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SENATE DRS45114-MC-103\* (03/10)

Short Title: New Historic Preservation Tax Credit. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT A HISTORIC PRESERVATION TAX CREDIT.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 105 of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 3L.

7 "Historic Rehabilitation Tax Credits Investment Program.

8 **§ 105-129.100. Credit for rehabilitating income-producing historic structure.**

9 (a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of  
10 the Code for making qualified rehabilitation expenditures for a certified historic structure  
11 located in this State is allowed a credit equal to the sum of the following:

12 (1) Base amount. – The percentage of qualified rehabilitation expenditures at the  
13 levels provided in the table below:

<u>Expenses</u>	<u>OverUp To</u>	<u>Rate</u>
<u>0</u>	<u>\$10 million</u>	<u>15.00%</u>
<u>\$10 million</u>	<u>\$20 million</u>	<u>10.00%</u>

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16  
17 (2) Development tier bonus. – An amount equal to five percent (5%) of  
18 qualified rehabilitation expenditures not exceeding twenty million dollars  
19 (\$20,000,000) if the certified historic structure is located in a development  
20 tier one or two area.

21 (3) Targeted investment bonus. – An amount equal to five percent (5%) of  
22 qualified rehabilitation expenditures not exceeding twenty million dollars  
23 (\$20,000,000) if the certified historic structure is located on an eligible  
24 targeted investment site.

25 (b) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and  
26 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may  
27 allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis  
28 in the pass-through entity, as determined under the Code, at the end of the taxable year in  
29 which the certified historic structure is placed in service, is at least forty percent (40%) of the  
30 amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the  
31 credit as if they had qualified for the credit directly. A pass-through entity and its owners must  
32 include with their tax returns for every taxable year in which an allocated credit is claimed a  
33 statement of the allocation made by the pass-through entity and the allocation that would have  
34 been required under G.S. 105-131.8 or G.S. 105-269.15.

35 (c) Definitions. – The following definitions apply in this section:

36 (1) Certified historic structure. – Defined in section 47 of the Code.



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- 1           (2)    Development tier area. – Defined in G.S. 143B-437.08.
- 2           (3)    Eligibility certification. – A certification obtained from the State Historic  
3           Preservation Officer that the site comprises an eligible targeted investment  
4           site.
- 5           (4)    Eligible targeted investment site. – A site located in this State that satisfies  
6           all of the following conditions:
- 7                a.    It was used as a manufacturing facility or for purposes ancillary to  
8                manufacturing, as a warehouse for selling agricultural products, or as  
9                a public or private utility.
- 10              b.    It is a certified historic structure.
- 11              c.    It has been at least sixty-five percent (65%) vacant for a period of at  
12              least two years immediately preceding the date the eligibility  
13              certification is made.
- 14           (5)    Pass-through entity. – Defined in G.S. 105-228.90.
- 15           (6)    Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- 16           (7)    State Historic Preservation Officer. – The Deputy Secretary of the Office of  
17           Archives and History of the North Carolina Department of Cultural  
18           Resources, or the Deputy Secretary's designee, who acts to administer the  
19           historic preservation programs within the State.
- 20           (8)    Targeted investment. – Qualified rehabilitation expenditures on a certified  
21           historic structure that is located on an eligible targeted investment site.
- 22           (d)    Limitations. – The amount of credit allowed under this section with respect to  
23           qualified rehabilitation expenditures for an income-producing certified historic structure may  
24           not exceed four million five hundred thousand dollars (\$4,500,000).

25    **"§ 105-129.101. Credit for rehabilitating non-income-producing historic structure.**

26           (a)    Credit. – A taxpayer who is not allowed a federal income tax credit under section 47  
27           of the Code and who has rehabilitation expenses of at least ten thousand dollars (\$10,000) for a  
28           State-certified historic structure located in this State is allowed a credit equal to fifteen percent  
29           (15%) of the rehabilitation expenses.

