HB3184

LRB10213062HLH18405b

102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3184

Introduced 2/19/2021, by Rep. Jehan Gordon-Booth

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/232 new
30 ILCS 105/5.935 new

Creates the School Building Rehabilitation Tax Credit Act. Creates an income tax credit equal to 25% of the qualified expenditures incurred by a qualified taxpayer undertaking a qualified rehabilitation plan of a vacant school building. Provides that, to be eligible for the credit, the taxpayer must apply with the Department of Commerce and Economic Opportunity. Provides that the credit is subject to certain limitations. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

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FISCAL NOTE ACT MAY APPLY

HOUSING AFFORDABILITY IMPACT NOTE ACT MAY APPLY

A BILL FOR

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the School Building Rehabilitation Tax Credit Act.

Section 5. Definitions. As used in this Act, unless the context clearly indicates otherwise:

"Department" means the Department of Commerce and Economic Opportunity.

"Phased rehabilitation" means a project that is completed in phases.

"Placed in service" means the date when the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Qualified expenditures" means all the costs and expenses for construction materials used to repurpose a qualified school building.

"Qualified school building" means a vacant school building located in Illinois.

"Qualified rehabilitation plan" means a project involving a qualified school building that is approved by the Department.

"Qualified taxpayer" means the owner of the qualified school building.

"Recapture event" means any of the following events occurring during the recapture period:

(1) failure to place in service the rehabilitated portions of the qualified school building, or failure to maintain the rehabilitated portions of the qualified school building in service after they are placed in service; provided that a recapture event under this paragraph (1) shall not include a removal from service for a reasonable period of time to conduct maintenance and repairs that are reasonably necessary to protect the health and safety of the public or to protect the structural integrity of the qualified school building or a neighboring structure;

(2) demolition or other alteration of the qualified school building in a manner that is inconsistent with the qualified rehabilitation plan;

(3) disposition of the rehabilitated qualified school building in whole or a proportional disposition of a partnership interest therein, except as otherwise permitted by this Section; or

(4) use of the qualified school building in a manner that is inconsistent with the qualified rehabilitation plan or that is otherwise inconsistent with the provisions and intent of this Section.

A recapture event occurring in one taxable year shall be deemed continuing to subsequent taxable years unless and until corrected.

The following dispositions of a qualified school building shall not be deemed to be a recapture event for purposes of this Section:

(1) a transfer by reason of death;

(2) a transfer between spouses incident to divorce;

(3) a sale by and leaseback to an entity that, when the rehabilitated portions of the qualified school building are placed in service, will be a lessee of the qualified school building, but only for so long as the entity continues to be a lessee; and

(4) a mere change in the form of conducting the trade or business by the owner (or, if applicable, the lessee) of the qualified school building, so long as the property interest in such qualified school building is retained in such trade or business and the owner or lessee retains a substantial interest in such trade or business.

"Recapture period" means the 5-year period beginning on the date that the qualified school building or rehabilitated portions of the qualified school building are placed in service.

"Substantial rehabilitation" means that the qualified expenditures during the 24-month period selected by the taxpayer at the time and in the manner prescribed by rule and ending with or within the taxable year exceed the greater of

(i) the adjusted basis of the building and its structural components or (ii) $5,000. The adjusted basis of the building and its structural components shall be determined as of the beginning of the first day of such 24-month period or as of the beginning of the first day of the holding period of the building, whichever is later. For purposes of determining the adjusted basis, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation. In the case of any phased rehabilitation, with phases set forth in architectural plans and specifications completed before the rehabilitation begins, this definition shall be applied by substituting "60-month period" for "24-month period" wherever that term occurs in the definition.

Section 10. Allowable credit.

(a) To the extent authorized by this Act, for taxable years beginning on or after January 1, 2021 and ending on or before December 31, 2025, there shall be allowed a tax credit against the tax imposed by subsections (a) and (b) of Section 201 of the Illinois Income Tax Act in an aggregate amount equal to 25% of qualified expenditures incurred by a qualified taxpayer undertaking a qualified rehabilitation plan of a qualified school building, provided that the total amount of such expenditures must (i) equal $5,000 or more or (ii) exceed the adjusted basis of the qualified school building on the first day the qualified rehabilitation plan commenced. If the qualified rehabilitation plan spans multiple years, the aggregate credit for the entire project shall be allowed in the last taxable year.

