

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 42

Session of 2009

INTRODUCED BY FREEMAN, HARPER, ADOLPH, ARGALL, BARRAR, BELFANTI, BEYER, BOYD, BRENNAN, BUXTON, CALTAGIRONE, COHEN, CONKLIN, DALLY, DePASQUALE, FLECK, FRANKEL, GEIST, GEORGE, GIBBONS, GOODMAN, GROVE, HARKINS, HESS, JOSEPHS, KIRKLAND, KORTZ, KOTIK, LENTZ, LEVDANSKY, LONGIETTI, MANDERINO, MANN, McGEEHAN, McILVAINE SMITH, MELIO, MICOZZIE, MILLER, MOUL, MURT, MUSTIO, M. O'BRIEN, O'NEILL, PALLONE, PASHINSKI, PAYNE, PETRI, READSHAW, REED, REICHLEY, ROSS, SAMUELSON, SAYLOR, SCAVELLO, SCHRODER, SIPTROTH, K. SMITH, SONNEY, STURLA, VITALI, WALKO, WATSON, WHITE, YUDICHAK, HORNAMAN, CLYMER, HARHAI, FABRIZIO, MILNE, WANSACZ, KILLION, GINGRICH, MYERS, PETRARCA, HOUGHTON, BRIGGS AND MATZIE, JANUARY 26, 2009

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 8, 2009

AN ACT

1 Providing for the establishment of the Historic Preservation
2 Incentive Program for historic commercial and residential
3 sites, for grants and for tax credits.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Historic
10 Preservation Incentive Act.

11 Section 102. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Commercial applicant." Any natural person, corporation,
3 foundation, organization, business trust, estate, limited
4 liability company, licensed corporation, trust, partnership,
5 limited liability partnership, association or any other form of
6 legal business entity that owns an eligible commercial property.

7 "Commission." The Pennsylvania Historical and Museum
8 Commission.

9 "Eligible building improvements." Exterior rehabilitation or
10 restoration work performed on an eligible commercial property or
11 an eligible residential property, including work involving
12 windows, consistent with the Standards for Rehabilitation of the
13 Secretary of the Interior.

14 "Eligible commercial property." A building used or zoned to
15 be used for income producing purposes, that is listed on the
16 National Register of Historic Places, is a contributing property
17 in a National Register historic district or is located in a
18 local government historic district. The term includes a building
19 used or zoned to be used for commercial purposes that is also
20 used for residential purposes and a for-sale condominium
21 project, which otherwise meet the criteria set forth in this
22 definition.

23 "Eligible residential property." A single-family dwelling or
24 a building which:

25 (1) is a single family dwelling used as the owner's
26 principal residence or is a building that is divided into no
27 more than four residential units, one of which is used as the
28 owner's principal residence;

29 (2) is owned by one or more natural persons; and

30 (3) either:

1 (i) is listed on the National Register of Historic
2 Places or is a contributing property in a National
3 Register historic district; or

4 (ii) is located in a local government historic
5 district.

6 "Elm Street area." A geographically defined portion of a
7 municipality designated as an Elm Street area by the Department
8 of Community and Economic Development in accordance with the
9 terms and conditions of the act of February 9, 2004 (P.L.61, No.
10 7), known as the Elm Street Program Act. The term includes an
11 area which has exited the official program but still has a
12 program functioning to revitalize the designated areas pursuant
13 to the department's program guidelines.

14 "Enterprise zone." A geographic area designated by the
15 Department of Community and Economic Development as an
16 enterprise zone. The term includes an area which has exited the
17 official program but still has a program functioning to
18 revitalize the designated areas pursuant to the department's
19 program guidelines.

20 "Historic district." A local government historic district or
21 an area in this Commonwealth which has been designated as a
22 historic district under the National Historic Preservation Act
23 (Public Law 89-665, 80 Stat. 915).

24 "Historic structure." A building listed in the National
25 Register of Historic Places, either individually or as a
26 contributing building within a historic district.

27 "Local government historic district." A historic district
28 designated by any of the following:

29 (1) Section 2 of the act of June 13, 1961 (P.L.282, No.
30 167), entitled "An act authorizing counties, cities,

1 boroughs, incorporated towns and townships to create historic
2 districts within their geographic boundaries; providing for
3 the appointment of Boards of Historical Architectural Review;
4 empowering governing bodies of political subdivisions to
5 protect the distinctive historical character of these
6 districts and to regulate the erection, reconstruction,
7 alteration, restoration, demolition or razing of buildings
8 within the historic districts."

