

The Senate Committee on Finance offered the following substitute to HB 59:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation and exemptions from state income taxes, so
3 as to revise procedures, conditions, and limitations relating to tax credits for the rehabilitation
4 of historic structures; to authorize promulgation of regulations; to provide for preapproval
5 of additional tax credits for current recipients of tax credits; to provide for tax credits for
6 manufacturers of zero emission motor vehicles; to provide for definitions; to provide for
7 related matters; to provide for applicability; to provide for automatic repeals; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
12 imposition, rate, and computation and exemptions from state income taxes, is amended by
13 revising Code Section 48-7-29.8, relating to tax credits for the rehabilitation of historic
14 structures, as follows:

15 "48-7-29.8.

16 (a) As used in this Code section, the term:

17 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are
18 certified by the Department of Natural Resources as meeting the United States Secretary
19 of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation
20 as provided by the Department of Natural Resources.

21 (2) 'Certified structure' means a historic building or structure that is located within a
22 national historic district, individually listed on the National Register of Historic Places,
23 individually listed in the Georgia Register of Historic Places, or is certified by the
24 Department of Natural Resources as contributing to the historic significance of a Georgia
25 Register Historic District.

26 (3) 'Historic home' means a certified structure which, or any portion of which is or will,
 27 within a reasonable period, be owned and used as the principal residence of the person
 28 claiming the tax credit allowed under this Code section. Historic home shall include any
 29 structure or group of structures that constitute a multifamily or multipurpose structure,
 30 including a cooperative or condominium. If only a portion of a building is used as such
 31 person's principal residence, only those qualified rehabilitation expenditures that are
 32 properly allocable to such portion shall be deemed to be made to a historic home.

33 (4) 'Qualified rehabilitation expenditure' means any qualified rehabilitation expenditure
 34 as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount
 35 properly chargeable to a capital account expended in the substantial rehabilitation of a
 36 structure that by the end of the taxable year in which the certified rehabilitation is
 37 completed is a certified structure. This term does not include the cost of acquisition of
 38 the certified structure, the cost attributable to enlargement or additions to an existing
 39 building, site preparation, or personal property.

40 (5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the
 41 qualified rehabilitation expenditures, at least 5 percent of which ~~must~~ shall be allocable
 42 to the exterior during the 24 month period selected by the taxpayer ending with or within
 43 the taxable year, exceed:

44 (A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of
 45 the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the
 46 case of a historic home located in a target area, \$5,000.00; or

47 (B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of
 48 the property.

49 (6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue
 50 Code of 1986, found in the United States Department of Housing and Urban
 51 Development document number N-94-3821; FR-3796-N-01.

52 (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter ~~for the~~
 53 ~~taxable year in which~~ at such time as the certified rehabilitation is completed:

54 (1) In the case of a historic home, equal to 25 percent of qualified rehabilitation
 55 expenditures, except that, in the case of a historic home located within a target area, an
 56 additional credit equal to 5 percent of qualified rehabilitation expenditures shall be
 57 allowed; and

58 (2) In the case of any other certified structure, equal to 25 percent of qualified
 59 rehabilitation expenditures.

60 Qualified rehabilitation expenditures may only be counted once in determining the amount
 61 of the tax credit available, and more than one entity may not claim a credit for the same
 62 qualified rehabilitation expenditures.

63 (c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month
64 period.

65 (2) The maximum credit for any other individual certified structure shall be \$5 million
66 for any taxable year, except in the case that the project creates 200 or more full-time,
67 permanent jobs or \$5 million in annual payroll within two years of the placed in service
68 date, in which case the project is eligible for credits up to \$10 million for an individual
69 certified structure. In no event shall more than one application for any individual
70 certified structure under this paragraph be approved in any 120 month period.

71 (3) In no event shall credits issued under this Code section for projects earning more than
72 \$300,000.00 in credits exceed in the aggregate ~~\$25 million~~ \$40 million per calendar year.

73 (d)(1) An applicant ~~A taxpayer~~ seeking to claim a tax credit under paragraph (2) of
74 subsection (b) of this Code section shall submit an application to the commissioner for
75 preapproval of such tax credit. An applicant shall, at the time of application, either own
76 the real property for which said tax credit is to be claimed, or be a party to a written
77 purchase contract, written option contract, written lease-purchase contract, or written
78 lease having a term of more than 40 years. Such application shall include a
79 precertification from the Department of Natural Resources certifying that the
80 improvements to the certified structure are to be consistent with the Department of
81 Natural Resources Standards for Rehabilitation. ~~The Department~~ department shall have
82 the authority to require electronic submission of such application in the manner specified
83 by the department. The commissioner shall preapprove the tax credits within 30 days
84 based on the order in which properly completed applications were submitted. In the
85 event that two or more applications were submitted on the same day and the amount of
86 funds available will not be sufficient to fully fund the tax credits requested, the
87 commissioner shall prorate the available funds between or among the applicants. For
88 applications on projects over the annual ~~\$25 million limitation~~ \$40 million limitation,
89 those applications shall be given priority the following year.