(b) To obtain a tax credit pursuant to this Section, the taxpayer must apply with the Department. The Department shall determine the amount of eligible rehabilitation expenditures within 45 days after receipt of a complete application. The taxpayer must provide to the Department a third-party cost certification conducted by a certified public accountant verifying (i) the qualified and non-qualified rehabilitation expenses and (ii) that the qualified expenditures exceed the adjusted basis of the qualified school building on the first day the qualified rehabilitation plan commenced. The accountant shall provide appropriate review and testing of invoices. The Department is authorized, but not required, to accept this third-party cost certification to determine the amount of qualified expenditures.

(c) If the amount of any tax credit awarded under this Act exceeds the qualified taxpayer's income tax liability for the year in which the qualified rehabilitation plan was placed in service, the excess amount may be carried forward for a credit against the taxpayer's income tax liability in the next succeeding year or years until the total amount of the credit has been used, except that a credit may not be carried forward for deduction after the tenth taxable year after the taxable year in which the qualified rehabilitation plan was placed in service. Upon completion and review of the project, the Department shall issue a single certificate in the amount of the eligible credits equal to 25% of the qualified expenditures incurred during the eligible taxable years. At the time the certificate is issued, an issuance fee up to the maximum amount of 2% of the amount of the credits issued by the certificate may be collected from the applicant to administer the Act. If collected, this issuance fee shall be paid into the School Building Rehabilitation Tax Credit Fund for use of the Department in the administration of this program. The taxpayer must attach the certificate or legal documentation of her or his proportional share of the certificate to the tax return on which the credits are to be claimed. The tax credit under this Section may not reduce the taxpayer's liability to less than zero. If the amount of the credit exceeds the tax liability for the year, the excess credit may be carried forward and applied to the tax liability of the 10 taxable years following the excess credit year.

(d) If the taxpayer is (i) a corporation having an election in effect under Subchapter S of the federal Internal Revenue Code, (ii) a partnership, or (iii) a limited liability company, the credit provided under this Act may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the by-laws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method.

(e) If a recapture event occurs during the recapture period with respect to a qualified school building, then, for any taxable year in which the credits are allowed as specified in this Act, the tax under the applicable Section of this Act shall be increased by applying the recapture percentage set forth below to the tax decrease resulting from the application of credits allowed under this Act to the taxable year in question.

For the purposes of this subsection, the recapture percentage shall be determined as follows:

(1) if the recapture event occurs within the first year after commencement of the recapture period, then the recapture percentage is 100%;

(2) if the recapture event occurs within the second year after commencement of the recapture period, then the recapture percentage is 80%;

(3) if the recapture event occurs within the third year after commencement of the recapture period, then the recapture percentage is 60%;

(4) if the recapture event occurs within the fourth year after commencement of the recapture period, then the recapture percentage is 40%; and

(5) if the recapture event occurs within the fifth year after commencement of the recapture period, then the recapture percentage is 20%.

In the case of any recapture event, the carryforwards under this Act shall be adjusted by reason of such event.

(d) The Department may adopt rules to implement this Section in addition to the rules expressly authorized herein.

Section 20. Limitations, reporting, and monitoring.

(a) The Department shall award not more than an aggregate of $15,000,000 in total annual tax credits pursuant to qualified rehabilitation plans for qualified school building. The Department shall award not more than $3,000,000 in tax credits with regard to a single qualified rehabilitation plan. In awarding tax credits under this Act, the Department must prioritize projects that meet one or more of the following:

(1) the qualified school building was previously owned by a federal, State, or local governmental entity;

(2) the qualified school building is located in a census tract that has a median family income at or below

the State median family income; data from the most recent 5-year estimate from the American Community Survey (ACS), published by the U.S. Census Bureau, shall be used to determine eligibility;

(3) the qualified rehabilitation plan includes in the development partnership a Community Development Entity or a low-profit (B Corporation) or not-for-profit organization, as defined by Section 501(c)(3) of the Internal Revenue Code; or

(4) the qualified school building is located in an area declared under an Emergency Declaration or Major Disaster Declaration under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(b) The annual aggregate program allocation of $15,000,000 set forth in subsection (a) shall be allocated by the Department, in such proportion as determined by the Department, on a per calendar basis twice in each year that the program is in effect, provided that: (i) the amount initially allocated by the Department for any one calendar application period shall not exceed 65% of the total allowable amount and (ii) any portion of the allocated allowable amount remaining unused as of the end of any of the second calendar application period of a given calendar year shall be rolled into and added to the total allocated amount for the next available calendar year. The qualified rehabilitation plan must meet a readiness test, as defined in the rules created by the Department, in order for the Applicant to qualify. Applicants that qualify under this Act will be placed in a queue based on the date and time the application is received until the application period total allowable amount is reached. Applicants must reapply for each application period.

