

As Introduced

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S. B. No. 225

Senator Schuring

Cosponsors: Senators Lang, Romanchuk, Brenner, Manning, Blessing, Reineke, Gavarone, Rulli, Huffman, S., Antonio, Craig, Peterson, Schaffer, Hottinger, Yuko, Cirino, Hoagland, Antani, Hackett, Kunze, Wilson, Fedor

A BILL

To amend sections 122.84 and 149.311 of the Revised 1
Code to temporarily modify the historic 2
rehabilitation and the opportunity zone 3
investment tax credits. 4

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

Section 1. That sections 122.84 and 149.311 of the Revised 5
Code be amended to read as follows: 6

Sec. 122.84. (A) As used in this section: 7

(1) "Ohio qualified opportunity fund" means a qualified 8
opportunity fund that holds one hundred per cent of its invested 9
assets in qualified opportunity zone property situated in an 10
Ohio opportunity zone. 11

In the case of qualified opportunity zone property that is 12
qualified opportunity zone stock or qualified opportunity zone 13
partnership interest, the stock or interest is situated in an 14
Ohio opportunity zone only if, during all of the qualified 15
opportunity fund's holding period for such stock or interest, 16

all of the use of the corporation's or partnership's tangible 17
property was in an Ohio opportunity zone. In the case of 18
qualified opportunity zone property that is qualified 19
opportunity zone business property, the property is situated in 20
an Ohio opportunity zone only if, during all of the fund's 21
holding period for such property, all of the use of the property 22
was in an Ohio opportunity zone. 23

All terms used in division (A) of this section have the 24
same meaning as in 26 U.S.C. 1400Z-2, except that "all" shall be 25
substituted for "substantially all" wherever "substantially all" 26
appears in the definition of those terms or in the definition of 27
terms used in those terms. 28

(2) "Ohio opportunity zone" means a qualified opportunity 29
zone designated in this state under 26 U.S.C. 1400Z-1 before, 30
on, or after the effective date of the enactment of this section 31
by H.B. 166 of the 133rd general assembly. 32

(3) "Taxpayer" and "taxable year" have the same meanings 33
as in section 5747.01 of the Revised Code. 34

(4) "Qualifying taxable year" means ~~a~~ one of the 35
following, as applicable: 36

(a) For a taxpayer, the taxpayer's taxable year that 37
includes the first day of a calendar year during which ~~an~~ the 38
Ohio qualified opportunity fund in which the ~~taxpayer credit~~ 39
eligible investment was made invests ~~makes an investment~~ in a 40
project located in an Ohio opportunity zone; 41

(b) For a person that is not a taxpayer but is subject to 42
federal income taxation, the person's federal taxable year that 43
includes the first day of a calendar year during which an Ohio 44
qualified opportunity fund in which the credit eligible 45

investment was made invests in a project located in an Ohio 46
opportunity zone; 47

(c) For any other person, the calendar year during which 48
an Ohio qualified opportunity fund in which the credit eligible 49
investment was made invests in a project located in an Ohio 50
opportunity zone. 51

(B) A ~~taxpayer~~ person that invests in one or more Ohio 52
qualified opportunity funds may apply to the director of 53
development for a nonrefundable credit against the tax levied 54
under section 5747.02 of the Revised Code. The application shall 55
be made on forms prescribed by the director on or after the 56
first day of January and on or before the first day of February 57
of each year. The credit shall equal ten per cent of the amount 58
of the ~~taxpayer's~~ person's investment in the fund that the fund 59
invested during the preceding calendar year in projects located 60
in Ohio opportunity zones. 61

The ~~taxpayer~~ person shall include the following 62
information with the ~~taxpayer's~~ person's application: 63

(1) The amount of the ~~taxpayer's~~ person's investment in 64
Ohio qualified opportunity funds during the ~~taxpayer's~~ person's 65
qualifying taxable year, arranged according to the amount 66
invested in each such fund if the ~~taxpayer~~ person invested in 67
more than one such fund; 68

