

# HB3025



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3025

by Rep. Jehan Gordon-Booth

#### SYNOPSIS AS INTRODUCED:

New Act  
35 ILCS 5/229 new

Creates the School Building Rehabilitation Tax Credit Act. Creates an income tax credit equal to 25% of the qualified expenditures incurred by a qualified taxpayer undertaking a qualified rehabilitation plan of a vacant school building. Provides that, to be eligible for the credit, the taxpayer must apply with the Department of Revenue. Provides that the credit is subject to certain limitations. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB101 04951 HLH 49960 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the School  
5 Building Rehabilitation Tax Credit Act.

6 Section 5. Definitions. As used in this Act, unless the  
7 context clearly indicates otherwise:

8 "Department" means the Department of Revenue.

9 "Phased rehabilitation" means a project that is completed  
10 in phases.

11 "Placed in service" means the date when the property is  
12 placed in a condition or state of readiness and availability  
13 for a specifically assigned function.

14 "Qualified expenditures" means all the costs and expenses  
15 for construction materials used to repurpose a qualified school  
16 building.

17 "Qualified school building" means a vacant school building  
18 located in Illinois.

19 "Qualified rehabilitation plan" means a project involving  
20 a qualified school building that is approved by the Department.

21 "Qualified taxpayer" means the owner of the qualified  
22 school building.

23 "Recapture event" means any of the following events

1 occurring during the recapture period:

2 (1) failure to place in service the rehabilitated  
3 portions of the qualified school building, or failure to  
4 maintain the rehabilitated portions of the qualified  
5 school building in service after they are placed in  
6 service; provided that a recapture event under this  
7 paragraph (1) shall not include a removal from service for  
8 a reasonable period of time to conduct maintenance and  
9 repairs that are reasonably necessary to protect the health  
10 and safety of the public or to protect the structural  
11 integrity of the qualified school building or a neighboring  
12 structure;

13 (2) demolition or other alteration of the qualified  
14 school building in a manner that is inconsistent with the  
15 qualified rehabilitation plan;

16 (3) disposition of the rehabilitated qualified school  
17 building in whole or a proportional disposition of a  
18 partnership interest therein, except as otherwise  
19 permitted by this Section; or

20 (4) use of the qualified school building in a manner  
21 that is inconsistent with the qualified rehabilitation  
22 plan or that is otherwise inconsistent with the provisions  
23 and intent of this Section.

24 A recapture event occurring in one taxable year shall be  
25 deemed continuing to subsequent taxable years unless and until  
26 corrected.

1           The following dispositions of a qualified school building  
2 shall not be deemed to be a recapture event for purposes of  
3 this Section:

4           (1) a transfer by reason of death;

5           (2) a transfer between spouses incident to divorce;

6           (3) a sale by and leaseback to an entity that, when the  
7 rehabilitated portions of the qualified school building  
8 are placed in service, will be a lessee of the qualified  
9 school building, but only for so long as the entity  
10 continues to be a lessee; and

11           (4) a mere change in the form of conducting the trade  
12 or business by the owner (or, if applicable, the lessee) of  
13 the qualified school building, so long as the property  
14 interest in such qualified school building is retained in  
15 such trade or business and the owner or lessee retains a  
16 substantial interest in such trade or business.

17           "Recapture period" means the 5-year period beginning on the  
18 date that the qualified school building or rehabilitated  
19 portions of the qualified school building are placed in  
20 service.

21           "Substantial rehabilitation" means that the qualified  
22 expenditures during the 24-month period selected by the  
23 taxpayer at the time and in the manner prescribed by rule and  
24 ending with or within the taxable year exceed the greater of  
25 (i) the adjusted basis of the building and its structural  
26 components or (ii) \$5,000. The adjusted basis of the building

1 and its structural components shall be determined as of the  
2 beginning of the first day of such 24-month period or as of the  
3 beginning of the first day of the holding period of the  
4 building, whichever is later. For purposes of determining the  
5 adjusted basis, the determination of the beginning of the  
6 holding period shall be made without regard to any  
7 reconstruction by the taxpayer in connection with the  
8 rehabilitation. In the case of any phased rehabilitation, with  
9 phases set forth in architectural plans and specifications  
10 completed before the rehabilitation begins, this definition  
11 shall be applied by substituting "60-month period" for  
12 "24-month period" wherever that term occurs in the definition.

