

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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As Engrossed: H4/1/19
A Bill

HOUSE BILL 1800

By: Representative A. Davis

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS MAJOR HISTORIC
REHABILITATION INCOME TAX CREDIT ACT; TO CREATE THE
ARKANSAS MAJOR HISTORIC REHABILITATION TRUST FUND;
AND FOR OTHER PURPOSES.

Subtitle

*TO CREATE THE ARKANSAS MAJOR HISTORIC
REHABILITATION INCOME TAX CREDIT ACT.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1150. Arkansas Major Historic Rehabilitation Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Major Historic Rehabilitation Trust Fund".

(b) The Arkansas Major Historic Rehabilitation Trust Fund shall consist of:

(1) Grants, donations, or transfers made by any person or government agency or office;

(2) Any remaining balances in the Arkansas Major Historic Rehabilitation Trust Fund carried forward from year to year; and

(3) Any other funds authorized or provided by law.

(c) The Arkansas Major Historic Rehabilitation Trust Fund shall be used to offset the costs of the income tax credits allowed under the Arkansas Major Historic Rehabilitation Income Tax Credit Act, § 26-51-1601 et seq., as



follows:

(1) By June 30 of each year, the Director of the Department of Finance and Administration shall certify:

(A) To the Department of Arkansas Heritage the amount in the Arkansas Major Historic Rehabilitation Trust Fund, which shall serve as the maximum amount of Arkansas major historic rehabilitation income tax credits that the department may approve for the next fiscal year; and

(B) To the Treasurer of State the amount of Arkansas major historic rehabilitation income tax credits claimed during the current fiscal year; and

(2) On July 1 of each year, the Treasurer of State shall transfer the amount certified under subdivision (c)(1)(B) of this section to the General Revenue Fund Account of the State Apportionment Fund to be distributed as authorized under § 19-5-202(b)(2)(B)(iii). and

SECTION 2. Arkansas Code Title 26, Chapter 51, is amended to add an additional subchapter to read as follows:

Subchapter 26 – Arkansas Major Historic Rehabilitation Income Tax Credit Act

26-51-2601. Title.

This subchapter shall be known and may be cited as the “Arkansas Major Historic Rehabilitation Income Tax Credit Act”.

26-51-2602. Definitions.

As used in this subchapter:

(1) “Arkansas major historic rehabilitation income tax credit” means the income tax credit allowed under this subchapter against the income tax imposed by this chapter and the premium tax levied under §§ 26-57-601 – 26-57-605;

(2) “Certification of completion” means a certificate issued by the Department of Arkansas Heritage certifying that a project is a certified rehabilitation of an eligible property that qualifies for the Arkansas major historic rehabilitation income tax credit;

(3) “Certified rehabilitation” means the total of appropriate and approved rehabilitation work on an eligible property that results in a substantial rehabilitation of an eligible property that has been issued an

eligibility certificate;

(4) "Eligible property" means property that is located in the state that:

(A) Qualifies as a certified historic structure under 26 U.S.C. § 47, as it existed on January 1, 2019;

(B) Will qualify as a certified historic structure following certified rehabilitation;

(C) Is listed in the National Register of Historic Places;

(D) Is designated as contributing to a district listed in the National Register of Historic Places; or

(E) Is eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation;

(5) "Federal rehabilitation tax credit" means the federal tax credit provided under 26 U.S.C. § 47, as it existed on January 1, 2009;

(6) "Holder" means the holder of a certification of completion that is:

(A) A person, firm, or corporation subject to the income tax imposed by this chapter; or

(B) An insurance company paying the premium tax on its gross premium receipts;

(7) "Owner" means a person or an entity that owns eligible property and is the initial recipient of the certification of completion from the department;

(8) "Premium tax" means a tax levied under §§ 26-57-603 – 26-57-605; and

(9) "Qualified rehabilitation expenses" means costs and expenses incurred to complete a certified rehabilitation that are qualified rehabilitation expenses under the federal rehabilitation tax credit or under the Arkansas major historic rehabilitation income tax credit.

26-51-2603. Arkansas major historic rehabilitation income tax credit.

(a)(1) There is allowed an income tax credit up to the amount of tax imposed by this chapter or the premium tax to a holder of an Arkansas major historic rehabilitation income tax credit.

(2) The income tax credit allowed under subdivision (a)(1) of

this section is allowed only one (1) time in a two-year period for each eligible property.

(b) The Arkansas major historic rehabilitation income tax credit shall be in an amount equal to twenty-five percent (25%) of the total qualified rehabilitation expenses incurred by the owner to complete a certified rehabilitation.

(c)(1) The Department of Arkansas Heritage shall not issue Arkansas major historic rehabilitation income tax credits for more than the amount certified under § 19-5-1150(c)(1)(A).

(2) Any unused Arkansas major historic rehabilitation income tax credits shall not be carried over to the following fiscal year for use by the department.

(3) Any certification of completion that would cause the Arkansas major historic rehabilitation income tax credit to exceed the amounts listed in subdivision (c)(1) of this section during the fiscal year shall be carried forward for consideration during the following fiscal year.

(d) The Arkansas major historic rehabilitation income tax credit shall be available to an owner of an eligible property that:

(1) Completes a certified rehabilitation that is placed in service after January 1, 2019;

(2) Has a minimum investment of one million five hundred thousand dollars (\$1,500,000) in qualified rehabilitation expenses; and

(3) Is not receiving a tax credit under any other state law for the same eligible property.