30           (b)    Limitations. – The amount of credit allowed under this section with respect to  
31           rehabilitation expenses for a non-income-producing certified historic structure may not exceed  
32           twenty-two thousand five hundred dollars (\$22,500) per discrete property parcel. In the event  
33           that the taxpayer is the transferee of a State-certified historic structure for which rehabilitation  
34           expenses were made, the taxpayer as transferee is allowed a credit under this section only if the  
35           transfer takes place before the structure is placed in service. In this event, no other taxpayer  
36           may claim such credit. A taxpayer is allowed to claim a credit under this section no more than  
37           once in any five-year period, carryovers notwithstanding.

38           (c)    Definitions. – The following definitions apply in this section:

39                (1)    Certified rehabilitation. – Repairs or alterations consistent with the Secretary  
40                of the Interior's Standards for Rehabilitation and certified as such by the  
41                State Historic Preservation Officer.

42                (2)    Discrete property parcel. – A lot or tract described by metes and bounds, a  
43                deed or plat of which has been recorded in the deed records of the county in  
44                which the property is located, and on which a State-certified historic  
45                structure is located, or a single condominium unit in a State-certified historic  
46                structure.

47                (3)    Placed in service. – The later of the date on which the rehabilitation is  
48                completed or the date on which the property is used for its intended purpose.

49                (4)    Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of  
50                a certified historic structure and added to the property's basis. The expenses  
51                must be incurred within any 24-month period per discrete property parcel.

1           The term does not include the cost of acquiring the property, the cost  
2           attributable to the enlargement of an existing building, the cost of site work  
3           expenditures, or the cost of personal property.

4           (5)   State-certified historic structure. – A structure that is individually listed in  
5           the National Register of Historic Places or is certified by the State Historic  
6           Preservation Officer as contributing to the historic significance of a National  
7           Register Historic District or a locally designated historic district certified by  
8           the United States Department of the Interior.

9           (6)   State Historic Preservation Officer. – Defined in G.S. 105-129.100(c)(7).

10   **"§ 105-129.102. Rules; fees.**

11           (a)   Rules. – The North Carolina Historical Commission, in consultation with the State  
12           Historic Preservation Officer, may adopt rules needed to administer any certification process  
13           required by this Article.

14           (b)   Fees. – The North Carolina Historical Commission, in consultation with the State  
15           Historic Preservation Officer, may adopt a schedule of fees for providing any certifications  
16           required by this Article, or Article 3D or 3H as they provided as of December 31, 2014. In  
17           establishing the fee schedule, the Commission shall consider the administrative and personnel  
18           costs incurred by the Department of Cultural Resources. An application fee may not exceed one  
19           percent (1%) of the completed qualifying rehabilitation expenditures. The proceeds of the fees  
20           are receipts of the Department of Cultural Resources and must be used for performing its duties  
21           under this Article.

22   **"§ 105-129.103. Tax credited; credit limitations.**

23           (a)   Tax Credited. – The credits provided in this Article are allowed against the franchise  
24           tax imposed in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or  
25           the gross premiums tax imposed in Article 8B of this Chapter. The taxpayer may take a credit  
26           allowed by this Article against only one of the taxes against which it is allowed. The taxpayer  
27           must elect the tax against which a credit will be claimed when filing the return on which it is  
28           claimed, and this election is binding. Any carryforwards of a credit must be claimed against the  
29           same tax.

30           (b)   Return. – A taxpayer may claim a credit allowed by this Article on a return filed for  
31           the taxable year in which the certified historic structure was placed into service. When an  
32           income-producing certified historic structure as defined in G.S. 105-129.100 is placed into  
33           service in two or more phases in different years, the amount of credit that may be claimed in a  
34           year is the amount based on the qualified rehabilitation expenditures associated with the phase  
35           placed into service during that year.

36           (c)   Cap. – A credit allowed under this Article may not exceed the amount of the tax  
37           against which it is claimed for the taxable year reduced by the sum of all credits allowed,  
38           except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit  
39           may be carried forward for the succeeding nine years.