(c) On or before December 31, 2021, and on or before December 31 of each even-numbered year thereafter through 2024, subject to appropriation and prior to equal disbursement to the Department, moneys in the School Building Rehabilitation Tax Credit Fund attributable to fees under this Act shall be used, beginning at the end of the first fiscal year after the effective date of this Act, to hire a qualified third party to prepare a biennial report to assess the overall effectiveness of this Act from the qualified rehabilitation projects under this Act completed in that year and in previous years. Baseline data of the metrics in the report shall be collected at the initiation of a qualified rehabilitation project. The overall economic impact shall include at least:

(1) the number of applications, project locations, and proposed use of qualified school building;

(2) the amount of credits awarded and the number and location of projects receiving credit allocations;

(3) the status of ongoing projects and projected qualifying expenditures for ongoing projects;

(4) for completed projects, the total amount of qualifying rehabilitation expenditures and non-qualifying

expenditures, the number of housing units created and the number of housing units that qualify as affordable, and the total square footage rehabilitated and developed;

(5) direct, indirect, and induced economic impacts;

(6) temporary, permanent, and construction jobs created; and

(7) sales, income, and property tax generation before construction, during construction, and after completion.

The report to the General Assembly shall be filed with the Clerk of the House of Representatives and the Secretary of the Senate in electronic form only, in the manner that the Clerk and the Secretary shall direct.

(d) Any time prior to issuance of a tax credit certificate, the Director of the Department, the State Historic Preservation Officer, or staff of the Department may, upon reasonable notice to the project owner of not less than 3 business days, conduct a site visit to the project to inspect and evaluate the project.

(e) Any time prior to the issuance of a tax credit certificate and for a period of 4 years following the effective date of a project tax credit certificate, the Director may, upon reasonable notice of not less than 30 calendar days, request a status report from the Applicant consisting of information and updates relevant to the status of the project. Status reports shall not be requested more than twice yearly.

(f) In order to demonstrate sufficient evidence of reviewable progress within 12 months after the date the Applicant received notification of approval from the Department, the Applicant shall provide all of the following:

(1) a viable financial plan which demonstrates by way of an executed agreement that all financing has been secured for the project; such financing shall include, but not be limited to, equity investment as demonstrated by letters of commitment from the owner of the property, investment partners, and equity investors; and

(2) final construction drawings or approved building permits that demonstrate the complete rehabilitation of the full scope of the application.

The Director shall review the submitted evidence and may request additional documentation from the Applicant if necessary. The Applicant will have 30 calendar days to provide the information requested, otherwise the approval may be rescinded at the discretion of the Director.

(g) In order to demonstrate sufficient evidence of reviewable progress within 18 months after the date the application received notification of approval from the Department, the Applicant is required to provide detailed evidence that the Applicant has secured and closed on financing for the complete scope of rehabilitation for the project. To demonstrate evidence that the Applicant has secured and closed on financing, the Applicant will need to provide signed and processed loan agreements, bank financing documents or other legal and contractual evidence to demonstrate that adequate financing is available to complete the project. The Director shall review the submitted evidence and may request additional documentation from the Applicant if necessary. The Applicant will have 30 calendar days to provide the information requested, otherwise the approval may be rescinded at the discretion of the Director.

If the Applicant fails to document reviewable progress within 18 months of approval, the Director may notify the Applicant that the application is rescinded. However, should financing and construction be imminent, the Director may elect to grant the Applicant no more than 5 months to close on financing and commence construction. If the Applicant fails to meet these conditions in the required timeframe, the Director shall notify the Applicant that the application is rescinded. Any such rescinded allocation shall be added to the aggregate amount of credits available for allocation for the year in which the forfeiture occurred.

The amount of the qualified expenditures identified in the Applicant's certification of completion and reflected on the certificate issued by the Department is subject to inspection, examination, and audit.

The Applicant shall establish and maintain for a period of 4 years following the effective date on a project tax credit certificate such records as required by the Department.

Section 25. Powers. The Department shall adopt rules for the administration of this Act.

Section 900. The Illinois Income Tax Act is amended by adding Section 232 as follows:

(35 ILCS 5/232 new)

Sec. 232. School Building Rehabilitation Tax Credit. For taxable years beginning on or after January 1, 2021 and ending on or before December 31, 2025, each taxpayer that is awarded a credit under the School Building Rehabilitation Tax Credit Act is entitled to a credit as provided in that Act.

Section 905. The State Finance Act is amended by adding Section 5.935 as follows:

(30 ILCS 105/5.935 new)

Sec. 5.935. The School Building Rehabilitation Tax Credit Fund.

Section 999. Effective date. This Act takes effect upon becoming law.