

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 389

By Senators Smith (Mr. President) and Woelfel

[By Request of the Executive]

[Introduced January 15, 2026; referred
to the Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, §11-13NN-7, §11-13NN-8, §11-13NN-9, §11-13NN-10, §11-13NN-11, §11-13NN-12, §11-13NN-13, and §11-13NN-14, and to amend the code by adding two new sections, designated §11-21-8i and §11-24-23h, all relating to the West Virginia Historic Rehabilitated Building Tax Credit Act; providing a sunset on the current rehabilitation credits; creating a centralized article providing for historic rehabilitation credits; providing legislative findings; defining terms; setting forth procedures to claim the credit; providing for recapture of the credit; defining crimes and penalties; setting out the effective date; and providing for severability of any invalid provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. THE WEST VIRGINIA HISTORIC REHABILITATED BUILDING TAX

CREDIT

ACT.

§11-13NN-1. Legislative findings and purpose.

The legislature hereby finds that there is inherent historical, cultural and artistic value in the rehabilitation of historic buildings for the use and enjoyment of this and future generations; to further these aims, an income tax credit to encourage rehabilitation of historic buildings is herein created. The legislature further finds that by reorganizing and clarifying the credit's requirements, taxpayers will be able to utilize, and the state will be able to administer, this credit in a more efficient and effective manner.

§11-13NN-2. Establishment of the West Virginia historic rehabilitated building tax credit;

amount

of

credit.

The West Virginia Historic rehabilitated building tax credit can be claimed against the taxes imposed in §11-21-1 et seq. or §11-24-1 et seq. of this code and is allowed as follows:

(a) Certified historic structures. — For certified historic structures, the credit is equal to 25

4 percent of qualified rehabilitation expenditures. This credit is available for both residential and
5 nonresidential buildings located in this state, that are reviewed by the West Virginia Department of
6 Tourism and designated by the National Park Service, United States Department of the Interior as
7 "certified historic structures," and further defined as a "qualified rehabilitated building," as defined
8 under 26 U.S.C. § 47(c)(1).

9 (b) *Residential certified historic structures.* -- The credit is equal to 25 percent of eligible
10 rehabilitation expenses in the rehabilitation of a certified historic structure. The credit is available
11 for residential certified historic structures located in this state that are reviewed by the West
12 Virginia Department of Tourism and are determined to be listed on the national register of historic
13 places either individually or as a contributing building within a historical district that is listed on the
14 national register of historic places.

§11-13NN-3.**Definitions.**

1 (a) "Certified historic structure" means any building located in this state that is listed
2 individually in the national register of historic places or located in a registered historic district,
3 reviewed by the West Virginia Department of Tourism and certified by the National Park Service as
4 being of historic significance to the district.

5 (b) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is
6 reviewed by the West Virginia Department of Tourism and certified by the National Park Service as
7 being consistent with the historic character of the property and, where applicable, the district in
8 which it is located.

9 (c) "Eligible rehabilitation expenses" means expenses incurred in the material
10 rehabilitation of a certified historic structure and added to the property's basis for income tax
11 purposes.

12 (d) "Historic district" means any district that is listed in the national register of historic
13 places or designated under a state or local statute which has been certified as containing criteria
14 which will substantially achieve the purpose of preserving and rehabilitating buildings of

significance to the district and which is certified as substantially meeting all of the requirements for listing of districts in the national register of historic places.

(e) "Historic preservation application" means application forms published by the National Park Service, United States Department of the Interior, Parts 1, 2 and 3, Form No. 1-168, or its successor, or comparable application forms prepared by the Department of Tourism.

(f) "Material rehabilitation" means improvements, repairs, alterations or additions consistent with the "secretary of the interior's standards" for rehabilitation, the actual cost of which amounts to at least 20 percent of the assessed value of a certified historic structure for ad valorem real estate tax purposes for the year before such rehabilitation expenses were incurred, exclusive of the assessed value of the land.

(g) "Qualified rehabilitation expenditures" shall have the same meaning as defined in 26 U.S.C. § 47(c)(2).

(h) "Qualified rehabilitated building," shall have the same meaning as defined in 26 U.S.C. § 47(c)(1).

