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FIRST REPRINT

A.B. 178

ASSEMBLY BILL NO. 178—ASSEMBLYMEN SWANK; BILBRAY-
AXELROD, CARLTON, COHEN, DALY, ELLISON, FLORES,
HANSEN, KRAMER, MCCURDY, PETERS, ROBERTS,
SPIEGEL, TORRES, WATTS AND YEAGER

FEBRUARY 18, 2019

Referred to Committee on Taxation

SUMMARY—Provides for transferable tax credits for the
rehabilitation of historic buildings. (BDR 32-297)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing the Department of
Taxation to approve and issue a certificate of transferable
tax credits to a person who rehabilitates a historic
building in this State under certain circumstances;
providing for the calculation of the amount of the
transferable tax credits; requiring the Department to
provide notice of certain hearings concerning an
application for transferable tax credits; requiring a person
who rehabilitates a historic building to return any portion
of transferable tax credits to which he or she is not
entitled; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

Section 7 of this bill authorizes a person who undertakes the rehabilitation of a
qualified historic building to apply to the Department of Taxation for a certificate
of transferable tax credits. Under **section 5** of this bill, a building is a “qualified
historic building” if the building is: (1) at least 50 years of age; (2) nonresidential
real property as defined in certain federal laws authorizing tax credits for the
rehabilitation of historic buildings; and (3) is listed or located in a historic district
that is listed in the National Register of Historic Places, the State Register of
Historic Places or certain local historic districts. **Section 7** requires the Department
to approve an application for transferable tax credits for the rehabilitation of a
historic building if, in addition to certain other requirements, the applicant incurred
certain eligible costs and expenses of at least \$20,000 in connection with the
rehabilitation of the building and the Office of Historic Preservation of the State



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Department of Conservation and Natural Resources determines that the building is a qualified historic building and certifies that the rehabilitation of the building satisfies the standards for the rehabilitation of historic buildings set forth in certain federal regulations. **Section 7** also provides that an applicant is not eligible for additional transferable tax credits if the applicant has been issued two or more certificates of transferable tax credits during the 2 years before the person's application. Under **section 7**, the transferable tax credits may be applied to the modified business tax, gaming license fee or the insurance premium tax, or any combination thereof.

Sections 8 and 9 of this bill provide for the calculation of the amount of transferable tax credits and duration for which such transferable tax credits are valid. Under **section 8**, the amount of transferable tax credits issued to an applicant must usually be equal to 20 percent of the eligible costs and expenses incurred by the applicant for the rehabilitation, but this must increase to 25 percent for the rehabilitation of an historic building that is part of certain state or federal programs or 30 percent if the rehabilitated building provides affordable housing. In any event, the tax credits must not exceed \$1 million per qualified rehabilitation. **Section 8** also provides that the Department may not approve more than \$10 million in new transferable tax credits each year. **Section 9** provides that the transferable tax credits expire 5 years after the date on which the credits are issued.

Section 10 of this bill requires the Department to meet certain notice requirements before holding a hearing to approve or disapprove an application for transferable tax credits. **Section 11** of this bill requires an applicant to repay any portion of transferable tax credits to which the applicant is not entitled if the applicant becomes ineligible for the tax credits after receiving the tax credits.

Sections 2, 3, 4, 6 and 12 of this bill make conforming changes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *As used in sections 2 to 12, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. 1. *"Eligible costs and expenses" means any amount properly chargeable to the capital account of a qualified historic building in connection with a qualified rehabilitation.*

2. *The term does not include:*

(a) The costs of acquiring any building or interest therein; or

(b) Any expenditures attributable to the enlargement of an existing building.

