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2022 -- S 2551

STATE RHODE ISLAND OF

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT - REBUILD RHODE ISLAND TAX CREDIT

Introduced By: Senators Kallman, McCaffrey, Gallo, DiMario, Ruggerio, Miller, Lawson, Valverde, Seveney, and Lombardo Date Introduced: March 01, 2022

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-64.20-5 of the General Laws in Chapter 42-64.20 entitled

2 "Rebuild Rhode Island Tax Credit" is hereby amended to read as follows:

3 42-64.20-5. Tax credits.

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(a) An applicant meeting the requirements of this chapter may be allowed a credit as set

5 forth hereinafter against taxes imposed upon such person under applicable provisions of title 44 of

6 the general laws for a qualified development project.

7 (b) To be eligible as a qualified development project entitled to tax credits, an applicant's

8 chief executive officer or equivalent officer shall demonstrate to the commerce corporation, at the 9

- time of application, that:
- 10 (1) The applicant has committed a capital investment or owner equity of not less than 11 twenty percent (20%) of the total project cost;
 - (2) There is a project financing gap in which after taking into account all available private

and public funding sources, the project is not likely to be accomplished by private enterprise 13 14 without the tax credits described in this chapter; and

15 (3) The project fulfills the state's policy and planning objectives and priorities in that:

(i) The applicant will, at the discretion of the commerce corporation, obtain a tax 16 stabilization agreement from the municipality in which the real estate project is located on such 17 18 terms as the commerce corporation deems acceptable;

1 (ii) It (A) Is a commercial development consisting of at least 25,000 square feet occupied 2 by at least one business employing at least 25 full-time employees after construction or such 3 additional full-time employees as the commerce corporation may determine; (B) Is a multi-family 4 residential development in a new, adaptive reuse, certified historic structure, or recognized 5 historical structure consisting of at least 20,000 square feet and having at least 20 residential units in a hope community; or (C) Is a mixed-use development in a new, adaptive reuse, certified historic 6 7 structure, or recognized historical structure consisting of at least 25,000 square feet occupied by at 8 least one business, subject to further definition through rules and regulations promulgated by the 9 commerce corporation; and

- (iii) Involves a total project cost of not less than \$ 5,000,000, except for a qualified
 development project located in a hope community or redevelopment area designated under \$ 4532-4 in which event the commerce corporation shall have the discretion to modify the minimum
 project cost requirement-; and
- 14 (iv) All construction workers shall be paid in accordance with the wages and benefits
- 15 required pursuant to chapter 13 of title 37 with all contractors and subcontractors be required to file

16 certified payrolls on a monthly basis with the tax administrator of the division of taxation. Failure

17 to follow the requirements pursuant to chapter 13 of title 37 shall constitute a material violation

18 and a material breach of the agreement with the state and the commerce corporation, in consultation

- 19 with the tax administrator, shall have the discretion to revoke the tax credits.
- 20 (4) The commerce corporation, in consultation with the tax administrator, shall promulgate
 21 such rules and regulations as are necessary to implement the enforcement of this section.
- 22 (c) The commerce corporation shall develop separate, streamlined application processes

23 for the issuance of rebuild RI tax credits for each of the following:

- 24 (1) Qualified development projects that involve certified historic structures;
- 25 (2) Qualified development projects that involve recognized historical structures;
- 26 (3) Qualified development projects that involve at least one manufacturer; and
- 27 (4) Qualified development projects that include affordable housing or workforce housing.

(d) Applications made for a historic structure or recognized historic structure tax credit under chapter 33.6 of title 44 shall be considered for tax credits under this chapter. The division of taxation, at the expense of the commerce corporation, shall provide communications from the commerce corporation to those who have applied for and are in the queue awaiting the offer of tax credits pursuant to chapter 33.6 of title 44 regarding their potential eligibility for the rebuild RI tax credit program.

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(e) Applicants (1) Who have received the notice referenced in subsection (d) above and

1 who may be eligible for a tax credit pursuant to chapter 33.6 of title 44, (2) Whose application 2 involves a certified historic structure or recognized historical structure, or (3) Whose project is 3 occupied by at least one manufacturer shall be exempt from the requirements of subsections 4 (b)(3)(ii) and (b)(3)(iii). The following procedure shall apply to such applicants:

5 (i) The division of taxation shall remain responsible for determining the eligibility of an applicant for tax credits awarded under chapter 33.6 of title 44; 6

7 (ii) The commerce corporation shall retain sole authority for determining the eligibility of 8 an applicant for tax credits awarded under this chapter; and

9 (iii) The commerce corporation shall not award in excess of fifteen percent (15%) of the 10 annual amount authorized in any fiscal year to applicants seeking tax credits pursuant to this 11 subsection (e).

