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## A BILL FOR AN ACT

RELATING TO TAX CREDIT FOR HISTORIC PRESERVATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that, without providing  
2 economic incentives, historic structures are not viable for the  
3 redevelopment and reuse by modern commercial, residential, or  
4 manufacturing enterprises. The redevelopment and reuse of  
5 historic structures are of critical importance to the State and  
6 will assist in stimulating the reuse and redevelopment of  
7 historic structures and will improve property values, foster  
8 civic beauty, and promote public education, pleasure, and  
9 welfare.

10           The purpose of this Act is to create economic incentives  
11 for the purpose of stimulating the redevelopment and reuse of  
12 the State's historic structures.

13           SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16           "§235-    Historic preservation tax credit.    (a) As used  
17 in this section:



1       "Board" means the Hawaii historic places review board  
2 established under chapter 6E.

3       "Certified historic structure" means a property that is  
4 located in the State and is:

- 5       (1) Listed individually on the National Register of  
6       Historic Places;  
7       (2) Listed individually in the state register of historic  
8       places; or  
9       (3) Located in a registered historic district and  
10       certified by either the board or the Secretary of the  
11       Interior as being of historic significance to the  
12       district.

13       "Certified rehabilitation" means any rehabilitation of a  
14 certified historic structure consistent with the historic  
15 character of the property or the district in which the property  
16 is located as determined by the board.

17       "Exempt from real property tax" means, with respect to any  
18 certified historic structure, that the structure is exempt from  
19 the real property tax.

20       "Holding period" means twenty-four months after the board  
21 issues a certificate of completed work to the owner. In the  
22 case of a rehabilitation that may reasonably be expected to be



1 completed in phases, the term "holding period" shall be extended  
2 to include a period of time beginning on the date of issuance of  
3 a certificate of completed work for the first phase or phases  
4 for which a certificate of completed work is issued and  
5 continuing until the expiration of twenty-four months after the  
6 certificate of completed work is issued for the last phase.

7 "Placed in service" means that substantial rehabilitation  
8 work has been completed that would allow for occupancy of the  
9 entire structure or some identifiable portion of the structure,  
10 or the owner has commenced depreciation of the qualified  
11 rehabilitation expenditures, whichever occurs first.

12 "Principal residence" means the principal residence of the  
13 owner within the meaning of section 121 of the Internal Revenue  
14 Code.

15 "Qualified rehabilitation expenditures" means any amount  
16 expended in the rehabilitation of a certified historic structure  
17 properly capitalized to the building and either:

- 18 (1) Depreciable under the Internal Revenue Code; or  
19 (2) Made with respect to property (other than the  
20 principal residence of the owner) held for sale by the  
21 owner.



1       "Registered historic district" means any district listed in  
2 the National Register of Historic Places or the state register  
3 of historic places.

4       "Substantial rehabilitation" means, with respect to a  
5 certified historic structure, that the qualified rehabilitation  
6 expenses of the building during the twenty-four-month period  
7 selected by the taxpayer ending with or within the taxable year  
8 exceed fifty per cent of the adjusted basis in the building and  
9 its structural components as of the beginning of the period. In  
10 the case of any rehabilitation that may be reasonably expected  
11 to be completed in phases set forth in architectural plans and  
12 specifications completed before the rehabilitation begins, the  
13 above definition shall be applied by substituting "sixty-month  
14 period" for "twenty-four-month period".

15       (b) Every individual or corporate taxpayer who files a net  
16 income tax return for a taxable year may claim a historic  
17 preservation tax credit under this section. The tax credit  
18 shall be deductible from the taxpayer's net income tax return  
19 liability, if any, imposed by this chapter for the taxable year  
20 in which the credit is properly claimed.

21       To qualify for the tax credit, the individual or corporate  
22 taxpayer, whether for profit or nonprofit, shall have incurred



1 qualified rehabilitation expenditures for the substantial  
2 rehabilitation of a certified historic structure; provided that  
3 the rehabilitation meets standards consistent with the standards  
4 of the Secretary of the United States Department of the Interior  
5 for rehabilitation as certified by the board.

6 The tax credit shall be equal to thirty per cent of the  
7 qualified rehabilitation expenditures incurred by the taxpayer.

