

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1800**

**Bill Subtitle: TO CREATE THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT; AND TO PROVIDE FUNDING TO OFFSET THE COST OF THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT.**

---

### Basic Change :

**Sponsor: Rep. A. Davis**

The bill would create the Arkansas Major Historic Rehabilitation Income Tax Credit Act to provide income tax credits for certain property rehabilitation projects. The bill would also provide funding for the income credits authorized through transfers from the Property Tax Relief Trust Fund.

The bill would amend Arkansas Code Title 26, Chapter 51 to add an additional subchapter that creates the Arkansas Major Rehabilitation Income Tax Credit Act. The Department of Arkansas Heritage (DAH) would administer the provisions of the program.

DAH would begin accepting applications for the Arkansas major historic rehabilitation income tax credits beginning July 1, 2020 and ending on June 30, 2025. Applications for the tax credits must be for eligible properties that qualify as a certified historic structure under 26 U.S.C. § 47; will qualify as a certified historic structure following certified rehabilitation; is listed in the National Register of Historic Places; and is eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation.

DAH would develop the criteria for the prioritizing of the rehabilitation applications and would consider projects that would stimulate the local economy where the property is located; result in the creation of a new business; result in the expansion of an existing business; establish or contribute to the establishment of a tourism attraction as defined by the Department of Parks and Tourism; contribute to the revitalization of a specific business district; or be a key property in the revitalization of a specific neighborhood.

Upon completion of a property rehabilitation, the owner would submit documentation as required by DAH to verify that the completed rehabilitation qualifies as a certified rehabilitation. If DAH determines that a rehabilitation qualifies as a certified rehabilitation and that the certified rehabilitation is complete, DAH would issue a transferable certification of completion specifying the total amount of the qualified rehabilitation expenses and the amount of Arkansas major historic rehabilitation income tax credit allowed. The tax credit is only allowed one time in a two-year period for each eligible property. The credit is equal to 25% of the total qualified rehabilitation expenses and the minimum investment is \$1,500,000 per project.

The tax credit may be used by the owner against Arkansas Income Taxes or Insurance Premium Taxes due. The amount of credit that can be used for a taxable year can equal but not exceed the amount of income tax or premium tax due. Unused credits may be carried forward for up to five years and may be sold or transferred in whole or in part at any time. Any consideration received for the transfer of the credit is not subject to income tax, and any consideration paid for the transfer of a credit is not deductible.

The tax credits authorized would be funded by transfers from the Property Tax Relief Trust Fund to the Arkansas Major Historic Rehabilitation Trust Fund with subsequent transfers to state General Revenue. The bill would require during 2019, beginning on the last day of each calendar month

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1800**

**Bill Subtitle: TO CREATE THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT; AND TO PROVIDE FUNDING TO OFFSET THE COST OF THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT.**

---

following the effective date of the act, the Chief Fiscal Officer of the State to certify to the State Treasurer the total amount of funds credited to the Property Tax Relief Trust Fund. The monthly certifications to the State Treasurer would continue for all years subsequent to 2019.

By December 31 of each year, the Chief Fiscal Officer would then determine the annual estimated amount needed to fund the distributions from the Property Tax Relief Trust Fund as required under § 26-26-310 for the next calendar year. These required annual distributions include the reimbursements to Arkansas counties of the property tax credits provided by County Assessors to homestead property owners in the amounts certified on March 31, June 30 and November 15 of each year; an additional one percent (1%) annual distribution of any excess funds in the Property Tax Relief Trust Fund occurring on December 31 of each year; and an additional \$4 Million annual distribution occurring in December of each year. If the total amounts deposited during the calendar year to the Property Tax Relief Trust Fund exceed the estimated amount needed to provide for the distributions from the Fund during the next calendar year, the remaining year-end fund balance would be transferred from the Fund to the Arkansas Major Historic Rehabilitation Trust Fund.

By June 30 of each year, the Department of Finance and Administration (DFA) would certify to DAH the amount in the Arkansas Major Historic Rehabilitation Trust Fund, which would serve as the maximum amount of Arkansas major historic rehabilitation income tax credits that DAH could approve for the next fiscal year and would also certify to the State Treasurer the amount of Arkansas major historic rehabilitation income tax credits claimed during the current fiscal year. On July 1, the State Treasurer would then transfer the amount certified to General Revenue Fund Account. When the Director of DFA has determined that all approved Arkansas major historic rehabilitation income tax credits have been claimed or have expired, any amount remaining in the Arkansas Major Historic Rehabilitation Trust Fund would be transferred to the Property Tax Relief Trust Fund.

