

HOUSE No. 760

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to stabilize neighborhood tax credits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/19/2011</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>	<i>1/28/2011</i>
<i>Michael J. Moran</i>	<i>18th Suffolk</i>	<i>2/3/2011</i>
<i>Mayor Thomas Menino</i>	<i>1 City Hall Square Suite 500 Boston, MA 02201-2013</i>	

HOUSE No. 760

By Mr. Honan of Boston, a petition (accompanied by bill, House, No. 760) of Kevin G. Honan, John P. Fresolo, Michael J. Moran and Thomas M. Menino providing for neighborhood stabilization tax credits. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3608 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to stabilize neighborhood tax credits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 63 of the General Laws, as appearing in the 2006 official edition, is hereby
2 amended by inserting after section 38T the following new section-

3 Section 38U. Rehabilitation of foreclosed properties, credit

4 (a) For purposes of this section, the following terms shall have the following meanings
5 unless the context clearly requires otherwise:

6 “Certified rehabilitation”, the rehabilitation of a qualified stabilization property that has
7 been approved and certified by the department of housing and community development as
8 necessary to enable the rehabilitation and preservation of qualified stabilization properties.

9 “Qualified rehabilitation expenditure”, any amount properly chargeable to a capital
10 account, as well as legal fees and other development costs unrelated to acquisition, incurred in
11 connection with the certified rehabilitation of a qualified stabilization property.

12 “Qualified stabilization property”, any building or structure, or group thereof, located
13 within the commonwealth that is in the possession of a mortgage lender or municipality as a
14 result of foreclosure or forfeiture, or that is vacant, abandoned, distressed, out of compliance
15 with sanitary and building code, or is in receivership. Qualified stabilization property shall be
16 property, where all or any portion of which is owned, in whole or in part, by the taxpayer.

17 “Stabilization target area”, areas determined by the department to be eligible for
18 neighborhood stabilization tax credits. The department may consider criteria including but not
19 limited to; high concentration of foreclosed properties as determined by a given number per
20 thousand housing units, definition as a weak market area determined by a given percentage of
21 change in median sales prices, high concentration of vacant or abandoned properties, high
22 concentration of assisted housing or low homeownership rates, blighted open, decadent or
23 substandard areas as defined in MGL c. 121A § 1, or designation under section 42(d)(5)(c) of the
24 Internal Revenue Code as a qualified census tract, or designation under section 5305(c)(2)(A)(ii)
25 of the Housing and Community Development Act of 1974 as an area where not less than 51
26 percent of the residents are persons of low and moderate income.

27 “Substantial rehabilitation” and “substantially rehabilitated”, the qualified rehabilitation
28 expenditures of the building or buildings during the 24-month period selected by the taxpayer
29 ending with or within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such
30 building and its structural components as of the beginning of such period. In the case of any

rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the applicable period referred to in this paragraph shall be 60 months.

“Taxpayer”, a corporation or other entity subject to an excise imposed by this chapter.

(b)(1) There shall be a Massachusetts neighborhood stabilization tax credit.

(i) The commissioner, in consultation with the Massachusetts department of housing and community development, shall authorize annually, for the 5 year period beginning January 1, 2011 and ending December 31, 2015 under this section together with section, an amount not to exceed \$15,000,000 per year. The Massachusetts department of housing and community development shall determine the criteria for eligibility for the credit, the criteria to be set forth in regulations promulgated under this section; and, to the greatest extent possible, the tax credits shall be allocated projects that contain owner-occupied or affordable rental housing whenever possible and are also consistent with the criteria for designating qualified stabilization property. Further, the department shall administer the credits and shall ensure that credits are distributed in such a manner that prevents the deterioration of properties, stabilizes target areas and promotes reinvestment through homeownership and redevelopment for affordable rental housing. To this end, regulations and recapture requirements should ensure expeditious redevelopment and minimum owner-occupant residency period of at least 7 years. If disposition through homeownership is not feasible, affordable rental leases and rent-to-own arrangements may be allowed with the approval of the department. Selection criteria shall include a preference for properties that are affirmatively marketed to graduates of homeownership-counseling programs.

(ii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit, to be computed as hereinafter provided, against the excise imposed by this chapter. The credit shall be equal to a percentage, not to exceed 25 per cent, of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified stabilization property which has received final certification and has been placed in service as provided for in this section. The Massachusetts department of housing and community development shall administer and determine eligibility for the Massachusetts neighborhood stabilization tax credit and allocate the credit in accordance with this section; but, the Massachusetts department of housing and community development may impose a fee for the processing of applications for the certification of any rehabilitation under this section.

