

SENATE SUBSTITUTE TO HB 469:

AS PASSED SENATE

**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, computation, exemptions, and credits relative to state income
3 taxes, so as to provide for aggregate caps and extend the sunset date for tax credits for the
4 rehabilitation of historic structures; to extend a provision for an automatic repeal of such tax
5 credits; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

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

13 "48-7-29.8.

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

15 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are
16 certified by the Department of Community Affairs as meeting the United States Secretary

of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation as provided by the Department of Community Affairs.

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

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

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

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

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

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

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

(b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter in the year that the certified rehabilitation is placed in service, which may be up to two years after the end of the taxable year for which the credit was originally reserved:

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

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

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

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

(2) The maximum credit for any other individual certified structure shall be \$5 million for any taxable year, except in the case that the project creates 200 or more full-time, permanent jobs or \$5 million in annual payroll within two years of the placed in service date, in which case the project is eligible for credits up to \$10 million for an individual

certified structure. In no event shall more than one application for any individual certified structure under this paragraph be approved in any 120 month period.

(3)(A) Prior to January 1, 2022, in no event shall credits issued under this Code section for projects earning more than \$300,000.00 in credits exceed in the aggregate \$25 million per calendar year.

(B) For calendar year 2022, in no event shall credits issued under this Code section exceed \$5 million in aggregate for all projects earning \$300,000.00 or less, or \$25 million in aggregate for all projects earning more than \$300,000.00.

~~(C) On and after January 1, 2023, in no event shall credits be issued under this Code section.~~ For calendar years 2023 and 2024, in no event shall credits issued under this Code section for historic homes exceed \$5 million in aggregate per year. On and after January 1, 2025, no credits shall be issued under this Code section for historic homes.

(D) For calendar years 2023 through 2027, in no event shall credits issued under this Code section for certified structures other than historic homes exceed \$30 million in aggregate per year.

(E) On and after January 1, 2028, in no event shall credits be issued under this Code section.

(d)(1) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of this Code section shall submit an application to the commissioner for preapproval of such tax credit. Such application shall include a precertification from the Department of Community Affairs certifying that the improvements to the certified structure are to be consistent with the Department of Community Affairs Standards for Rehabilitation. The Department shall have the authority to require electronic submission of such application in the manner specified by the department. The commissioner shall preapprove the tax credits within 30 days based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits

requested, the commissioner shall prorate the available funds between or among the applicants. ~~For applications on projects~~ Applications submitted ~~over~~ after the annual \$25 million limitation, limitations provided for in paragraph (3) of subsection (c) of this Code section have been met ~~those applications~~ shall be given priority the following year.

(2) In order to be eligible to receive the credit authorized under subsection (b) of this Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the completed certification of the Department of Community Affairs verifying that the improvements to the certified structure are consistent with the Department of Community Affairs Standards for Rehabilitation.

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

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

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

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

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

(B) A taxpayer who sells or assigns a credit under this Code section and the entity to which the credit is sold or assigned shall jointly submit written notice of the sale or

assignment to the department not later than 30 days after the date of the sale or assignment. The notice must include:

(i) The date of the sale or assignment;

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

(C) If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

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

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

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

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

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

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

202 (l) The Department of Community Affairs and the Department of Revenue shall prescribe
203 such regulations as may be appropriate to carry out the purposes of this Code section.
204 (m) The Department of Community Affairs shall report, on an annual basis, on the overall
205 economic activity, usage, and impact to the state from the rehabilitation of eligible
206 properties for which credits provided by this Code section have been allowed.
207 (n) This Code section shall stand repealed and reserved by operation of law on
208 December 31, ~~2022~~ 2027."

209 **SECTION 2.**

210 All laws and parts of laws in conflict with this Act are repealed.