9 (2) The Historic Preservation Ordinance, Section
10 14-2007, of the Philadelphia City Code.

11 (3) Title 11 of the Pittsburgh City Code, Chapter 1,
12 Section 3, as amended by City Council on July 22, 1997.

13 (4) The City of Scranton under the City of Scranton
14 Commission for Architectural and Urban Design Review
15 ordinance.

16 "Main Street community." A geographic area designated as a
17 Main Street community by the Department of Community and
18 Economic Development. The term includes an area that has exited
19 the official program but still has a program functioning to
20 revitalize the designated areas pursuant to the department's
21 program guidelines.

22 "National Register." The National Register of Historic
23 Places established under section 101 of the National Historic
24 Preservation Act (Public Law 89-665, 16 U.S.C. § 470a).

25 "Residential applicant." One or more natural persons who own
26 an eligible residential property.

27 "Standards." The Secretary of the Interior Standards for the
28 Treatment of Historic Properties, excluding reconstruction, set
29 forth at 36 CFR 67.7 (relating to Standards for Rehabilitation).

30 CHAPTER 3

GRANTS

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Section 301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Community and Economic Development of the Commonwealth.

Section 302. Historic Preservation Incentive Grant Program.

(a) Establishment.--There is established a program in the department to be known as the Historic Preservation Incentive Grant Program. The program shall provide grants, TO THE EXTENT FUNDS ARE AVAILABLE, to owners of eligible properties located within this Commonwealth that undertake eligible residential building improvements.

(b) Application.--IN ANY YEAR IN WHICH THERE IS FUNDING FOR THE PROGRAM, THE DEPARTMENT SHALL MAKE APPLICATIONS AVAILABLE ON ITS INTERNET WEBSITE AND IN ITS REGIONAL COMMUNITY AFFAIRS AND DEVELOPMENT OFFICES. To participate in the program, a residential applicant must submit an application to the department requesting a grant for the reimbursement of costs associated with eligible building improvements to an eligible residential property owned by the residential applicant. The application must be submitted on a form developed by the department in consultation with the commission and must include all of the following:

- (1) The name and address of the residential applicant.
- (2) The location of the property.
- (3) Proof of ownership of the property by the residential applicant. The residential applicant may satisfy this requirement by providing evidence satisfactory to the

1 department that the residential applicant will own the
2 property at some point in time following submission of the
3 application and has sufficient control of the property at the
4 time of submission to perform the work described in the
5 application.

6 (4) A description of the property providing sufficient
7 information to establish that the property meets the criteria
8 for an eligible residential property, including information
9 specified in the commission's guidelines.

10 (5) A detailed description of the proposed work to be
11 performed, including plans, drawings and specifications as
12 appropriate.

13 (6) A detailed estimate of the cost of the work to be
14 performed.

15 (7) Proof that the residential applicant is current with
16 respect to the payment of all real estate taxes assessed
17 against the property or evidence that the residential
18 applicant is contesting the taxes in good faith and has set
19 aside sums to cover any tax liability in the event the
20 contest fails.

21 (8) Evidence of the source of matching funds to be
22 utilized for the project. If the source of matching funds is
23 a loan from a financial institution, the residential
24 applicant must provide a copy of the loan application and
25 commitment or other evidence satisfactory to the department
26 of the residential applicant's ability to obtain the
27 necessary financing.

28 (9) Any other information required by the department or
29 the commission.

30 (c) Review and recommendation by commission.--The department

1 shall forward the application to the commission for review. If
2 the commission determines that the property qualifies as an
3 eligible residential property and that the proposed improvements
4 would qualify as eligible building improvements, then the
5 commission may recommend approval of the property for the
6 program and shall notify the department of its recommendation
7 within 45 days following receipt of a completed application by
8 the commission.

9 (d) Award of grant by department.--Upon receipt of the
10 commission's recommendation for approval as provided in
11 subsection (c) AND TO THE EXTENT FUNDS ARE AVAILABLE, the ←
12 department may award the residential applicant a grant and shall
13 notify the residential applicant and the commission of its
14 action.