Sec. 4. *"Office" means the Office of Historic Preservation of the State Department of Conservation and Natural Resources.*

Sec. 5. *"Qualified historic building" means a building in this State that:*

1. *Is at least 50 years of age;*



2. Is nonresidential real property as defined in 26 U.S.C. § 168(e)(2)(B); and

3. Is:

(a) Listed individually in the National Register of Historic Places pursuant to 54 U.S.C. § 302102;

(b) Listed individually in the State Register of Historic Places pursuant to NRS 383.085;

(c) Located in an historic district listed in the National Register of Historic Places and certified by the Secretary of the Interior as contributing to the historic significance of the district pursuant to 36 C.F.R. § 67.5;

(d) Located in an historic district listed in the State Register of Historic Places pursuant to NRS 383.085 and is certified by the Office as contributing to the historic character of the district; or

(e) Listed individually or as part of a local historic district established pursuant to NRS 384.005 by a local government certified pursuant to 54 U.S.C. § 302502.

Sec. 6. “Qualified rehabilitation” means the rehabilitation of a qualified historic building that the Office has certified as meeting the standards for rehabilitation as defined in 36 C.F.R. § 67.7.

Sec. 7. 1. A person who undertakes a qualified rehabilitation may apply to the Department for a certificate of eligibility for transferable tax credits for any eligible costs and expenses. The transferable tax credits may be applied to:

(a) Any tax imposed by chapter 363A or 363B of NRS;

(b) The gaming license fees imposed by the provisions of NRS 463.370;

(c) Any tax imposed pursuant to chapter 680B of NRS; or

(d) Any combination of the fees and taxes described in paragraphs (a), (b) and (c).

2. Upon receipt of an application for a certificate of eligibility for transferable tax credits pursuant to this section, the Department shall forward the application to the Office, which shall determine whether the building for which the applicant will undertake a qualified rehabilitation is a qualified historic building. The Office shall notify the Department of its determination. If the Office determines that the building for which the applicant will undertake a qualified rehabilitation is a qualified historic building, the Department shall:

(a) Approve the application for a certificate of eligibility for transferable tax credits if the Department finds that the person undertaking the qualified rehabilitation qualifies for the transferable tax credits pursuant to subsection 3; and



(b) Calculate the estimated amount of the transferable tax credits pursuant to section 8 of this act.

3. To be eligible for transferable tax credits pursuant to this section, a person must:

(a) Submit an application that meets the requirements of subsection 4;

(b) Provide proof satisfactory to the Office that the rehabilitation of the qualified historic building is a qualified rehabilitation;

(c) Provide proof satisfactory to the Department that the applicant has incurred eligible costs and expenses of \$20,000 or more in undertaking the qualified rehabilitation;

(d) Not later than 90 days after the date on which the qualified historic building was first placed in service after the qualified rehabilitation, provide the Department with:

(1) A certificate issued by the Office that the rehabilitation of the qualified historic building is a qualified rehabilitation; and

(2) An itemized report of eligible costs and expenses incurred by the applicant and documentation to establish the amount of the eligible costs and expenses incurred by the applicant;

(e) Not have been issued two or more certificates of transferable tax credits during the 2 years immediately preceding the date of the person's application; and

(f) Meet any other requirements prescribed by regulation pursuant to this section.

4. An application submitted pursuant to subsection 3 must contain:

(a) The name of the applicant;

(b) A description of the qualified historic building for which the applicant will undertake a qualified rehabilitation;

(c) A summary of the budgeted expenditures for the qualified rehabilitation;

(d) A summary of the eligible costs and expenses; and

(e) Any other information required by regulations adopted pursuant to subsections 8 and 9.

5. If the Department approves an application for a certificate of eligibility for transferable tax credits pursuant to this section, the Department shall immediately forward a copy of the certificate of eligibility which identifies the estimated amount of the tax credits available pursuant to section 8 of this act, to:

(a) The applicant; and

(b) The Nevada Gaming Control Board.

