

**AN ACT** providing tax credits to reimburse developers for certain costs of rehabilitating historic properties, and supplementing Title 34 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 Preservation Tax Credit Program Act.”

2. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority appointed pursuant to subsection b. of section 4 of P.L.1974, c.80 (C.34:1B-4).

“Collaborative workspace” means coworking, accelerator, incubator, or other shared working environments that promote collaboration, interaction, socialization, and coordination among tenants through the clustering of multiple businesses or individuals. For this purpose, the collaborative workspace shall be the greater of: 2,500 of dedicated square feet or 10 percent of the total qualified property. The collaborative workspace shall include a community manager, be focused on collaboration among the community members, and include regularly scheduled education events for the members. The collaborative workspace shall also include a physical open space that supports the engagement of its community members.

"Cost of rehabilitation" means the consideration given, valued in money, whether given in money or otherwise, for the materials and services that are directly related to the repair or improvement of structural and architectural features of a qualified property, and which may include structural components such as: walls, partitions, floors, ceilings, permanent coverings such as paneling or tiling, windows, and doors, components of central air conditioning or heating systems, plumbing and plumbing fixtures, electrical wiring and lighting fixtures, chimneys, stairs, escalators, elevators, sprinkler systems, fire escapes, and other components related to the operation or maintenance of the building. In addition, expenses that qualify may include construction period interest and taxes, architect fees, engineering fees, construction management costs, reasonable developer fees, and any other fees paid that would normally be charged to a capital account.

“Developer” means an owner or lessee of a qualified property that enters or proposes to enter into a rehabilitation agreement with the authority pursuant to the provisions of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Income producing property” means a structure or site that is used in a trade or business or to produce rental income.

“Incubator facility” means a commercial property, which contains 5,000 or more square feet of office, laboratory, or industrial space, which is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university, and within which at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies.

“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 (54 USCS s.300101et seq.), to act as liaison for the purpose of administering historic preservation programs in the State.

“Program” means the Historic Preservation Tax Credit Program established by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Project financing gap" means the part of the total cost of rehabilitation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total cost of rehabilitation, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources.

“Qualified property” means an income producing property associated with the history of New Jersey that is on the State or National Register of Historic Places or is eligible for placement on the State or national register.

"Rehabilitation agreement" means an agreement between the authority and a developer under which the developer agrees to perform any work or undertaking necessary for the rehabilitation of a qualified property, and for the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of residential, commercial, industrial, or public structures or improvements appurtenant to the qualified property.

"Rehabilitation project" 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 qualified property that have significant historical, architectural, and cultural value as determined by the officer.

3. The Historic Preservation Tax Credit Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The purpose of the program is to reimburse developers that rehabilitate historic buildings for a portion of the cost of rehabilitation. To implement this purpose, the authority shall issue tax credits. The total value of tax credits approved by the authority shall not exceed an aggregate annual limit of \$20,000,000 for a calendar year. For the purpose of determining the aggregate

value of tax credits approved in a calendar year, a tax credit shall be deemed to have been approved at the time the director allows a tax credit to a developer pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) following completion of the rehabilitation project.

4. a. Prior to July 1, 2024, a developer seeking a tax credit for a rehabilitation project shall submit an application to the authority and to the officer in a form and manner prescribed in regulations adopted by the authority, in consultation with the officer, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. A rehabilitation project shall be eligible for a tax credit only if the developer demonstrates to the authority at the time of application that:

(1) the developer has not commenced any rehabilitation or construction work at the qualified property prior to applying for a tax credit pursuant to this section, but intends to redevelop the qualified property immediately upon approval of the tax credit;

(2) without the tax credit, the rehabilitation project is not economically feasible; and

(3) a project financing gap exists.

c. The authority, in consultation with the officer, may impose additional requirements upon an applicant through rule or regulation adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), if the authority or the officer determines the additional requirements to be necessary and appropriate to effectuate the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill).

d. The authority, in consultation with the officer, shall conduct a review of the applications through a competitive application process whereby the authority and the officer shall evaluate all applications submitted by a date certain as if submitted on that date. The authority, in consultation with the officer, shall submit applications, which comply with the eligibility criteria set forth in this section, satisfy the submission requirements, and provide adequate information for the subject application, to the board for final approval.

e. The authority shall allocate tax credits to rehabilitation projects until either the available tax credits are exhausted or all rehabilitation projects that are eligible for a tax credit pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a developer in accordance with the provisions of subsection a. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), the authority may offer the developer a value of tax credits below the amount provided for in subsection a. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

f. A developer shall pay to the authority and officer, as appropriate, fees to cover the administrative costs related to the tax credit. A developer shall pay to the authority or to the officer, as appropriate, the full amount of the direct costs of an analysis concerning the developer's application for a tax credit, which a third party retained by the authority or officer performs, if the authority or officer deems such retention to be necessary.