15 (e) Certification and disbursement.--

16 (1) Following completion of the work, the residential
17 applicant shall file a certification with the commission
18 stating that the work has been completed. The certification
19 shall be accompanied by photographs showing the completed
20 project, evidence of the actual expenditures made by the
21 residential applicant and evidence, in the form of a letter
22 or letters from local code enforcement officials, that the
23 property, as improved, complies with all local building,
24 fire, safety and health codes.

25 (2) The commission shall complete its review of the
26 certification within 90 days of receipt of the certification
27 by the commission. The commission may request additional
28 information and conduct a site inspection as it deems
29 necessary to determine compliance with the requirements of
30 the program established by this chapter.

1 (3) If the commission is satisfied with the
2 certification submitted, it shall notify the department of
3 the approved eligible building improvements. The department
4 shall calculate the amount of the grant and disburse the
5 grant funds to the residential applicant.

6 (f) Eligible organizations.--A Main or Elm Street program or
7 organization for historic preservation shall be eligible to
8 apply for funding under this chapter to assist in the
9 administration of the program under this chapter.

10 (g) Special rules.--An application for a grant for eligible
11 building improvements must include one of the following
12 statements from the residential applicant:

13 (1) That the residential applicant has owned the
14 eligible residential property for at least five years prior
15 to the date of submission of the application.

16 (2) That the residential applicant has owned the
17 eligible residential property for less than five years prior
18 to the date of submission of the application but agrees to
19 continue to own the property for a total of at least five
20 years.

21 Section 303. Exemption from State taxes.

22 Grant amounts awarded by the department for eligible
23 residential properties shall not be considered income to the
24 residential applicant under section 303 of the act of March 4,
25 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

26 Section 304. Allocation of grant funds; limitations;
27 priorities.

28 (a) Source.--Funds for this program shall be provided to the
29 department from funds authorized for this purpose.

30 (b) Proration.--If the total amount of grants to be awarded

1 exceeds the amount of funds available for the program in any
2 year, the amount of grants may be prorated among the successful
3 residential applicants.

4 (c) Limitations.--

5 (1) Subject to the other limitations set forth in this
6 subsection, a grant awarded to a successful residential
7 applicant shall not be more than 70% of the total amount of
8 expenditures made for eligible building improvements.

9 (2) In no event shall any grant be awarded unless:

10 (i) the residential applicant is current with
11 respect to all local real estate taxes assessed against
12 the residential applicant's eligible residential
13 property; or

14 (ii) the residential applicant, in good faith, is
15 contesting local real estate taxes assessed against the
16 residential applicant's eligible residential property,
17 provides the department with evidence of the contest and
18 has set aside sums to cover any tax liability in the
19 event the contest fails.

20 (3) Up to \$15,000 may be awarded to a residential
21 applicant in connection with a single project.

22 (4) In order to receive money from a grant, the
23 residential applicant must complete the project being funded
24 by the grant within two years of receipt of notification from
25 the department of the award.

26 (d) Priorities.--Priority for the award of grants may be
27 given to properties located in Elm Street areas, Main Street
28 communities, enterprise zones and local government historic
29 districts. The department shall take into account geographical
30 distribution of grants in making awards.

1 Section 305. Administration.

2 (a) Guidelines.--The department and the commission shall
3 jointly develop guidelines for the implementation of the program
4 established by this chapter.

5 (b) Expenditures.--The department may utilize up to an
6 aggregate of 3% of the funds available for the program annually,
7 not to exceed \$500,000, as allocated by the Governor, for
8 expenses incurred in administering the program established by
9 this chapter and Chapter 5. The department and the commission
10 shall enter into an agreement for the payment to the commission
11 of a portion of sums for expenses incurred by the commission.

12 Section 306. Repayment.

13 The department, at its discretion, shall be entitled to a
14 return of all grant funds paid to the residential applicant if,
15 within five years following completion of the project, any of
16 the following occur:

17 (1) The owner of the eligible residential property makes
18 improvements to the exterior of the property which do not
19 meet the standards.

20 (2) The eligible residential property is removed from
21 the National Register, either individually or as a
22 contributing building within a historic district, whether or
23 not as a result of the owner making improvements to the
24 exterior of the property which do not meet the standards.