6. Within 60 business days after receipt of the certification and the report and documentation provided pursuant to paragraph



(d) of subsection 3 and any other accountings or other information required by the Department, the Department shall make a final determination of whether a certificate of transferable tax credits will be issued. If the Department determines that all other requirements for the transferable tax credits have been met, the Department shall notify the applicant that the transferable tax credits will be issued. Within 30 days after the receipt of the notice, the applicant shall make an irrevocable declaration of the amount of transferable tax credits that will be applied to each fee or tax set forth in subsection 1, thereby accounting for all of the credits which will be issued. Upon receipt of the declaration, the Department shall issue to the applicant a certificate of transferable tax credits in the amount approved by the Department for the fees or taxes included in the declaration of the applicant. The applicant shall notify the Department upon transferring any of the transferable tax credits. The Department shall notify the Nevada Gaming Control Board of all transferable tax credits issued, segregated by each fee or tax set forth in subsection 1, the amount of any transferable tax credits transferred and the person or entity to whom the tax credits were transferred.

7. An applicant for transferable tax credits pursuant to this section shall, upon request of:

(a) The Administrator of the Office, furnish the Administrator with copies of all records necessary to verify that the building for which the applicant will undertake a qualified rehabilitation is a qualified historic building and the rehabilitation of the qualified historic building is a qualified rehabilitation; and

(b) The Department, furnish the Department with copies of all records necessary to verify that the applicant meets the requirements of subsection 3.

8. The Office:

(a) Shall adopt regulations prescribing any information that must be provided to the Office to enable the Office to determine whether the building for which the applicant will undertake a qualified rehabilitation is a qualified historic building and the rehabilitation of the qualified historic building is a qualified rehabilitation; and

(b) May adopt any other regulations that are necessary to carry out the provisions of sections 2 to 12, inclusive, of this act.

9. The Nevada Tax Commission:

(a) Shall adopt regulations prescribing:

(1) Any additional requirements to receive transferable tax credits;

(2) Any additional information that must be included with an application;



(3) *The application review process; and*
(4) *The requirements for notice pursuant to section 10 of this act; and*

(b) *May adopt any other regulations that are necessary to carry out the provisions of sections 2 to 12, inclusive, of this act.*

10. *The Nevada Tax Commission and the Nevada Gaming Commission:*

(a) *Shall adopt regulations prescribing the manner in which the transferable tax credits will be administered.*

(b) *May adopt any other regulations that are necessary to carry out the provisions of sections 2 to 12, inclusive, of this act.*

Sec. 8. 1. *Except as otherwise provided in this section and section 9 of this act, the amount of transferable tax credits issued to a person who applies for a transferable tax credit pursuant to section 7 of this act must equal 20 percent of the eligible costs and expenses incurred by the person for a qualified rehabilitation but must not exceed \$1,000,000 per qualified rehabilitation.*

2. *Except as otherwise provided in this section and section 9 of this act, the amount of transferable tax credits issued to a person who applies for a transferable tax credit pursuant to section 7 of this act and who undertakes a qualified rehabilitation of a qualified historic building that provides affordable housing must equal 30 percent of the eligible costs and expenses incurred by the person for a qualified rehabilitation but must not exceed \$1,000,000 per qualified rehabilitation.*

3. *Except as otherwise provided in this section and section 9 of this act, the amount of transferable tax credits issued to a person who applies for a transferrable tax credit pursuant to section 7 of this act and who undertakes a qualified rehabilitation of a qualified historic building that is part of a local Main Street program designated by the Nevada Main Street Program pursuant to NRS 231.1534 or is part of a community which is recognized as a Certified Local Government pursuant to the Certified Local Government Program jointly administered by the National Park Service and the Office of Historic Preservation of the State Department of Conservation and Natural Resources must equal 25 percent of the eligible costs and expenses incurred by the person for a qualified rehabilitation but must not exceed \$1,000,000 per qualified rehabilitation.*

4. *The Department shall not approve any application for transferrable tax credits submitted pursuant to section 7 of this act if approval of the application would cause the total amount of transferable tax credits approved pursuant to section 7 of this act for each fiscal year to exceed the sum of \$10,000,000. Any portion of the \$10,000,000 per fiscal year for which transferable tax*



1 *credits have not previously been approved may be carried forward*
2 *and made available for approval during the next or any future*
3 *fiscal year, in addition to the \$10,000,000 for that fiscal year.*