8 Notwithstanding the foregoing, except in the case of a  
9 nonprofit corporation, there shall be deducted from qualified  
10 rehabilitation expenditures for the purposes of calculating the  
11 tax credit, any funds made available to the person incurring the  
12 qualified rehabilitation expenditures in the form of a direct  
13 grant from a federal, state, or county department or agency.

14 (c) The tax credit shall be allowed for the taxable year  
15 in which a certified historic structure or an identifiable  
16 portion of the structure is placed in service and is  
17 substantially rehabilitated.

18 (d) If the amount of the tax credit exceeds the taxpayers  
19 total tax liability for the year in which the substantially  
20 rehabilitated property is placed in service, the amount that  
21 exceeds the taxpayer's tax liability may be carried forward for



1 credit against the taxes imposed for the succeeding ten years or  
2 until the full credit is exhausted.

3 (e) In the case of a partnership, S corporation, estate,  
4 trust, association of apartment owners of a qualified hotel  
5 facility, time share owners association, or any developer of a  
6 time share project, the tax credit allowable is for the  
7 qualified improvement and renovation costs incurred by the  
8 entity for the taxable year. The cost upon which the tax credit  
9 is computed shall be determined at the entity level.  
10 Distribution and share of credit shall be determined pursuant to  
11 section 235-110.7(a).

12 (f) A taxpayer may assign, transfer, or convey the  
13 credits, in whole or in part, by sale or otherwise to any  
14 individual or entity, including but not limited to condominium  
15 owners in the event the certified historic structure is  
16 converted into condominiums. The assignee of the tax credits  
17 may use acquired credits to offset up to one hundred per cent of  
18 the tax liabilities imposed under this chapter. The assignee  
19 may apply the tax credit against taxes imposed on the assignee  
20 until the end of the tenth calendar year after the year in which  
21 the substantially rehabilitated property is placed in service or  
22 until the full credit assigned is used, whichever occurs first.



1       Fiscal year assignees may claim the credit until the  
2 expiration of the fiscal year that ends within the tenth year  
3 after the year in which the substantially rehabilitated property  
4 is placed in service. The assignor shall perfect the transfer  
5 by notifying the department of taxation in writing within thirty  
6 days following the effective date of the transfer and shall  
7 provide any information as may be required by the department of  
8 taxation to administer this section.

9       For the purposes of this section, any assignment or sales  
10 proceeds received by a taxpayer for its assignment or sale of  
11 the tax credits, allowed pursuant to this subsection, shall be  
12 exempt from any tax otherwise taxable under title 14. If a tax  
13 credit is subsequently recaptured, revoked, or adjusted, the  
14 seller's tax calculation for the year of revocation, recapture,  
15 or adjustment shall be increased by the total amount of the  
16 sales proceeds, without proration, as a modification as provided  
17 by law. In the event that the seller is not a natural person,  
18 the seller's tax calculation for the year of revocation,  
19 recapture, or adjustment shall be increased by including the  
20 total amount of the sales proceeds without proration.

21       (g) Substantial rehabilitation of property that is exempt  
22 from real property tax shall be ineligible for the tax credits



1 authorized under this chapter. In the event a certified  
2 historic structure undergoes a substantial rehabilitation  
3 pursuant to this section and within twenty-four months after  
4 issuance of a certificate of completed work the property becomes  
5 exempt from real property tax, the taxpayer's tax for the year  
6 shall be increased by the total amount of credit actually used  
7 against the tax.

8 (h) In the case of a corporation, the tax credit is only  
9 allowed against the tax of a corporation included in a  
10 consolidated return that qualifies for the tax credit and not  
11 against the tax of other corporations that may join in the  
12 filing of a consolidated tax return.

13 (i) To claim the tax credit under this section, a taxpayer  
14 shall apply to the board:

15 (1) Prior to the certified historic structure being placed  
16 in service for a certification that the certified  
17 historic structure's rehabilitation shall be  
18 consistent with the standards of the Secretary of the  
19 United States Department of the Interior for  
20 rehabilitation; and

21 (2) After completion of the rehabilitation work of the  
22 certified historic structure, for:



1           (A) A certification that the rehabilitation is  
2           consistent with the standards of the Secretary of  
3           the United States Department of the Interior for  
4           rehabilitation; and

5           (B) A certification as to the amount of tax credit  
6           for which the rehabilitation qualifies.