25 (3) The eligible residential property is transferred in
26 violation of the agreement made by the owner under the
27 provisions of section 302(g)(2), if applicable, unless the
28 transfer occurs as a result of the death of the owner or is
29 otherwise involuntary.

30 CHAPTER 5

TAX CREDITS

Section 501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Certified historic structure." As defined in section 47(c) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c) (3)).

"Department." The Department of Revenue of the Commonwealth.

"Pass-through entity." Any of the following:

(1) A partnership, as defined in section 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(2) A Pennsylvania S corporation as defined in section 301(n.1) of the Tax Reform Code of 1971.

"Qualified rehabilitation expenditure." A qualified rehabilitation expenditure, as defined in section 47(c) (2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c) (2)), incurred after December 31, 2008.

"Qualified tax liability." The liability for taxes imposed under Article III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The term does not include any tax withheld by an employer from an employee under Article III of the Tax Reform Code of 1971.

Section 502. Tax credit certificate.

(a) Application.--

(1) A commercial applicant may apply to the Department of Community and Economic Development for a tax credit certificate under this section.

(2) The application must be on the form required by the

1 Department of Community and Economic Development.

2 (3) The application must be filed on or before February
3 1 for qualified rehabilitation expenditures incurred in the
4 prior calendar year.

5 (b) Review, recommendation and approval.--

6 (1) The Department of Community and Economic Development
7 shall forward the application to the commission for review.

8 (2) If the commission determines that the commercial
9 applicant has incurred qualified rehabilitation expenditures,
10 the commission may recommend approval of the application and
11 shall notify the Department of Community and Economic
12 Development of its recommendation within 30 days following
13 receipt of a completed application by the commission.

14 (3) Upon receipt of the commission's recommendation for
15 approval, the Department of Community and Economic
16 Development:

17 (i) may approve the application; and

18 (ii) by April 1, shall notify the commercial
19 applicant and the commission of its action.

20 (4) If the Department of Community and Economic
21 Development approves the application, it shall issue the
22 commercial applicant a tax credit certification by April 1.
23 In granting tax credit certificates, the Department of
24 Community and Economic Development:

25 (i) shall give priority to properties located in Elm
26 Street areas, enterprise zones, local government historic
27 districts and Main Street communities;

28 (ii) shall take into account the geographical
29 distribution of tax credit certificates; and

30 (iii) shall not grant more than \$10,000,000 in tax

1 credit certificates in a single fiscal year.

2 (C) AVAILABILITY OF FUNDING.--THE DEPARTMENT OF COMMUNITY
3 AND ECONOMIC DEVELOPMENT MAY NOT APPROVE ANY APPLICATION UNDER
4 THIS CHAPTER UNLESS THE SECRETARY OF THE BUDGET DETERMINES THAT
5 ENOUGH FUNDS ARE AVAILABLE FOR THE TAX CREDITS IN THAT CALENDAR
6 YEAR.

7 Section 503. Claiming the credit.

8 (a) Claim.--Upon presenting a tax credit certificate to the
9 department, the commercial applicant may claim a tax credit
10 against the qualified tax liability of the commercial applicant.

11 (b) Amount and qualification.--

12 (1) A commercial applicant is allowed a tax credit under
13 this chapter in the amount of 25% of a qualified
14 rehabilitation expenditure:

15 (i) which is incurred in connection with
16 rehabilitation of a certified historic structure located
17 in this Commonwealth; and

18 (ii) for which a credit is received under section 47
19 of the Internal Revenue Code of 1986 (Public Law 99-514,
20 26 U.S.C. § 47).

21 (2) The tax credit may not exceed \$500,000 for a single
22 commercial applicant in a single fiscal year.

23 Section 504. Carryover, carryback and sale or assignment of
24 credit.

25 (a) General rule.--If the commercial applicant cannot use
26 the entire amount of the tax credit for the taxable year in
27 which the tax credit certificate was issued, then the excess may
28 be carried over to succeeding taxable years and used as a credit
29 against the qualified tax liability of the commercial applicant
30 for those taxable years. Each time the tax credit is carried

1 over to a succeeding taxable year, it shall be reduced by the
2 amount that was used as a credit during the immediately
3 preceding taxable year. The tax credit provided by this chapter
4 may be carried over and applied to succeeding taxable years for
5 no more than three taxable years following the first taxable
6 year for which the taxpayer was entitled to claim the credit.

