

[Third Reprint]

# ASSEMBLY, No. 1851

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 25, 2010

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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**

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on December 9, 2010, with amendments.

(Sponsorship Updated As Of: 1/11/2011)

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

4

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

7

8 1. This act shall be known and may be cited as the “Historic  
9 Property Reinvestment Act.”

10

11 2. As used in this act:

12 “Cost of rehabilitation” means the consideration given, valued in  
13 money, whether given in money or otherwise, for the materials and  
14 services which constitute the rehabilitation.

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

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

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

25 “Partnership” means an entity classified as a partnership for  
26 federal income tax purposes.

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

36 “Property” means a structure, including its site improvements  
37 and landscape features, assessed as real property, and used for a  
38 residential purpose, residential rental purpose, commercial purpose,  
39 or any combination thereof.

40 “Qualified property” means a property located in the State of  
41 New Jersey that is:

42 (a) (i) individually listed, or located in a district listed on the  
43 National Register of Historic Places in accordance with the

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted May 13, 2010.

<sup>2</sup>Assembly AAP committee amendments adopted November 8, 2010.

<sup>3</sup>Senate SSG committee amendments adopted December 9, 2010.

1 "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C.  
2 s.470 et seq.), or on the New Jersey Register of Historic Places  
3 pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.), or  
4 individually designated, or located in a district designated, by the  
5 Pinelands Commission as a historic resource of significance to the  
6 Pinelands in accordance with the Pinelands comprehensive  
7 management plan adopted pursuant to the "Pinelands Protection  
8 Act," P. L.1979, c.111 (C.13:18A-1 et seq.), and

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

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

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

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

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

31 "Selected rehabilitation period" means a period of 24 months the  
32 beginning of such period is chosen by the business entity during  
33 which, or parts of which, a rehabilitation is occurring or a period of  
34 60 months if a rehabilitation is reasonably expected to be completed  
35 in distinct phases set forth in written architectural plans and  
36 specifications completed before or during the physical work on the  
37 rehabilitation.

38  
39 3. a. An individual, upon successful application to the officer,  
40 shall be allowed a credit against the tax otherwise due pursuant to  
41 N.J.S.54A:1-1 et seq. for 25 percent of the cost of rehabilitation  
42 paid by the individual for the rehabilitation of a qualified property  
43 that the individual owns and occupies as the individual's principal  
44 residence for a period of twelve consecutive months following the  
45 completion of the rehabilitation, provided that (1) the cost of  
46 rehabilitation is in an amount not less than 50 percent of the  
47 equalized assessed value of the structure for local real estate tax  
48 purposes as indicated on the most recent property tax bill for the

1 qualified property prior to the start of the rehabilitation, and that (2)  
2 for the purpose of calculating the amount of the total credit, no  
3 more than 60 percent of the total cost of rehabilitation shall be  
4 attributable to interior rehabilitation.

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

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

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

36  
37 4. a. A business entity, upon successful application to the  
38 officer, shall be allowed a credit against the tax otherwise due  
39 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax  
40 imposed on insurers generally, pursuant to P.L.1945, c.132  
41 (C.54:18A-1 et. seq.), or the tax imposed on marine insurance  
42 companies pursuant to R.S.54:16-1 et. seq., for 25 percent of the  
43 cost of rehabilitation paid by the business entity for the  
44 rehabilitation of a qualified property, if the cost of rehabilitation  
45 during a business entity's selected rehabilitation period is not less  
46 than the greater of (1) the adjusted basis of the structure of the  
47 qualified property used for federal income tax purposes as of the  
48 beginning of the business entity's selected rehabilitation period, or

1 (2) \$5,000. The amount of the credit claimed in any accounting or  
2 privilege period shall not reduce the amount of the tax liability to  
3 less than the statutory minimum provided in subsection (e) of  
4 section 5 of P.L.1945, c.162 (C.54:10A-5).

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

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

28  
29 5. a. The officer shall, in cooperation with the director,  
30 establish and administer a gross income tax credit transfer  
31 certificate program, a corporation business tax credit transfer  
32 certificate program, and an insurance premiums tax credit transfer  
33 certificate program to enable individuals and business entities with  
34 unused, otherwise allowable amounts of tax credits issued pursuant  
35 to this act to exchange these credits, in whole or in part, for private  
36 financial assistance prior to the expiration of the tax credit.

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

41 b. An individual or business entity holding an unused,  
42 otherwise allowable tax credit issued pursuant to this act may apply  
43 to the officer for a tax credit transfer certificate pursuant to  
44 subsection a. of this section. Upon receipt thereof, the individual or  
45 the business entity may sell or assign, in full or in part, the tax  
46 credit transfer certificate to another taxpayer in exchange for private  
47 financial assistance to be provided by the purchaser or assignee of  
48 the tax credit transfer certificate to the seller thereof. The purchaser

1 or assignee of the tax credit transfer certificate may apply the face  
2 value of the tax credit transfer certificate acquired against the  
3 purchaser's or assignee's applicable tax liability by claiming the tax  
4 credit on the purchaser's or assignee's gross income tax,  
5 corporation business tax or insurance premiums tax return with the  
6 corresponding tax credit transfer certificate accompanying the tax  
7 return.