(i) "Residential certified historic structure" means any certified historic structure that is:

(A) Classified as Class II property for levy purposes pursuant to §11-8-5 of this code for the year in which the rehabilitation expenses are incurred; or

(B) Not classified as Class II property for levy purposes for the year in which the rehabilitation expenses are incurred but will satisfy the requirements for classification as Class II for real property assessment purposes pursuant to §11-8-5 of this code as of July 1, of the year following the year in which the rehabilitation expenses are incurred.

(j) "Secretary of the Interior's Standards" means standards and guidelines adopted and published by the National Park Service, United States department of the interior, for rehabilitation of historic properties.

(k) "State Historic Preservation Officer" means the state official designated by the Governor pursuant to provisions in the National Historic Preservation Act of 1966, as amended

and further defined in §29-1-8 of this code.

(l) "Substantial rehabilitation" shall have the same meaning as defined in 26 U.S.C. § 47(c)(2).

§11-13NN-4. Additional requirements to earn and maintain the West Virginia historic rehabilitated building tax credit.

(a) *Threshold for claiming the credit* – In order for a taxpayer to begin claiming the credit created in this article, except for phased rehabilitation projects, all construction as included on Part 2 – Description of Rehabilitation, must be completed, whether or not the project has been placed into service; a project is deemed complete the date that the Part 3 – Request for Certification of Completed Work, including all amendments, is successfully submitted to the State Historic Preservation Officer. In cases of phased rehabilitation, the credit can be claimed in accordance with the provisions of §11-13NN-6 of this code.

(b) *Good standing requirements* -- No taxpayer is entitled to the West Virginia historic rehabilitated building tax credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the State Tax Commissioner, the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed.

(c) *Relationship to federal credit* – In order to qualify for the West Virginia historic rehabilitation building tax credit, the taxpayer must demonstrate that a federal historic rehabilitated building income tax credit was potentially earned, whether it was claimed, based upon the same project and expenditures.

§11-13NN-5. Procedure to earn and claim the West Virginia historic rehabilitated building tax credit.

(a) Application procedures to earn entitlement to the West Virginia historic rehabilitated

2 building tax credit as set forth in §11-13NN-2(a) are as follows:

3 (1) The application procedures for West Virginia historic rehabilitated building tax credit for
4 certified historic structures shall be the same or substantially similar to those required under
5 provisions of Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of
6 Federal Regulations, Part 1. Successful completion of a historic preservation certification
7 application shall automatically qualify the applicant to be considered for tax credits under this
8 article.

9 (2) Successful certification by the National Park Service of a rehabilitation of a building that
10 results in such building being a "qualified rehabilitated building" within the meaning of 26 U.S.C.
11 §47(c)(1), and amendments thereto, shall automatically qualify the applicant for tax credits under
12 this article. The State Historic Preservation Officer's role in the application procedure shall be
13 identical to that in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of
14 Federal Regulations, Part 1.

15 (3) The historic preservation certification application, Part 2 – Description of Rehabilitation,
16 shall be reviewed by the State Historic Preservation Officer and submitted to the National Park
17 Service for full review within 30 days of receipt. At the time the historic preservation certification
18 application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the
19 State Historic Preservation Officer shall send a request for the fee prescribed in subsection (c) of
20 this section to the property owner.

21 (4) The State Historic Preservation Officer shall issue tax credit certificates for
22 rehabilitation projects that the National Park Service has determined have met the Secretary of the
23 Interior standards for rehabilitation based on the issuance of an approved historic preservation
24 certification application, Part 3 – Request for Certification of Completed Work, including
25 amendments, or a Phase Advisory Determination. The credit cannot be claimed prior to receipt of
26 the Part 3 certification; however, the effective date of the credit shall be the date the Part 3 –
27 Request for Certification of Completed Work, including all amendments, was successfully

submitted to the State Historic Preservation Officer.

(b) Application procedures to earn entitlement to the West Virginia historic rehabilitated building tax credit as set forth in §11-13NN-2(b) of this code are as follows —

(1) The West Virginia Historic Rehabilitated Building Tax Credit for residential historic structures is available for residential certified historic structures located in this state that are reviewed by the State Historic Preservation Officer and are determined to be listed on the national register of historic places either individually or as a contributing building within a historical district that is listed on the national register of historic places.

