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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1354 Session of  
2011

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INTRODUCED BY FREEMAN, HARPER, THOMAS, ROSS, BEAR, BOBACK,  
B. BOYLE, BRIGGS, BUXTON, CALTAGIRONE, CLYMER, CONKLIN,  
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SCAVELLO, K. SMITH, SONNEY, STURLA, WAGNER, WATSON AND  
YOUNGBLOOD, APRIL 20, 2011

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REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 20, 2011

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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  
14 context clearly indicates otherwise:

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

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

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

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

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

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

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

29 (3) either:

30 (i) is listed on the National Register of Historic

1 Places or is a contributing property in a National  
2 Register historic district; or  
3 (ii) is located in a local government historic  
4 district.

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

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

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

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

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

28 (1) Section 2 of the act of June 13, 1961 (P.L.282, No.  
29 167), entitled "An act authorizing counties, cities,  
30 boroughs, incorporated towns and townships to create historic

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

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

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

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

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

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

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

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

29 CHAPTER 3

30 GRANTS

1 Section 301. Definitions.

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

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

7 Section 302. Historic Preservation Incentive Grant Program.

8 (a) Establishment.--There is established a program in the  
9 department to be known as the Historic Preservation Incentive  
10 Grant Program. The program shall provide grants, to the extent  
11 funds are available, to owners of eligible properties located  
12 within this Commonwealth that undertake eligible residential  
13 building improvements.

14 (b) Application.--In any year in which there is funding for  
15 the program, the department shall make applications available on  
16 its Internet website and in its regional community affairs and  
17 development offices. To participate in the program, a  
18 residential applicant must submit an application to the  
19 department requesting a grant for the reimbursement of costs  
20 associated with eligible building improvements to an eligible  
21 residential property owned by the residential applicant. The  
22 application must be submitted on a form developed by the  
23 department in consultation with the commission and must include  
24 all of the following:

25 (1) The name and address of the residential applicant.

26 (2) The location of the property.

27 (3) Proof of ownership of the property by the  
28 residential applicant. The residential applicant may satisfy  
29 this requirement by providing evidence satisfactory to the  
30 department that the residential applicant will own the

1 property at some point in time following submission of the  
2 application and has sufficient control of the property at the  
3 time of submission to perform the work described in the  
4 application.

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

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

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

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

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

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

29 (c) Review and recommendation by commission.--The department  
30 shall forward the application to the commission for review. If

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

8 (d) Award of grant by department.--Upon receipt of the  
9 commission's recommendation for approval as provided in  
10 subsection (c) and to the extent funds are available, the  
11 department may award the residential applicant a grant and shall  
12 notify the residential applicant and the commission of its  
13 action.

14 (e) Certification and disbursement.--

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

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

30 (3) If the commission is satisfied with the

1 certification submitted, it shall notify the department of  
2 the approved eligible building improvements. The department  
3 shall calculate the amount of the grant and disburse the  
4 grant funds to the residential applicant.

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

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

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

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

20 Section 303. Exemption from State taxes.

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

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

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

29 (b) Proration.--If the total amount of grants to be awarded  
30 exceeds the amount of funds available for the program in any



1 year, the amount of grants may be prorated among the successful  
2 residential applicants.

3 (c) Limitations.--

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

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

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

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

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

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

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

30 Section 305. Administration.

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

4 (b) Expenditures.--The department may utilize up to an  
5 aggregate of 3% of the funds available for the program annually,  
6 not to exceed \$500,000, as allocated by the Governor, for  
7 expenses incurred in administering the program established by  
8 this chapter and Chapter 5. The department and the commission  
9 shall enter into an agreement for the payment to the commission  
10 of a portion of sums for expenses incurred by the commission.  
11 Section 306. Repayment.

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

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

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

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

29 CHAPTER 5

30 TAX CREDITS

1 Section 501. Definitions.

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

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

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

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

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

13 (2) A Pennsylvania S corporation as defined in section  
14 301(n.1) of the Tax Reform Code of 1971.

15 "Qualified rehabilitation expenditure." A qualified  
16 rehabilitation expenditure, as defined in section 47(c)(2) of  
17 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
18 § 47(c)(2)), incurred after December 31, 2008.

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

24 Section 502. Tax credit certificate.

25 (a) Application.--

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

29 (2) The application must be on the form required by the  
30 Department of Community and Economic Development.

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

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

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

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

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

16                 (i) may approve the application; and

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

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

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

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

29                 (iii) shall not grant more than \$10,000,000 in tax  
30 credit certificates in a single fiscal year.

1 (c) Availability of funding.--The Department of Community  
2 and Economic Development may not approve any application under  
3 this chapter unless the Secretary of the Budget determines that  
4 enough funds are available for the tax credits in that calendar  
5 year.

6 Section 503. Claiming the credit.

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

10 (b) Amount and qualification.--

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

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

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

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

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

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

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

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

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

16 (d) Sale or assignment.--

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

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

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

29 (e) Purchasers and assignees.--The purchaser or assignee of  
30 all or a portion of a tax credit under subsection (d) shall

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

10 Section 505. Pass-through entity.

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

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

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

28 Section 506. Cancellation.

29 (a) Cancellation of tax credit certificate.--The Department  
30 of Community and Economic Development may cancel a tax

1 certificate issued under section 502 if, within five years  
2 following completion of the project, any of the following occur:

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

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

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

18 (c) Appeals.--

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

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

24 (3) The appeal is subject to:

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

30 (ii) 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial



1 review of Commonwealth agency action).

2 Section 507. Administration.

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

6 CHAPTER 31

7 MISCELLANEOUS PROVISIONS

8 Section 3101. Effective date.

9 This act shall take effect in 120 days.