7 (b) Application.--A tax credit certificate issued by the
8 department shall first be applied against the commercial
9 applicant's qualified tax liability for the current taxable year
10 as of the date on which the tax credit certificate was issued
11 before the tax credit can be applied against any tax liability
12 under subsection (a).

13 (c) No carryback or refund.--A commercial applicant is not
14 entitled to carry back or obtain a refund of all or any portion
15 of an unused tax credit granted to the taxpayer under this
16 chapter.

17 (d) Sale or assignment.--

18 (1) A commercial applicant, upon application to and
19 approval by the department, may sell or assign, in whole or
20 in part, a tax credit granted to the commercial applicant
21 under this chapter.

22 (2) A credit may not be sold or assigned for a period of
23 one year following the date the tax certificate was issued by
24 the department.

25 (3) Before an application is approved, the department
26 must make a finding that the commercial applicant has filed
27 all required State tax reports and returns for all applicable
28 taxable years and paid any balance of State tax due as
29 determined by assessment or determination by the department.

30 (e) Purchasers and assignees.--The purchaser or assignee of

1 all or a portion of a tax credit under subsection (d) shall
2 immediately claim the credit in the taxable year in which the
3 purchase or assignment is made. The amount of the tax credit
4 that a purchaser or assignee may use against a single qualified
5 tax liability may not exceed 50% of that qualified tax liability
6 for the taxable year. The purchaser or assignee may not carry
7 forward, carry back or obtain a refund of or further sell or
8 assign the tax credit. The purchaser or assignee shall notify
9 the department of the seller or assignor of the tax credit in
10 compliance with procedures specified by the department.

11 Section 505. Pass-through entity.

12 (a) General rule.--If a pass-through entity has any unused
13 tax credit under section 504(a), it may elect in writing,
14 according to procedures established by the department, to
15 transfer all or a portion of the credit to shareholders, members
16 or partners in proportion to the share of the entity's
17 distributive income to which the shareholder, member or partner
18 is entitled.

19 (b) Limitation.--A pass-through entity and a shareholder,
20 member or partner of a pass-through entity may not claim the
21 credit under subsection (a) for the same qualified
22 rehabilitation expenditure.

23 (c) Application.--A shareholder, member or partner of a
24 pass-through entity to which a credit is transferred under
25 subsection (a) shall immediately claim the credit in the taxable
26 year in which the transfer is made. The shareholder, member or
27 partner may not carry forward, carry back, obtain a refund of or
28 sell or assign the credit.

29 Section 506. Cancellation.

30 (a) Cancellation of tax credit certificate.--The Department

1 of Community and Economic Development may cancel a tax
2 certificate issued under section 502 if, within five years
3 following completion of the project, any of the following occur:

4 (1) The owner of the certified historic structure makes
5 improvements to the exterior of the property which do not
6 meet the standards.

7 (2) The certified historic structure is removed from the
8 National Register, either individually or as a contributing
9 building within a historic district, whether or not as a
10 result of the owner making improvements to the exterior of
11 the property which do not meet the standards.

12 (b) Notices.--The Department of Community and Economic
13 Development shall notify the commercial applicant to whom the
14 tax credit was granted and the department of cancellation of
15 that tax credit, including the amount of the tax credit
16 canceled. The commercial applicant shall pay the amount of the
17 canceled tax credit on the application notice to the department
18 within 30 days of the date of the cancellation notice.

19 (c) Appeals.--

20 (1) A party aggrieved by the cancellation of a tax
21 credit certificate may appeal the cancellation to the
22 Department of Community and Economic Development.

23 (2) The appeal must be made within 30 days of the date
24 of the cancellation notice.

25 (3) The appeal is subject to:

26 (i) 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
27 and procedure of Commonwealth agencies), 1 Pa. Code Pt.
28 II (relating to general rules of administrative practice
29 and procedure) and procedural regulations promulgated by
30 the Department of Community and Economic Development; and

1 (ii) 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial
2 review of Commonwealth agency action).

3 Section 507. Administration.

4 The Department of Community and Economic Development and the
5 department shall jointly develop guidelines for the
6 implementation of the program established in this chapter.

7 CHAPTER 31

8 MISCELLANEOUS PROVISIONS

9 Section 3101. Effective date.

10 This act shall take effect in 120 days.