SENATE, No. 659

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:
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SYNOPSIS

"Historic Property Reinvestment Act"; provides credits against certain taxes for certain costs of rehabilitating historic properties.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT providing credits against certain taxes for certain costs of rehabilitating historic properties, and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Historic Property Reinvestment Act."

2. As used in this act:

"Cost of rehabilitation" means the consideration given, valued in money, whether given in money or otherwise, for the materials and services which constitute the rehabilitation.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"New Jersey S corporation" means the same as the term is defined in section 12 of P.L.1993, c.173 (C.54A:5-10).

"Officer" means the State Historic Preservation Officer or the official within the State designated by the Governor or by statute in accordance with the provisions of the "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C. s.470 et seq.), to act as liaison for the purpose of administering historic preservation programs in the State.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Principal residence" means a one- or two-family homestead actually and continually occupied by an individual as the individual's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the individual, and other secondary real property holdings, except that the permanent residence of military personnel called to active duty shall be considered to be a principal residence so long as the individual maintains ownership of the residence for which the credit is sought.

"Property" means a structure, including its site improvements and landscape features, assessed as real property, and used for a residential purpose, residential rental purpose, commercial purpose, or any combination thereof.

"Qualified property" means a property located in the State of New Jersey that is:

(a) (i) individually listed, or located in a district listed on the National Register of Historic Places in accordance with the "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C. s.470 et seq.), or on the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.), or individually designated, or located in a district designated, by the

Pinelands Commission as a historic resource of significance to the Pinelands in accordance with the Pinelands comprehensive management plan adopted pursuant to the "Pinelands Protection Act," P. L.1979, c.111 (C.13:18A-1 et seq.), and

(ii) if located within a district, certified by either the officer or the Pinelands Commission, as appropriate, as contributing to the historic significance of the district; or

(b) (i) individually identified or registered, or located in a district composed of properties identified or registered, for protection as significant historic resources in accordance with criteria established by a municipality in which the property or district is located if the criteria for identification or registration has been approved by the officer as suitable for substantially achieving the purpose of preserving and rehabilitating buildings of historic significance within the jurisdiction of the municipality, and

(ii) if located within a district, certified by the officer as contributing to the historic significance of the district.

"Rehabilitation" means the repair or reconstruction of the exterior or interior of a qualified property to make an efficient contemporary use possible while preserving the portions or features of the property that have significant historical, architectural, and cultural values.

"Rehabilitation of the interior of the qualified property" means the repair or reconstruction of the structural or substrate components and electrical, plumbing, and heating components within the interior of a qualified property.

"Selected rehabilitation period" means a period of 24 months the beginning of such period is chosen by the business entity during which, or parts of which, a rehabilitation is occurring or a period of 60 months if a rehabilitation is reasonably expected to be completed in distinct phases set forth in written architectural plans and specifications completed before or during the physical work on the rehabilitation.

3. a. An individual, upon successful application to the officer, shall be allowed a credit against the tax otherwise due pursuant to N.J.S.54A:1-1 et seq. for 25 percent of the cost of rehabilitation paid by the individual for the rehabilitation of a qualified property that the individual owns and occupies as the individual's principal residence for a period of twelve consecutive months following the completion of the rehabilitation, provided that (1) the cost of rehabilitation is in an amount not less than 50 percent of the equalized assessed value of the structure for local real estate tax purposes as indicated on the most recent property tax bill for the qualified property prior to the start of the rehabilitation, and that (2) for the purpose of calculating the amount of the total credit, no

more than 60 percent of the total cost of rehabilitation shall be attributable to interior rehabilitation.