(e) Upon completion of a rehabilitation, the owner shall submit documentation required by the department to verify that the completed rehabilitation qualifies as a certified rehabilitation.

(f) If the department determines that a rehabilitation qualifies as a certified rehabilitation and that the certified rehabilitation is complete, the department shall issue a freely transferable certification of completion specifying the total amount of the qualified rehabilitation expenses and Arkansas major historic rehabilitation income tax credit allowed.

(g)(1) If the owner requests a review of the department's determination under subsection (f) of this section, the owner shall submit a written request for review of the determination.

(2) The owner shall submit the request in writing to the

department within thirty (30) days of the date of notification to the owner of the determination.

(h)(1) The owner shall certify to the department the validity of the costs and expenses claimed as qualified rehabilitation expenses and shall maintain a record supporting the claim for at least five (5) years after the issuance of the certification of completion.

(2) An owner's record supporting a claim for qualified rehabilitation expenses may be reviewed by the department, the appropriate tax collection authority, or a holder.

26-51-2604. Procedure to claim tax credit – Transferring credit.

(a)(1) A holder shall submit the certification of completion and documents proving an assignment, if any, with the appropriate tax collection authority at the time of filing the holder's income tax return or premium tax return.

(2) The appropriate tax collection authority may refuse to recognize the Arkansas major historic rehabilitation income tax credit claimed if the holder fails to submit the certification of completion and any assignment documents.

(b) The amount of the Arkansas major historic rehabilitation income tax credit that may be used by a holder for a taxable year may equal but shall not exceed the amount of income tax or premium tax due.

(c) A holder of an unused Arkansas major historic rehabilitation income tax credit may carry forward part or all of an Arkansas major historic rehabilitation income tax credit for five (5) consecutive taxable years to apply against the holder's income taxes due or the holder's premium tax due.

(d)(1) An owner of an Arkansas major historic rehabilitation income tax credit may freely transfer, sell, or assign part or all of the Arkansas major historic rehabilitation income tax credit amount identified in the certification of completion.

(2) A subsequent holder may transfer, sell, or assign part or all of the remaining Arkansas major historic rehabilitation income tax credit.

(e) An owner may sell the owner's eligible property after the issuance of the certification of completion.

(f) An Arkansas major historic rehabilitation income tax credit

granted to a partnership, Subchapter S corporation, a limited liability company taxed as a partnership, or 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 an alternate distribution method.

(g)(1) A holder may use the Arkansas major historic rehabilitation income tax credit to offset up to one hundred percent (100%) of the state income taxes due or premium tax due from the holder.

(2) A holder is not required to have any ownership or other interest in the eligible property for which an Arkansas major historic rehabilitation income tax credit is claimed.

(3) An Arkansas major historic rehabilitation income tax credit may be used up to its total amount by any holder without limitation and is not subject to limits imposed by federal law or regulation on the use of federal rehabilitation tax credits.

(h) An owner or holder that assigns part or all of an Arkansas major historic rehabilitation income tax credit shall perfect the transfer by notifying the Department of Arkansas Heritage and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the department and the appropriate tax collection authority to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused Arkansas major historic rehabilitation income tax credit.

(i)(1) Any consideration received for the transfer of an Arkansas major historic rehabilitation income tax credit shall not be included as income taxable by the State of Arkansas.

(2) Any consideration paid for the transfer of an Arkansas major historic rehabilitation income tax credit shall not be deducted from income taxable by the State of Arkansas.

26-51-2605. Fees.

(a)(1) The Department of Arkansas Heritage may charge a fee to process:

(A) An application for an Arkansas major historic rehabilitation income tax credit; and

(B) A request to record transfers of interests in an Arkansas major historic rehabilitation income tax credit to other holders.

(2) The fee for processing an application for an Arkansas historic rehabilitation income tax credit shall not exceed the lesser of one percent (1%) of the amount of the Arkansas major historic rehabilitation income tax credit applied for or seventy-five hundredths percent (0.75%) of the amount of the Arkansas major historic rehabilitation income tax credit transferred.

(b) A fee collected under this subchapter by the department shall be considered cash funds of the department and shall be used for the administration of this subchapter.

26-51-2606. Rules.

(a) The Department of Arkansas Heritage shall promulgate rules to implement this subchapter that shall include criteria for the prioritizing of the rehabilitation applications and that will stimulate the local economy where the property is located, including without limitation the criteria that the rehabilitation project will be prioritized in the following order:

- (1) Result in the creation of a new business;
- (2) Result in the expansion of an existing business;
- (3) Establish or contribute to the establishment of a tourism attraction as defined by the Department of Parks and Tourism;
- (4) Contribute to the revitalization of a specific business district; or
- (5) Be a key property in the revitalization of a specific neighborhood.

(b) The Department of Arkansas Heritage shall consult with the Department of Finance and Administration, the Arkansas Economic Development Commission, and the State Insurance Department in promulgating rules under this subchapter.

(c) The Department of Parks and Tourism shall promulgate rules to define a "tourism attraction" as provided in subdivision (a)(3) of this section.

26-51-2607. Application period.

(a) The Department of Arkansas Heritage shall accept applications for

Arkansas major historic rehabilitation income tax credits under this subchapter beginning July 1, 2020, and ending June 30, 2025.

(b) An Arkansas major historic rehabilitation income tax credit approved under an application that was submitted on or before June 30, 2025, may be claimed until it is exhausted or it expires.

SECTION 3. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the Department of Arkansas Heritage shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2020; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(b) The department shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rules for approval before January 1, 2020.

/s/A. Davis