



Bethany Boyd

*Bill Analysis*  
Legislative Service Commission

## **Am. Sub. H.B. 149**

126th General Assembly  
(As Passed by the House)

**Reps. Calvert, Raga, J. McGregor, C. Evans, Latta, Aslanides, Hartnett, Chandler, Oelslager, Gibbs, Seitz, Gilb, Collier, Schaffer, Kilbane, Hagan, Barrett, Blessing, Buehrer, Cassell, Combs, Core, DeBose, DeGeeter, Dolan, D. Evans, Faber, Fende, Flowers, Garrison, Healy, Hughes, Law, Martin, Mason, R. McGregor, T. Patton, Peterson, Reidelbach, Reinhard, Sayre, Schlichter, Schneider, Seaver, Setzer, G. Smith, J. Stewart, Trakas, Wagoner, Widener, Wolpert, Woodard, Yates, Yuko**

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### **BILL SUMMARY**

- Authorizes 20 nonrefundable tax credits per year against the corporation franchise tax or personal income tax for rehabilitating historic buildings.
- Provides that the credit equals 25% of rehabilitation expenditures, up to \$250,000 per historic building.
- Allows the credit to be transferred once.
- Requires that the State Historic Preservation Officer establish a procedure for applying for, reviewing, and ranking applications for rehabilitation tax credit certificates.
- Requires pre- and post-rehabilitation appraisals of rehabilitated buildings and an annual report on those appraisals to the General Assembly.

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### **CONTENT AND OPERATION**

#### **Eligibility for tax credit for rehabilitating historic buildings**

##### **Historic buildings**

(R.C. 149.307(A))

The bill authorizes a tax credit for rehabilitating "historic buildings." A "historic building" is a building, including its structural components, that is located

in Ohio and that is either (1) individually listed on the National Register of Historic Places under the federal National Historic Preservation Act, located in a "registered historic district," and certified by the State Historic Preservation Officer as being of historic significance to the district, or (2) individually listed as a historic landmark designated by a local government certified under federal law (see **COMMENT 1**) and was originally constructed before 1900. A "registered historic district" is a historic district listed in the National Register of Historic Places under federal law, a historic district designated by a local government certified under federal law, or a local historic district certified under federal regulations by the Secretary of the Interior as substantially meeting National Register criteria. "Rehabilitation" is the process of returning a building or buildings to a state of utility, through repair or alteration, making possible an efficient use while preserving those portions and features of the building and its site and environment that are significant to its historic, architectural, and cultural values.

**Obtaining a rehabilitation tax credit certificate**

(R.C. 149.307(A) and (B); Section 3)

Under the bill, the owner who holds the fee simple interest in a historic building or a qualified lessee of the building may be eligible for the tax credit.<sup>1,2</sup> The owner or qualified lessee must first apply to the State Historic Preservation Officer for a rehabilitation tax credit certificate. The form and manner of filing applications for a certificate must be prescribed by the State Historic Preservation Officer or the Officer's designee. (Hereinafter, both are referred to as the "Officer.") Applications to the Officer for a rehabilitation tax credit certificate may be filed beginning on or after the first day of the sixth month after the month in which the bill takes effect.

The Officer must accept and review an application, and may approve issuance of not more than 20 rehabilitation tax credit certificates each calendar

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<sup>1</sup> *The degree, nature, and extent of ownership interests in real property (known in legal parlance as "estates") vary widely. The most absolute type of estate with respect to the rights which it confers is known as the "fee simple." The fee simple is unlimited as to duration, disposition, and descendibility (i.e., inheritability). As a practical matter, this means that the owner of a property interest in fee simple may dispose of the ownership interest however the owner pleases and may devise the interest to the owner's heirs upon death.*

<sup>2</sup> *A "qualified lessee" is a person occupying or otherwise holding the historic building under a lease with a term ending not earlier than five years after completion of the rehabilitation for which a rehabilitation tax credit certificate may be issued, determined without regard to any renewal period of the lease.*

year. The Officer cannot issue a certificate unless the Officer determines all of the following:

(1) That the building that is the subject of the application is a historic building.