If more than one individual own a qualified property and at least one of the owners occupies the qualified property as the owner's principal residence for a period of twelve consecutive months following the completion of the rehabilitation, each owner shall be allowed a credit against the tax otherwise due pursuant to N.J.S.54A:1-1 et seq. for 25 percent of the cost of rehabilitation paid by that owner for the rehabilitation of a qualified property, provided that (1) the total cost of rehabilitation of the qualified property borne by all owners is in an amount not less than 50 percent of the equalized assessed value of the structure for local real estate tax purposes as indicated on the most recent property tax bill for the qualified property prior to the start of the rehabilitation, and that (2) for the purpose of calculating the amount of the total credit, no more than 60 percent of the total cost of rehabilitation of the qualified property borne by all owners shall be attributable to interior rehabilitation.

b. The amount of the credit allowable under this section shall be applied against the tax otherwise due pursuant to N.J.S.54A:1-1 et seq. during the taxable year in which the officer issues the tax credit certification to be attached by the individual to the individual's tax return. The director shall determine the order in which the credit allowed under this section and any other credit permitted by law shall be applied against the individual's amount of tax due. If the amount of the credit exceeds the individual's tax liability, that amount of excess shall not be considered an overpayment for the purposes of N.J.S.54A:9-7, but instead may be carried over, if necessary, to the four taxable years following the taxable year for which the credit was allowed.

c. The cumulative amount of credit granted under this section for the cost of rehabilitation of a specific qualified property shall not exceed $25,000 within any ten-year period.

4. a. A business entity, upon successful application to the officer, shall be allowed a credit against the tax otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et. seq.), or the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et. seq., for 25 percent of the cost of rehabilitation paid by the business entity for the rehabilitation of a qualified property, if the cost of rehabilitation during a business entity's selected rehabilitation period is not less than the greater of (1) the adjusted basis of the structure of the qualified property used for federal income tax purposes as of the beginning of the business entity's selected rehabilitation period, or (2) $5,000. The amount of the credit claimed in any accounting or

privilege period shall not reduce the amount of the tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

b. The amount of credit granted, or recognized through a tax credit transfer certificate acquired pursuant to section 5 of this act, to a partnership, limited liability company, New Jersey S corporation, multiple owners, or qualifying long-term leaseholders of the property, shall be passed through to the partners, members, shareholders, or owners respectively, either in proportion to their ownership interest in the entity or as the partners, members, shareholders, or owners mutually agree as provided in an executed document detailing the alternate distribution method.

c. A business entity may claim a credit under this section during the accounting or privilege period (1) in which it makes the final payment for the cost of the rehabilitation if the business entity has chosen a selected rehabilitation period of 24 months, or (2) in which a distinct project phase of the rehabilitation is completed if the business entity has chosen a selected rehabilitation period of 60 months. The credit may be claimed against any tax liability otherwise due after any other credits permitted pursuant to law have been applied. The amount of credit claimed in an accounting or privilege period that cannot be applied for that accounting or privilege period due to limitations in this section may be carried over, if necessary, to the nine accounting or privilege periods following the accounting or privilege period for which the credit was allowed.

5. a. The officer shall, in cooperation with the director, establish and administer a gross income tax credit transfer certificate program, a corporation business tax credit transfer certificate program, and an insurance premiums tax credit transfer certificate program to enable individuals and business entities with unused, otherwise allowable amounts of tax credits issued pursuant to this act to exchange these credits, in whole or in part, for private financial assistance prior to the expiration of the tax credit.

A certificate issued by the officer shall include a statement waiving the rights of the individual to whom or the business entity to which the tax credit has been granted to claim that amount of the credit against any tax liability.

b. An individual or business entity holding an unused, otherwise allowable tax credit issued pursuant to this act may apply to the officer for a tax credit transfer certificate pursuant to subsection a. of this section. Upon receipt thereof, the individual or the business entity may sell or assign, in full or in part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance to be provided by the purchaser or assignee of the tax credit transfer certificate to the seller thereof. The purchaser or assignee of the tax credit transfer certificate may apply the face value of the tax credit transfer certificate acquired against the purchaser's or assignee's applicable tax liability by claiming the tax credit on the purchaser's or assignee's gross income tax, corporation business tax or insurance premiums tax return with the corresponding tax credit transfer certificate accompanying the tax return.

c. The purchaser or assignee of a tax credit transfer certificate, together with the tax credit transferor, shall be liable for the tax credit amount to be recaptured if section 7 of this act applies.

