HOUSE DOCKET, NO. 675 FILED ON: 1/17/2017

HOUSE . . . . . No. 1629

The Commonwealth of Massachusetts

PRESENTED BY:

Alan Silvia

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 updating the Massachusetts historic rehabilitation tax credit.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Alan Silvia	*7th Bristol*	*1/17/2017*
Carole A. Fiola	*6th Bristol*	*1/26/2017*
Paul A. Schmid, III	*8th Bristol*	*1/26/2017*
Richard J. Ross	*Norfolk, Bristol and Middlesex*	*1/17/2017*
Kevin J. Kuros	*8th Worcester*	*1/17/2017*

HOUSE DOCKET, NO. 675 FILED ON: 1/17/2017

HOUSE . . . . . No. 1629

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1629) of Alan Silvia and others relative to the Massachusetts historic rehabilitation tax credit. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act updating the Massachusetts historic rehabilitation tax credit.

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

SECTION __. Section 6J of chapter 62 of the general laws, as so appearing, is hereby amended by striking out in its entirety and inserting in place thereof the following:-

Section 6J. (a) For purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

"Certified rehabilitation", the rehabilitation of a qualified historic structure that has been approved and certified by the department of housing and community development in consultation with the Massachusetts historical commission as being consistent with the standards established by the Secretary of the United States Department of the Interior for rehabilitation of historic properties.

“Commissioner”, the commissioner of the department of revenue

“Department”, the department of housing and community development

"Qualified historic structure", any building or structure, located within the commonwealth that is individually listed on the National Register of Historic Places or is a contributing building within a district that is listed on the National Register of Historic Places or which has been determined by the Massachusetts historical commission to be eligible for listing on the National Register of Historic Places, and which all or any portion of which is owned, in whole or in part, by the taxpayer.

"Qualified rehabilitation expenditure", any amount properly chargeable to a capital account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the taxable year, incurred in connection with the certified rehabilitation of a qualified historic structure, but the term shall not include personal property, personal use property or the cost of acquiring any building or interest thereon.

"Secretary", the secretary of the executive office of housing and economic development

"Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation expenditures of the building during the 24 month period selected by the taxpayer ending with or within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such 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 person, firm, partnership, trust, estate, limited liability company or other entity subject to the income tax imposed by the provisions of this chapter.

(b)(1) There shall be a Massachusetts historic rehabilitation tax credit.

(i) The secretary of the executive office of housing and economic development, in consultation with the department of housing and community development and the commissioner, shall authorize annually, for the period beginning January 1, 2006 and ending December 31, 2023, under this section together with section 38R of chapter 63, an amount not to exceed $60,000,000 per year.

(ii) The secretary, in consultation with the department and the commissioner, shall administer and determine eligibility for this tax credit and allocate the credit in accordance with the standards and requirements set forth in regulations promulgated to carry out this section, provided however, at least 25 per cent of the tax credits shall be allowed to projects that contain affordable housing whenever possible and consistent with such criteria; provided, however, that the secretary shall ensure the award of tax credits pursuant to this section shall allow a taxpayer that acquires a qualified historic structure to receive any tax credits for qualified rehabilitation expenditures previously awarded to the transferor of the qualified historic structure if: (A) the rehabilitation was not placed in service by the transferor; (B) no credit has been claimed by anyone other than the acquiring taxpayer as verified by the department of revenue to the commission; (C) the taxpayer completes the rehabilitation and obtains certification as provided in this section; and (D) the taxpayer conforms with all other requirements of this section; and provided further, that in the case of a multi-phase project, tax credits may be transferred for any phase that meets the criteria in subclauses (A) to (D), inclusive

Tax credits authorized pursuant to this section shall be subject to the annual cumulative cap pursuant to subsection (b) of this section.

(iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this chapter. The credit shall be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic structure which has received final certification and has been placed in service as provided for in this section. The secretary shall administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate the credit in accordance with 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. A taxpayer allowed a credit under this section for a taxable year may carry over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company taxed as a partnership or 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 historic rehabilitation tax credit may, with prior notice to and in accordance with regulations adopted by the secretary, transfer the credits, in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

credits against the tax 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 tax 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 the tax for the taxable year; but, the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified historic structure received final certification and was placed in service as provided for in this section.

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

(i) an initial certification by the department that the structure meets the definition of qualified historic structure;

(ii) a second certification by the department, to be issued prior to construction, certifying that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation; and

(iii) a final certification by the department, 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 (iii) of paragraph (1).

(d) A taxpayer who leases his 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 department of revenue is not less than such minimum period as the regulations require.

(e) For any qualified historic structure, qualified rehabilitation expenditures applicable to the historical rehabilitation tax credit shall be treated for purposes of this section as made:

(i) on the date substantial rehabilitation is completed, or

(ii) to the extent provided by the commissioner of revenue by regulation, when such expenditures are properly chargeable to a capital account. Regulations under this paragraph shall include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as amended an in effect for the taxable year, relating to recapture if property ceases to qualify for progress expenditures.

(f)(1) If, before the end of the 5 year period beginning on the date on which the qualified historic structure received final certification and was placed in service, the taxpayer disposes of the taxpayer's interest in the structure, the taxpayer's tax for the taxable year in which the disposition occurs shall be increased by the recapture amount. Any carry forward credit shall be adjusted by reason of the disposition.