5. a. Following approval of an application by the board, but prior to the start of any construction or rehabilitation at the qualified property, the authority shall enter into a rehabilitation agreement with the developer. The chief executive officer of the authority shall negotiate the terms and conditions of the rehabilitation agreement on behalf of the State.

b. The rehabilitation agreement shall specify the amount of the tax credit to be awarded to the developer, the date on which the developer intends or projects to complete the rehabilitation project, and the projected cost of rehabilitation. The agreement shall require the developer to submit progress reports to the authority and to the officer every six months pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. The authority shall not enter into a rehabilitation agreement with a developer unless:

(1) the rehabilitation project complies with standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

(2) the rehabilitation project complies with the authority's affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.203 (C.34:1B-5.4); and

(3) the developer pays each worker employed to perform rehabilitation work or construction work at the rehabilitation project not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

d. (1) Except as provided in paragraph (2) of this subsection, the authority shall not enter into a rehabilitation agreement for a rehabilitation project that includes at least one retail establishment which will have more than 10 employees, or at least one distribution center which will have more than 20 employees, unless the rehabilitation agreement includes a precondition that any business that serves as the owner or operator of the retail establishment or distribution center enters into a labor harmony agreement with a labor organization or cooperating labor organizations which represent retail or distribution center employees in the State.

(2) The authority may enter into a rehabilitation agreement with a developer without the labor harmony agreement required under paragraph (1) of this subsection only if the authority determines that the rehabilitation project would not be able to go forward if a labor harmony agreement is required. The authority shall support the determination by a written finding, which provides the specific basis for the determination.

(3) As used in this subsection, “labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

e. A developer may seek an amendment to the rehabilitation agreement if the developer cannot complete the rehabilitation project on or before the date set forth in the rehabilitation agreement. A developer’s ability to change the date on which the developer shall complete the rehabilitation project shall be subject to the availability of tax credits in the year of the revised date of completion.

6. Commencing with the date six months following the date the authority and a developer executes a rehabilitation agreement and every six months thereafter until completion of the rehabilitation project, the developer shall submit an update of the status of the rehabilitation project to the authority and to the officer, including the cost of rehabilitation. Unless the authority determines that extenuating circumstances exist, the authority's approval of a tax credit shall expire if the authority, the officer, or both, do not timely receive the status update required under this section. The authority may recapture or rescind an award of tax credits under the program

if a rehabilitation project fails to advance in accordance with the rehabilitation agreement.

7. a. (1) Upon completion of the rehabilitation project, the officer shall certify to the authority the total cost of rehabilitation, that the property meets the definition of a qualified property, and that the developer completed the rehabilitation project in substantial compliance with the requirements of the Secretary of the Interior's Standards of Rehabilitation, 36 C.F.R. s.67.7. Upon receipt of the certification from the officer, the authority shall allow a developer a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 16 percent of the actual cost of rehabilitation or 16 percent of the projected cost of rehabilitation set forth in the rehabilitation agreement, whichever is less.

(2) The amount of the tax credit allowed pursuant to paragraph (1) of this section shall be increased as follows:

(a) for a rehabilitation project in which at least 20 percent of the residential units constructed for occupancy are reserved for occupancy by low- and moderate-income households with affordability controls as required under the rules of the Council on Affordable Housing or court order, an increase of four percent of the actual cost of rehabilitation or four percent of the projected cost of rehabilitation set forth in the rehabilitation agreement, whichever is less; and

(b) for a rehabilitation project that includes a collaborative workspace or an incubator facility, an increase of four percent of the actual cost of rehabilitation or four percent of the projected cost of rehabilitation set forth in the rehabilitation agreement, whichever is less.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the director shall not allow a tax credit to a developer in excess of \$4,000,000 for a rehabilitation project.

b. A developer shall apply the credit awarded against the developer's liability under section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period during which the director allows the developer a tax credit pursuant to subsection a. of this section. A developer shall not carry forward an unused credit. Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the director accompanied by any additional information as the director may prescribe.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with

any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

8. a. A developer may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, in the privilege period during which the director allows the developer a tax credit pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), in lieu of the developer being allowed to apply any amount of the tax credit against the developer's State tax liability. The tax credit transfer certificate, upon receipt thereof by the developer from the director and the chief executive officer of the authority, may be sold or assigned, in the privilege period during which the developer receives the tax credit transfer certificate from the director, to another person, who may apply the credit only against a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The tax credit transfer certificate provided to the developer shall include a statement waiving the developer's right to claim the credit that the developer has elected to sell or assign.

b. The developer shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 80 percent of the transferred credit amount. The tax credit transfer certificate issued to a developer by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) and any other terms and conditions that the director may prescribe.

c. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

d. The authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the authority and the director pursuant to this section:

- (1) the name of the transferrer;
- (2) the name of the transferee;
- (3) the value of the tax credit transfer certificate; and
- (4) the consideration received by the transferrer.