(2) A statement from an employee or officer of each Ohio 69
qualified opportunity fund identified by the ~~taxpayer~~ person 70
under division (B)(1) of this section certifying the amount of 71
the ~~taxpayer's~~ person's investment in the fund and the amount of 72
that investment the fund invested in projects located in Ohio 73
opportunity zones during the preceding calendar year. The 74

statement shall describe each project funded by the investment 75
and state each project's location and the portion of the 76
~~taxpayer's person's~~ investment invested in each such project. 77
Unless the fund demonstrates otherwise to the director's 78
satisfaction, the amount of a ~~taxpayer's person's~~ investment 79
that the fund invested in a project located in an Ohio 80
opportunity zone equals the same proportion of the amount of the 81
fund's investment in the project as the ~~taxpayer's person's~~ 82
investment in the fund bears to the total investment by all 83
investors in that fund on the date the fund makes the investment 84
in the project. 85

The director shall review applications in the order in 86
which applications are received. 87

(C) (1) Subject to division (C) (2) of this section, if the 88
director determines that the applicant qualifies for a credit 89
under this section, the director shall issue, within sixty days 90
after the receipt of a complete application under division (B) 91
of this section, a tax credit certificate to the ~~taxpayer person~~ 92
identified with a unique number and listing the amount of credit 93
the director determines ~~the taxpayer is eligible to claim~~be 94
claimed. 95

(2) The director shall not issue certificates in a total 96
amount that would cause the tax credits claimed in the fiscal 97
biennium beginning July 1, 2021, and ending June 30, 2023, to 98
exceed one hundred million dollars, or that would cause the tax 99
credits claimed in any other fiscal biennium to exceed fifty 100
million dollars. The director shall not issue certificates to a 101
single applicant in any fiscal biennium in an amount that 102
exceeds two million dollars. 103

The director may not issue a certificate under this 104

section on the basis of any investment for which a small 105
business investment certificate has been issued under section 106
122.86 of the Revised Code. 107

(3) The credit may be claimed by a taxpayer for the 108
taxpayer's qualifying taxable year or the next ensuing taxable 109
year. The taxpayer shall claim the credit in the order 110
prescribed by section 5747.98 of the Revised Code. Any unused 111
amount may be carried forward for the following five taxable 112
years. If the certificate is issued to a pass-through entity for 113
an investment by the entity, any taxpayer that is a direct or 114
indirect investor in the pass-through entity on the last day of 115
the entity's qualifying taxable year may claim the taxpayer's 116
proportionate or distributive share of the credit against the 117
taxpayer's aggregate amount of tax levied under that section. A 118
person that is not a taxpayer shall not claim the credit but if 119
the person is the applicant to which the certificate was 120
initially issued, the person may transfer the right to claim the 121
credit under division (E) of this section. 122

(D) A taxpayer claiming a credit under this section shall 123
submit a copy of the certificate with the taxpayer's return or 124
report. 125

(E) A ~~taxpayer~~ person that holds an unclaimed certificate 126
under this section may notify the tax commissioner, in writing, 127
that the ~~taxpayer~~ transferor is transferring the right to claim 128
the credit stated on the certificate. The ~~taxpayer~~ transferor 129
shall identify in that notification the certificate's number and 130
the name and the tax identification number of the transferee. 131
Pursuant to division (D) of this section, the transferee may 132
claim the credit stated on the certificate, subject to the 133
limitations of this section. A transferee may not transfer the 134

right to claim the credit amount to any other person. 135

(F) On or before the first day of August each year, the 136
director of development shall submit a report to the governor, 137
the president and minority leader of the senate, and the speaker 138
and minority leader of the house of representatives on the tax 139
credit program authorized under this section. The report shall 140
include the following information: 141

(1) The number of projects funded by investments for which 142
a tax credit application was submitted under this section during 143
the preceding year, the Ohio opportunity zone in which each such 144
project is located, the number of projects funded by investments 145
for which certificates were allocated during the preceding year, 146
a description of each such project, and the composition of an 147
Ohio qualified opportunity fund's investments in each project 148
funded by investments for which a tax credit application was 149
submitted under this section; 150

(2) The number of ~~taxpayers~~ persons that invested in an 151
Ohio qualified opportunity fund and applied for a tax credit 152
based on the fund's investment in a project during the preceding 153
year, the name of the fund in which each such investment was 154
made, the number of ~~taxpayers~~ persons allocated a credit for 155
such investments under this section, and the dollar amount of 156
those credits; 157