(2) Any claim for the West Virginia Historic Rehabilitated Building Tax Credit for residential historic structures shall be accompanied by a tax credit certificate issued by the State Historic Preservation Officer.

(3) The State Historic Preservation Officer shall prescribe and publish a form and instructions for an application for issuance of the tax credits authorized by §11-13NN-2(b) of this code.

(c)(1) *Application fee.* - Each application for tax credits pursuant to §11-13NN-2(a) of this code shall require a fee payable to the State Historic Preservation Officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application or (2) \$10,000.

(2) Fees collected under this subsection shall be deposited into a special revenue account established in §11-24-23a(e) of this code, which is hereby continued. The fund shall be administered by the State Historic Preservation Officer and expended for the purposes of administering the provisions of §11-13NN-1 *et seq.* of this code.

(d) *Standards.* -- All standards including the secretary of the interior standards and provisions in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1, that apply to tax credits available from the United States government shall apply to this article as well, provided that the property eligible for the tax credit under §11-13NN-2(b) of this code may not be income producing property or property for which depreciation is

54 allowed under 26 U.S.C. § 168.

55 (e) Subject to the carry forward and carry back provisions set forth in §11-13NN-8 of this
56 code, the credit authorized in §11-13NN-2(a), for investment in a certified historic structure made
57 by a taxpayer in any taxable year shall be allowed against the tax imposed by §11-21-1 et seq. or
58 11-24-1 et seq. of this code, in the applicable taxable year.

§11-13NN-6. Phased rehabilitation.

1 (a) Phased rehabilitations are authorized for any rehabilitation completed pursuant to §11-
2 13NN-2(a) of this code. For certified rehabilitations that may reasonably be expected to be
3 completed in phases set forth in a plan of rehabilitation that must be submitted contemporaneously
4 with the Description of Rehabilitation, which may be amended by the applicant, the State Historic
5 Preservation Officer shall permit phased rehabilitations.

6 (1) A rehabilitation may reasonably be expected to be completed in phases if it consists of
7 two or more distinct stages of development. A phased rehabilitation plan shall be consistent with
8 phasing guidance issued by the National Park Service.

9 (2) The State Historic Preservation Officer may review each phase as it is presented, but a
10 phased rehabilitation cannot be designated as a certified rehabilitation until all of the phases are
11 completed.

12 (b) The owner may elect to claim the credit allowable for each completed phase of a
13 phased rehabilitation upon receipt from the State Historic Preservation Officer of a written tax
14 credit certificate, for each phase of the phased rehabilitation. Written tax credit certificates for
15 completed phases of a phased rehabilitation shall be issued when the substantial rehabilitation
16 test has been satisfied with respect to the completed phase and the completed phase has been
17 placed into service, consistent with phase advisory guidance issued by the National Park Service.

18 (c) Any claims of a tax credit associated with a completed phase of a phased rehabilitation
19 are contingent upon final certification of the completed project. Tax credits claimed by a taxpayer,
20 including, but not limited to, the applicant or a third-party transferee of the tax credit, as applicable,

21 associated with a completed phase of a phased rehabilitation are subject to recapture by the State
22 Tax Commissioner pursuant to §11-13NN-9 of this code if an applicant for tax credits fails to submit
23 an approved historic preservation certification application, Part 3 – Request for Certification of
24 Completed Work, with amendments, for the rehabilitation within 60 months of the date of the
25 advisory determination by the National Park Service that such phase has been completed in
26 accordance with the Secretary of the Interior standards for rehabilitation.

§11-13NN-7. Transfer and allocation of credit; bond requirement.

1 (a) *Transfer.* -- Any person or entity eligible for credit under this article may transfer, sell or
2 assign any unused credits. Any person or entity that transfers, sells or assigns any unused portion
3 of a tax credit shall obtain a certificate of approval from the State Tax Commissioner to transfer,
4 sell or assign the stated amount of unused tax credit.

5 (1) A credit becomes eligible for transfer after completion of construction, as defined in
6 §11-13NN-4(a) of this code, except in cases of phased rehabilitation in accordance with §11-
7 13NN-6 of this code.

