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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - REBUILD RHODE ISLAND TAX
CREDIT

Introduced By: Representatives Mendonca, Canario, Morgan, Nunes, and Giarrusso

Date Introduced: February 15, 2018

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-64.20-3 and 42-64.20-5 of the General Laws in Chapter 42-
2 64.20 entitled "Rebuild Rhode Island Tax Credit" are hereby amended to read as follows:

3 **42-64.20-3. Definitions.**

4 As used in this chapter:

5 (1) "Adaptive reuse" means the conversion of an existing structure from the use for which
6 it was constructed to a new use by maintaining elements of the structure and adapting such
7 elements to a new use.

8 (2) "Affiliate" means an entity that directly or indirectly controls, is under common
9 control with, or is controlled by the business. Control exists in all cases in which the entity is a
10 member of a controlled group of corporations as defined pursuant to § 1563 of the Internal
11 Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of
12 organizations under common control as defined pursuant to subsection (b) or (c) of § 414 of the
13 Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and
14 convincing evidence, as determined by the tax administrator, that control exists in situations
15 involving lesser percentages of ownership than required by those statutes. An affiliate of a
16 business may contribute to meeting either the capital investment or full-time employee
17 requirements of a business that applies for a credit under this chapter.

18 (3) "Affordable housing" means housing for sale or rent with combined rental costs or

1 combined mortgage loan debt service, property taxes, and required insurance that do not exceed
2 thirty percent (30%) of the gross annual income of a household earning up to eighty percent
3 (80%) of the area median income, as defined annually by the United States Department of
4 Housing and Urban Development.

5 (4) "Applicant" means a developer applying for a rebuild Rhode Island tax credit under
6 this chapter.

7 (5) "Business" means a corporation as defined in § 44-11-1(4), or a partnership, an S
8 corporation, a non-profit corporation, a sole proprietorship, or a limited liability corporation. A
9 business shall include an affiliate of the business if that business applies for a credit based upon
10 any capital investment made by an affiliate.

11 (6) "Capital investment" in a real estate project means expenses by a developer incurred
12 after application for:

13 (i) Site preparation and construction, repair, renovation, improvement, equipping, or
14 furnishing on real property or of a building, structure, facility, or improvement to real property;

15 (ii) Obtaining and installing furnishings and machinery, apparatus, or equipment,
16 including but not limited to material goods for the operation of a business on real property or in a
17 building, structure, facility, or improvement to real property.

18 In addition to the foregoing, if a developer acquires or leases a qualified development
19 project, the capital investment made or acquired by the seller or owner, as the case may be, if
20 pertaining primarily to the premises of the qualified development project, shall be considered a
21 capital investment by the developer and, if pertaining generally to the qualified development
22 project being acquired or leased, shall be allocated to the premises of the qualified development
23 project on the basis of the gross leasable area of the premises in relation to the total gross leasable
24 area in the qualified development project. The capital investment described herein shall be
25 defined through rules and regulations promulgated by the commerce corporation.

26 (7) "Certified historic structure" means a property which is located in the state of Rhode
27 Island and is

28 (i) Listed individually on the national register of historic places; or

29 (ii) Listed individually in the state register of historic places; or

30 (iii) Located in a registered historic district and certified by either the Rhode Island
31 historical preservation and heritage commission created pursuant to § 42-45-2 or the Secretary of
32 the Interior as being of historic significance to the district.

33 (8) "Commerce corporation" means the Rhode Island commerce corporation established
34 pursuant to § 42-64-1 et seq.

1 (9) "Commercial" shall mean non-residential development.

2 (10) "Developer" means a person, firm, business, partnership, association, political
3 subdivision, or other entity that proposes to divide, divides, or causes to be divided real property
4 into a subdivision or proposes to build, or builds a building or buildings or otherwise improves
5 land or existing structures, which division, building, or improvement qualifies for benefits under
6 this chapter.

7 (11) "Development" means the improvement of land through the carrying out of building,
8 engineering, or other operations in, on, over, or under land, or the making of any material change
9 in the use of any buildings or land for the purposes of accommodating land uses.

10 (12) "Eligibility period" means the period in which a developer may claim a tax credit
11 under this act, beginning with the tax period in which the commerce corporation accepts
12 certification from the developer that it has met the requirements of the act and extending
13 thereafter for a term of five (5) years.

14 (13) "Full-time employee" means a person who is employed by a business for
15 consideration for a minimum of at least thirty-five (35) hours per week, or who renders any other
16 standard of service generally accepted by custom or practice as full-time employment, or who is
17 employed by a professional employer organization pursuant to an employee leasing agreement
18 between the business and the professional employer organization for a minimum of thirty-five
19 (35) hours per week, or who renders any other standard of service generally accepted by custom
20 or practice as full-time employment, and whose wages are subject to withholding.