6. a. The officer shall, in consultation with the director, promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as the officer deems necessary to administer the provisions of this act, including but not limited to rules establishing administrative fees to implement the provisions of this act and the setting of an annual application submission date.

b. For every tax credit allowed pursuant to sections 3 and 4 of this act, the officer shall certify to the director the total cost of rehabilitation; that the property meets the definition of qualified property; that the rehabilitation has been completed in substantial compliance with the requirements of the Secretary of the Interior's Standards for Rehabilitation pursuant to section 67.7 of title 36, Code of Federal Regulations; and, if applicable, that no more than 60 percent of the cost of rehabilitation which will be used to calculate the credit is for the rehabilitation of the interior of the qualified property. The individual or business entity shall attach the certification to the tax return on which the individual or business entity claims the credit.

c. The total amount of credits approved by the officer pursuant to this act shall not exceed $15,000,000 in fiscal year 2008, $25,000,000 in fiscal year 2009, $40,000,000 in fiscal year 2010, and $50,000,000 in fiscal year 2011 and thereafter.

The officer shall devise criteria for allocating tax credit amounts if the approved amounts combined exceed the total amount in fiscal years 2008 through 2011, including rules that allocate over multiple fiscal years a single credit amount granted in excess of $2,000,000. The criteria shall include a project's historic importance, positive impact on the surrounding neighborhood, economic sustainability, geographic diversity, and consistency with Statewide growth and development policies and plans.

d. In any fiscal year, 33 percent of the total monetary amount of tax credits approved pursuant to this act shall be granted for the rehabilitation of qualified properties pursuant to section 3 of this act, and 66 percent of the total monetary amount of tax credits approved pursuant to this act shall be granted for the rehabilitation of qualified properties pursuant to section 4 of this act. Any unallocated or recaptured portion of the tax credits during any year pursuant to section 3 or 4 of this act, may be carried over and reallocated in succeeding years.

7. a. The officer, in collaboration with the director, shall adopt rules for the recapture of an entire or partial tax credit amount allowed under this act. The rules shall require the officer to notify the director of the recapture of an entire or partial tax credit amount. The recapture of funds shall be subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. and recaptured funds shall be deposited in the General Fund of the State.

b. If, before the end of five full years after the completion of the rehabilitation of the qualified property, an individual who or a business entity that has been allowed a tax credit pursuant to section 3 or 4 of this act either disposes of a qualified property or modifies the architectural components of the rehabilitated qualified property so that it ceases to meet the requirements for the rehabilitation of a qualified property as defined in this act, then the tax liability of the individual or business entity for that taxable year or accounting or privilege period shall be increased by the following percentage of that portion of the original tax credit amount that the officer now disallows:

(1) 100 percent of the disallowed tax credit amount if the action causing the disallowance occurs within one full year after the rehabilitation’s completion;

(2) 80 percent of the disallowed tax credit amount if the action causing the disallowance occurs between the first and second full year after the rehabilitation’s completion;

(3) 60 percent of the disallowed tax credit amount if the action causing the disallowance occurs between the second and third full year after the rehabilitation’s completion;

(4) 40 percent of the disallowed tax credit amount if the action causing the disallowance occurs between the third and fourth full year after the rehabilitation’s completion; and

(5) 20 percent of the disallowed tax credit amount if the action causing the disallowance occurs between the fourth and fifth full year after the rehabilitation’s completion.

If the individual or business entity whose credit amount is disallowed has transferred the credit amount to another individual or business entity by means of a tax credit transfer certificate issued pursuant to section 5 of this act, then the purchaser or assignee of the tax credit transfer certificate, together with the tax credit transferor, shall be held liable for the credit amount to be recaptured.

c. In the case of a business entity that has chosen a selected rehabilitation period of 60 months, if the architectural plans change in the course of the phased rehabilitation project so that the rehabilitation of the qualified property would, upon the rehabilitation's completion, no longer qualify for a tax credit pursuant to the requirements of this act, then the business entity's tax liability for that accounting or privilege period shall be increased by the full amount of the tax credit that the officer had previously granted upon the completion of a distinct prior project phase that the business entity has applied against its tax liability in a prior accounting or privilege period. Any portion of the tax credit that the business entity has not yet used at the time of the disallowance by the officer shall be deemed void. If the business entity whose credit amount is disallowed has transferred the credit amount to another individual or business entity by means of a tax credit transfer certificate issued pursuant to section 5 of this act, then the purchaser or assignee of the tax credit transfer certificate, together with the tax credit transferor, shall be held liable for the credit amount to be recaptured.