8 (2) Any transferee, purchaser or assignee of tax credits under this section may use the
9 acquired credits to offset the tax imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

10 (3) To claim the tax credit, the transferee, purchaser or assignee shall attach the certificate
11 obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to
12 the tax return against which the credit is claimed when the tax return is filed with the State Tax
13 Commissioner. Any transferee, purchaser or assignee of tax credits under this section may also
14 use the acquired credits by transferring them in accordance with the provisions of this section.

15 (4) If the credit allowed under this section exceeds the transferee's, purchaser's or
16 assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit
17 may carry forward the excess in accordance with §11-13NN-8 of this code.

18 (b) *Allocation and distribution.* – A credit earned by any electing small business corporation
19 (S corporation), limited partnership, general partnership, limited liability company or multiple

owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to a documented agreement among the shareholders, partners, members or owners.

(1) Taxpayers who receive the credits through allocation or distribution are authorized to transfer or sell the credits in accordance with subsection (a) of this section.

(2) When allocation or distribution has occurred, the recapture provisions set forth in §11-13NN-9 of this code apply to the shareholders, partners, members or owners.

(c) *Bond requirement.* -- When a West Virginia historic rehabilitated building tax credit for certified historic structures as set forth in §11-13NN-2(a), which is part of phased rehabilitation project in accordance with §11-13NN-6 of this code; is sold, transferred, encumbered or otherwise offset, asserted or applied prior to establishment of a perfected entitlement to the tax credit, the seller (transferor) must execute and file a bond with the State Tax Commissioner guaranteeing that, in the event that the project is not completed and Part 3 – Request for Certification of Completed Work, including amendments, is not obtained, or in the event of any other failure of the taxpayer to obtain perfected entitlement to the tax credit, then the bond shall be levied upon to collect the tax attributable to the tax credit taken, sold, transferred, encumbered or otherwise offset, asserted or applied by the transferor. If for any reason, the transferor's bond is not filed, or if a bond is filed that is deficient in any way, or which fails to cover the amount of the tax offset by the tax credit by any party (transferor, transferee, or subsequent transferees), then the transferor and transferee will both be jointly and severally liable for the entire amount of the tax attributable to the assertion of the tax credit sold by any party. If there are subsequent tiers of transferees of the tax credit, then the transferors and transferees of each and every tier are subject to the same bonding and joint and several liability requirements.

(d) *Retroactive application after transfer.* – In cases of phased rehabilitation, a transferee may amend prior years' tax returns, subject to limitations within §11-10-14(l) of this code, in order to claim the credit without violating the provisions of §11-13NN-8(b) of this code.

§11-13NN-8. Carry back and carry forward.

1 (a) Any unused portion of any credit authorized by §11-13NN-1 et seq. of this code may be
2 carried over to each of the next five tax years following the first tax year for which the credit
3 entitlement is authorized under this article for a specific qualified investment until used to
4 exhaustion or forfeited due to lapse of time. In no event may the amount of credit taken in a
5 taxable year exceed the tax liability due for the taxable year.

6 (b) Except as set forth in §11-13NN-7(d) of this code, the credit authorized by this article is
7 not subject to carry back treatment.

§11-13NN-9. Imposition of recapture tax.

1 (a) Recapture tax in the amount up to and including the total amount of the credit claimed
2 or granted shall be imposed under the following circumstances:

3 (1) In cases of phased rehabilitation, if an applicant for tax credits fails to submit an
4 approved historic preservation certification application, Part 3 – Request for Certification of
5 Completed Work, with amendments, for the rehabilitation within 60 months of the date of the
6 advisory determination by the National Park Service that such phase has been completed in
7 accordance with the Secretary of the Interior standards for rehabilitation;

8 (2) In any case that the taxpayer is found to be noncompliant with the good standing
9 requirements set forth in §11-13NN-4(b) of this code; or

10 (3) For any failure to establish perfected entitlement to the tax credit, including but not
11 limited to the following:

12 (A) Failure to complete construction in any phase;

13 (B) Disallowance, non-certification, or other failure of credit attributable to construction that
14 is not in conformance with historic preservation requirements of state or federal authorities; or

15 (C) Failure to submit Part 3 – Request for Certification of Completed Work, with
16 amendments, or

(D) Any other failure of the project to meet statutory standards and gain full perfected entitlement to the tax credit.

