 71.28 (6) (cm), and 71.47 (6) (cm) of the statutes first applies to taxable years  
5 beginning after December 31, 2014.

6 **SECTION 9450. Effective dates; Wisconsin Economic Development**  
7 **Corporation.**

8 (1) HISTORIC REHABILITATION TAX CREDIT. The renumbering and amendment of  
9 section 238.17 of the statutes and the creation of section 238.17 (2), (3), and (4) of the  
10 statutes take effect on January 1, 2016.

11 (END)

(1)(b),

**Insert A - JK**

ms 9T

Under the bill, WEDC may not certify a person for the credit if the person has no state income tax liability, except that WEDC may ~~certify~~ <sup>certify</sup> a nonprofit entity for the credit if the nonprofit entity intends to transfer the credit to a person who has a tax liability.

**Insert 3 - 4 JK**

1           **SECTION 1.** 238.17 (1) (b) of the statutes is created to read:  
2           238.17 (1) (b) The corporation may not certify a person for a tax credit under  
3           this subsection if the person is not subject to the taxes imposed under s. 71.02, 71.08,  
4           71.23, or 71.43, except that the corporation may certify a nonprofit entity described  
5           under section 501 (c) (3) of the Internal Revenue Code for a tax credit under this  
6           subsection if the entity intends to sell or otherwise transfer the credit, <sup>has</sup> provided  
7           under s. 71.07 (9m) (h), 71.28 (6) (h), or 71.47 (6) (h).

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0935/P2dn

JK&ZDW:wlj:jm

Date

stays

ATTN: Brian Quinn

→ Please note that the provision I created to prohibit WEDC from certifying the credit for non-taxpayers, other than nonprofits who intend to transfer the credit, takes effect on January 1, 2016, along with the other changes made to s. 238.17. Delaying the effective date of that prohibition would seem to imply that WEDC **may** certify non-taxpayers, such as units of government, until that time. Is that consistent with your intent?

Joseph T. Kreye  
Senior Legislative Attorney  
(608) 266-2263  
joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0935/P2dn  
JK&ZDW:wlj:jm

January 14, 2015

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Joseph T. Kreye  
Senior Legislative Attorney  
(608) 266-2263  
joseph.kreye@legis.wisconsin.gov

**Kreye, Joseph**

---

**From:** Quinn, Brian D - DOA <Brian.Quinn@wisconsin.gov>  
**Sent:** Tuesday, January 13, 2015 4:29 PM  
**To:** Kreye, Joseph  
**Subject:** Historic Rehabilitation Credit Draft Edits

Joe,

The revised Historic Rehabilitation Tax Credit will include a clawback provision. It should be something like this:

- Require reporting by credit recipients for five years on the permanent job creation totals related to the project and allow DOR to require repayment in a manner proportional to the shortfall if actual employment does not match targeted employment.
- WEDC (New Authority) would provide monitoring and report to DOR if the recipient is out of compliance. DOR is ultimately the entity requiring repayment.
- Also, require if a recipient is required to repay the federal credit, the state credit must also be repaid.

Let me know if you have questions on these provisions.

---

Brian Quinn  
Executive Policy and Budget Analyst - Senior  
Wisconsin Department of Administration  
Division of Executive Budget and Finance  
(608)-266-1923  
Brian.quinn@wisconsin.gov

## Wyatt, Zachary

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**From:** Kreye, Joseph  
**Sent:** Tuesday, January 13, 2015 4:50 PM  
**To:** Gallagher, Michael; Wyatt, Zachary  
**Subject:** FW: Historic Rehabilitation Credit Draft Edits

Mike and Zack,

This refers to LRB-0935/P2. It seems like the monitoring/reporting component would be in chapter 238.

There's a similar payback provision under s. 71.07 (9r) (k) that is based on the year in which noncompliance occurs. I can use that as a model and place the new provision in the tax statutes.

Joe

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**From:** Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]  
**Sent:** Tuesday, January 13, 2015 4:29 PM  
**To:** Kreye, Joseph  
**Subject:** Historic Rehabilitation Credit Draft Edits

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Let me know if you have questions on these provisions.

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Executive Policy and Budget Analyst - Senior  
Wisconsin Department of Administration  
Division of Executive Budget and Finance  
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[Brian.quinn@wisconsin.gov](mailto:Brian.quinn@wisconsin.gov)