90 (2) In order to be eligible to receive the credit authorized under subsection (b) of this
91 Code section, a taxpayer ~~must~~ shall attach to ~~the~~ such taxpayer's state tax return a copy
92 of the completed certification of the Department of Natural Resources verifying that the
93 improvements to the certified structure are consistent with the Department of Natural
94 Resources Standards for Rehabilitation.

95 (e)(1) If the credit allowed under paragraph (1) of subsection (b) of this Code section in
96 any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable
97 year, the taxpayer may apply the excess as a credit for succeeding years until the earlier
98 of:

99 (A) The full amount of the excess is used; or

100 (B) The expiration of the tenth taxable year after the taxable year in which the certified
101 rehabilitation has been completed.

102 ~~(2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of~~
103 ~~subsection (b) of this Code section and previously claimed but not used by such taxpayer~~
104 ~~against its income tax may be transferred or sold in whole or in part by such taxpayer to~~
105 ~~another Georgia taxpayer, subject to the following conditions:~~

106 ~~(A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all~~
107 ~~or part of the tax credit that may be claimed for such costs and expenses to one or more~~
108 ~~entities, but no further sale or assignment of any credit previously sold or assigned~~
109 ~~pursuant to this subparagraph shall be allowed. All such transfers shall be subject to~~
110 ~~the maximum total limits provided by subsection (c) of this Code section;~~

111 ~~(B) A taxpayer who sells or assigns a credit under this Code section and the entity to~~
112 ~~which the credit is sold or assigned shall jointly submit written notice of the sale or~~
113 ~~assignment to the department not later than 30 days after the date of the sale or~~
114 ~~assignment. The notice must include:~~

115 ~~(i) The date of the sale or assignment;~~

116 ~~(ii) The amount of the credit sold or assigned;~~

117 ~~(iii) The names and federal tax identification numbers of the entity that sold or~~
118 ~~assigned the credit or part of the credit and the entity to which the credit or part of the~~
119 ~~credit was sold or assigned; and~~

120 ~~(iv) The amount of the credit owned by the selling or assigning entity before the sale~~
121 ~~or assignment and the amount the selling or assigning entity retained, if any, after the~~
122 ~~sale or assignment;~~

123 ~~(C) The sale or assignment of a credit in accordance with this Code section does not~~
124 ~~extend the period for which a credit may be carried forward and does not increase the~~
125 ~~total amount of the credit that may be claimed. After an entity claims a credit for~~
126 ~~eligible costs and expenses, another entity may not use the same costs and expenses as~~
127 ~~the basis for claiming a credit; and~~

128 ~~(D) Notwithstanding the requirements of this subsection, a credit earned or purchased~~
129 ~~by, or assigned to, a partnership, limited liability company, Subchapter 'S' corporation,~~
130 ~~or other pass-through entity may be allocated to the partners, members, or shareholders~~
131 ~~of that entity and claimed under this Code section in accordance with the provisions of~~
132 ~~any agreement among the partners, members, or shareholders of that entity and without~~
133 ~~regard to the ownership interest of the partners, members, or shareholders in the~~
134 ~~rehabilitated certified structure, provided that the entity or person that claims the credit~~
135 ~~must be subject to Georgia tax.~~

136 ~~(E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall~~
137 ~~be responsible in the event of a recapture, reduction, disallowance, or other failure~~
138 ~~related to such credit.~~

139 (2) If the credit allowed under paragraph (2) of subsection (b) of this Code section in any
140 taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year,
141 the taxpayer may apply the excess as a credit for succeeding years until the earlier of:

142 (A) The full amount of the excess is used; or

143 (B) The expiration of the tenth taxable year after the taxable year in which the certified
144 rehabilitation has been completed.

145 (3) No such credit shall be allowed the taxpayer against prior years' tax liability.

146 (4) Tax credits claimed under this Code section shall not be refundable, transferable, or
147 saleable.

148 (f) In the case of any rehabilitation which may reasonably be expected to be completed in
149 phases set forth in architectural plans and specifications completed before the rehabilitation
150 begins, a 60 month period may be substituted for the 24 month period provided for in
151 paragraph (5) of subsection (a) of this Code section.

152 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event
153 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the
154 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the
155 remaining unused amount of such credit to the purchaser of such certified structure. If
156 a historic home for which a certified rehabilitation has been completed by a nonprofit
157 corporation is sold or transferred, the full amount of the credit to which the nonprofit
158 corporation would be entitled if taxable shall be transferred to the purchaser or transferee
159 at the time of sale or transfer.

