

**HOUSE . . . . . No. 1629**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Alan Silvia*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act updating the Massachusetts historic rehabilitation tax credit.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>

**HOUSE . . . . . No. 1629**

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1629) of Alan Silvia and others relative to the Massachusetts historic rehabilitation tax credit. Revenue.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act updating the Massachusetts historic rehabilitation tax credit.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION \_\_. Section 6J of chapter 62 of the general laws, as so appearing, is hereby  
2 amended by striking out in its entirety and inserting in place thereof the following:-

3 Section 6J. (a) For purposes of this section, the following terms shall have the following  
4 meanings unless the context clearly requires otherwise:

5 "Certified rehabilitation", the rehabilitation of a qualified historic structure that has been  
6 approved and certified by the department of housing and community development in  
7 consultation with the Massachusetts historical commission as being consistent with the standards  
8 established by the Secretary of the United States Department of the Interior for rehabilitation of  
9 historic properties.

10 "Commissioner", the commissioner of the department of revenue

11 "Department", the department of housing and community development

12 "Qualified historic structure", any building or structure, located within the commonwealth  
13 that is individually listed on the National Register of Historic Places or is a contributing building  
14 within a district that is listed on the National Register of Historic Places or which has been  
15 determined by the Massachusetts historical commission to be eligible for listing on the National  
16 Register of Historic Places, and which all or any portion of which is owned, in whole or in part,  
17 by the taxpayer.

18 "Qualified rehabilitation expenditure", any amount properly chargeable to a capital  
19 account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the  
20 taxable year, incurred in connection with the certified rehabilitation of a qualified historic  
21 structure, but the term shall not include personal property, personal use property or the cost of  
22 acquiring any building or interest thereon.

23 "Secretary", the secretary of the executive office of housing and economic development

24 "Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation  
25 expenditures of the building during the 24 month period selected by the taxpayer ending with or  
26 within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such building and  
27 its structural components as of the beginning of such period. In the case of any rehabilitation that  
28 may reasonably be expected to be completed in phases set forth in architectural plans and  
29 specifications completed before the rehabilitation begins, the applicable period referred to in this  
30 paragraph shall be 60 months.

31 "Taxpayer", a person, firm, partnership, trust, estate, limited liability company or other  
32 entity subject to the income tax imposed by the provisions of this chapter.

33 (b)(1) There shall be a Massachusetts historic rehabilitation tax credit.

34 (i) The secretary of the executive office of housing and economic development, in  
35 consultation with the department of housing and community development and the commissioner,  
36 shall authorize annually, for the period beginning January 1, 2006 and ending December 31,  
37 2023, under this section together with section 38R of chapter 63, an amount not to exceed  
38 \$60,000,000 per year.

39 (ii) The secretary, in consultation with the department and the commissioner, shall  
40 administer and determine eligibility for this tax credit and allocate the credit in accordance with  
41 the standards and requirements set forth in regulations promulgated to carry out this section,  
42 provided however, at least 25 per cent of the tax credits shall be allowed to projects that contain  
43 affordable housing whenever possible and consistent with such criteria; provided, however, that  
44 the secretary shall ensure the award of tax credits pursuant to this section shall allow a taxpayer  
45 that acquires a qualified historic structure to receive any tax credits for qualified rehabilitation  
46 expenditures previously awarded to the transferor of the qualified historic structure if: (A) the  
47 rehabilitation was not placed in service by the transferor; (B) no credit has been claimed by  
48 anyone other than the acquiring taxpayer as verified by the department of revenue to the  
49 commission; (C) the taxpayer completes the rehabilitation and obtains certification as provided  
50 in this section; and (D) the taxpayer conforms with all other requirements of this section; and  
51 provided further, that in the case of a multi-phase project, tax credits may be transferred for any  
52 phase that meets the criteria in subclauses (A) to (D), inclusive

53 Tax credits authorized pursuant to this section shall be subject to the annual cumulative  
54 cap pursuant to subsection (b) of this section.

