

SENATE BILL 1040

By Watson

AN ACT to amend Tennessee Code Annotated, Title 56,  
Chapter 4, relative to incentives 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 fosters civic beauty, revitalizes and renews communities, expands the state's economy, creates new employment, retains existing employment, and promotes public education, pleasure, and welfare; and

WHEREAS, this General Assembly enacts this Historic Rehabilitation Investment Incentive Act to facilitate the restoration and preservation of the state's historic buildings and structures and redevelop the state's 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 8 as a new part.

SECTION 2. This part shall be known and may be cited as the "Historic Rehabilitation Investment Incentive Act."

SECTION 3. As used in this part:

(1) "Certified historic structure" means a property that is located in this state and is:

(A)

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

(ii) Located in a registered historic district listed 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; or

(B)

(i) Listed individually on the Tennessee register of historic places;

or

(ii) Located in a registered historic district listed on the Tennessee register of historic places and is certified by the commission as contributing to the historic significance of the district;

(2) "Certified rehabilitation" means the rehabilitation of a certified historic structure that the commission has certified as meeting the United States secretary of the interior's standards for rehabilitation as defined in 36 CFR 67.7;

(3) "Commission" means the Tennessee historical commission;

(4) "Eligible costs and expenses" has the same meaning as "qualified rehabilitation expenditures" defined in Section 47(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. § 47(c)(2)), except that the depreciation and tax-exempt use provisions of that section do not apply to cost and expenses incurred by an entity exempt from the tax imposed under § 67-6-322, and those costs and expenses are eligible costs and expenses if the other provisions of Section 47(c)(2) of the Internal Revenue Code (26 U.S.C. § 47(c)(2)) are satisfied;

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

(6) "Person" means any natural person, corporation, including any for-profit or nonprofit corporation, general or limited partnership, limited liability company, trust, estate, or other business entity;

(7) "Placed in service" means that sufficient rehabilitation work has been completed which 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)); and

(9) "State premium tax liability" means any liability incurred by an insurance company for the following taxes, as applicable:

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

(B) Retaliatory tax under § 56-4-218; and

(C) Any other premium taxes and retaliatory taxes imposed upon an insurance company by this state under any other law.

#### SECTION 4. Tax credit; carryforward; allocation.

(a) Any owner that incurs qualified rehabilitation expenditures for the rehabilitation of a certified historic structure shall earn a tax credit against any state premium tax liability in an amount equal to twenty-five percent (25%) of the qualified rehabilitation expenditures; provided, that:

(1) The rehabilitation meets standards consistent with the standards of the secretary of the United States department of the interior for rehabilitation, as certified by the commission;

(2) The certified historic structure is placed in service on or after January 1, 2017; and

(3) The total amount of qualified rehabilitation expenditures associated with the certified historic structure exceeds five thousand dollars (\$5,000).

(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; provided, that the tax credit shall be claimed in three (3) equal annual installments beginning with the year in which the certified historic structure, or portion of the structure, attributable to the qualified rehabilitation expenditures is placed in service. The total tax credit claimed for any taxable year, including the amount of any carryforward tax credit claimed, shall not exceed the claimant's state premium tax liability due. Any unused portion of any installment of the tax credit may be carried forward for the five (5) years following the year in which the installment could be claimed.

(c) The tax credit 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 in any manner agreed to by the partners, members, shareholders, or owners without regard to their sharing of other tax or economic attributes and may be allocated on an annual basis, including an allocation of the entire tax credit, or any installment of the credit, to any partner, member, shareholder, or other owner who was a partner, member, shareholder, or other owner at any time during the year in which the tax credit is allocated. There is no limit on the total number of allocations of all or part of the total credit authorized under this section.

#### SECTION 5. Application and Certification.

(a) Requests for designation of a property as a certified historic structure and of a proposed rehabilitation shall be made on the following forms, which shall be promulgated by the commission:

(1) A form used to request designation of a property as a certified historic structure;

(2) A form used to request certification of a proposed rehabilitation as meeting the standards consistent with the standards of the secretary of the United States department of the interior for rehabilitation; and

(3) A form used to request certification of a completed rehabilitation.

(b)

(1) If the owner also applies for the federal historic rehabilitation tax credit pursuant to Section 47 of the Internal Revenue Code of 1986 (26 U.S.C. § 47), then in lieu of requesting the tax credit provided in this part on the forms required by subsection (a), the owner may request the tax credit on parts 1, 2, and 3 of the historic preservation certification application used by the national park service, including any additional forms and certifications as may be requested by the commission. The owner may seek a state tax credit exclusively without also applying for the federal tax credit. If the owner is eligible to claim a state tax credit exclusively, the application forms for the historic rehabilitation investment incentive provided by the commission shall be used.

(2) A project, or any part or phase of a project, also submitted for the federal historic rehabilitation tax credit will be reviewed and approved by the national park service before the commission issues its determinations under this chapter. Official written determinations from the national park service, including advisory determinations on phased work, may meet this qualification. The commission shall consider national park service decisions in rendering its determinations. A project that receives certification for the purposes of the federal historic rehabilitation tax credit shall receive a certification of eligibility

pursuant to the Tennessee historic rehabilitation investment incentive; provided, that the building is a certified historic structure at the time the credit is taken.

(3) The owner may subdivide a phased project submitted for the federal historic rehabilitation tax credit program into a series of smaller projects submitted for the state program. These smaller projects must be described in the application for the federal historic rehabilitation tax credit at the outset of the project, and must correlate to individual phases of the federal phased project. Each project corresponding to a phase of the federal historic rehabilitation tax credit project may be submitted for the state credit when that phase of work is placed in service. Official determinations from the national park service must still be received for each phase of work submitted for the federal program before the commission issues its determination on each corresponding smaller project submitted for the state program.

(c) Concurrently with the certificate of a completed rehabilitation, the commission shall issue to the owner a tax credit certificate providing the amount of tax credit generated by the qualified rehabilitation expenditures incurred during the rehabilitation. To issue a tax credit certificate, the owner shall provide the commission with the following:

(1) An audited cost report issued by a public accountant licensed by this state confirming the amount of qualified rehabilitation expenditures incurred during the rehabilitation of the certified historic structure; and

(2) Evidence that the certified historic structure has been placed in service.

SECTION 6. Retaliatory Tax. A claimant of a tax credit shall not be required to pay any retaliatory tax levied under § 56-4-218 as a result of claiming the tax credit.

SECTION 7. Rules; fees.

(a) Within ninety (90) days of the effective date of this act, the commission may 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 ten thousand dollars (\$10,000), for the applications and certifications required by this part or by any rules promulgated pursuant to this part. The fees shall be receipts of the commission to be used for performing its 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.