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**H. 4679**

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Summary: SC Malls Revitalization Act

**HISTORY OF LEGISLATIVE ACTIONS**

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11/20/2019 House Referred to Committee on **Ways and Means**

1/14/2020 House Introduced and read first time ([House Journal‑page 65](file:///h:\hj\20200114.docx))

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**VERSIONS OF THIS BILL**

[11/20/2019](file:///p:\pprever\2019-20\4679_20191120.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 66 TO TITLE 12 ENTITLED THE “SOUTH CAROLINA MALLS REVITALIZATION ACT” SO AS TO PROVIDE CERTAIN TAX CREDITS FOR REHABILITATING CERTAIN MALLS BY MAKING THEM MORE OF A MIXED‑USE, MIXED‑INCOME, PEDESTRIAN‑ORIENTED AREA.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 66

South Carolina Malls Revitalization Act

Section 12‑66‑10. (A) The primary purpose of this chapter is to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned malls located in South Carolina.

(B) The abandonment of malls has resulted in the disruption of communities and increased the cost to local governments by requiring additional police and fire services due to excessive vacancies. Many abandoned malls pose safety concerns. A public and corporate purpose is served by restoring these malls to a productive asset for the communities and result in increased job opportunities.

(C) There exists in many communities of this State abandoned malls. The stable economic and physical development of these malls is endangered by the presence of these abandoned malls as manifested by the progressive and advanced deterioration of these structures. As a result of the existence of these abandoned malls, there is an excessive and disproportionate expenditure of public funds, inadequate public and private investments, unmarketability of property, growth in delinquencies and crime in the areas, together with an abnormal exodus of families and businesses, so the decline of these areas impairs the value of private investments, threatens the sound growth and the tax base of taxing districts in these areas, and threatens the health, safety, morals, and welfare of the public. To remove and alleviate these adverse conditions, it is necessary to encourage private investment and restore and enhance the tax base of the taxing districts in the areas by the redevelopment of these abandoned malls.

Section 12‑66‑20. For the purposes of this chapter, unless the context requires otherwise:

(1) ‘Abandoned’ means that at least fifty percent of the mall has been closed continuously to business or otherwise nonoperational as a mall for a period of at least one year immediately preceding the date on which the taxpayer files a ‘Notice of Intent to Rehabilitate’. For purposes of this item, a mall that otherwise qualifies as abandoned may be subdivided into separate parcels, which parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a mall for purposes of determining whether each subdivided parcel is considered to be abandoned.

(2) ‘Mall’ means an area that is comprised of three or more commercial establishments, the primary purpose of which is making retail sales, regardless of whether consideration is collected for the right or privilege of entering that area. Any parking areas contiguous to the mall may be considered as part of the mall.

(3) ‘Local taxing entities’ means a county, municipality, school district, special purpose district, and other entity or district with the power to levy ad valorem property taxes against the mall.

(4) ‘Local taxing entity ratio’ means that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the mall.

(5) ‘Placed in service’ means the date upon which the rehabilitated mall is completed and ready for its intended use. If the mall is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use.

(6) ‘Rehabilitation expenses’ means the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the mall, which make the entire mall more of a mixed‑use, mixed‑income, pedestrian‑oriented area. Costs of acquiring the mall or the cost of personal property located at the mall are not rehabilitation expenses.

(7) ‘Notice of Intent to Rehabilitate’ means, with respect to a mall acquired by a taxpayer after December 31, 2019, a letter submitted by the taxpayer to the department or the municipality or county as specified in this chapter, indicating the taxpayer’s intent to rehabilitate the mall, the location of the mall, the amount of acreage involved in the mall, and the estimated expenses to be incurred in connection with rehabilitation of the mall. The notice also must set forth information as to which parts of the mall the taxpayer intends to renovate.

Section 12‑66‑30. (A) Subject to the terms and conditions of this chapter, a taxpayer who rehabilitates a mall is eligible for either:

(1) a credit against real property taxes levied by local taxing entities; or

(2) a credit against income taxes imposed pursuant to Chapter 6 and Chapter 11 of this title, or corporate license fees pursuant to Chapter 20 of this title, or insurance premium taxes imposed by Chapter 7, Title 38, or any of them.

(B) If the taxpayer elects to receive the credit pursuant to subsection (A)(1), the following provisions apply:

(1) The taxpayer shall file a Notice of Intent to Rehabilitate with the municipality, or the county if the mall is located in an unincorporated area, in which the mall is located before incurring its first rehabilitation expenses at the mall. Failure to provide the Notice of Intent to Rehabilitate results in qualification of only those rehabilitation expenses incurred after notice is provided.