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

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

(h) The secretary, in consultation with the commissioner and the department, shall prescribe regulations necessary to carry out this section.

(i) Except for unused credits carried forward pursuant to paragraph (2) of subsection (b) of section 38R of chapter 63 and paragraph (2) of subsection (b) of this section, a taxpayer shall not be eligible for any historic rehabilitation tax credits for more than 5 taxable years.

SECTION __. Section 38R of chapter 63 of the general laws, as so appearing, is hereby amended by striking out in its entirety and inserting in place thereof the following:-

Section 38R. (a) For purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

"Certified rehabilitation", the rehabilitation of a qualified historic structure that has been approved and certified by the department of housing and community development in consultation with the Massachusetts historical commission as being consistent with the standards established by the Secretary of the United States Department of the Interior for rehabilitation of historic properties.

“Commissioner”, the commissioner of the department of revenue

“Department”, the department of housing and community development

"Qualified historic structure", any building or structure, located within the commonwealth that is individually listed on the National Register of Historic Places or is a contributing building within a district that is listed on the National Register of Historic Places or which has been determined by the Massachusetts historical commission to be eligible for listing on the National Register of Historic Places, and which all or any portion of which is owned, in whole or in part, by the taxpayer.

"Qualified rehabilitation expenditure", any amount properly chargeable to a capital account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the taxable year, incurred in connection with the certified rehabilitation of a qualified historic structure, but the term shall not include personal property, personal use property or the cost of acquiring any building or interest thereon.

"Secretary", the secretary of the executive office of housing and economic development

"Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation expenditures of the building during the 24 month period selected by the taxpayer ending with or within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such 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 person, firm, partnership, trust, estate, limited liability company or other entity subject to the income tax imposed by the provisions of this chapter.

(b)(1) There shall be a Massachusetts historic rehabilitation tax credit.

(i) The secretary of the executive office of housing and economic development, in consultation with the department of housing and community development and the commissioner shall authorize annually, for the period beginning January 1, 2006 and ending December 31, 2023, under this section together with section 6J of chapter 62, an amount not to exceed $60,000,000 per year.

(ii) The secretary, in consultation with the department and the commissioner, shall administer and determine eligibility for this tax credit and allocate the credit in accordance with the standards and requirements set forth in regulations promulgated to carry out this section, provided however, at least 25 per cent of the tax credits shall be allowed to projects that contain affordable housing whenever possible and consistent with such criteria; provided, however, that the secretary shall ensure the award of tax credits pursuant to this section shall allow a taxpayer that acquires a qualified historic structure to receive any tax credits for qualified rehabilitation expenditures previously awarded to the transferor of the qualified historic structure if: (A) the rehabilitation was not placed in service by the transferor; (B) no credit has been claimed by anyone other than the acquiring taxpayer as verified by the department of revenue to the commission; (C) the taxpayer completes the rehabilitation and obtains certification as provided in this section; and (D) the taxpayer conforms with all other requirements of this section; and provided further, that in the case of a multi-phase project, tax credits may be transferred for any phase that meets the criteria in subclauses (A) to (D), inclusive

Tax credits authorized pursuant to this section shall be subject to the annual cumulative cap pursuant to subsection (b) of this section.

(iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this chapter. The credit shall be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic structure which has received final certification and has been placed in service as provided for in this section. The secretary shall administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate the credit in accordance with 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. A taxpayer allowed a credit under this section for a taxable year may carry over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company taxed as a partnership or 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 historic rehabilitation tax credit may, with prior notice to and in accordance with regulations adopted by the secretary, transfer the credits, in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

credits against the tax 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 tax 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 the tax for the taxable year; but, the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified historic structure received final certification and was placed in service as provided for in this section.

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

(i) an initial certification by the department that the structure meets the definition of qualified historic structure;

(ii) a second certification by the department, to be issued prior to construction, certifying that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation; and

(iii) a final certification by the department, 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 (iii) of paragraph (1).

(d) A taxpayer who leases his 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 department of revenue is not less than such minimum period as the regulations require.

(e) For any qualified historic structure, qualified rehabilitation expenditures applicable to the historical rehabilitation tax credit shall be treated for purposes of this section as made:

(i) on the date substantial rehabilitation is completed, or

(ii) to the extent provided by the commissioner of revenue by regulation, when such expenditures are properly chargeable to a capital account. Regulations under this paragraph shall include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as amended an in effect for the taxable year, relating to recapture if property ceases to qualify for progress expenditures.

(f)(1) If, before the end of the 5 year period beginning on the date on which the qualified historic structure received final certification and was placed in service, the taxpayer disposes of the taxpayer's interest in the structure, the taxpayer's tax for the taxable year in which the disposition occurs shall be increased by the recapture amount. Any carry forward credit shall be adjusted by reason of the disposition.

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

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

(h) The secretary, in consultation with the commissioner and the department, shall prescribe regulations necessary to carry out this section.

(i) Except for unused credits carried forward pursuant to paragraph (2) of subsection (b) of section 6J of chapter 62 and paragraph (2) of subsection (b) of this section, a taxpayer shall not be eligible for any historic rehabilitation tax credits for more than 5 taxable years

SECTION__. Sections 1 and 2 shall be effective for tax years beginning on or after January 1, 2018.