21 (14) "Hope community" means a municipality for which the five-year (5) average
22 percentage of families with income below the federal poverty level exceeds the state five-year (5)
23 average percentage, both as most recently reported by the U.S. Department of Commerce, Bureau
24 of the Census.

25 (15) "Manufacturer" means any entity that:
26 (i) Uses any premises within the state primarily for the purpose of transforming raw
27 materials into a finished product for trade through any or all of the following operations:
28 adapting, altering, finishing, making, processing, refining, metalworking, and ornamenting, but
29 shall not include fabricating processes incidental to warehousing or distribution of raw materials,
30 such as alteration of stock for the convenience of a customer; or

31 (ii) Is described in codes 31-33 of the North American Industry Classification System, as
32 revised from time to time.

33 ~~(15)~~(16) "Mixed use" means a development comprising both commercial and residential
34 components.

1 ~~(16)~~(17) "Partnership" means an entity classified as a partnership for federal income tax
2 purposes.

3 ~~(17)~~(18) "Placed in service" means the earlier of i) substantial construction or
4 rehabilitation work has been completed which would allow for occupancy of an entire structure or
5 some identifiable portion of a structure, as established in the application approved by the
6 commerce corporation board or ii) receipt by the developer of a certificate, permit or other
7 authorization allowing for occupancy of the project or some identifiable portion of the project by
8 the municipal authority having jurisdiction.

9 ~~(18)~~(19) "Project" means qualified development project as defined under subsection (22).

10 ~~(19)~~(20) "Project area" means land or lands under common ownership or control in which
11 a qualified development project is located.

12 ~~(20)~~(21) "Project cost" means the costs incurred in connection with the qualified
13 development project or qualified residential or mixed use project by the applicant until the
14 issuance of a permanent certificate of occupancy, or until such other time specified by the
15 commerce corporation, for a specific investment or improvement, as defined through rules and
16 regulations promulgated by the commerce corporation.

17 ~~(21)~~(22) "Project financing gap" means

18 (i) The part of the total project cost that remains to be financed after all other sources of
19 capital have been accounted for (such sources will include, but not be limited to, developer-
20 contributed capital), which shall be defined through rules and regulations promulgated by the
21 commerce corporation, or

22 (ii) The amount of funds that the state may invest in a project to gain a competitive
23 advantage over a viable and comparable location in another state by means described in this
24 chapter.

25 ~~(22)~~(23) "Qualified development project" means a specific construction project or
26 improvement, including lands, buildings, improvements, real and personal property or any
27 interest therein, including lands under water, riparian rights, space rights and air rights, acquired,
28 owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved,
29 undertaken by a developer, owner or tenant, or both, within a specific geographic area, meeting
30 the requirements of this chapter, as set forth in an application made to the commerce corporation.

31 (24) "Qualified small business project" means a commercial project that is located within
32 one block of a project awarded funding under the main street Rhode Island streetscape
33 improvement fund act, chapter 64.27 of title 42, or as determined by the commerce corporation to
34 be located in a local business district consistent with the purposes of chapter 64.27 of title 42,

1 except that a project which by agreement or other contractual relationships, or statutes includes a
2 baseball stadium or athletic facility shall not qualify as a qualified small business project.

3 ~~(23)~~(25) "Recognized historical structure" means a property which is located in the state
4 of Rhode Island and is commonly considered to be of historic or cultural significance as
5 determined by the commerce corporation in consultation with the state historic preservation
6 officer.

7 ~~(24)~~(26) "Residential" means a development of residential dwelling units.

8 ~~(25)~~(27) "Targeted industry" means any advanced, promising, or otherwise prioritized
9 industry identified in the economic development vision and policy promulgated pursuant to § 42-
10 64.17-1 or, until such time as any such economic development vision and policy is promulgated,
11 as identified by the commerce corporation.

12 ~~(26)~~(28) "Transit oriented development area" means an area in proximity to transit
13 infrastructure that will be further defined by regulation of the commerce corporation in
14 consultation with the Rhode Island department of transportation.

15 ~~(27)~~(29) "Workforce housing" means housing for sale or rent with combined rental costs
16 or combined mortgage loan debt service, property taxes, and required insurance that do not
17 exceed thirty percent (30%) of the gross annual income of a household earning between eighty
18 percent (80%) and one hundred and forty percent (140%) of the area median income, as defined
19 annually by the United States Department of Housing and Urban Development.