55 (iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit,  
56 to be computed as hereinafter provided, against the tax imposed by this chapter. The credit shall  
57 be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures  
58 made by the taxpayer with respect to a qualified historic structure which has received final  
59 certification and has been placed in service as provided for in this section. The secretary shall  
60 administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate  
61 the credit in accordance with this section;

62 (2) The credit allowable under this section shall be allowed for the taxable year in which  
63 the substantially rehabilitated property is placed in service, that is, when occupancy of the entire  
64 structure or some identifiable portion of the structure is permitted. A taxpayer allowed a credit  
65 under this section for a taxable year may carry over and apply to the tax imposed by this chapter  
66 in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those  
67 credits which exceed the tax for the taxable year.

68 (i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company  
69 taxed as a partnership or multiple owners of property shall be passed through to the persons  
70 designated as partners, members or owners, respectively, pro rata or pursuant to an executed  
71 agreement among the persons designated as partners, members or owners documenting an  
72 alternative distribution method without regard to their sharing of other tax or economic attributes  
73 of the entity.

74 (ii) Taxpayers eligible for the Massachusetts historic rehabilitation tax credit may, with  
75 prior notice to and in accordance with regulations adopted by the secretary, transfer the credits,  
76 in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

77 credits against the tax with the same effect as if the transferee had incurred the qualified  
78 rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If  
79 the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the  
80 transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced  
81 from year to year, of those credits which exceed the tax for the taxable year; but, the carryover  
82 period shall not exceed 5 taxable years after the close of the taxable year during which the  
83 qualified historic structure received final certification and was placed in service as provided for  
84 in this section.

85 (c)(1) A certified rehabilitation shall require:

86 (i) an initial certification by the department that the structure meets the definition of  
87 qualified historic structure;

88 (ii) a second certification by the department, to be issued prior to construction, certifying  
89 that if completed as proposed, the rehabilitation work will meet the standards required for a  
90 certified rehabilitation; and

91 (iii) a final certification by the department, issued when construction is completed,  
92 certifying that the work was completed as proposed and that the costs are consistent with the  
93 work completed. Such final certification shall be acceptable as proof that the expenditures related  
94 to such construction qualify as qualified rehabilitation expenditures for purposes of the credit  
95 allowed under this section.

96 (2) A rehabilitation shall not be treated as complete before the date of the certification  
97 referred to in clause (iii) of paragraph (1).

98 (d) A taxpayer who leases his property shall be treated as the owner thereof if the  
99 remaining term of the lease as of the date determined under regulations prescribed by the  
100 department of revenue is not less than such minimum period as the regulations require.

101 (e) For any qualified historic structure, qualified rehabilitation expenditures applicable to  
102 the historical rehabilitation tax credit shall be treated for purposes of this section as made:

103 (i) on the date substantial rehabilitation is completed, or

104 (ii) to the extent provided by the commissioner of revenue by regulation, when such  
105 expenditures are properly chargeable to a capital account. Regulations under this paragraph shall  
106 include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as  
107 amended and in effect for the taxable year, relating to recapture if property ceases to qualify for  
108 progress expenditures.

109 (f)(1) If, before the end of the 5 year period beginning on the date on which the qualified  
110 historic structure received final certification and was placed in service, the taxpayer disposes of  
111 the taxpayer's interest in the structure, the taxpayer's tax for the taxable year in which the  
112 disposition occurs shall be increased by the recapture amount. Any carry forward credit shall be  
113 adjusted by reason of the disposition.

114 (2) For purposes of paragraph (1), the recapture amount shall equal the amount of the  
115 credit taken by the taxpayer, including any credit transferred by the taxpayer, minus the credit  
116 allowed for ownership, but not less than zero. The credit allowed for ownership shall be the  
117 product of the amount of credit allowed multiplied by a ratio, the numerator of which is the  
118 number of months the rehabilitated structure is owned by the taxpayer, and the denominator of  
119 which is 60.