(2) That the rehabilitation satisfies standards prescribed by the United States Secretary of the Interior under the National Historic Preservation Act and federal regulations that establish standards for rehabilitation (see **COMMENT 2**).

(3) That the expenditures to rehabilitate the building are "qualified rehabilitation expenditures" and are reported by the applicant to exceed the greater of \$5,000 or the adjusted basis of the building as it would be determined under the Internal Revenue Code. For this purpose, the adjusted basis does not include the cost of acquiring the building.

(4) That the building, once rehabilitated, is intended to be held as income-producing property for which the owner may claim depreciation or amortization deductions under federal income tax law.

"Qualified rehabilitation expenditures" are expenditures paid or incurred during the "rehabilitation period" by an owner or qualified lessee of a historic building to rehabilitate the building, including architectural or engineering fees paid or incurred in connection with the rehabilitation, and expenses paid or incurred in the preparation of nomination forms for listing on the National Register of Historic Places, but excluding the cost of acquiring a building or expenditures to expand or enlarge a historic building.<sup>3</sup>

Criteria in addition to those in (1) through (3), above, may be prescribed by the Officer to rank tax credit certificate applications for the purpose of selecting the 20 credits that may be granted each year.

An applicant must demonstrate to the satisfaction of the Officer that the rehabilitation satisfies the federal standards described in (2), above, must cause the building to be appraised to determine its fair market value, and must submit a copy of that appraisal with the application, before the applicant begins physical rehabilitation work. A rehabilitation tax credit certificate for a historic building cannot be issued before rehabilitation of the building is completed. Upon the

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<sup>3</sup> *Rehabilitation must be completed within a "rehabilitation period," which is a period not to exceed 24 months if the rehabilitation initially was not planned to be completed in stages, or a period not to exceed 60 months if the rehabilitation initially was planned to be completed in stages. Time begins to run with the month in which physical rehabilitation work begins.*

Officer's request, a credit applicant must document the qualified rehabilitation expenditures for which the credit is sought.

**Administration of rehabilitation tax credit certificates**

(R.C. 149.307(C) and (D))

Rehabilitation tax credit certificates must be in a form devised by the Officer with the advice of the Tax Commissioner, must identify the applicant and the building that is the subject of the application, must show the amount of the qualified rehabilitation expenditures the applicant claims to have paid or incurred, and must bear a unique registration number. Issuance of a certificate represents a finding by the Officer only of the matters described in (1) through (3), above; issuance of a certificate does not represent a verification or certification by the Officer of the amount of qualified rehabilitation expenditures for which a tax credit may be claimed. The amount of qualified rehabilitation expenditures is subject to inspection and examination by the Tax Commissioner or the Commissioner's employees under existing law that authorizes the Commissioner to inspect the books of a taxpayer, and any other applicable provision of law.

Upon issuance of a certificate, the Officer is required to certify to the Commissioner, in the form and manner requested by the Commissioner, the name of the person to whom the certificate was issued, the dollar amount of qualified rehabilitation expenditures shown on the certificate, the registration number of the certificate, the fair market value of the historic building, and any other information required by the Commissioner.

The Officer may fix and collect a reasonable fee payable at the time an application for a rehabilitation tax credit certificate is filed. The amount of the fee must be fixed by rule adopted under the Administrative Procedure Act (which requires notice and public hearing in rule making). Proceeds from the fee may be used only to defray the expenses incurred by the Historic Preservation Office in administering the rehabilitation tax credit certificate law.

**Register of rehabilitation tax credit certificates**

(R.C. 5703.75)

The Tax Commissioner must compile and maintain a register of rehabilitation tax credit certificates. The register must record, according to the registration number of each certificate issued, the name of the person to which the certificate is issued and the dollar amount of qualified rehabilitation expenditures the person claims to have paid or incurred.