12 (f) Maximum project credit.

13 (1) For qualified development projects, the maximum tax credit allowed under this chapter 14 shall be the lesser of (i) Thirty percent (30%) of the total project cost; or (ii) The amount needed to 15 close a project financing gap (after taking into account all other private and public funding sources 16 available to the project), as determined by the commerce corporation.

17 (2) The credit allowed pursuant to this chapter, inclusive of any sales and use tax 18 exemptions allowed pursuant to this chapter, shall not exceed fifteen million dollars (\$15,000,000) 19 for any qualified development project under this chapter; except as provided in subsection (f)(3) of 20 this section; provided however, any qualified development project that exceeds the project cap upon 21 passage of this act shall be deemed not to exceed the cap, shall not be reduced, nor shall it be further 22 increased. No building or qualified development project to be completed in phases or in multiple 23 projects shall exceed the maximum project credit of fifteen million dollars (\$15,000,000) for all 24 phases or projects involved in the rehabilitation of the building. Provided, however, that for 25 purposes of this subsection and no more than once in a given fiscal year, the commerce corporation 26 may consider the development of land and buildings by a developer on the "I-195 land" as defined 27 in § 42-64.24-3(6) as a separate, qualified development project from a qualified development 28 project by a tenant or owner of a commercial condominium or similar legal interest including 29 leasehold improvement, fit out, and capital investment. Such qualified development project by a 30 tenant or owner of a commercial condominium or similar legal interest on the I-195 land may be 31 exempted from subsection (f)(1)(i) of this section.

32 (3) The credit allowed pursuant to this chapter, inclusive of any sales and use tax 33 exemptions allowed pursuant to this chapter, shall not exceed twenty-five million dollars 34 (\$25,000,000) for the project for which the I-195 redevelopment district was authorized to enter

into a purchase and sale agreement for parcels 42 and P4 on December 19, 2018, provided that
 project is approved for credits pursuant to this chapter by the commerce corporation.

3 (g) Credits available under this chapter shall not exceed twenty percent (20%) of the project
4 cost, provided, however, that the applicant shall be eligible for additional tax credits of not more
5 than ten percent (10%) of the project cost, if the qualified development project meets any of the
6 following criteria or other additional criteria determined by the commerce corporation from time
7 to time in response to evolving economic or market conditions:

8 (1) The project includes adaptive reuse or development of a recognized historical structure;

9 (2) The project is undertaken by or for a targeted industry;

10 (3) The project is located in a transit-oriented development area;

(4) The project includes residential development of which at least twenty percent (20%) of
the residential units are designated as affordable housing or workforce housing;

13 (5) The project includes the adaptive reuse of property subject to the requirements of the
14 industrial property remediation and reuse act, § 23-19.14-1 et seq.; or

(6) The project includes commercial facilities constructed in accordance with the minimum
 environmental and sustainability standards, as certified by the commerce corporation pursuant to
 Leadership in Energy and Environmental Design or other equivalent standards.

(h) Maximum aggregate credits. The aggregate sum authorized pursuant to this chapter,
inclusive of any sales and use tax exemptions allowed pursuant to this chapter, shall not exceed
two hundred ten million dollars (\$210,000,000), excluding any tax credits allowed pursuant to
subsection (f)(3) of this section.

(i) Tax credits shall not be allowed under this chapter prior to the taxable year in which theproject is placed in service.

(j) The amount of a tax credit allowed under this chapter shall be allowable to the taxpayer
in up to five, annual increments; no more than thirty percent (30%) and no less than fifteen percent
(15%) of the total credits allowed to a taxpayer under this chapter may be allowable for any taxable
year.

(k) If the portion of the tax credit allowed under this chapter exceeds the taxpayer's total tax liability for the year in which the relevant portion of the credit is allowed, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits allowed to a partnership, a limited-liability company taxed as a partnership, or multiple owners of property shall be passed through to the persons designated as partners, members, or owners respectively pro rata or pursuant to an executed agreement among persons designated as partners, members, or

- owners documenting an alternate distribution method without regard to their sharing of other tax
 or economic attributes of such entity.
- 3 (1) The commerce corporation, in consultation with the division of taxation, shall establish,
 4 by regulation, the process for the assignment, transfer, or conveyance of tax credits.