120 (g) For purposes of this section, if a credit is allowed under this section for any  
121 expenditure with respect to any property, the increase in the basis of such property which would,  
122 but for this paragraph, result from such expenditure shall be reduced by the amount of the credit  
123 so allowed.

124 (h) The secretary, in consultation with the commissioner and the department, shall  
125 prescribe regulations necessary to carry out this section.

126 (i) Except for unused credits carried forward pursuant to paragraph (2) of subsection (b)  
127 of section 38R of chapter 63 and paragraph (2) of subsection (b) of this section, a taxpayer shall  
128 not be eligible for any historic rehabilitation tax credits for more than 5 taxable years.

129 SECTION \_\_. Section 38R of chapter 63 of the general laws, as so appearing, is hereby  
130 amended by striking out in its entirety and inserting in place thereof the following:-

131 Section 38R. (a) For purposes of this section, the following terms shall have the  
132 following meanings unless the context clearly requires otherwise:

133 "Certified rehabilitation", the rehabilitation of a qualified historic structure that has been  
134 approved and certified by the department of housing and community development in  
135 consultation with the Massachusetts historical commission as being consistent with the standards  
136 established by the Secretary of the United States Department of the Interior for rehabilitation of  
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141 that is individually listed on the National Register of Historic Places or is a contributing building  
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143 determined by the Massachusetts historical commission to be eligible for listing on the National  
144 Register of Historic Places, and which all or any portion of which is owned, in whole or in part,  
145 by the taxpayer.

146 "Qualified rehabilitation expenditure", any amount properly chargeable to a capital  
147 account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the  
148 taxable year, incurred in connection with the certified rehabilitation of a qualified historic  
149 structure, but the term shall not include personal property, personal use property or the cost of  
150 acquiring any building or interest thereon.

151 "Secretary", the secretary of the executive office of housing and economic development

152 "Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation  
153 expenditures of the building during the 24 month period selected by the taxpayer ending with or  
154 within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such building and  
155 its structural components as of the beginning of such period. In the case of any rehabilitation that  
156 may reasonably be expected to be completed in phases set forth in architectural plans and  
157 specifications completed before the rehabilitation begins, the applicable period referred to in this  
158 paragraph shall be 60 months.

159 "Taxpayer", a person, firm, partnership, trust, estate, limited liability company or other  
160 entity subject to the income tax imposed by the provisions of this chapter.

161 (b)(1) There shall be a Massachusetts historic rehabilitation tax credit.

162 (i) The secretary of the executive office of housing and economic development, in  
163 consultation with the department of housing and community development and the commissioner  
164 shall authorize annually, for the period beginning January 1, 2006 and ending December 31,  
165 2023, under this section together with section 6J of chapter 62, an amount not to exceed  
166 \$60,000,000 per year.

167 (ii) The secretary, in consultation with the department and the commissioner, shall  
168 administer and determine eligibility for this tax credit and allocate the credit in accordance with  
169 the standards and requirements set forth in regulations promulgated to carry out this section,  
170 provided however, at least 25 per cent of the tax credits shall be allowed to projects that contain  
171 affordable housing whenever possible and consistent with such criteria; provided, however, that  
172 the secretary shall ensure the award of tax credits pursuant to this section shall allow a taxpayer  
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175 rehabilitation was not placed in service by the transferor; (B) no credit has been claimed by  
176 anyone other than the acquiring taxpayer as verified by the department of revenue to the  
177 commission; (C) the taxpayer completes the rehabilitation and obtains certification as provided  
178 in this section; and (D) the taxpayer conforms with all other requirements of this section; and  
179 provided further, that in the case of a multi-phase project, tax credits may be transferred for any  
180 phase that meets the criteria in subclauses (A) to (D), inclusive

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182 cap pursuant to subsection (b) of this section.