### **The tax credits for rehabilitating historic buildings**

(R.C. 149.307(A), 5733.01, 5733.47, 5733.98, 5747.76, and 5747.98)

The bill authorizes a nonrefundable tax credit against the corporation franchise tax or personal income tax for an owner of a rehabilitation tax credit certificate. The "certificate owner" is the owner or qualified lessee of the historic building who is listed on the Tax Commissioner's register of rehabilitation tax credit certificates, or a person or entity to which the building owner or lessee transferred the certificate. As explained above, only 20 credits may be granted each calendar year.

The credit equals 25% of the dollar amount of the taxpayer's qualified rehabilitation expenditures indicated in the Tax Commissioner's register. If the amount of the credit exceeds the amount of tax otherwise due, the excess may be carried forward and applied to the tax due for the following ten years. The credit may be claimed for tax year 2007 and thereafter in the case of the corporation franchise tax, and for taxable years beginning on or after January 1, 2007, in the case of the personal income tax. A taxpayer may not claim a total of more than \$250,000 of credits with respect to the same historic building.

A taxpayer claiming a credit must retain the rehabilitation tax credit certificate for four years following the end of the last year in which the credit, including any carried-forward amount, is applied. The taxpayer must make the certificate available for inspection by the Tax Commissioner, upon request, during that period.

### **Transferability of credits**

(R.C. 149.307(E) and 5703.75)

A building owner or qualified lessee who receives a rehabilitation tax credit certificate may sell or otherwise transfer the certificate (and therefore the right to claim the credit) to any other legal person (e.g., a financial institution). The transferee must provide written notice of the transfer to the Tax Commissioner, including the transferee's name and mailing address, the registration number of the certificate, and any other information the Tax Commissioner requires. The notice must be provided within 30 days after the date the certificate is transferred, although the Tax Commissioner may extend the deadline for good cause shown. The Tax Commissioner retains the authority to examine the books and records of the original certificate recipient to verify or confirm the rehabilitation expenditures for which the credit is claimed.

Each tax credit certificate may be sold or transferred only once; subsequent sales or transfers are not permitted. Transfers must be noted on the register of rehabilitation tax credit certificates maintained by the Tax Commissioner.

**Appraisals of historic buildings**

(R.C. 149.307(B) and 5703.75)

The bill requires both pre-rehabilitation and post-rehabilitation appraisals to determine the increase, if any, in a historic building's estimated fair market value caused by or coincident with the rehabilitation. The tax credit applicant must cause the pre-rehabilitation appraisal to be performed before physical rehabilitation work begins, and must submit a copy of the appraisal with the tax credit application. The Tax Commissioner must cause the post-rehabilitation appraisal to be conducted on buildings for which tax credits are granted. The post-rehabilitation appraisal must be conducted within one year after the tax credit certificate is issued. Annually by March 31, the Tax Commissioner must prepare a report on the appraisals showing changes in appraised fair market values for buildings that underwent a post-rehabilitation appraisal in the preceding year. The report must be submitted to the President of the Senate and the Speaker of the House of Representatives.

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**COMMENT**

1. Under the federal National Historic Preservation Act, 16 U.S.C. 470-470w-6, the Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. Properties meeting certain criteria are designated "National Historic Landmarks" and are included on the National Register. The Secretary of the Interior approves State Historic Preservation Programs according to criteria established by the Secretary, one requirement of which is that the Governor of a state must designate a State Historic Preservation Officer to administer the state program. State programs are eligible for matching grants administered by the Secretary, and for direct grants for the preservation of properties included on the National Register.

Any state program approved by the Secretary of the Interior must provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of the National Historic Preservation Act and provide for the transfer of a portion of the grants received by a state to those local governments.

2. The Code of Federal Regulations, 36 C.F.R. 67.7, lists federal standards for rehabilitation projects. These standards are extensive, and are intended to

assist the long-term preservation of a property's significance through preservation of historic materials and features. The standards encompass the exterior and interior of historic buildings, related landscape features, and the building's site and environment. In general, the standards prohibit changes to the building that do not maintain the historic character of the property, and require that the distinctive features of the property be preserved.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-24-05
Reported, H. Ways & Means	03-28-06
Passed House (84-5)	05-16-06

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