### **Revenue Impact :**

#### **Calendar Year 2019**

No Eligible Transfers from the Property Tax Relief Trust Fund

#### **Calendar Year 2020**

\$24.5 Million Eligible Transfer to Arkansas Major Historic Rehabilitation Trust Fund from the Property Tax Relief Trust Fund

#### **Calendar Year 2021**

\$29.5 Million Eligible Transfer to Arkansas Major Historic Rehabilitation Trust Fund from the Property Tax Relief Trust Fund

#### **Calendar Year 2022**

\$34.6 Million Eligible Transfer to Arkansas Major Historic Rehabilitation Trust Fund from the Property Tax Relief Trust Fund

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1800**

**Bill Subtitle: TO CREATE THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT; AND TO PROVIDE FUNDING TO OFFSET THE COST OF THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT.**

---

General Revenue Impact --- It is not known which fiscal year will have the initial use of the tax credits that will result in a loss to state General Revenues in one fiscal year that would be reimbursed to General Revenues in the following fiscal year (July 1)

[ The credit cannot exceed the amount deposited in the Arkansas Major Rehabilitation Trust Fund, which will consist of grants, donations, and an amount equal to 1% of the amount of excess funds certified from the Property Tax Relief Trust Fund. ]

### **Taxpayer Impact :**

A Taxpayer that completes a certified rehabilitation that is placed in service after January 1, 2019 with a minimum investment of \$1.5 million in qualified rehabilitation expenses may receive an Arkansas major historic rehabilitation credit that can be used against either income tax or insurance premium tax. A Taxpayer wishing to buy or sell credits would need to follow documentation requirements of the bill. A Taxpayer would need to retain documentation of credit for at least five years after the issuance of the certification of completion.

### **Resources Required :**

Update computer programs, tax instructions, procedure and training manuals.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Implement procedures to recordkeeping for ownership of issued tax credits. DFA employees will need to be educated as well as the tax community.

### **Other Comments :**

The bill provides for a lagged reimbursement process. Tax credits would be used in one fiscal year but the reimbursement to General Revenue from the Arkansas Major Historic Rehabilitation Trust Fund would not occur until July 1 of the next year. The bill also provides that DFA certifies to the Treasurer the amount of income tax credits claimed during the fiscal year but does not provide for the claims against insurance premium tax.

As drafted, it is not clear if the annually determined estimated amount to fund the distributions required under § 26-26-310(b)(2)(C) includes the needed distributions for reimbursements to the counties for the tax credits provided to homestead owners.

Final reporting by County Assessors of the tax credits provided to homestead property owners is not made until November 15 of each year for reimbursements from the Trust Fund during that same

# Department of Finance and Administration

## Legislative Impact Statement

### **Bill: HB1800**

### **Bill Subtitle: TO CREATE THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT; AND TO PROVIDE FUNDING TO OFFSET THE COST OF THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT.**

---

calendar year. Depending on the interpretation of the bill language, it is not clear if funds would remain in the Trust Fund for the State Treasurer to make these final reimbursements in December. If the intent of the bill is to eliminate the Fund's balance at the end on each calendar year, the bill would appear to require amendment. If the Fund balance were reduced to \$0.00 at the end of the calendar year, county governments would have delays in receipt of the reimbursements during the following calendar year versus the current procedure in Arkansas law.

As drafted, transfers from the Property Tax Relief Trust Fund to the Arkansas Major Historic Rehabilitation Trust Fund would never end. Conclusion of the tax credit program does not end the transfers.

Tax Credits can be issued and used for many years beyond 2025 with only the application process ending on June 30, 2025

No excess monies deposited into the Arkansas Major Historic Rehabilitation Trust Fund will be transferred back to Property Tax Relief Trust Fund until all approved credits are used or expire, which with carry-forward, could be many years beyond 2025.

It would be anticipated that a large fund balance in the Arkansas Major Historic Rehabilitation Trust Fund could be held for many years.