9. a. The authority, in collaboration with the officer and the director, shall adopt rules for the recapture of a tax credit allowed under the program. The rules shall require the authority to notify the director of the recapture of the tax credit. 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, a developer that has received a tax credit pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) modifies the qualified property so that it

ceases to meet the requirements for the rehabilitation of a qualified property as defined under the program, then the tax credit allowed under the program shall be recaptured in accordance with the rules adopted pursuant to subsection a. of this section.

10. Beginning the year next following the year in which P.L. , c. (pending before the Legislature as this bill) takes effect and every two years thereafter, a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the authority, prepare a report on the implementation of the program, and submit the report to the authority, the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Each biennial report required under this section shall include a description of each rehabilitation project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 4 and 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), the return on investment for incentives awarded, the rehabilitation project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The authority shall prepare a written response to the report, which the authority shall submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

11. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the chief executive officer of the authority, in consultation with the officer, may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the chief executive officer and officer deem necessary to implement the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The chief executive officer, in consultation with the officer, may thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

12. This act shall take effect immediately.

## STATEMENT

This bill establishes the Historic Preservation Tax Credit Program under the jurisdiction of the New Jersey Economic Development Authority (EDA). The purpose of the program is to reimburse developers that revitalize income producing historic buildings or



sites for a portion of the cost of rehabilitation. through the issuance of up to \$20 million in tax credits annually.

To be eligible for a tax credit under the program, a developer must demonstrate to the EDA and the State Historic Preservation Officer, or his equivalent, (officer) that: (1) the developer has not commenced any construction or rehabilitation work at the site of the rehabilitation project prior to applying for a tax credit; (2) without the tax credit, the rehabilitation project is not economically feasible; and (3) a project financing gap exists. The EDA, in consultation with the officer, may impose additional eligibility criteria if the EDA or officer determines it is necessary.

Following approval of an application for a tax credit by the board of the EDA, the bill requires a developer and the EDA to enter into a rehabilitation agreement. The bill requires that the rehabilitation agreement specify the amount of the tax credit to be awarded to the developer, the date on which the developer must complete the rehabilitation project, and the projected cost of rehabilitation.

Within six months following the date on which the EDA and the developer executes a rehabilitation agreement, the bill requires the developer to submit progress information to the EDA and the officer indicating the cost of rehabilitation. The bill requires the developer to submit these reports every six months until completion of the rehabilitation project. Unless the EDA determines that extenuating circumstances exist, the EDA's approval of a tax credit will expire if the EDA and officer do not timely receive the progress information.

Upon completion of the rehabilitation project, the bill requires the officer to certify to the EDA the total cost of rehabilitation, that the property meets the definition of an historic site, and that the developer completed the rehabilitation project in substantial compliance with the requirements of the Secretary of the Interior's Standards of Rehabilitation. Following certification, the EDA will allow the developer a tax credit.

The value of the tax credit will equal 16 percent of the actual cost of rehabilitation or 16 percent of the projected cost of rehabilitation set forth in the rehabilitation agreement, whichever is less. A developer can receive an additional four percent of the cost of rehabilitation for reserving units for affordable housing or for including a collaborative workspace or incubator facility at the site of the rehabilitation project. The maximum tax credit allowed per rehabilitation project is \$4 million.

The bill requires that the developer utilize the tax credit in the privilege period during which the Director of the Division of Taxation allows it. The bill allows the director to recapture a credit if the developer modifies the property in a way that destroys the historic value of the property.

The bill permits developers to transfer State tax credits issued by the EDA, upon application to and approval by the Director of the Division of Taxation, in the privilege period in which the director allows the tax credit. The bill provides that the developer cannot sell

or exchange a tax credit certificate for private financial consideration of less than 80 percent of the transferred State tax credit amount. The bill prohibits a purchaser or assignee of a tax credit transfer certificate from making any subsequent transfers, assignments, or sales of the tax credit transfer certificate. A purchaser may only apply the transferred credit against a tax liability under the corporation business tax.

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“Historic Preservation Tax Credit Program Act,” provides tax credits to developers for cost of rehabilitation of historic properties.