13 Section 10. Allowable credit.

14 (a) To the extent authorized by this Act, for taxable years  
15 beginning on or after January 1, 2020 and ending on or before  
16 December 31, 2024, there shall be allowed a tax credit against  
17 the tax imposed by subsections (a) and (b) of Section 201 of  
18 the Illinois Income Tax Act in an aggregate amount equal to 25%  
19 of qualified expenditures incurred by a qualified taxpayer  
20 undertaking a qualified rehabilitation plan of a qualified  
21 school building, provided that the total amount of such  
22 expenditures must (i) equal \$5,000 or more or (ii) exceed the  
23 adjusted basis of the qualified school building on the first  
24 day the qualified rehabilitation plan commenced. If the  
25 qualified rehabilitation plan spans multiple years, the

1 aggregate credit for the entire project shall be allowed in the  
2 last taxable year.

3 (b) To obtain a tax credit pursuant to this Section, the  
4 taxpayer must apply with the Department. The Department shall  
5 determine the amount of eligible rehabilitation expenditures  
6 within 45 days after receipt of a complete application. The  
7 taxpayer must provide to the Department a third-party cost  
8 certification conducted by a certified public accountant  
9 verifying (i) the qualified and non-qualified rehabilitation  
10 expenses and (ii) that the qualified expenditures exceed the  
11 adjusted basis of the qualified school building on the first  
12 day the qualified rehabilitation plan commenced. The  
13 accountant shall provide appropriate review and testing of  
14 invoices. The Department is authorized, but not required, to  
15 accept this third-party cost certification to determine the  
16 amount of qualified expenditures.

17 (c) If the amount of any tax credit awarded under this Act  
18 exceeds the qualified taxpayer's income tax liability for the  
19 year in which the qualified rehabilitation plan was placed in  
20 service, the excess amount may be carried forward for a credit  
21 against the taxpayer's income tax liability in the next  
22 succeeding year or years until the total amount of the credit  
23 has been used, except that a credit may not be carried forward  
24 for deduction after the tenth taxable year after the taxable  
25 year in which the qualified rehabilitation plan was placed in  
26 service. Upon completion and review of the project, the

1 Department shall issue a single certificate in the amount of  
2 the eligible credits equal to 25% of the qualified expenditures  
3 incurred during the eligible taxable years. At the time the  
4 certificate is issued, an issuance fee up to the maximum amount  
5 of 2% of the amount of the credits issued by the certificate  
6 may be collected from the applicant to administer the Act. If  
7 collected, this issuance fee shall be directed to the Tax  
8 Compliance and Administration Fund for use of the Department in  
9 the administration of this program. The taxpayer must attach  
10 the certificate or legal documentation of her or his  
11 proportional share of the certificate to the tax return on  
12 which the credits are to be claimed. The tax credit under this  
13 Section may not reduce the taxpayer's liability to less than  
14 zero. If the amount of the credit exceeds the tax liability for  
15 the year, the excess credit may be carried forward and applied  
16 to the tax liability of the 10 taxable years following the  
17 excess credit year.

18 (d) If the taxpayer is (i) a corporation having an election  
19 in effect under Subchapter S of the federal Internal Revenue  
20 Code, (ii) a partnership, or (iii) a limited liability company,  
21 the credit provided under this Act may be claimed by the  
22 shareholders of the corporation, the partners of the  
23 partnership, or the members of the limited liability company in  
24 the same manner as those shareholders, partners, or members  
25 account for their proportionate shares of the income or losses  
26 of the corporation, partnership, or limited liability company,

1 or as provided in the by-laws or other executed agreement of  
2 the corporation, partnership, or limited liability company.  
3 Credits granted to a partnership, a limited liability company  
4 taxed as a partnership, or other multiple owners of property  
5 shall be passed through to the partners, members, or owners  
6 respectively on a pro rata basis or pursuant to an executed  
7 agreement among the partners, members, or owners documenting  
8 any alternate distribution method.

9 (e) If a recapture event occurs during the recapture period  
10 with respect to a qualified school building, then, for any  
11 taxable year in which the credits are allowed as specified in  
12 this Act, the tax under the applicable Section of this Act  
13 shall be increased by applying the recapture percentage set  
14 forth below to the tax decrease resulting from the application  
15 of credits allowed under this Act to the taxable year in  
16 question.