The amount of credit that can be used for a taxable year can equal but not exceed the amount of income tax or premium tax due. Allowing the credit to be transferred more than once and able to offset both income tax and premium tax will make it difficult to determine if more than 100% of an established credit is claimed. The credit can be carried forward for five consecutive tax years. The credit can be freely transferred, sold, or assigned in total or partially. An owner can sell the owner's eligible property after the issuance of the certificate of completion. A holder of the certificate 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. Any consideration received for the transfer of the credit is not taxable, and any consideration paid for the transfer of a credit is not deductible. DAH shall promulgate rules to administer the credit.

### **Legal Analysis :**

HB1800 creates the Arkansas Major Historic Rehabilitation Income Tax Credit Act (the "Act"), which provides an income tax credit under § 26-51-2601 et seq. for qualified rehabilitation expenses for work on historic structures. Owners of eligible properties with a minimum investment of \$1,500,000 in qualified rehabilitation expenses may apply for a certification of completion from the Department of Arkansas Heritage (DAH). The certification will specify the income tax credit allowed, which is limited to 25% of the total qualified rehabilitation expenses incurred by the owner to complete the certified rehabilitation.

The certification of completion and corresponding credit may be freely sold or transferred. The holder of the certification of completion may claim the credit to offset up to 100% of the holder's state income taxes or premium taxes. The credit may only be used one time in a two-year period for each eligible property. The holder of a credit may carry-forward any excess credit for five years. It is unclear whether the five-year

# Department of Finance and Administration

## Legislative Impact Statement

### Bill: HB1800

### Bill Subtitle: TO CREATE THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT; AND TO PROVIDE FUNDING TO OFFSET THE COST OF THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT.

---

limitations period would apply if the credit were denied in one or more fiscal years due to lack of funding. DAH would accept applications beginning July 1, 2019 and ending June 30, 2025, and would be permitted to charge certain fees to process applications for the credit and record transfers.

HB1800 also creates the Arkansas Major Historic Rehabilitation Trust Fund to fund the credits, which would be funded through grants, donations, and monies transferred from the Property Tax Relief Trust Fund.

Under HB1800, all revenues credited to the Property Tax Relief Trust Fund in excess of the amount required to fund required distributions for the next year would be transferred from the Property Tax Relief Trust Fund to the Arkansas Major Historic Rehabilitation Trust Fund. Income tax credits issued under the Act would be limited to the amount in the Arkansas Major Historic Rehabilitation Trust Fund, and any excess monies would be transferred back to the Property Tax Relief Trust Fund.

The bill requires DAH to adopt rules to implement the credit and to file the proposed rules with the Legislative Council sufficiently in advance of January 1, 2020 after consulting with AEDC, DFA, and the State Insurance Department. This could create a significant difficulty for the multiple agencies to be able to provide consultation and for the drafting, reviewing, publication, and presentation of the rules for ALC in the timeframe provided.

#### Issues:

- In Lines 26-29, Page 3, HB1800 requires the Director of DFA to determine the amount needed to fund the distributions required under (b)(2)(c) of § 26-26-310 for the next year. The only distribution required under (b)(2)(c) is the distribution of each county's share of the 1% of excess funds. Lines 26-29, Page 3, should likely require the Director to determine the amount needed to fund the distributions required under (b)(1) (reimbursements to counties) and (b)(2)(c) (distribution of 1% of excess funds), in addition to any separately required appropriations, and to then certify the excess funds credited to the Property Tax Relief Trust Fund for that calendar year to the Treasurer.
- Lines 30-36, Page 3, should likely require a yearly deadline for the transfer of excess revenues to the Arkansas Major Historic Rehabilitation Trust Fund.
- Lines 30-36, Page 3, should likely specify a percentage of excess funds to be transferred to the Arkansas Major Historic Rehabilitation Trust Fund, rather than potentially depleting the Property Tax Relief Trust Fund. A depletion of the Property Tax Relief Trust Fund could result in insufficient funds for reimbursements to the counties if collections decrease.

There are not any apparent constitutional issues with the requirements of HB1800. Arkansas Constitution, Amendment 79, § 3, passed in the November 2000 election, provides: "The General Assembly shall provide by law for an annual state credit against ad valorem property tax on a homestead in an amount of not less than three hundred dollars (\$300). The credit shall not exceed the amount of ad valorem property taxes owed. The credit shall apply beginning for taxes due in calendar year 2001." § 26-26-310, as amended by HB1800, does not appear to violate § 3 of Amendment 79. § 26-26-310 currently provides that remaining funds in the Fund may be used in accordance with subsequent legislation to provide additional tax relief.