

HOUSE BILL 1063

By Vaughan

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 11, Part 1; Title 56, Chapter 4 and Title 67, relative to tax credits for the rehabilitation of historic structures.

WHEREAS, this General Assembly recognizes the importance of restoring and preserving the State's historic buildings and structures; and

WHEREAS, the restoration and preservation of the State's historic buildings and structures foster civic beauty, revitalizes and renews communities, expands the State's economy, creates new employment opportunities, retains existing employment, and promotes public education, tourism, and welfare; and

WHEREAS, historic rehabilitation projects are labor intensive and cause the hiring of local craftspersons, technical training, and the purchase of materials locally; and

WHEREAS, this General Assembly enacts the Main Street Historic Tourism and Revitalization Act to facilitate the restoration and preservation of the State's historic buildings and structures and to redevelop the State's most important historic assets, being primarily in the State's smaller and main street communities; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 4, is amended by adding Sections 2 through 7 as a new part.

SECTION 2. This part shall be known and may be cited as the "Main Street Historic Tourism and Revitalization Act."

SECTION 3. Definitions. As used in this part:

(1) "Applicable percentage" means:

(A) For any certified historic structure located in Davidson or Williamson county, ten percent (10%);

(B) For any certified historic structure located in Hamilton, Knox, or Shelby county, twenty percent (20%);

(C) For any certified historic structure located in a county not included in subdivision (1)(A) or (1)(B), thirty percent (30%); and

(D) For any certified historic structure that is located in a specially designated area, that does not also serve as the county seat of a county included in subdivisions (1)(A) or (1)(B), the applicable percentage set forth in subdivisions (1)(A)-(1)(C) and this subdivision (1)(D) shall be increased by five percent (5%);

(2) "Certified historic structure" means a building for which depreciation or amortization in lieu of depreciation is allowable and that is located in this state and is:

(A) Listed individually in the national register of historic places; or

(B) Located in a registered historic district on the national register of historic places and is certified by the secretary of the United States department of the interior as contributing to the historic significance of the district;

(3) "Commission" means the Tennessee historical commission or any successor thereto then operating as the state historic preservation office;

(4) "Department" means the department of economic and community development;

(5) "Owner" means the person who holds legal fee or qualifying leasehold title to an entire certified historic structure, or an identifiable portion of the structure;

(6) "Person" means any natural person, corporation, including any for-profit corporation, general or limited partnership, limited liability company, trust, estate, or other business entity or any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(7) "Placed in service" means that sufficient rehabilitation work has been completed that would allow for occupancy of the entire certified historic structure or of some identifiable portion of the structure, or that the owner has commenced depreciation of the qualified rehabilitation expenses, whichever occurs first;

(8) "Qualified rehabilitation expenditures" has the same meaning as defined in Section 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 47(c)(2)(A));

(9) "Qualifying leasehold interest" means any leasehold interest in ground and the entirety of the certified historic structure located thereon with a term in excess of ten (10) years;

(10) "Specially designated area" means:

(A) A Tennessee main street community or a Tennessee downtown community, as defined by the department;

(B) A certified local government approved by the national park service that does not also serve as the county seat of a county described in subdivision (1)(A) or (1)(B); or

(C) A Music Row cultural industry district; and

(11) "State tax liability" means any liability incurred by any person for the following taxes, as applicable:

(A) Premium taxes under part 2 of this title; title 50, chapter 6, part 4; and §§ 56-13-114, 56-14-113, 56-22-114, and 56-45-110;

(B) Retaliatory tax under § 56-4-218;

(C) Income taxes under title 67, chapter 2;

(D) Property taxes under title 67, chapter 5;

(E) Business taxes under title 67, chapter 4;

(F) Franchise and excise taxes under title 67, chapter 4, parts 20 and 21;  
and

(G) Any other premium taxes, retaliatory taxes, income taxes, or property taxes imposed upon a person by this state under any other law.

SECTION 4. Tax credit; carryforward; allocation.