160 (2) Such purchaser shall be subject to the limitations of subsection (e) of this Code
161 section. Such purchaser shall file with such purchaser's tax return a copy of the approval
162 of the rehabilitation by the Department of Natural Resources as provided in subsection
163 (d) and a copy of the form evidencing the transfer of the tax credit.

164 (3) Such purchaser shall be entitled to rely in good faith on the information contained in
165 and used in connection with obtaining the approval of the credit including, without
166 limitation, the amount of qualified rehabilitation expenditures.

167 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three
168 years of receiving the credit, the seller shall recapture the credit to the Department of
169 Revenue as follows:

170 (A) If the property is sold within one year of receiving the credit, the recapture amount
171 will equal the lesser of the credit or the net profit of the sale;

172 (B) If the property is sold within two years of receiving the credit, the recapture
 173 amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or
 174 (C) If the property is sold within three years of receiving the credit, the recapture
 175 amount will equal the lesser of one-third of the credit or the net profit of the sale.

176 (2) The recapture provisions of this subsection shall not apply to a sale resulting from the
 177 death of the owner.

178 (i)(1) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
 179 (b) of this Code section and leases such certified structure, the department shall aggregate
 180 all total sales tax receipts from the certified structure.

181 (2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code
 182 section shall report to the department the average full-time employees employed at the
 183 certified structure. A full-time employee for the purposes of this Code section shall mean
 184 a person who works a job that requires 30 or more hours per week. Such reports ~~must~~
 185 shall be submitted to the department for five calendar years following the year in which
 186 the credit is claimed by the taxpayer.

187 (3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
 188 (b) of this Code section and leases such certified structure, the department shall aggregate
 189 all total full-time employees at the certified structure.

190 (j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall
 191 furnish a report to the chairperson of the House Committee on Ways and Means and the
 192 chairperson of the Senate Finance Committee by June 30 of each year. Such report shall
 193 contain the total sales tax collected in the prior calendar year and the average number of
 194 full-time employees at the certified structure and the total value of credits claimed for each
 195 taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section

196 (k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and
 197 any recaptured tax credit, shall be allocated among some or all of the partners, members,
 198 or shareholders of the entity ~~owning the project~~ claiming the credit in any manner agreed
 199 to by such persons, whether or not such persons are allocated or allowed any portion of any
 200 other tax credit with respect to the project.

201 (l) The Department of Natural Resources and the Department of Revenue shall prescribe
 202 such regulations as may be appropriate to carry out the purposes of this Code section.

203 (m) ~~The Department of Natural Resources shall report, on an annual basis, on the overall~~
 204 ~~economic activity, usage, and impact to the state from the rehabilitation of eligible~~
 205 ~~properties for which credits provided by this Code section have been allowed. This Code~~
 206 ~~section shall stand repealed by operation of law on July 1, 2023."~~

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SECTION 2.

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Said article is further amended by adding a new Code section to read as follows:

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"48-7-40.34.

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(a) As used in this Code section, the term:

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(1) 'Manufacturer' means any person who performs the major portion of the assembly of new motor vehicles whose principal place of business and sole manufacturing facility is located in this state as of July 1, 2018.

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(2) 'Motor vehicles' means self-propelled vehicles intended primarily for use and operation on the public highways, except construction equipment, recreational vehicles, and farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

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(3) 'Zero emission motor vehicles' means motor vehicles which have zero tailpipe and evaporative emissions as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, and shall include an electric vehicle whose drive train is powered solely by electricity, provided said electricity is not provided by any on-board combustion device.

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(b) A tax credit is allowed against the tax imposed under this article to a manufacturer who assembles new zero emission motor vehicles exclusively and employs at least 50 full-time employees in this state. The amount of the income tax credit shall be \$2,500.00 per vehicle assembled in this state.

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(c) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which a new zero emissions motor vehicle was assembled.

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(d) In no event shall the amount of any tax credit provided in this Code section exceed the taxpayer's income tax liability. The aggregate amount of tax credits allowed under this Code section shall not exceed \$5 million for each taxable year.

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(e) The state revenue commissioner shall be authorized to adopt rules and regulations to provide for the administration of the tax credit provided by this Code section.

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(f) This Code section shall stand repealed by operation of law on July 1, 2021."

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SECTION 3.

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(a) Section 1 of this Act shall be applicable to certified rehabilitations completed on or after July 1, 2018.

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(b) An Act to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation and exemptions from state income taxes, approved May 12, 2015 (Ga. L. 2015, p. 1340), is amended by repealing and reserving Section 2 of said Act.

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243 **SECTION 4.**
244 All laws and parts of laws in conflict with this Act are repealed.