7           The board shall be entitled to rely on the facts  
8           represented in the application without independent investigation  
9           and, with respect to the amount of tax credit for which the  
10           rehabilitation qualifies, upon the certification of a certified  
11           public accountant licensed under chapter 466. The applications  
12           shall be developed by the board and may be amended as necessary.

13           (j) Within ninety days after the board's receipt of the  
14           taxpayer's application requesting certification for the  
15           completed rehabilitation work, the board shall issue the  
16           taxpayer:

17           (1) A written determination either denying or certifying  
18           the rehabilitation; and

19           (2) A certification of the amount of credit for which the  
20           rehabilitation qualifies.



1        To claim the tax credit, the board's certification as to  
2 the amount of the tax credit shall be attached to all state tax  
3 returns on which the credit is claimed.

4        (k) No taxpayer may benefit from the tax credit unless the  
5 owner of the certified historic structure grants a restrictive  
6 covenant to the board, agreeing that during the holding period,  
7 no alterations to the certified historic structure will be made  
8 without the board's approval or in a manner inconsistent with  
9 the standards of the Secretary of the United States Department  
10 of the Interior.

11        (l) The board may establish a schedule of fees for the  
12 review of tax credit applications, but the fees shall not exceed  
13 \$2,000 in total for each project.

14        (m) If information comes to the attention of the board at  
15 any time, up to and including the last day of the holding  
16 period, that is materially inconsistent with representations  
17 made in an application, the board may deny the requested  
18 certification or revoke a certification previously given.

19        (n) The director of taxation, for the purpose of  
20 ascertaining the correctness of any tax credit claimed under  
21 this section, may:



- 1        (1) Examine any books, paper, records, or memoranda
- 2        bearing upon the matters required to be included in
- 3        the return, report, or other statement;
- 4        (2) Require the attendance of the taxpayer, or the
- 5        taxpayer's designee executing the return, report, or
- 6        other statement, or of any officer or employee of any
- 7        taxpayer, or the attendance of any other person;
- 8        (3) Examine the person under oath respecting any matter
- 9        that the director of taxation deems pertinent or
- 10       material in determining the eligibility for tax
- 11       credits claimed; and
- 12       (4) Request information from the board, which the board
- 13       shall provide to the extent not otherwise prohibited
- 14       by law.
- 15       (o) Taxpayers who elect and qualify to claim tax credits
- 16       for the substantial rehabilitation of a certified historic
- 17       structure pursuant to this section are ineligible for any tax
- 18       credits that may also be available to the taxpayer for the
- 19       substantial rehabilitation of that particular certified historic
- 20       structure under title 14.
- 21       (p) The department of taxation and the Hawaii historic
- 22       places review board may adopt rules pursuant to chapter 91 to



1 effectuate this section. The department of taxation shall  
2 prepare forms as may be necessary to claim a tax credit under  
3 this section."

4 SECTION 3. Section 6E-5.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) The review board shall:

7 (1) Order and enter historic properties into the Hawaii  
8 register of historic places on the basis of their  
9 value to Hawaii's heritage;

10 (2) Evaluate and, when appropriate, recommend the  
11 nomination of historic properties to the national  
12 register of historic places;

13 (3) Review the state survey of historic properties  
14 undertaken in accordance with this chapter;

15 (4) Review the content of the state historic preservation  
16 plan developed in accordance with this chapter;

17 (5) Elect a chairperson and a vice-chairperson and adopt  
18 such rules as are necessary for the purposes of this  
19 section;

20 (6) Maintain the Hawaii register of historic places,  
21 including all those listed on the national register of  
22 historic places, and a program of notification and



1 publication regarding properties on the registers[-];  
 2 and  
 3 (7) Administer the historic preservation tax credit to the  
 4 extent required under section 235- ."

5 SECTION 4. Statutory material to be repealed is bracketed  
 6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval;  
 8 provided that section 2 shall apply to taxable years beginning  
 9 after December 31, 2006.

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**Report Title:**

Tax Credit; Historic Preservation

**Description:**

Provides a tax credit for improvements to historic preservation properties.