(2) The credit allowable under this section shall be allowed for the taxable year in which the substantially rehabilitated property is placed in service, that is, when occupancy of the entire structure or some identifiable portion of the structure is permitted. The tax credit shall be taken against the taxes imposed under this chapter and shall, at the election of the taxpayer, be refundable to a similar extent as provided for in section 32E. A taxpayer allowed a credit under this section for a taxable year may carry over and apply to the excise imposed by this chapter in any of the succeeding 10 taxable years, the portion, as reduced from year to year, of those credits which exceed the excise for the taxable year.

(i) Credits allowed under this section which are provided to multiple owners of property shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or pursuant to an executed agreement among the persons designated as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity.

(ii) Taxpayers eligible for the Massachusetts neighborhood stabilization tax credit may, with prior notice to and in accordance with regulations adopted by the commissioner, transfer the credits, in whole or in part, to an individual or entity, and the transferee shall be entitled to apply the credits against the excise with the same effect as if the transferee had incurred the qualified rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If the credit allowable for any taxable year exceeds the transferee's excise liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceed such excise for the taxable year; but the carryover period shall not exceed 10 taxable years after the close of the taxable year during which the qualified stabilization property received final certification and was placed in service as provided for in this section. An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. A tax credit shall not be transferred, sold or assigned without a certificate.

(iii) The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(iv) The department may pursue methods of enhancing the efficiency of the Massachusetts neighborhood stabilization tax credit program including but not limited to; pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines and reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.

(v) The credit allowed under this section shall not be subject to the limitations of section 32C; but, the credit allowed by this section shall not reduce the excise due under this chapter below the minimum excise provided by subsection (b) of section 32 and subsection (b) of section 39.

(c)(1) A certified rehabilitation shall require:

(i) an initial certification by the Massachusetts department of housing and community development that the structure meets the definition of qualified stabilization property, and that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation; and

(ii) a final certification by the Massachusetts department of housing and community development, issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under this section.

(2) A rehabilitation shall not be treated as complete before the date of the certification referred to in clause (ii) of paragraph (1).

(d) A taxpayer who leases its property shall be treated as the owner thereof if the remaining term of the lease as of the date determined under regulations prescribed by the commissioner of revenue is not less than such minimum period as the regulations require.

(e) For any qualified stabilization property, qualified rehabilitation expenditures shall be treated for purposes of this section as made:

(i) on the date the qualified stabilization property is placed in service, when occupancy of the entire structure or some identifiable portion of the structure is permitted, or

(ii) to the extent provided by the commissioner of the department of housing and community development by regulation, when such expenditures are properly chargeable to a capital account.

(f)(1) If, before the end of the 10 year period beginning on the date on which the qualified stabilization property received final certification and was placed in service, the taxpayer disposes of the taxpayer's interest in the structure, or the property otherwise ceases to meet the criteria of a qualified stabilization property, the taxpayer's tax for the taxable year in which the disposition occurs shall be increased by the recapture amount. A carry forward credit shall be adjusted by reason of the disposition. Regulations under this paragraph shall include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as amended and in effect for the taxable year, relating to recapture if property ceases to qualify for progress expenditures. In the event that recapture of the credit is required, any statement submitted to the commissioner shall include the proportion of the Massachusetts low-income housing tax credit required to be recaptured, the

140 identity of each transferee subject to recapture and the amount of credit previously transferred to
141 such transferee.

142 (2) For purposes of paragraph (1), the recapture amount shall equal the amount of the
143 credit taken by the taxpayer, including any credit transferred by the taxpayer, minus the credit
144 allowed for ownership, but not less than zero. The credit allowed for ownership shall be the
145 product of the amount of credit allowed multiplied by a ratio, the numerator of which is the
146 number of months the rehabilitated structure is owned by the taxpayer, and the denominator of
147 which is 60.

148 (g) For purposes of this section, if a credit is allowed under this section for any
149 expenditure with respect to any property, the increase in the basis of such property which would,
150 but for this paragraph, result from such expenditure shall be reduced by the amount of the credit
151 so allowed.

152 (h) The commissioner, in consultation with the department of housing and community
153 development, shall prescribe regulations necessary to carry out this section.

154 (i) The department, in consultation with the commissioner, shall monitor and oversee
155 compliance with the Massachusetts neighborhood stabilization tax credit program and may
156 promulgate regulations requiring the filing of additional documentation deemed necessary to
157 determine continuing eligibility for the Massachusetts neighborhood stabilization tax credit. The
158 department or the commissioner shall report specific occurrences of noncompliance to
159 appropriate state, federal and local authorities. The department shall report annually to Ways
160 and Means as to the number of qualified stabilization properties, number of housing units
161 assisted, and credit allocated per unit.