(a) Any person who incurs costs and expenses for the rehabilitation of a certified historic structure shall receive a credit against state tax liability ("tax credit") in an amount equal to the applicable percentage of the qualified rehabilitation expenditures incurred by such person, regardless of whether the expenses were incurred before or after receipt of the approval contemplated by Section 5(c), not to exceed four million dollars (\$4,000,000) per certified historic structure, per annual allocation; provided, that:

(1) The rehabilitation meets the United States secretary of the interior's *Standards for Rehabilitation*, as certified by the commission;

(2) The certified historic structure is placed in service on or after January 1, 2020;

(3) The total amount of qualified rehabilitation expenditures associated with the certified historic structure exceeds fifty percent (50%) of the adjusted basis of the certified historic structure and its structural components;

(4) The commission shall not approve applications for tax credits under this part that, in the aggregate, exceed forty million dollars (\$40,000,000) per fiscal year, increased by any amount of tax credits for which approval shall be rescinded under Section 5(f);

(5) Fifty percent (50%) of the aggregate amount set forth in subdivision (a)(4) shall be reserved for awards to projects subject to the applicable percentage set forth in Section 3(1)(C); provided, that if the commission has not

approved applications for such amount on or before April 1 of each fiscal year, any remaining credits reserved under this subsection (a) shall be available to any application meeting the requirements of this Section 4.

(b) The entire tax credit shall be earned in the year in which the certified historic structure, or portion of the structure, attributable to the qualified rehabilitation expenditures is placed in service.

(c) If the amount of such credit exceeds the total tax liability for the year in which the rehabilitated property is placed in service, the amount that exceeds the state tax liability may be carried forward for credit against the state tax liability for the succeeding five (5) years, or until the full credit is used, whichever occurs first.

(d) Persons eligible for such tax credits may transfer, sell, or assign the tax credits and such transferees shall be permitted to further transfer, sell, or assign the tax credits in whole or in part.

(e) The tax credits may be allocated among some or all of the partners, members, shareholders, or other owners of any partnership, limited liability company, S-corporation, or other similar pass-through entity based on their pro rata share of the entity or in any manner agreed to by the partners, members, shareholders, or owners without documenting an alternative distribution method.

(f) The assignee of the tax credits may use acquired credits to offset up to one hundred percent (100%) of the state tax liability imposed.

(g) Any person to whom or to which a tax credit is assigned has only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was assigned. This subsection (g) shall not limit the ability of a tax credit assignee to reduce the tax liability of the assignee regardless of the actual tax liability of the tax credit assignor for the relevant taxable period. The assignor

of the credit and the assignee shall jointly file a copy of the written credit assignment agreement with the department within thirty (30) days of the assignment. Such filing of the written credit assignment agreement with the department shall perfect such assignment. The written assignment agreement must contain the name, address, and taxpayer identification number of the parties to the assignment; the amount of credit being assigned; the year the credit was originally allowed to the assignor; the tax year or years for which the credit may be claimed; and a representation by the assignor that the assignor has neither claimed for its own behalf nor conveyed such credits to any other assignee. The department shall develop a standard form for use by subsequent assignees of the credit demonstrating eligibility for the assignee to reduce its applicable state tax liability resulting from ownership of the credit. The department shall develop a system to record and track the assignment of the credit and certify the ownership of the credit to each transferor or transferee, with each transfer or subsequent transfer, and may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection (g), but shall not promulgate any rules that unduly restrict or hinder the assignments of such tax credit.

#### SECTION 5. Application and Certification.

(a) To obtain approval for tax credits allowed under Section 4, a person shall submit an application for tax credits to the commission. Each application for approval shall be prioritized for review, in the order of the date in which the application was postmarked, with the oldest postmarked date receiving priority. Applications postmarked on the same day shall go through a lottery process created by the commission to determine the order in which such applications must be reviewed.