17 For the purposes of this subsection, the recapture  
18 percentage shall be determined as follows:

19 (1) if the recapture event occurs within the first year  
20 after commencement of the recapture period, then the  
21 recapture percentage is 100%;

22 (2) if the recapture event occurs within the second  
23 year after commencement of the recapture period, then the  
24 recapture percentage is 80%;

25 (3) if the recapture event occurs within the third year  
26 after commencement of the recapture period, then the

1 recapture percentage is 60%;

2 (4) if the recapture event occurs within the fourth  
3 year after commencement of the recapture period, then the  
4 recapture percentage is 40%; and

5 (5) if the recapture event occurs within the fifth year  
6 after commencement of the recapture period, then the  
7 recapture percentage is 20%.

8 In the case of any recapture event, the carryforwards under  
9 this Act shall be adjusted by reason of such event.

10 (d) The Department may adopt rules to implement this  
11 Section in addition to the rules expressly authorized herein.

12 Section 20. Limitations, reporting, and monitoring.

13 (a) The Department shall award not more than an aggregate  
14 of \$15,000,000 in total annual tax credits pursuant to  
15 qualified rehabilitation plans for qualified school building.  
16 The Department shall award not more than \$3,000,000 in tax  
17 credits with regard to a single qualified rehabilitation plan.  
18 In awarding tax credits under this Act, the Department must  
19 prioritize projects that meet one or more of the following:

20 (1) the qualified school building was previously owned  
21 by a federal, State, or local governmental entity;

22 (2) the qualified school building is located in a  
23 census tract that has a median family income at or below  
24 the State median family income; data from the most recent  
25 5-year estimate from the American Community Survey (ACS),

1 published by the U.S. Census Bureau, shall be used to  
2 determine eligibility;

3 (3) the qualified rehabilitation plan includes in the  
4 development partnership a Community Development Entity or  
5 a low-profit (B Corporation) or not-for-profit  
6 organization, as defined by Section 501(c)(3) of the  
7 Internal Revenue Code; or

8 (4) the qualified school building is located in an area  
9 declared under an Emergency Declaration or Major Disaster  
10 Declaration under the federal Robert T. Stafford Disaster  
11 Relief and Emergency Assistance Act.

12 (b) The annual aggregate program allocation of \$15,000,000  
13 set forth in subsection (a) shall be allocated by the  
14 Department, in such proportion as determined by the Department,  
15 on a per calendar basis twice in each year that the program is  
16 in effect, provided that: (i) the amount initially allocated by  
17 the Department for any one calendar application period shall  
18 not exceed 65% of the total allowable amount and (ii) any  
19 portion of the allocated allowable amount remaining unused as  
20 of the end of any of the second calendar application period of  
21 a given calendar year shall be rolled into and added to the  
22 total allocated amount for the next available calendar year.  
23 The qualified rehabilitation plan must meet a readiness test,  
24 as defined in the rules created by the Department, in order for  
25 the Applicant to qualify. Applicants that qualify under this  
26 Act will be placed in a queue based on the date and time the

1 application is received until the application period total  
2 allowable amount is reached. Applicants must reapply for each  
3 application period.

4 (c) On or before December 31, 2020, and on or before  
5 December 31 of each even-numbered year thereafter through 2024,  
6 subject to appropriation and prior to equal disbursement to the  
7 Department, moneys in the Tax Compliance and Administration  
8 Fund attributable to fees under this Act shall be used,  
9 beginning at the end of the first fiscal year after the  
10 effective date of this Act, to hire a qualified third party to  
11 prepare a biennial report to assess the overall effectiveness  
12 of this Act from the qualified rehabilitation projects under  
13 this Act completed in that year and in previous years. Baseline  
14 data of the metrics in the report shall be collected at the  
15 initiation of a qualified rehabilitation project. The overall  
16 economic impact shall include at least:

17 (1) the number of applications, project locations, and  
18 proposed use of qualified historic structures;

19 (2) the amount of credits awarded and the number and  
20 location of projects receiving credit allocations;

21 (3) the status of ongoing projects and projected  
22 qualifying expenditures for ongoing projects;

23 (4) for completed projects, the total amount of  
24 qualifying rehabilitation expenditures and non-qualifying  
25 expenditures, the number of housing units created and the  
26 number of housing units that qualify as affordable, and the

1 total square footage rehabilitated and developed;

2 (5) direct, indirect, and induced economic impacts;

3 (6) temporary, permanent, and construction jobs  
4 created; and

5 (7) sales, income, and property tax generation before  
6 construction, during construction, and after completion.