(3) A map that shows the location of each Ohio opportunity 158
zone and that indicates which zones include existing or pending 159
projects that are, or will be, funded by tax credit-eligible 160
investments. 161

Sec. 149.311. (A) As used in this section: 162

(1) "Historic building" means a building, including its 163

structural components, that is located in this state and that is 164
either individually listed on the national register of historic 165
places under 16 U.S.C. 470a, located in a registered historic 166
district, and certified by the state historic preservation 167
officer as being of historic significance to the district, or is 168
individually listed as an historic landmark designated by a 169
local government certified under 16 U.S.C. 470a(c). 170

(2) "Qualified rehabilitation expenditures" means 171
expenditures paid or incurred during the rehabilitation period, 172
and before and after that period as determined under 26 U.S.C. 173
47, by an owner or qualified lessee of an historic building to 174
rehabilitate the building. "Qualified rehabilitation 175
expenditures" includes architectural or engineering fees paid or 176
incurred in connection with the rehabilitation, and expenses 177
incurred in the preparation of nomination forms for listing on 178
the national register of historic places. "Qualified 179
rehabilitation expenditures" does not include any of the 180
following: 181

(a) The cost of acquiring, expanding, or enlarging an 182
historic building; 183

(b) Expenditures attributable to work done to facilities 184
related to the building, such as parking lots, sidewalks, and 185
landscaping; 186

(c) New building construction costs. 187

(3) "Owner" of an historic building means a person holding 188
the fee simple interest in the building. "Owner" does not 189
include the state or a state agency, or any political 190
subdivision as defined in section 9.23 of the Revised Code. 191

(4) "Qualified lessee" means a person subject to a lease 192

agreement for an historic building and eligible for the federal	193
rehabilitation tax credit under 26 U.S.C. 47. "Qualified lessee"	194
does not include the state or a state agency or political	195
subdivision as defined in section 9.23 of the Revised Code.	196
(5) "Certificate owner" means the owner or qualified	197
lessee of an historic building to which a rehabilitation tax	198
credit certificate was issued under this section.	199
(6) "Registered historic district" means an historic	200
district listed in the national register of historic places	201
under 16 U.S.C. 470a, an historic district designated by a local	202
government certified under 16 U.S.C. 470a(c), or a local	203
historic district certified under 36 C.F.R. 67.8 and 67.9.	204
(7) "Rehabilitation" means the process of repairing or	205
altering an historic building or buildings, making possible an	206
efficient use while preserving those portions and features of	207
the building and its site and environment that are significant	208
to its historic, architectural, and cultural values.	209
(8) "Rehabilitation period" means one of the following:	210
(a) If the rehabilitation initially was not planned to be	211
completed in stages, a period chosen by the owner or qualified	212
lessee not to exceed twenty-four months during which	213
rehabilitation occurs;	214
(b) If the rehabilitation initially was planned to be	215
completed in stages, a period chosen by the owner or qualified	216
lessee not to exceed sixty months during which rehabilitation	217
occurs. Each stage shall be reviewed as a phase of a	218
rehabilitation as determined under 26 C.F.R. 1.48-12 or a	219
successor to that section.	220
(9) "State historic preservation officer" or "officer"	221

means the state historic preservation officer appointed by the 222
governor under 16 U.S.C. 470a. 223

(10) "Catalytic project" means the rehabilitation of an 224
historic building, the rehabilitation of which will foster 225
economic development within two thousand five hundred feet of 226
the historic building. 227

(B) The owner or qualified lessee of an historic building 228
may apply to the director of development for a rehabilitation 229
tax credit certificate for qualified rehabilitation expenditures 230
paid or incurred by such owner or qualified lessee after April 231
4, 2007, for rehabilitation of an historic building. If the 232
owner of an historic building enters a pass-through agreement 233
with a qualified lessee for the purposes of the federal 234
rehabilitation tax credit under 26 U.S.C. 47, the qualified 235
rehabilitation expenditures paid or incurred by the owner after 236
April 4, 2007, may be attributed to the qualified lessee. 237