8. On or before December 31, 2011, the officer, in consultation with the director, shall prepare and submit a written report regarding the number and total monetary amount of tax credits granted for the rehabilitation of qualified properties pursuant to sections 3 and 4 of this act, the geographical distribution of the credits granted, a summary of the tax credit transfer program established pursuant to section 5 of this act, an evaluation of the effectiveness of the tax credits provided pursuant to this act in promoting the rehabilitation of historic properties, recommendations for administrative or legislative changes to increase the effectiveness of the program, and any other information that the officer or the director may deem useful or appropriate. This report shall be submitted to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

9. This act shall take effect immediately and section 3 shall apply to taxable years beginning on or after January 1 next following the date of enactment of this act, and section 4 shall apply to accounting or privilege periods beginning on or after July 1 next following the date of enactment of this act.

STATEMENT

This bill, the "Historic Property Reinvestment Act," establishes two State tax credits and a tax credit certificate transfer program for 25% of taxpayer's costs of rehabilitating qualified historic properties in this State: one under the New Jersey gross income tax for homeowners, which is capped at a total credit amount of $25,000 per property during a ten-year period; and one for businesses under the corporation business tax, insurance premiums tax or marine insurance premiums tax, whose credit amount per property is not capped. The bill provides that a taxpayer may sell any portion of the tax credit by means of a tax credit transfer certificate program to be established by the State Historic Preservation Officer (SHPO) and the Director of the Division of Taxation in the Department of the Treasury.

A qualified property being rehabilitated must be:

(1) (a) Individually listed (or located in a district listed) on the National Register of Historic Places or the New Jersey Register of Historic Places, or designated (or located in a district designated) by the Pinelands Commission as an historic resource of significance to the Pinelands; and (b) if located within a district, certified by either the SHPO or the Pinelands Commission as contributing to the district's historic significance; or

(2) (a) Individually identified (or located in a district composed of properties identified) for protection as a significant resource in accordance with criteria established by the appropriate municipality and approved by the SHPO; and (b) if located within a district, certified by the SHPO as contributing to the district's historic significance.

A homeowner seeking a tax credit must spend no more than 60 percent of the cost of rehabilitation on the rehabilitation of the interior and must own and occupy the qualified property as the homeowner’s principal residence for twelve consecutive months following the completion of the rehabilitation. Rehabilitation expenditures must be at least 50 percent of the equalized assessed value of the structure for local real estate tax purposes as indicated on the most recent property tax bill for the property prior to the start of the rehabilitation.

A business seeking the tax credit must, during a selected 24-month or 60-month rehabilitation period, have eligible rehabilitation expenditures of the greater of $5,000 or the adjusted basis of the structure of the qualified property used for federal income tax purposes at the start of the rehabilitation period.

The bill provides that the amount of tax credits approved cannot exceed $15 million in fiscal year 2008, $25 million in fiscal year 2009, $40 million in fiscal year 2010, and $50 million in fiscal year 2011 and thereafter. The bill will apply to tax years beginning on and after enactment. Sums unallocated in a fiscal year may be carried over to the subsequent year, thus adding to the designated cap amounts. The bill provides that in any fiscal year in which tax credits are issued, 33 percent of the total monetary amount of tax credits approved shall be granted for the rehabilitation of qualified properties by homeowners. The bill also provides for the adoption of rules for the recapture of tax credit amounts if a qualified property is sold, or modified in a manner that disqualifies the rehabilitation, within 5 years after completion of the rehabilitation.

The bill also requires that the SHPO, in consultation with the director, prepare and submit a written report to the Governor and the Legislature before 2012 detailing the number and total monetary amount of tax credits granted for the rehabilitation of qualified properties, the geographical distribution of the credits granted, a summary of the tax credit transfer program, an evaluation of the effectiveness of the tax credits in promoting the rehabilitation of historic properties, recommendations for administrative or legislative changes to increase the effectiveness of the program, and any other information that the officer or the director may deem useful or appropriate.