7 The report to the General Assembly shall be filed with the  
8 Clerk of the House of Representatives and the Secretary of the  
9 Senate in electronic form only, in the manner that the Clerk  
10 and the Secretary shall direct.

11 (d) Any time prior to issuance of a tax credit certificate,  
12 the Director of the Department, the State Historic Preservation  
13 Officer, or staff of the Department may, upon reasonable notice  
14 to the project owner of not less than 3 business days, conduct  
15 a site visit to the project to inspect and evaluate the  
16 project.

17 (e) Any time prior to the issuance of a tax credit  
18 certificate and for a period of 4 years following the effective  
19 date of a project tax credit certificate, the Director may,  
20 upon reasonable notice of not less than 30 calendar days,  
21 request a status report from the Applicant consisting of  
22 information and updates relevant to the status of the project.  
23 Status reports shall not be requested more than twice yearly.

24 (f) In order to demonstrate sufficient evidence of  
25 reviewable progress within 12 months after the date the  
26 Applicant received notification of approval from the

1 Department, the Applicant shall provide all of the following:

2 (1) a viable financial plan which demonstrates by way  
3 of an executed agreement that all financing has been  
4 secured for the project; such financing shall include, but  
5 not be limited to, equity investment as demonstrated by  
6 letters of commitment from the owner of the property,  
7 investment partners, and equity investors; and

8 (2) final construction drawings or approved building  
9 permits that demonstrate the complete rehabilitation of  
10 the full scope of the application.

11 The Director shall review the submitted evidence and may  
12 request additional documentation from the Applicant if  
13 necessary. The Applicant will have 30 calendar days to provide  
14 the information requested, otherwise the approval may be  
15 rescinded at the discretion of the Director.

16 (g) In order to demonstrate sufficient evidence of  
17 reviewable progress within 18 months after the date the  
18 application received notification of approval from the  
19 Department, the Applicant is required to provide detailed  
20 evidence that the Applicant has secured and closed on financing  
21 for the complete scope of rehabilitation for the project. To  
22 demonstrate evidence that the Applicant has secured and closed  
23 on financing, the Applicant will need to provide signed and  
24 processed loan agreements, bank financing documents or other  
25 legal and contractual evidence to demonstrate that adequate  
26 financing is available to complete the project. The Director

1 shall review the submitted evidence and may request additional  
2 documentation from the Applicant if necessary. The Applicant  
3 will have 30 calendar days to provide the information  
4 requested, otherwise the approval may be rescinded at the  
5 discretion of the Director.

6 If the Applicant fails to document reviewable progress  
7 within 18 months of approval, the Director may notify the  
8 Applicant that the application is rescinded. However, should  
9 financing and construction be imminent, the Director may elect  
10 to grant the Applicant no more than 5 months to close on  
11 financing and commence construction. If the Applicant fails to  
12 meet these conditions in the required timeframe, the Director  
13 shall notify the Applicant that the application is rescinded.  
14 Any such rescinded allocation shall be added to the aggregate  
15 amount of credits available for allocation for the year in  
16 which the forfeiture occurred.

17 The amount of the qualified expenditures identified in the  
18 Applicant's certification of completion and reflected on the  
19 certificate issued by the Department is subject to inspection,  
20 examination, and audit.

21 The Applicant shall establish and maintain for a period of  
22 4 years following the effective date on a project tax credit  
23 certificate such records as required by the Department.

24 Section 25. Powers. The Department shall adopt rules for  
25 the administration of this Act.

1           Section 60. The Illinois Income Tax Act is amended by  
2 adding Section 229 as follows:

3           (35 ILCS 5/229 new)

4           Sec. 229. School Building Rehabilitation Tax Credit. For  
5 taxable years beginning on or after January 1, 2020 and ending  
6 on or before December 31, 2024, each taxpayer that is awarded a  
7 credit under the School Building Rehabilitation Tax Credit Act  
8 is entitled to a credit as provided in that Act.

9           Section 99. Effective date. This Act takes effect upon  
10 becoming law.