40           (d)   Forfeiture for Disposition. – A taxpayer who is required under section 50 of the  
41           Code to recapture all or part of the federal credit for rehabilitating an income-producing historic  
42           structure located in this State forfeits the corresponding part of the State credit allowed under  
43           G.S. 105-129.100 with respect to that historic structure. If the credit was allocated among the  
44           owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that  
45           the credit was allocated.

46           (e)   Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has  
47           qualified for the credit allowed under G.S. 105-129.100 disposes of all or a portion of the  
48           owner's interest in the pass-through entity within five years from the date the rehabilitated  
49           historic structure is placed in service and the owner's interest in the pass-through entity is  
50           reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the  
51           historic structure was placed in service, the owner forfeits a portion of the credit. The amount

1 forfeited is determined by multiplying the amount of credit by the percentage reduction in  
2 ownership and then multiplying that product by the forfeiture percentage. The forfeiture  
3 percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the  
4 Code.

5 (f) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is  
6 not required if the change in ownership is the result of any of the following:

7 (1) The death of the owner.

8 (2) A merger, consolidation, or similar transaction requiring approval by the  
9 shareholders, partners, or members of the taxpayer under applicable State  
10 law, to the extent the taxpayer does not receive cash or tangible property in  
11 the merger, consolidation, or other similar transaction.

12 (g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that  
13 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus  
14 interest at the rate established under G.S. 105-241.21, computed from the date the taxes would  
15 have been due if the credit had not been allowed. The past taxes and interest are due 30 days  
16 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to  
17 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

18 (h) Substantiation. – To claim a credit allowed by this Article, the taxpayer must  
19 provide any information required by the Secretary of Revenue, including a copy of the  
20 certification obtained from the State Historic Preservation Office verifying that the historic  
21 structure has been rehabilitated in accordance with the requirements set out in this Article, and  
22 a copy of the eligibility certification if the historic structure is located in an eligible targeted  
23 investment site and the target investment bonus is claimed. Every taxpayer claiming a credit  
24 under this Article must maintain and make available for inspection by the Secretary of Revenue  
25 any records the Secretary considers necessary to determine and verify the amount of the credit  
26 to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount  
27 of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to  
28 maintain adequate records or to make them available for inspection.

29 (i) No Double Credit. – A taxpayer that claims a credit under this Article may not also  
30 claim a credit under Article 3D or Article 3H of this Chapter with respect to the same activity.

31 **§ 105-129.104. Report; tracking.**

32 (a) The Department must include in the economic incentives report required by  
33 G.S. 105-256 the following information itemized by taxpayer:

34 (1) The number of taxpayers that took the credits allowed in this Article.

35 (2) The amount of rehabilitation expenses and qualified rehabilitation  
36 expenditures with respect to which credits were taken.

37 (3) The total cost to the General Fund of the credits taken.

38 (b) The Department shall include in the economic incentives report required by  
39 G.S. 105-256 the following information:

40 (1) The total amount of tax credits claimed and the total amount of tax credits  
41 taken against current taxes, by type of tax, during the relevant tax year.

42 (2) The total amount of tax credits carried forward, by type of tax.

43 **§ 105-129.105. Sunset.**

44 This Article expires for qualified rehabilitation expenditures and rehabilitation expenses  
45 incurred on or after January 1, 2021."

46 **SECTION 2.** G.S. 105-129.75 reads as rewritten:

47 **§ 105-129.75. Sunset.**

48 This Article expires January 1, 2015, for rehabilitation projects for which an application for  
49 an eligibility certification is submitted on or after that date. Eligibility certifications under this  
50 Article expire January 1, 2023."

1           **SECTION 3.** Section 1 of this act becomes effective January 1, 2015, and applies  
2 to qualified rehabilitation expenditures and rehabilitation expenses incurred on or after that  
3 date. Section 2 of this act is effective when it becomes law.