

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 AND MYERS, JANUARY 26, 2009

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 4, 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 (ii) 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,

GRANTS

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 owners of eligible properties located within this Commonwealth that undertake eligible residential building improvements.

(b) Application.--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 department that the residential applicant will own the property at some point in time following submission of the application and has sufficient control of the property at the time of submission to perform the work described in the

1 application.

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

6 (5) A detailed description of the proposed work to be
7 performed, including plans, drawings and specifications as
8 appropriate.

9 (6) A detailed estimate of the cost of the work to be
10 performed.

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

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

24 (9) Any other information required by the department or
25 the commission.

26 (c) Review and recommendation by commission.--The department
27 shall forward the application to the commission for review. If
28 the commission determines that the property qualifies as an
29 eligible residential property and that the proposed improvements
30 would qualify as eligible building improvements, then the

1 commission may recommend approval of the property for the
2 program and shall notify the department of its recommendation
3 within 45 days following receipt of a completed application by
4 the commission.

5 (d) Award of grant by department.--Upon receipt of the
6 commission's recommendation for approval as provided in
7 subsection (c), the department may award the residential
8 applicant a grant and shall notify the residential applicant and
9 the commission of its action.

10 (e) Certification and disbursement.--

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

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

26 (3) If the commission is satisfied with the
27 certification submitted, it shall notify the department of
28 the approved eligible building improvements. The department
29 shall calculate the amount of the grant and disburse the
30 grant funds to the residential applicant.

1 ~~(f) Agreement. The department is not required to enter into~~ ←
2 ~~a grant agreement with a residential applicant prior to awarding~~
3 ~~and disbursing a grant.~~

4 (F) ELIGIBLE ORGANIZATIONS.--A MAIN OR ELM STREET PROGRAM OR ←
5 ORGANIZATION FOR HISTORIC PRESERVATION SHALL BE ELIGIBLE TO
6 APPLY FOR FUNDING UNDER THIS CHAPTER TO ASSIST IN THE
7 ADMINISTRATION OF THE PROGRAM UNDER THIS CHAPTER.

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

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

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

19 Section 303. Exemption from State taxes.

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

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

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

28 (b) Proration.--If the total amount of grants to be awarded
29 exceeds the amount of funds available for the program in any
30 year, the amount of grants may be prorated among the successful

1 residential applicants.

2 (c) Limitations.--

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

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

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

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

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

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

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

29 Section 305. Administration.

30 (a) Guidelines.--The department and the commission shall

1 jointly develop guidelines for the implementation of the program
2 established by this chapter.

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

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

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

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

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

28 CHAPTER 5
29 TAX CREDITS

30 Section 501. Definitions.

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

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

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

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

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

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

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

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

23 Section 502. Tax credit certificate.

24 (a) Application.--

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

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

30 (3) The application must be filed on or before February

1 for qualified rehabilitation expenditures incurred in the
2 prior calendar year.

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

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

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

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

15 (i) may approve the application; and

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

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

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

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

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

30 Section 503. Claiming the credit.

1 (a) Claim.--Upon presenting a tax credit certificate to the
2 department, the commercial applicant may claim a tax credit
3 against the qualified tax liability of the commercial applicant.

4 (b) Amount and qualification.--

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

8 (i) which is incurred in connection with
9 rehabilitation of a certified historic structure located
10 in this Commonwealth; and

11 (ii) for which a credit is received under section 47
12 of the Internal Revenue Code of 1986 (Public Law 99-514,
13 26 U.S.C. § 47).

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

16 Section 504. Carryover, carryback and sale or assignment of
17 credit.

18 (a) General rule.--If the commercial applicant cannot use
19 the entire amount of the tax credit for the taxable year in
20 which the tax credit certificate was issued, then the excess may
21 be carried over to succeeding taxable years and used as a credit
22 against the qualified tax liability of the commercial applicant
23 for those taxable years. Each time the tax credit is carried
24 over to a succeeding taxable year, it shall be reduced by the
25 amount that was used as a credit during the immediately
26 preceding taxable year. The tax credit provided by this chapter
27 may be carried over and applied to succeeding taxable years for
28 no more than three taxable years following the first taxable
29 year for which the taxpayer was entitled to claim the credit.

30 (b) Application.--A tax credit certificate issued by the

1 department shall first be applied against the commercial
2 applicant's qualified tax liability for the current taxable year
3 as of the date on which the tax credit certificate was issued
4 before the tax credit can be applied against any tax liability
5 under subsection (a).

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

10 (d) Sale or assignment.--

11 (1) A commercial applicant, upon application to and
12 approval by the department, may sell or assign, in whole or
13 in part, a tax credit granted to the commercial applicant
14 under this chapter.

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

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

23 (e) Purchasers and assignees.--The purchaser or assignee of
24 all or a portion of a tax credit under subsection (d) shall
25 immediately claim the credit in the taxable year in which the
26 purchase or assignment is made. The amount of the tax credit
27 that a purchaser or assignee may use against a single qualified
28 tax liability may not exceed 50% of that qualified tax liability
29 for the taxable year. The purchaser or assignee may not carry
30 forward, carry back or obtain a refund of or further sell or

1 assign the tax credit. The purchaser or assignee shall notify
2 the department of the seller or assignor of the tax credit in
3 compliance with procedures specified by the department.

4 Section 505. Pass-through entity.

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

12 (b) Limitation.--A pass-through entity and a shareholder,
13 member or partner of a pass-through entity may not claim the
14 credit under subsection (a) for the same qualified
15 rehabilitation expenditure.

16 (c) Application.--A shareholder, member or partner of a
17 pass-through entity to which a credit is transferred under
18 subsection (a) shall immediately claim the credit in the taxable
19 year in which the transfer is made. The shareholder, member or
20 partner may not carry forward, carry back, obtain a refund of or
21 sell or assign the credit.

22 Section 506. Cancellation.

23 (a) Cancellation of tax credit certificate.--The Department
24 of Community and Economic Development may cancel a tax
25 certificate issued under section 502 if, within five years
26 following completion of the project, any of the following occur:

27 (1) The owner of the certified historic structure makes
28 improvements to the exterior of the property which do not
29 meet the standards.

30 (2) The certified historic structure is removed from the

1 National Register, either individually or as a contributing
2 building within a historic district, whether or not as a
3 result of the owner making improvements to the exterior of
4 the property which do not meet the standards.

5 (b) Notices.--The Department of Community and Economic
6 Development shall notify the commercial applicant to whom the
7 tax credit was granted and the department of cancellation of
8 that tax credit, including the amount of the tax credit
9 canceled. The commercial applicant shall pay the amount of the
10 canceled tax credit on the application notice to the department
11 within 30 days of the date of the cancellation notice.

12 (c) Appeals.--

13 (1) A party aggrieved by the cancellation of a tax
14 credit certificate may appeal the cancellation to the
15 Department of Community and Economic Development.

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

18 (3) The appeal is subject to:

19 (i) 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
20 and procedure of Commonwealth agencies), 1 Pa. Code Pt.
21 II (relating to general rules of administrative practice
22 and procedure) and procedural regulations promulgated by
23 the Department of Community and Economic Development; and

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

26 Section 507. Administration.

27 The Department of Community and Economic Development and the
28 department shall jointly develop guidelines for the
29 implementation of the program established in this chapter.

30

CHAPTER 31

1

MISCELLANEOUS PROVISIONS

2 Section 3101. Effective date.

3 This act shall take effect in 120 days.