

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:
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>1/17/2017</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/26/2017</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/26/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	

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:

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

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

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

10 "Commissioner", the commissioner of the department of revenue

11 "Department", the department of housing and community development

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

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

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

24 "Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation
25 expenditures of the building during the 24 month period selected by the taxpayer ending with or
26 within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such building and
27 its structural components as of the beginning of such period. In the case of any rehabilitation that
28 may reasonably be expected to be completed in phases set forth in architectural plans and
29 specifications completed before the rehabilitation begins, the applicable period referred to in this
30 paragraph shall be 60 months.

31 "Taxpayer", a person, firm, partnership, trust, estate, limited liability company or other
32 entity subject to the income tax imposed by the provisions of this chapter.

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

34 (i) The secretary of the executive office of housing and economic development, in
35 consultation with the department of housing and community development and the commissioner,
36 shall authorize annually, for the period beginning January 1, 2006 and ending December 31,
37 2023, under this section together with section 38R of chapter 63, an amount not to exceed
38 \$60,000,000 per year.

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

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

55 (iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit,
56 to be computed as hereinafter provided, against the tax imposed by this chapter. The credit shall
57 be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures
58 made by the taxpayer with respect to a qualified historic structure which has received final
59 certification and has been placed in service as provided for in this section. The secretary shall
60 administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate
61 the credit in accordance with this section;

62 (2) The credit allowable under this section shall be allowed for the taxable year in which
63 the substantially rehabilitated property is placed in service, that is, when occupancy of the entire
64 structure or some identifiable portion of the structure is permitted. A taxpayer allowed a credit
65 under this section for a taxable year may carry over and apply to the tax imposed by this chapter
66 in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those
67 credits which exceed the tax for the taxable year.

68 (i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company
69 taxed as a partnership or multiple owners of property shall be passed through to the persons
70 designated as partners, members or owners, respectively, pro rata or pursuant to an executed
71 agreement among the persons designated as partners, members or owners documenting an
72 alternative distribution method without regard to their sharing of other tax or economic attributes
73 of the entity.

74 (ii) Taxpayers eligible for the Massachusetts historic rehabilitation tax credit may, with
75 prior notice to and in accordance with regulations adopted by the secretary, transfer the credits,
76 in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

77 credits against the tax with the same effect as if the transferee had incurred the qualified
78 rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If
79 the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the
80 transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced
81 from year to year, of those credits which exceed the tax for the taxable year; but, the carryover
82 period shall not exceed 5 taxable years after the close of the taxable year during which the
83 qualified historic structure received final certification and was placed in service as provided for
84 in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138 "Commissioner", the commissioner of the department of revenue

139 "Department", the department of housing and community development

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

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

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

152 "Substantial rehabilitation" and "substantially rehabilitated", the qualified rehabilitation
153 expenditures of the building during the 24 month period selected by the taxpayer ending with or
154 within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such building and
155 its structural components as of the beginning of such period. In the case of any rehabilitation that
156 may reasonably be expected to be completed in phases set forth in architectural plans and
157 specifications completed before the rehabilitation begins, the applicable period referred to in this
158 paragraph shall be 60 months.

159 "Taxpayer", a person, firm, partnership, trust, estate, limited liability company or other
160 entity subject to the income tax imposed by the provisions of this chapter.

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

162 (i) The secretary of the executive office of housing and economic development, in
163 consultation with the department of housing and community development and the commissioner
164 shall authorize annually, for the period beginning January 1, 2006 and ending December 31,
165 2023, under this section together with section 6J of chapter 62, an amount not to exceed
166 \$60,000,000 per year.

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

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

183 (iii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit,
184 to be computed as hereinafter provided, against the tax imposed by this chapter. The credit shall
185 be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures
186 made by the taxpayer with respect to a qualified historic structure which has received final
187 certification and has been placed in service as provided for in this section. The secretary shall
188 administer and determine eligibility for the Massachusetts rehabilitation tax credit and allocate
189 the credit in accordance with this section;

190 (2) The credit allowable under this section shall be allowed for the taxable year in which
191 the substantially rehabilitated property is placed in service, that is, when occupancy of the entire
192 structure or some identifiable portion of the structure is permitted. A taxpayer allowed a credit
193 under this section for a taxable year may carry over and apply to the tax imposed by this chapter
194 in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those
195 credits which exceed the tax for the taxable year.

196 (i) Historic rehabilitation tax credits allowed to a partnership, a limited liability company
197 taxed as a partnership or multiple owners of property shall be passed through to the persons
198 designated as partners, members or owners, respectively, pro rata or pursuant to an executed
199 agreement among the persons designated as partners, members or owners documenting an
200 alternative distribution method without regard to their sharing of other tax or economic attributes
201 of the entity.

202 (ii) Taxpayers eligible for the Massachusetts historic rehabilitation tax credit may, with
203 prior notice to and in accordance with regulations adopted by the secretary, transfer the credits,
204 in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the

205 credits against the tax with the same effect as if the transferee had incurred the qualified
206 rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If
207 the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the
208 transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced
209 from year to year, of those credits which exceed the tax for the taxable year; but, the carryover
210 period shall not exceed 5 taxable years after the close of the taxable year during which the
211 qualified historic structure received final certification and was placed in service as provided for
212 in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

257 SECTION __. Sections 1 and 2 shall be effective for tax years beginning on or after
258 January 1, 2018.