(b) Each application must be reviewed by the commission for approval. In order to receive approval, an application must include:

(1) Proof of ownership or site control. Proof of ownership shall include evidence that the person is a fee simple owner of the certified historic structure, such as a warranty deed or a closing statement. Proof of site control may be evidenced by a lease evidencing a qualifying leasehold interest or an option to acquire such an interest. If the person is in the process of acquiring fee simple ownership, proof of site control shall include an executed sales contract or an executed option to purchase the certified historic structure;

(2) Floor plans of the existing structure, architectural plans, and plans of the proposed alterations to the structure, as well as proposed additions meeting the United States secretary of the interior's *Standards for Rehabilitation*;

(3) The adjusted basis of the certified historic structure and its structural components, the estimated cost of the rehabilitation, the anticipated total costs of the project, the anticipated total labor costs, the estimated project start date, and the estimated project completion date;

(4) Proof that the property is a certified historic structure; and

(5) Any other information that the commission may reasonably require to review the project for approval. Once selected for review, a person shall not be permitted to request the review of another certified historic structure for approval in the place of the certified historic structure contained in the application. Any disapproved application shall be removed from the review process. If an application is removed from the review process, the commission shall notify the taxpayer in writing of the decision to remove the application. Disapproved applications shall lose priority in the review process. A disapproved application

may be resubmitted, but shall be deemed to be a new submission for the purposes of the priority procedures described in this section.

(c)

(1) If the commission approves an application, the person shall be notified in writing of the approval for an amount of credits equal to the lesser of:

(A) The amount approved by the commission; or

(B) The amount provided in Section 4(a), less any amount of tax credits previously approved by the commission in the applicable fiscal year.

(2) Such approvals shall be granted to applications in the order of priority established under this section and shall require full compliance thereafter with all other requirements of law as a condition to any claim for such tax credits.

(d) Following the approval of an application, the identity of the person contained in the application shall not be modified except:

(1) The person may add partners, members, or shareholders as part of the ownership structure, so long as the principal remains a principal of the person; provided, however, that subsequent to the commencement of renovations and the expenditure of at least ten percent (10%) of the proposed rehabilitation budget, removal of the principal for failure to perform duties and the appointment of a new principal thereafter shall not constitute a change of the principal; or

(2) Where the ownership of the project is changed due to a foreclosure, deed in lieu of a foreclosure or a voluntary conveyance, or a transfer in bankruptcy.

(e) In the event that the commission approves applications for tax credits equal to the total amount available or reserved, as applicable, under Section 4, all persons with applications then awaiting approval or thereafter submitted for approval shall be notified by the commission that no additional approvals shall be granted during the fiscal year and shall be notified of the priority given to such person's applications then awaiting approval. Such applications must be kept on file by the commission and shall be considered for approval for tax credits in the order established in this section in the event that additional credits become available due to the rescission of approvals or when a new fiscal year's allocation of credits become available for approval or reservation, as applicable.

(f) All persons with applications receiving approval shall commence rehabilitation within eighteen (18) months of the date of issuance of the letter from the commission granting approval for the tax credits. "Commence rehabilitation" means that as of the date in which physical work, contemplated by the architectural plans submitted with the application, has begun, the person has incurred no less than twenty percent (20%) of the estimated costs of rehabilitation provided in the application. The person with approval of a project shall submit evidence of compliance with this subsection (f). Persons shall notify the commission of any loss of site control or failure to exercise any option to obtain site control within the prescribed time period within ten (10) days of such loss or failure. If the commission determines that a person has lost or failed to obtain site control of the eligible property or otherwise failed to comply with the requirements provided under this subsection (f), the approval for the amount of tax credits for such person shall be rescinded. A person may voluntarily forfeit such approval at any time by written notice to the commission. Any approval rescinded or forfeited under this subsection (f) shall then

be included in the total aggregate amount of tax credits available in the year of such recession or forfeiture, provided under Section 4, from which approvals may be granted.

(g) To claim the credit authorized under Section 4, the owner shall notify the commission that the substantial rehabilitation has been completed and shall certify to the department the qualified rehabilitation expenditures incurred with respect to the rehabilitation plan. In addition, the owner shall provide the department with a cost and expense certification, prepared by a licensed certified public accountant that is not an affiliate of the owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits for which the owner is eligible and, if the qualified rehabilitation expenditures exceed one million dollars (\$1,000,000), the cost and expense certification must be audited by the licensed certified public accountant.