4 *5. The Department may:*

5 *(a) Reduce the cumulative amount of transferable tax credits*
6 *that are calculated pursuant to this section by an amount equal to*
7 *any damages incurred by the State or any political subdivision of*
8 *the State as a result of the qualified rehabilitation; or*

9 *(b) Withhold the transferable tax credits, in whole or in part,*
10 *until any pending legal action in this State against the applicant or*
11 *involving the qualified rehabilitation is resolved.*

12 *Sec. 9. The transferable tax credits issued to any applicant*
13 *for a qualified rehabilitation pursuant to section 7 of this act*
14 *expire 5 years after the date on which the transferable tax credits*
15 *are issued.*

16 *Sec. 10. 1. If the Department receives an application for*
17 *transferable tax credits pursuant to section 7 of this act, the*
18 *Department shall, not later than 10 days before a hearing on the*
19 *application, provide notice of the hearing to:*

20 *(a) The applicant;*

21 *(b) The Office; and*

22 *(c) The Nevada Gaming Control Board.*

23 *2. The notice required by this section must set forth the date,*
24 *time and location of the hearing on the application. The date of*
25 *the hearing must be not later than 60 days after the Department*
26 *receives the completed application.*

27 *3. The Department shall issue a decision on the application*
28 *not later than 30 days after the conclusion of the hearing on the*
29 *application.*

30 *4. Except as otherwise provided in this subsection, if the*
31 *application is approved, the qualified rehabilitation must begin not*
32 *more than 90 days after the date on which the decision on the*
33 *application is issued. The Department may extend by not more*
34 *than 90 days the period otherwise prescribed by this subsection.*

35 *5. An applicant that undertakes a qualified rehabilitation*
36 *shall submit the report and documentation required by section 7 of*
37 *this act and all other required information to the Office or the*
38 *Department, as applicable, within the time required by paragraph*
39 *(d) of subsection 3 of section 7 of this act. If the Office or the*
40 *Department determines that information submitted pursuant to*
41 *this subsection is incomplete, the applicant shall, not later than 30*
42 *days after receiving notice that the information is incomplete,*
43 *provide to the Office or the Department, as applicable, all*
44 *additional information required by the Office or the Department.*



6. *The Department shall give priority to the approval and processing of an application relating to a qualified rehabilitation that promotes tourism in the State of Nevada.*

Sec. 11. *1. A person who applied for a transferable tax credit pursuant to section 7 of this act who is found to have submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits or who otherwise becomes ineligible for transferable tax credits after receiving the transferable tax credits pursuant to section 7 of this act shall repay to the Department or the Nevada Gaming Control Board, as applicable, any portion of the transferable tax credits to which the applicant is not entitled.*

2. Transferable tax credits purchased in good faith are not subject to forfeiture or repayment by the transferee unless the transferee submitted fraudulent information in connection with the purchase.

Sec. 12. *The Department shall, on or before October 1 of each year, prepare and submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature an annual report which includes, for the immediately preceding fiscal year:*

1. The number of applications submitted for transferable tax credits pursuant to section 7 of this act;

2. The number of qualified rehabilitations for which transferable tax credits were approved;

3. The amount of transferable tax credits approved;

4. The amount of transferable tax credits used;

5. The amount of transferable tax credits transferred and the person or entity to whom the tax credits were transferred;

6. The amount of transferable tax credits taken against each allowable fee or tax, including the actual amount used and outstanding, in total and for each qualified rehabilitation;

7. The total amount of the eligible costs and expenses incurred by each qualified rehabilitation;

8. The number of persons in Nevada employed by each qualified rehabilitation and the amount of wages paid to those persons; and

9. The period during which each qualified rehabilitation employed persons in Nevada.

Sec. 13. *The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act that adds or revises a requirement to submit a report to the Legislature.*

Sec. 14. *This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other*



- 1 preparatory administrative tasks that are necessary to carry out the
- 2 provisions of this act and on July 1, 2019, for all other purposes.

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