The form and manner of filing such applications shall be 238
prescribed by rule of the director. Each application shall state 239
the amount of qualified rehabilitation expenditures the 240
applicant estimates will be paid or incurred. The director may 241
require applicants to furnish documentation of such estimates. 242

The director, after consultation with the tax commissioner 243
and in accordance with Chapter 119. of the Revised Code, shall 244
adopt rules that establish all of the following: 245

(1) Forms and procedures by which applicants may apply for 246
rehabilitation tax credit certificates; 247

(2) Criteria for reviewing, evaluating, and approving 248
applications for certificates within the limitations under 249
division (D) of this section, criteria for assuring that the 250

certificates issued encompass a mixture of high and low	251
qualified rehabilitation expenditures, and criteria for issuing	252
certificates under division (C) (3) (b) of this section;	253
(3) Eligibility requirements for obtaining a certificate	254
under this section;	255
(4) The form of rehabilitation tax credit certificates;	256
(5) Reporting requirements and monitoring procedures;	257
(6) Procedures and criteria for conducting cost-benefit	258
analyses of historic buildings that are the subjects of	259
applications filed under this section. The purpose of a cost-	260
benefit analysis shall be to determine whether rehabilitation of	261
the historic building will result in a net revenue gain in state	262
and local taxes once the building is used.	263
(7) Any other rules necessary to implement and administer	264
this section.	265
(C) The director shall review the applications with the	266
assistance of the state historic preservation officer and	267
determine whether all of the following criteria are met:	268
(1) That the building that is the subject of the	269
application is an historic building and the applicant is the	270
owner or qualified lessee of the building;	271
(2) That the rehabilitation will satisfy standards	272
prescribed by the United States secretary of the interior under	273
16 U.S.C. 470, et seq., as amended, and 36 C.F.R. 67.7 or a	274
successor to that section;	275
(3) That receiving a rehabilitation tax credit certificate	276
under this section is a major factor in:	277

(a) The applicant's decision to rehabilitate the historic building; or 278
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(b) To increase the level of investment in such rehabilitation. 280
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An applicant shall demonstrate to the satisfaction of the state historic preservation officer and director that the rehabilitation will satisfy the standards described in division (C) (2) of this section before the applicant begins the physical rehabilitation of the historic building. 282
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(D) (1) If the director determines that an application meets the criteria in divisions (C) (1), (2), and (3) of this section, the director shall conduct a cost-benefit analysis for the historic building that is the subject of the application to determine whether rehabilitation of the historic building will result in a net revenue gain in state and local taxes once the building is used. The director shall consider the results of the cost-benefit analysis in determining whether to approve the application. The director shall also consider the potential economic impact and the regional distributive balance of the credits throughout the state. The director may approve an application only after completion of the cost-benefit analysis. 287
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(2) A rehabilitation tax credit certificate shall not be issued for an amount greater than the estimated amount furnished by the applicant on the application for such certificate and approved by the director. The director shall not approve more than a total of one hundred twenty million dollars of rehabilitation tax credits for each of fiscal years 2022 and 2023, and sixty million dollars of rehabilitation tax credits per for each fiscal year thereafter but the director may reallocate unused tax credits from a prior fiscal year for new 299
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applicants and such reallocated credits shall not apply toward 308
the dollar limit of this division. 309

(3) For rehabilitations with a rehabilitation period not 310
exceeding twenty-four months as provided in division (A) (8) (a) 311
of this section, a rehabilitation tax credit certificate shall 312
not be issued before the rehabilitation of the historic building 313
is completed. 314

(4) For rehabilitations with a rehabilitation period not 315
exceeding sixty months as provided in division (A) (8) (b) of this 316
section, a rehabilitation tax credit certificate shall not be 317
issued before a stage of rehabilitation is completed. After all 318
stages of rehabilitation are completed, if the director cannot 319
determine that the criteria in division (C) of this section are 320
satisfied for all stages of rehabilitations, the director shall 321
certify this finding to the tax commissioner, and any 322
rehabilitation tax credits received by the applicant shall be 323
repaid by the applicant and may be collected by assessment as 324
unpaid tax by the commissioner. 325