5 (m) For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from 6 7 taxation under title 44. If a tax credit is subsequently revoked or adjusted, the seller's tax calculation 8 for the year of revocation or adjustment shall be increased by the total amount of the sales proceeds, 9 without proration, as a modification under chapter 30 of title 44. In the event that the seller is not a 10 natural person, the seller's tax calculation under chapter 11, 13, 14, or 17 of title 44, as applicable, 11 for the year of revocation, or adjustment, shall be increased by including the total amount of the 12 sales proceeds without proration.

(n) The tax credit allowed under this chapter may be used as a credit against corporate
income taxes imposed under chapter 11, 13, 14, or 17, of title 44, or may be used as a credit against
personal income taxes imposed under chapter 30 of title 44 for owners of pass-through entities such
as a partnership, a limited-liability company taxed as a partnership, or multiple owners of property.
(o) In the case of a corporation, this credit is only allowed against the tax of a corporation
included in a consolidated return that qualifies for the credit and not against the tax of other
corporations that may join in the filing of a consolidated tax return.

(p) Upon request of a taxpayer and subject to annual appropriation, the state shall redeem
this credit, in whole or in part, for ninety percent (90%) of the value of the tax credit. The division
of taxation, in consultation with the commerce corporation, shall establish by regulation a
redemption process for tax credits.

(q) Projects eligible to receive a tax credit under this chapter may, at the discretion of the commerce corporation, be exempt from sales and use taxes imposed on the purchase of the following classes of personal property only to the extent utilized directly and exclusively in the project: (1) Furniture, fixtures, and equipment, except automobiles, trucks, or other motor vehicles; or (2) Other materials, including construction materials and supplies, that are depreciable and have a useful life of one year or more and are essential to the project.

(r) The commerce corporation shall promulgate rules and regulations for the administration
 and certification of additional tax credit under subsection (e), including criteria for the eligibility,
 evaluation, prioritization, and approval of projects that qualify for such additional tax credit.

33 (s) The commerce corporation shall not have any obligation to make any award or grant34 any benefits under this chapter.

1 SECTION 2. Section 44-31.2-5 of the General Laws in Chapter 44-31.2 entitled "Motion 2 Picture Production Tax Credits" is hereby amended to read as follows:

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44-31.2-5. Motion picture production company tax credit.

4 (a) A motion picture production company shall be allowed a credit to be computed as 5 provided in this chapter against a tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be thirty percent (30%) of the state-certified production costs incurred 6 7 directly attributable to activity within the state, provided:

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(1) That the primary locations are within the state of Rhode Island and the total production 9 budget as defined herein is a minimum of one hundred thousand dollars (\$100,000); or

10 (2) The motion picture production incurs and pays a minimum of ten million dollars 11 (\$10,000,000) in state-certified production costs within a twelve-month (12) period.

12 The credit shall be earned in the taxable year in which production in Rhode Island is 13 completed, as determined by the film office in final certification pursuant to § 44-31.2-6(c).

14 (b) For the purposes of this section: "total production budget" means and includes the 15 motion picture production company's pre-production, production, and post-production costs 16 incurred for the production activities of the motion picture production company in Rhode Island in 17 connection with the production of a state-certified production. The budget shall not include costs 18 associated with the promotion or marketing of the film, video, or television product.

19 (c) Notwithstanding subsection (a) of this section, the credit shall not exceed seven million 20 dollars (\$7,000,000) and shall be allowed against the tax for the taxable period in which the credit 21 is earned and can be carried forward for not more than three (3) succeeding tax years. Pursuant to 22 rules promulgated by the tax administrator, the administrator may issue a waiver of the seven 23 million dollars (\$7,000,000) tax credit cap for any feature-length film or television series up to the 24 remaining funds available pursuant to section (e) of this section.

25 (d) Credits allowed to a motion picture production company, which is a subchapter S corporation, partnership, or a limited-liability company that is taxed as a partnership, shall be 26 27 passed through respectively to persons designated as partners, members, or owners on a pro rata 28 basis or pursuant to an executed agreement among such persons designated as subchapter S 29 corporation shareholders, partners, or members documenting an alternate distribution method 30 without regard to their sharing of other tax or economic attributes of such entity.

31 (e) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax 32 year beginning after December 31, 2007, for motion picture tax credits pursuant to this chapter 33 and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title. After 34 December 31, 2019, no more than twenty million dollars (\$20,000,000) in total may be issued for

any tax year for motion picture tax credits pursuant to this chapter and/or musical and theater
production tax credits pursuant to chapter 31.3 of this title. Said credits shall be equally available
to motion picture productions and musical and theatrical productions. No specific amount shall be
set aside for either type of production.