20 **42-64.20-5. Tax credits.**

21 (a) An applicant meeting the requirements of this chapter may be allowed a credit as set
22 forth hereinafter against taxes imposed upon such person under applicable provisions of title 44
23 of the general laws for a qualified development project.

24 (b) To be eligible as a qualified development project entitled to tax credits, an applicant's
25 chief executive officer or equivalent officer shall demonstrate to the commerce corporation, at the
26 time of application, that:

27 (1) The applicant has committed capital investment or owner equity of not less than
28 twenty percent (20%) of the total project cost;

29 (2) There is a project financing gap in which after taking into account all available private
30 and public funding sources, the project is not likely to be accomplished by private enterprise
31 without the tax credits described in this chapter; and

32 (3) The project fulfills the state's policy and planning objectives and priorities in that:

33 (i) The applicant will, at the discretion of the commerce corporation, obtain a tax
34 stabilization agreement from the municipality in which the real estate project is located on such

1 terms as the commerce corporation deems acceptable;

2 (ii) It (A) is a commercial development consisting of at least 25,000 square feet occupied
3 by at least one business employing at least 25 full-time employees after construction or such
4 additional full-time employees as the commerce corporation may determine; (B) is a multi-family
5 residential development in a new, adaptive reuse, certified historic structure, or recognized
6 historical structure consisting of at least 20,000 square feet and having at least 20 residential units
7 in a hope community; or (C) is a mixed-use development in a new, adaptive reuse, certified
8 historic structure, or recognized historical structure consisting of at least 25,000 square feet
9 occupied by at least one business, subject to further definition through rules and regulations
10 promulgated by the commerce corporation; and

11 (iii) Involves a total project cost of not less than \$5,000,000, except for a qualified
12 development project located in a hope community or redevelopment area designated under § 45-
13 32-4 in which event the commerce corporation shall have the discretion to modify the minimum
14 project cost requirement.

15 (c) Applicants qualifying for a tax credit pursuant to chapter 33.6 of title 44 shall be
16 exempt from the requirements of subparagraphs (b)(3)(ii) and (b)(3)(iii). The following procedure
17 shall apply to such applicants:

18 (1) The division of taxation shall remain responsible for determining the eligibility of an
19 applicant for tax credits awarded under chapter 33.6 of title 44;

20 (2) The commerce corporation shall retain sole authority for determining the eligibility of
21 an applicant for tax credits awarded under this chapter; and

22 (3) The commerce corporation shall not award in excess of fifteen percent (15%) of the
23 annual amount appropriated in any fiscal year to applicants seeking tax credits pursuant to
24 subsection (c).

25 (d) Applicants whose project is occupied by at least one manufacturer or is a qualified
26 small business project, shall be exempt from the requirements of subsections (b)(3)(ii) and
27 (b)(3)(iii) of this section, and the commerce corporation may establish minimum project cost
28 amounts required for eligibility under this subsection. In the case of qualified small business
29 projects, the commerce corporation may require a plan for the area and/or demonstration of
30 support from a municipality, local business association, or chamber of commerce.

31 ~~(e)~~(e) Maximum project credit.

32 (i) For qualified development projects, the maximum tax credit allowed under this
33 chapter shall be the lesser of (1) thirty percent (30%) of the total project cost; or (2) the amount
34 needed to close a project financing gap (after taking into account all other private and public

1 funding sources available to the project), as determined by the commerce corporation.

2 (ii) The credit allowed pursuant to this chapter shall not exceed fifteen million dollars
3 (\$15,000,000) for any qualified development project under this chapter. No building or qualified
4 development project to be completed in phases or in multiple projects shall exceed the maximum
5 project credit of fifteen million dollars (\$15,000,000) for all phases or projects involved in the
6 rehabilitation of such building. Provided, however, that for purposes of this subsection and no
7 more than once in a given fiscal year, the commerce corporation may consider the development
8 of land and buildings by a developer on the "I-195 land" (as defined in section 42-64.24-3(6) of
9 the general laws) as a separate, qualified development project from a qualified development
10 project by a tenant or owner of a commercial condominium or similar legal interest including
11 leasehold improvement, fit out, and capital investment. Such qualified development project by a
12 tenant or owner of a commercial condominium or similar legal interest on the I-195 land may be
13 exempted from subparagraph (d)(i)(1).