(5) The director shall require the applicant to provide a 326
third-party cost certification by a certified public accountant 327
of the actual costs attributed to the rehabilitation of the 328
historic building when qualified rehabilitation expenditures 329
exceed two hundred thousand dollars. 330

If an applicant whose application is approved for receipt 331
of a rehabilitation tax credit certificate fails to provide to 332
the director sufficient evidence of reviewable progress, 333
including a viable financial plan, copies of final construction 334
drawings, and evidence that the applicant has obtained all 335
historic approvals within twelve months after the date the 336
applicant received notification of approval, and if the 337

applicant fails to provide evidence to the director that the 338
applicant has secured and closed on financing for the 339
rehabilitation within eighteen months after receiving 340
notification of approval, the director may rescind the approval 341
of the application. The director shall notify the applicant if 342
the approval has been rescinded. Credits that would have been 343
available to an applicant whose approval was rescinded shall be 344
available for other qualified applicants. Nothing in this 345
division prohibits an applicant whose approval has been 346
rescinded from submitting a new application for a rehabilitation 347
tax credit certificate. 348

(6) The director may approve the application of, and issue 349
a rehabilitation tax credit certificate to, the owner of a 350
catalytic project, provided the application otherwise meets the 351
criteria described in divisions (C) and (D) of this section. The 352
director may not approve more than one application for a 353
rehabilitation tax credit certificate under division (D)(6) of 354
this section during each state fiscal biennium. The director 355
shall not approve an application for a rehabilitation tax credit 356
certificate under division (D)(6) of this section during the 357
state fiscal biennium beginning July 1, 2017, or during any 358
state fiscal biennium thereafter. The director shall consider 359
the following criteria in determining whether to approve an 360
application for a certificate under division (D)(6) of this 361
section: 362

(a) Whether the historic building is a catalytic project; 363

(b) The effect issuance of the certificate would have on 364
the availability of credits for other applicants that qualify 365
for a credit certificate within the credit dollar limit 366
described in division (D)(2) of this section; 367

(c) The number of jobs, if any, the catalytic project will 368
create. 369

(7) (a) The owner or qualified lessee of a historic 370
building may apply for a rehabilitation tax credit certificate 371
under both divisions (B) and (D) (6) of this section. In such a 372
case, the director shall consider each application at the time 373
the application is submitted. 374

(b) The director shall not issue more than one certificate 375
under this section with respect to the same qualified 376
rehabilitation expenditures. 377

(E) Issuance of a certificate represents a finding by the 378
director of the matters described in divisions (C) (1), (2), and 379
(3) of this section only; issuance of a certificate does not 380
represent a verification or certification by the director of the 381
amount of qualified rehabilitation expenditures for which a tax 382
credit may be claimed under section 5725.151, 5725.34, 5726.52, 383
5729.17, 5733.47, or 5747.76 of the Revised Code. The amount of 384
qualified rehabilitation expenditures for which a tax credit may 385
be claimed is subject to inspection and examination by the tax 386
commissioner or employees of the commissioner under section 387
5703.19 of the Revised Code and any other applicable law. Upon 388
the issuance of a certificate, the director shall certify to the 389
tax commissioner, in the form and manner requested by the tax 390
commissioner, the name of the applicant, the amount of qualified 391
rehabilitation expenditures shown on the certificate, and any 392
other information required by the rules adopted under this 393
section. 394

(F) (1) On or before the first day of August each year, the 395
director and tax commissioner jointly shall submit to the 396
president of the senate and the speaker of the house of 397

representatives a report on the tax credit program established 398
under this section and sections 5725.151, 5725.34, 5726.52, 399
5729.17, 5733.47, and 5747.76 of the Revised Code. The report 400
shall present an overview of the program and shall include 401
information on the number of rehabilitation tax credit 402
certificates issued under this section during the preceding 403
fiscal year, an update on the status of each historic building 404
for which an application was approved under this section, the 405
dollar amount of the tax credits granted under sections 406
5725.151, 5725.34, 5726.52, 5729.17, 5733.47, and 5747.76 of the 407
Revised Code, and any other information the director and 408
commissioner consider relevant to the topics addressed in the 409
report. 410