(2) Once the Notice of Intent to Rehabilitate has been provided to the county or municipality, the municipality or the county shall first by resolution determine the eligibility of the mall and the proposed rehabilitation expenses for the credit. A proposed rehabilitation of a mall must be approved by a positive majority vote of the local governing body. For purposes of this subsection, ‘positive majority vote’ is as defined in Section 6‑1‑300(5). If the county or municipality determines that the mall and the proposed rehabilitation expenses are eligible for the credit, there must be a public hearing and the municipality or county shall approve the mall for the credit by ordinance. Before approving a mall for the credit, the municipality or county shall make a finding that the credit does not violate a covenant, representation, or warranty in any of its tax increment financing transactions or an outstanding general obligation bond issued by the county or municipality.

(3)(a) The amount of the credit is equal to twenty‑five percent of the actual rehabilitation expenses made at the mall times the local taxing entity ratio of each local taxing entity that has consented to the credit pursuant to item (4), if the actual rehabilitation expenses incurred in rehabilitating the mall are between eighty percent and one hundred twenty‑five percent of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate. If the actual rehabilitation expenses exceed one hundred twenty‑five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty‑five percent of the estimated expenses as opposed to the actual expenses it incurred in rehabilitating the mall. If the actual rehabilitation expenses are below eighty percent of the estimated rehabilitation expenses, the credit is not allowed. The ordinance must provide for the credit to be taken as a credit against up to seventy‑five percent of the real property taxes due on the mall each year for up to eight years.

(b) The local taxing entity ratio is set as of the time the Notice of Intent to Rehabilitate is filed and remains set for the entire period that the credit may be claimed by the taxpayer.

(4) No fewer than forty‑five days before holding the public hearing required by subsection (B)(2), the governing body of the municipality or county shall give notice to all affected local taxing entities in which the mall is located of its intention to grant a credit against real property taxes for the mall and the amount of estimated credit proposed to be granted based on the estimated rehabilitation expenses. If a local taxing entity does not file an objection to the tax credit with the municipality or county on or before the date of the public hearing, the local taxing entity is considered to have consented to the tax credit.

(5) The credit against real property taxes for each applicable phase or portion of the mall may be claimed beginning for the property tax year in which the applicable phase or portion of the mall is first placed in service.

(C) If the taxpayer elects to receive the credit pursuant to subsection (A)(2), the following provisions apply:

(1) The amount of the credit is equal to twenty‑five percent of the actual rehabilitation expenses made at the mall.

(2) If the taxpayer has acquired the mall after December 31, 2019, the provisions of this item apply to the mall; provided, however, that transfers between affiliated taxpayers of phases of any mall may not be deemed an acquisition for this purpose. The taxpayer shall file with the department a Notice of Intent to Rehabilitate prior to receiving the building permits for the applicable rehabilitation at the mall or phase thereof. Failure to provide the Notice of Intent to Rehabilitate prior to receiving the building permits for the applicable rehabilitation at the mall or phase thereof results in qualification of only those rehabilitation expenses incurred after the notice is provided. If the actual rehabilitation expenses exceed one hundred twenty‑five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty‑five percent of the estimated expenses as opposed to the actual expenses incurred in rehabilitating the mall.

(3) The entire credit is earned in the taxable year in which the applicable phase or portion of the mall is placed in service but must be taken in equal installments over a five‑year period beginning with the tax year in which the applicable phase or portion of the mall is placed in service. Unused credit may be carried forward for the succeeding five years, at the individual, partnership, or limited liability company level.

(4)(a) If the taxpayer leases the mall, or part of the mall, the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the mall to the lessee. The provisions of this item apply to a lessee that is an entity taxed as a partnership. If a taxpayer sells the mall, or any phase or portion of the mall, the taxpayer may transfer all, or part of the remaining credit, associated with the rehabilitation expenses incurred with respect to that phase or portion of the mall to the purchaser of the applicable portion of the mall.

(b) To the extent that the taxpayer transfers the credit, the taxpayer must notify the department of the transfer in the manner the department prescribes.

(5) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit, including the unused credit carryforward, may be passed through to the partners or members and may be allocated by the taxpayer among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a member or partner at any time during the year in which the credit is allocated.

(D) A taxpayer is not eligible for the credit if the facility has previously received credits allowed by this chapter, or if the taxpayer owned the otherwise eligible mall when the part of the mall that was operational, and immediately prior to its abandonment.

Section 12‑66‑40. The provisions of Chapter 31, Title 6 also apply to this chapter; except that, the requirements of Section 6‑31‑40 do not apply.

Section 12‑66‑50. The taxpayer may apply to the municipality or county in which the mall is located for a certification of the mall made by ordinance or binding resolution of the governing body of the municipality or county. The certification shall include findings that the:

(1) mall was a mall as defined in Section 12‑66‑20(3); and

(2) mall has been abandoned as defined in Section 12‑66‑20(1).

The taxpayer may conclusively rely upon the certification in determining the credit allowed; provided, however, that if the taxpayer is relying upon the certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed.”

SECTION 2. This act takes effect upon approval by the Governor.

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