14 ~~(e)~~(f) Credits available under this chapter shall not exceed twenty percent (20%) of the
15 project cost, provided, however, that the applicant shall be eligible for additional tax credits of not
16 more than ten percent (10%) of the project cost, if the qualified development project meets any of
17 the following criteria or other additional criteria determined by the commerce corporation from
18 time to time in response to evolving economic or market conditions:

19 (1) The project includes adaptive reuse or development of a recognized historical
20 structure;

21 (2) The project is undertaken by or for a targeted industry;

22 (3) The project is located in a transit-oriented development area;

23 (4) The project includes residential development of which at least twenty percent (20%)
24 of the residential units are designated as affordable housing or workforce housing;

25 (5) The project includes the adaptive reuse of property subject to the requirements of the
26 industrial property remediation and reuse act, sections 23-19.14-1 et seq.; or

27 (6) The project includes commercial facilities constructed in accordance with the
28 minimum environmental and sustainability standards, as certified by the commerce corporation
29 pursuant to Leadership in Energy and Environmental Design or other equivalent standards.

30 ~~(f)~~(g) Maximum aggregate credits. The aggregate sum authorized pursuant to this chapter
31 shall not exceed one hundred and fifty million dollars (\$150,000,000).

32 ~~(g)~~(h) Tax credits shall not be allowed under this chapter prior to the taxable year in
33 which the project is placed in service.

34 ~~(h)~~(i) The amount of a tax credit allowed under this chapter shall be allowable to the

1 taxpayer in up to five, annual increments; no more than thirty percent (30%) and no less than
2 fifteen percent (15%) of the total credits allowed to a taxpayer under this chapter may be
3 allowable for any taxable year. except for projects with a project financing gap of less than five
4 hundred thousand dollars (\$500,000).

5 ~~(j)~~(j) If the portion of the tax credit allowed under this chapter exceeds the taxpayer's total
6 tax liability for the year in which the relevant portion of the credit is allowed, the amount that
7 exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for
8 the succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits
9 allowed to a partnership, a limited liability company taxed as a partnership, or multiple owners of
10 property shall be passed through to the persons designated as partners, members, or owners
11 respectively pro rata or pursuant to an executed agreement among such persons designated as
12 partners, members, or owners documenting an alternate distribution method without regard to
13 their sharing of other tax or economic attributes of such entity.

14 ~~(k)~~(k) The commerce corporation in consultation with the division of taxation shall
15 establish, by regulation, the process for the assignment, transfer, or conveyance of tax credits.

16 ~~(l)~~(l) For purposes of this chapter, any assignment or sales proceeds received by the
17 taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be
18 exempt from taxation under title 44. If a tax credit is subsequently revoked or adjusted, the
19 seller's tax calculation for the year of revocation or adjustment shall be increased by the total
20 amount of the sales proceeds, without proration, as a modification under chapter 30 of title 44. In
21 the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 13,
22 14, or 17 of title 44 of the general laws, as applicable, for the year of revocation, or adjustment,
23 shall be increased by including the total amount of the sales proceeds without proration.

24 ~~(m)~~(m) The tax credit allowed under this chapter may be used as a credit against corporate
25 income taxes imposed under chapters 11, 13, 14, or 17, of title 44, or may be used as a credit
26 against personal income taxes imposed under chapter 30 of title 44 for owners of pass-through
27 entities such as a partnership, a limited liability company taxed as a partnership, or multiple
28 owners of property.

29 ~~(n)~~(n) In the case of a corporation, this credit is only allowed against the tax of a
30 corporation included in a consolidated return that qualifies for the credit and not against the tax of
31 other corporations that may join in the filing of a consolidated tax return.

32 ~~(o)~~(o) Upon request of a taxpayer and subject to annual appropriation, the state shall
33 redeem such credit, in whole or in part, for ninety percent (90%) of the value of the tax credit.
34 The division of taxation, in consultation with the commerce corporation, shall establish by

1 regulation a redemption process for tax credits.

2 ~~(p)~~(p) Projects eligible to receive a tax credit under this chapter may, at the discretion of
3 the commerce corporation, be exempt from sales and use taxes imposed on the purchase of the
4 following classes of personal property only to the extent utilized directly and exclusively in such
5 project: (1) Furniture, fixtures and equipment, except automobiles, trucks, or other motor
6 vehicles; or (2) Such other materials, including construction materials and supplies, that are
7 depreciable and have a useful life of one year or more and are essential to the project.

8 ~~(q)~~(q) The commerce corporation shall promulgate rules and regulations for the
9 administration and certification of additional tax credit under subsection (e), including criteria for
10 the eligibility, evaluation, prioritization, and approval of projects that qualify for such additional
11 tax credit.

12 ~~(r)~~(r) The commerce corporation shall not have any obligation to make any award or
13 grant any benefits under this chapter.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - REBUILD RHODE ISLAND TAX
CREDIT

- 1 This act would provide that a baseball stadium or athletic facility would not qualify as a
- 2 qualified small business project under the rebuild Rhode Island tax credit program.
- 3 This act would take effect upon passage.

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