(2) On or before December 1, 2015, the director and tax 411
commissioner jointly shall submit to the president of the senate 412
and the speaker of the house of representatives a comprehensive 413
report that includes the information required by division (F) (1) 414
of this section and a detailed analysis of the effectiveness of 415
issuing tax credits for rehabilitating historic buildings. The 416
report shall be prepared with the assistance of an economic 417
research organization jointly chosen by the director and 418
commissioner. 419

(G) There is hereby created in the state treasury the 420
historic rehabilitation tax credit operating fund. The director 421
is authorized to charge reasonable application and other fees in 422
connection with the administration of tax credits authorized by 423
this section and sections 5725.151, 5725.34, 5726.52, 5729.17, 424
5733.47, and 5747.76 of the Revised Code. Any such fees 425
collected shall be credited to the fund and used to pay 426
reasonable costs incurred by the department of development in 427
administering this section and sections 5725.151, 5725.34, 428

5726.52, 5729.17, 5733.47, and 5747.76 of the Revised Code. 429

The Ohio historic preservation office is authorized to 430
charge reasonable fees in connection with its review and 431
approval of applications under this section. Any such fees 432
collected shall be credited to the fund and used to pay 433
administrative costs incurred by the Ohio historic preservation 434
office pursuant to this section. 435

(H) Notwithstanding sections 5725.151, 5725.34, 5726.52, 436
5729.17, 5733.47, and 5747.76 of the Revised Code, the 437
certificate owner of a tax credit certificate issued under 438
division (D)(6) of this section may claim a tax credit equal to 439
twenty-five per cent of the dollar amount indicated on the 440
certificate for a total credit of not more than twenty-five 441
million dollars. The credit claimed by such a certificate owner 442
for any calendar year, tax year, or taxable year under section 443
5725.151, 5725.34, 5726.52, 5729.17, 5733.47, or 5747.76 of the 444
Revised Code shall not exceed five million dollars. If the 445
certificate owner is eligible for more than five million dollars 446
in total credits, the certificate owner may carry forward the 447
balance of the credit in excess of the amount claimed for that 448
year for not more than five ensuing calendar years, tax years, 449
or taxable years. If the credit claimed in any calendar year, 450
tax year, or taxable year exceeds the tax otherwise due, the 451
excess shall be refunded to the taxpayer. 452

(I) Notwithstanding sections 5725.151, 5725.34, 5726.52, 453
5729.17, 5733.47, and 5747.76 of the Revised Code, the following 454
apply to a tax credit approved under this section in fiscal year 455
2021, 2022, or 2023, for a rehabilitation project upon which 456
construction is commenced on or after the effective date of this 457
amendment: 458

(1) The certificate holder may claim a tax credit equal to 459
thirty-five per cent of the dollar amount indicated on the tax 460
credit certificate if the project is not located within a 461
municipal corporation that has a population of seventy-one 462
thousand or more according to the 2020 decennial census. The tax 463
credit equals twenty-five per cent of the dollar amount 464
indicated on the certificate if the project is located within 465
such a municipal corporation. 466

(2) The total tax credit claimed under section 5725.151, 467
5725.34, 5726.52, 5729.17, 5733.47, or 5747.76 of the Revised 468
Code shall not exceed ten million dollars for any calendar year, 469
tax year, or taxable year. 470

(3) If the credit claimed in any calendar year, tax year, 471
or taxable year exceeds the tax otherwise due, the excess shall 472
be refunded to the taxpayer, subject to division (I)(2) of this 473
section. 474

(J) The director of development, in consultation with the 475
director of budget and management, shall develop and adopt a 476
system of tracking any information necessary to anticipate the 477
impact of credits issued under this section on tax revenues for 478
current and future fiscal years. Such information may include 479
the number of applications approved, the estimated 480
rehabilitation expenditures and rehabilitation period associated 481
with such applications, the number and amount of tax credit 482
certificates issued, and any other information the director of 483
budget and management requires for the purposes of this 484
division. 485

Section 2. That existing sections 122.84 and 149.311 of 486
the Revised Code are hereby repealed. 487