183 (iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit,  
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187 certification and has been placed in service as provided for in this section. The secretary shall  
188 administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate  
189 the credit in accordance with this section;

190 (2) The credit allowable under this section shall be allowed for the taxable year in which  
191 the substantially rehabilitated property is placed in service, that is, when occupancy of the entire  
192 structure or some identifiable portion of the structure is permitted. A taxpayer allowed a credit  
193 under this section for a taxable year may carry over and apply to the tax imposed by this chapter  
194 in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those  
195 credits which exceed the tax for the taxable year.

196 (i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company  
197 taxed as a partnership or multiple owners of property shall be passed through to the persons  
198 designated as partners, members or owners, respectively, pro rata or pursuant to an executed  
199 agreement among the persons designated as partners, members or owners documenting an  
200 alternative distribution method without regard to their sharing of other tax or economic attributes  
201 of the entity.

202 (ii) Taxpayers eligible for the Massachusetts historic rehabilitation tax credit may, with  
203 prior notice to and in accordance with regulations adopted by the secretary, transfer the credits,  
204 in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

205 credits against the tax with the same effect as if the transferee had incurred the qualified  
206 rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If  
207 the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the  
208 transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced  
209 from year to year, of those credits which exceed the tax for the taxable year; but, the carryover  
210 period shall not exceed 5 taxable years after the close of the taxable year during which the  
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214 (i) an initial certification by the department that the structure meets the definition of  
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219 (iii) a final certification by the department, issued when construction is completed,  
220 certifying that the work was completed as proposed and that the costs are consistent with the  
221 work completed. Such final certification shall be acceptable as proof that the expenditures related  
222 to such construction qualify as qualified rehabilitation expenditures for purposes of the credit  
223 allowed under this section.

224 (2) A rehabilitation shall not be treated as complete before the date of the certification  
225 referred to in clause (iii) of paragraph (1).

226 (d) A taxpayer who leases his property shall be treated as the owner thereof if the  
227 remaining term of the lease as of the date determined under regulations prescribed by the  
228 department of revenue is not less than such minimum period as the regulations require.

229 (e) For any qualified historic structure, qualified rehabilitation expenditures applicable to  
230 the historical rehabilitation tax credit shall be treated for purposes of this section as made:

231 (i) on the date substantial rehabilitation is completed, or

232 (ii) to the extent provided by the commissioner of revenue by regulation, when such  
233 expenditures are properly chargeable to a capital account. Regulations under this paragraph shall  
234 include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as  
235 amended and in effect for the taxable year, relating to recapture if property ceases to qualify for  
236 progress expenditures.

237 (f)(1) If, before the end of the 5 year period beginning on the date on which the qualified  
238 historic structure received final certification and was placed in service, the taxpayer disposes of  
239 the taxpayer's interest in the structure, the taxpayer's tax for the taxable year in which the  
240 disposition occurs shall be increased by the recapture amount. Any carry forward credit shall be  
241 adjusted by reason of the disposition.

242 (2) For purposes of paragraph (1), the recapture amount shall equal the amount of the  
243 credit taken by the taxpayer, including any credit transferred by the taxpayer, minus the credit  
244 allowed for ownership, but not less than zero. The credit allowed for ownership shall be the  
245 product of the amount of credit allowed multiplied by a ratio, the numerator of which is the  
246 number of months the rehabilitated structure is owned by the taxpayer, and the denominator of  
247 which is 60.

248 (g) For purposes of this section, if a credit is allowed under this section for any  
249 expenditure with respect to any property, the increase in the basis of such property which would,  
250 but for this paragraph, result from such expenditure shall be reduced by the amount of the credit  
251 so allowed.

252 (h) The secretary, in consultation with the commissioner and the department, shall  
253 prescribe regulations necessary to carry out this section.

254 (i) Except for unused credits carried forward pursuant to paragraph (2) of subsection (b)  
255 of section 6J of chapter 62 and paragraph (2) of subsection (b) of this section, a taxpayer shall  
256 not be eligible for any historic rehabilitation tax credits for more than 5 taxable years

257 SECTION \_\_. Sections 1 and 2 shall be effective for tax years beginning on or after  
258 January 1, 2018.