(f) Exclusively for tax year 2022, the total amount of motion picture tax credits issued
pursuant to this section and/or musical and theatrical production tax credits pursuant to chapter 31.3
of this title shall not exceed thirty million dollars (\$30,000,000).

8 (g) All construction workers shall be paid in accordance with the wages and benefits 9 required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified 10 payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow 11 the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material 12 breach of the agreement with the state and the tax administrator shall have the discretion to revoke 13 the tax credits.

(h) The tax administrator of the division of taxation shall promulgate such rules and
 regulations as are necessary to implement the enforcement of this section.

SECTION 3. Section 44-33.6-3 of the General Laws in Chapter 44-33.6 entitled "Historic
Preservation Tax Credits 2013" is hereby amended to read as follows:

18 <u>44-33.6-3. Tax credit.</u>

19 (a) Subject to the maximum credit provisions set forth in subsections (c) and (d) below, 20 any person, firm, partnership, trust, estate, limited liability company, corporation (whether for 21 profit or nonprofit) or other business entity that incurs qualified rehabilitation expenditures for the 22 substantial rehabilitation of a certified historic structure, provided the rehabilitation meets standards 23 consistent with the standards of the Secretary of the United States Department of the Interior for 24 rehabilitation as certified by the commission and said person, firm, partnership, trust, estate, limited 25 liability company, corporation or other business entity is not a social club as defined in § 44-33.6-26 2(15) of this chapter, shall be entitled to a credit against the taxes imposed on such person or entity pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to the following: 27

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(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or

- 29 (2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that
 30 either:
- 31 (i) At least twenty-five percent (25%) of the total rentable area of the certified historic
 32 structure will be made available for a trade or business; or
- 33 (ii) The entire rentable area located on the first floor of the certified historic structure will34 be made available for a trade or business.

(b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
 which such certified historic structure or an identifiable portion of the structure is placed in service
 provided that the substantial rehabilitation test is met for such year.

4 (c) Maximum project credit. The credit allowed pursuant to this chapter shall not exceed
5 five million dollars (\$5,000,000) for any certified rehabilitation project under this chapter. No
6 building to be completed in phases or in multiple projects shall exceed the maximum project credit
7 of five million dollars (\$5,000,000) for all phases or projects involved in the rehabilitation of such
8 building.

9 (d) Maximum aggregate credits. The aggregate credits authorized to be reserved pursuant 10 to this chapter shall not exceed sums estimated to be available in the historic preservation tax credit 11 trust fund pursuant to this chapter.

12 (e) Subject to the exception provided in subsection (g) of this section, if the amount of the 13 tax credit exceeds the taxpayer's total tax liability for the year in which the substantially 14 rehabilitated property is placed in service, the amount that exceeds the taxpayer's tax liability may 15 be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until 16 the full credit is used, whichever occurs first for the tax credits. Credits allowed to a partnership, a 17 limited liability company taxed as a partnership or multiple owners of property shall be passed 18 through to the persons designated as partners, members or owners respectively pro rata or pursuant 19 to an executed agreement among such persons designated as partners, members or owners 20 documenting an alternate distribution method without regard to their sharing of other tax or 21 economic attributes of such entity. Credits may be allocated to partners, members or owners that 22 are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code and these partners, members or owners must be treated as taxpayers for purposes of this 23 24 section.

25 (f) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for 26 the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise 27 to any individual or entity, including, but not limited to, condominium owners in the event the 28 certified historic structure is converted into condominiums and assignees of the credits that have 29 not claimed the tax credits in whole or part may assign, transfer or convey the credits, in whole or 30 in part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use 31 acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed 32 pursuant to chapter 11, 12, 13, (other than the tax imposed under § 44-13-13), 14, 17 or 30 of this 33 title. The assignee may apply the tax credit against taxes imposed on the assignee until the end of 34 the tenth calendar year after the year in which the substantially rehabilitated property is placed in

service or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may
claim the credit until the expiration of the fiscal year that ends within the tenth year after the year
in which the substantially rehabilitated property is placed in service. The assignor shall perfect the
transfer by notifying the state of Rhode Island division of taxation, in writing, within thirty (30)
calendar days following the effective date of the transfer and shall provide any information as may
be required by the division of taxation to administer and carry out the provisions of this section.

7 For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for 8 its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from this 9 title. If a tax credit is subsequently recaptured under this chapter, revoked or adjusted, the seller's 10 tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total 11 amount of the sales proceeds, without proration, as a modification under chapter 30 of this title. In 12 the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 12, 13 13 (other than with respect to the tax imposed under § 44-13-13), 14, 17, or 30 of this title, as 14 applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the 15 total amount of the sales proceeds without proration.