(h) In addition to the requirements in subsection (g), a person shall also provide to the department any employment related data as deemed necessary by the department, including, but not limited to, the number of construction jobs, the number of anticipated jobs to be created on site, anticipated use of the completed building, anticipated number of employees, and pre- and post-assessed property valuation.

(i) Unless the department notifies the person of any deficiency in the application for final approval and issuance of tax credits for a project, submitted within one hundred eighty (180) days, then the department shall issue either:

(1) The total amount of the tax credits for which the person is eligible as provided in the person's certification of qualified expenses submitted with the application for final approval; or

(2) The total amount of tax credits approved for such project under subsection (c).

(j) Within one (1) year of the department's receipt of all materials required by the department for an application for final approval and issuance of tax credits for a project, the department shall:

(1) Make a final determination of the total costs and expenses of rehabilitation and the amount of tax credits to be issued for such costs and expenses;

(2) Notify the person in writing of its final determination; and

(3) Direct the department of revenue to issue to the person tax credit certificates in an amount equal to the remaining amount of tax credits for which the person is eligible to receive, but was not issued in the initial tax credit issuance under subsection (i).

(k) If the department determines that the amount of tax credits issued to a person in the initial tax credit issuance under subsection (i) is in excess of the total amount of tax credits such initial recipient of the tax credits is eligible to receive, the department shall notify such person, and such person shall be solely liable to the department of revenue in an amount equal to such excess together with interest and penalties allowed under state law and reasonable attorneys' fees and litigation costs. No subsequent transferee of the tax credits shall be subject to any liability, revocation, or repayment imposed under this subsection (k) if such transferee acquired the tax credit certificate issued under this chapter for value, in good faith.

(l) In the event the amount of eligible rehabilitation costs and expenses incurred by a taxpayer would result in the issuance of an amount of tax credits in excess of the amount provided under such taxpayer's approval granted under subsection (c), such taxpayer may apply to the department for issuance of tax credits in an amount equal to such excess. Applications for issuance of tax credits in excess of the amount provided

under a taxpayer's application shall be made on a form prescribed by the department. Such applications shall be subject to all provisions regarding priority provided under subsection (a).

#### SECTION 6. Appeals.

(a) An applicant or an applicant's duly authorized representative may appeal any denial of an application for final approval and issuance of tax credits to an independent third-party appeals officer designated by the department. Such appeals shall constitute an administrative review of the decision and shall not be conducted as an adjudicative proceeding.

(b) Appeals must be submitted to the designated appeals officer in writing within thirty (30) days of receipt, by the applicant or the applicant's duly authorized representative, of the decision that is the subject of the appeal and must include all information the appellant wishes the appeals officer to consider in deciding the appeal.

(c) Within fourteen (14) days of receipt of an appeal, the appeals officer shall notify the department that an appeal is pending, identify the decision being appealed, and forward a copy of the information submitted by the appellant. The department shall submit a written response to the appeal within thirty (30) days.

(d) The appellant shall be entitled to one (1) meeting with the appeals officer to discuss the appeal, but the appeals officer may schedule additional meetings at the officer's discretion. The department may appear at all meetings.

(e) The appeals officer shall consider the record of the decision in question, any further written submissions by the appellant and by the department, and other available information and shall deliver a written decision to the appellant and the department as promptly as circumstances permit, but no later than ninety (90) days after the initial receipt of an appeal by the appeals officer.

SECTION 7. Rules; fees.

(a) Within one hundred eighty (180) days of the effective date of this act, the commission shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and adopt the forms necessary or convenient to implement this part.

(b) The commission may adopt a fee, not to exceed one thousand dollars (\$1,000). The fees shall be received by the commission and used in the performance of its duties under this part.

(c) The commission is authorized to charge an issuance fee in an amount up to two percent (2%) of the amount of tax credits issued. One-half (1/2) of the amounts collected by the commission pursuant to this subsection (c) shall be remitted to the department. The fees shall be received by the commission and the department, as applicable, and used in the performance of their respective duties under this part.

SECTION 8. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.