(b) Recapture tax can be collected from any party claiming the credit, including the initial applicant, transferor or transferee, and regardless of whether the taxpayer claiming the credit is responsible for the event that triggered the recapture tax in circumstances as set forth in §11-13NN-1 *et seq.* of this code.

(c) *Extended Audit period.* -- If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the State Tax Commissioner, along with interest, as provided in §11-10-17 of this code and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 *et seq.* of this code.

(1) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, penalties and additions to tax imposed under that article may be waived at the discretion of the Tax Commissioner: *Provided*, That interest is not subject to waiver.

(2) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

§11-13NN-10. Rulemaking authority.

The State Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13NN-1 *et seq.* of this code and to implement the intent of the Legislature. The State Tax

Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2026. All rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code.

§11-13NN-11. Tax administration.

Each provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.* of this code applies to the tax credits allowed under §11-13NN-1 *et seq.* of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credits allowed by §11-13NN-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13NN-12. Crimes and penalties.

Each provision of the "West Virginia Tax Crimes and Penalties Act" set forth in §11-9-1 *et seq.* of this code applies to the tax credit allowed by §11-13NN-1 *et seq.* of this code with like effect as if that act were applicable only to the tax credit §11-13NN-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13NN-13. Effective date.

The provisions of this article shall be effective for all applications received by the State Historic Preservation Officer on or after June 30, 2026, and any prior application for which Part 3 – Request for Certification of Completed Work, including amendments, was not physically received by the State Historic Preservation Officer prior to June 30, 2026.

§11-13NN-14. Severability.

(a) If any provision of §11-13NN-1 *et seq.* of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of §11-13NN-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13NN-1 *et seq.* of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13NN-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8i. Elimination of the credits for certified historic structures and residential certified historic structures; preservation of credits earned prior to the sunset date.

(a) Subject to the provisions in this section, the credits allowed by §11-21-8a and §11-21-8g shall be terminated effective June 30, 2026.

(b) Certified historic structures tax credits and residential certified historic structures tax credits to which a taxpayer has gained lawful entitlement by successfully submitting a Part 3 – Request for Certification of Completed Work, including amendments, to the State Historic Preservation Officer prior to the termination date may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

(c) Certified historic structures and residential certified historic structures tax credits to which a taxpayer has gained lawful entitlement in accordance with subsection (b) of this section prior to the termination date of the credits may be transferred in accordance with §11-21-8h of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

(d) For applications filed prior to the termination date of the certified historic structures and residential certified historic structures tax credits that have not yet submitted Part 3 – Request for

17 Certification of Completed Work, including amendments, to the State Historic Preservation Officer,
 18 the provisions of §11-13NN-1 et seq. of this code shall apply.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23h. Elimination of the credit for qualified rehabilitated buildings investment;
preservation of credit earned prior to the sunset date.

1 (a) Subject to the provisions in this section, the qualified rehabilitated buildings investment
 2 tax credit allowed by §11-24-23a shall be terminated effective June 30, 2026.

3 (b) Any qualified rehabilitated buildings investment tax credit to which a taxpayer has
 4 gained lawful entitlement by successfully submitting a Part 3 – Request for Certification of
 5 Completed Work, including amendments, to the State Historic Preservation Officer prior to the
 6 termination date may continue to be applied against tax liabilities, subject to the conditions,
 7 limitations, and constraints applicable to such credit under this article, until exhausted or otherwise
 8 terminated in accordance with the terms of this article and this code.

9 (c) Any qualified rehabilitated buildings investment tax credit to which a taxpayer has
 10 gained lawful entitlement in accordance with subsection (b) of this section prior to the termination
 11 date of the credits may be transferred in accordance with §11-24-23g of this code, subject to the
 12 conditions, limitations, and constraints applicable to such credit under this article, until exhausted
 13 or otherwise terminated in accordance with the terms of this article and this code.

14 (d) For applications filed prior to the termination date of the qualified rehabilitated building
 15 investment tax credit that have not yet submitted Part 3 – Request for Certification of Completed
 16 Work, including amendments, to the State Historic Preservation Officer, the provisions of §11-
 17 13NN-1 et seq. of this code shall apply.

NOTE: The purpose of this bill is to sunset the historic rehabilitation credits in their current
 disperse locations in the code, provide continued eligibility to current recipients, and to
 replace those sections with a cohesive article that is easier to utilize and administer.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.