(g) Credits allowed to partners, members or owners that are exempt from taxation under
section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code, and only said credits, shall
be fully refundable.

19 (h) Substantial rehabilitation of property that either:

20 (1) Is exempt from real property tax;

21 (2) Is a social club; or

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22 (3) Consists of a single family home or a property that contains less than three (3) 23 residential apartments or condominiums shall be ineligible for the tax credits authorized under this 24 chapter; provided, however, a scattered site development with five (5) or more residential units in 25 the aggregate (which may include single family homes) shall be eligible for tax credit. In the event 26 a certified historic structure undergoes a substantial rehabilitation pursuant to this chapter and 27 within twenty-four (24) months after issuance of a certificate of completed work the property 28 becomes exempt from real property tax, the taxpayer's tax for the year shall be increased by the 29 total amount of credit actually used against the tax.

(i) In the case of a corporation, this credit is only allowed against the tax of a corporation
included in a consolidated return that qualifies for the credit and not against the tax of other
corporations that may join in the filing of a consolidated tax return.

(j) All construction workers shall be paid in accordance with the wages and benefits

34 required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified

- 1 payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow
- 2 the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material
- 3 breach of the agreement with the state and the tax administrator shall have the discretion to revoke
- 4 the tax credits.
- 5 (k) The tax administrator of the division of taxation shall promulgate such rules and
 6 regulations as are necessary to implement the enforcement of this section.
- ingulations as are necessary to implement the emotechnent of this seen
- SECTION 4. Section 44-48.3-6 of the General Laws in Chapter 44-48.3 entitled "Rhode
 Island New Qualified Jobs Incentive Act 2015" is hereby amended to read as follows:
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44-48.3-6. Total amount of tax credit for eligible business.

- (a) The base amount of the tax credit for an eligible business for each new full-time job
 shall be up to two thousand five hundred dollars (\$2,500) annually.
- (b) The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period after the commerce corporation, in consultation with the division of taxation, has verified that the jobs covered by the tax credit have generated sufficient personal income taxes to comply with subsection (e) of this section.
- (c) In addition to the base amount of the tax credit, the amount of the tax credit to be
 awarded for each new full-time job may be increased, pursuant to the provisions of subsection (d)
 of this section, if the business meets any of the following criteria or such other additional criteria
 determined by the commerce corporation from time to time in response to evolving economic or
 market conditions:
- 21 (1) For a business located within a hope community;
- 22 (2) For a targeted industry;
- 23 (3) For a business located within a transit oriented development area; and
- (4) For an out-of-state business that relocates a business unit or units or creates a significant
 number of new full-time jobs during the commitment period.
- 26 (d) For any application made to the commerce corporation the tax credit for an eligible
 27 business for each new full-time job shall not exceed seven thousand five hundred dollars (\$7,500)
 28 annually.
- (e) Notwithstanding the provisions of subsections (a) through (d) of this section, for each application approved by the commerce corporation prior to July 1, 2019, the amount of tax credits available to be obtained by the business annually shall not exceed the reasonable W-2 withholding received by the state for each new full-time job created by a business for applications received by the commerce corporation. For each application approved by the commerce corporation after July 1, 2019, the amount of tax credits available to be obtained by the business annually shall not exceed by the commerce corporation.

- seventy-five percent (75%) of the reasonable W-2 withholding received by the state for each new
 full-time job created by a business for applications received by the commerce corporation.
- 3 (f) The commerce corporation shall establish regulations regarding the conditions under
 4 which a business may submit more than one application for tax credits over time. The commerce
 5 corporation may place limits on repeat applications.
- 6 (g) All construction workers shall be paid in accordance with the wages and benefits
- 7 required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified
- 8 payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow
- 9 the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material
- 10 breach of the agreement with the state and the commerce corporation, in consultation with the tax
- 11 <u>administrator, shall have the discretion to revoke the tax credits.</u>
- 12 (h) The commerce corporation, in consultation with the tax administrator, shall promulgate
- 13 such rules and regulations as are necessary to implement the enforcement of this section.
- 14 SECTION 5. This act shall take effect upon passage.

LC005270

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT – REBUILD RHODE ISLAND TAX CREDIT

1 This act would require that all entities receiving tax credits from the state pay their workers

2 the prevailing wage or other payments pursuant to chapter 13 of title 37. This act would also allow

- 3 the revocation of the tax credits for violation of this requirement.
- 4 This act would take effect upon passage.

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