8 <sup>2</sup>[c. The purchaser or assignee of a tax credit transfer certificate,  
9 together with the tax credit transferor, shall be liable for the tax  
10 credit amount to be recaptured if section 7 of this act applies.]<sup>2</sup>  
11

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

19 b. For every tax credit allowed pursuant to sections 3 and 4 of  
20 this act, the officer shall certify to the director the total cost of  
21 rehabilitation; that the property meets the definition of qualified  
22 property; that the rehabilitation has been completed in substantial  
23 compliance with the requirements of the Secretary of the Interior's  
24 Standards for Rehabilitation pursuant to section 67.7 of title 36,  
25 Code of Federal Regulations; and, if applicable, that no more than  
26 60 percent of the cost of rehabilitation which will be used to  
27 calculate the credit is for the rehabilitation of the interior of the  
28 qualified property. The individual or business entity shall attach the  
29 certification to the tax return on which the individual or business  
30 entity claims the credit.

31 c. The total amount of credits approved by the officer pursuant  
32 to this act shall not exceed \$15,000,000 in fiscal year <sup>1</sup>[2011]  
33 2012<sup>1</sup>, \$25,000,000 in fiscal year <sup>1</sup>[2012] 2013<sup>1</sup>, \$40,000,000 in  
34 fiscal year <sup>1</sup>[2013] 2014<sup>1</sup>, and \$50,000,000 in fiscal year <sup>1</sup>[2014]  
35 2015<sup>1</sup> and thereafter.

36 The officer shall devise criteria for allocating tax credit amounts  
37 if the approved amounts combined exceed the total amount in fiscal  
38 years <sup>1</sup>[2011] 2012<sup>1</sup> through <sup>1</sup>[2014] 2015<sup>1</sup>, including rules that  
39 allocate over multiple fiscal years a single credit amount granted in  
40 excess of \$2,000,000. The criteria shall include a project's historic  
41 importance, positive impact on the surrounding neighborhood,  
42 economic sustainability, geographic diversity, and consistency with  
43 Statewide growth and development policies and plans.

44 d. In any fiscal year, <sup>2</sup>[33 percent] not less than 25 percent<sup>2</sup> of  
45 the total monetary amount of tax credits approved pursuant to this  
46 act shall be granted for the rehabilitation of qualified properties  
47 pursuant to section 3 of this act, and <sup>2</sup>[66 percent] not less than 65

1 percent<sup>2</sup> of the total monetary amount of tax credits approved  
2 pursuant to this act shall be granted for the rehabilitation of  
3 qualified properties pursuant to section 4 of this act. Any  
4 unallocated or recaptured portion of the tax credits during any year  
5 pursuant to section 3 or 4 of this act may be carried over and  
6 reallocated in succeeding years.

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

15 b. If, before the end of five full years after the completion of  
16 the rehabilitation of the qualified property, an individual who or a  
17 business entity that has been allowed a tax credit pursuant to section  
18 3 or 4 of this act <sup>3</sup>**[either disposes of a qualified property or]**<sup>3</sup>  
19 modifies the architectural components of the rehabilitated qualified  
20 property so that it ceases to meet the requirements for the  
21 rehabilitation of a qualified property as defined in this act, then the  
22 tax liability of the individual or business entity for that taxable year  
23 or accounting or privilege period shall be increased by the  
24 following percentage of that portion of the original tax credit  
25 amount that the officer now disallows:

26 (1) 100 percent of the disallowed tax credit amount if the action  
27 causing the disallowance occurs within one full year after the  
28 rehabilitation's completion;

29 (2) 80 percent of the disallowed tax credit amount if the action  
30 causing the disallowance occurs between the first and second full  
31 year after the rehabilitation's completion;

32 (3) 60 percent of the disallowed tax credit amount if the action  
33 causing the disallowance occurs between the second and third full  
34 year after the rehabilitation's completion;

35 (4) 40 percent of the disallowed tax credit amount if the action  
36 causing the disallowance occurs between the third and fourth full  
37 year after the rehabilitation's completion; and

38 (5) 20 percent of the disallowed tax credit amount if the action  
39 causing the disallowance occurs between the fourth and fifth full  
40 year after the rehabilitation's completion.

41 <sup>2</sup>**[If the individual or business entity whose credit amount is**  
42 **disallowed has transferred the credit amount to another individual**  
43 **or business entity by means of a tax credit transfer certificate issued**  
44 **pursuant to section 5 of this act, then the purchaser or assignee of**  
45 **the tax credit transfer certificate, together with the tax credit**  
46 **transferor, shall be held liable for the credit amount to be**  
47 **recaptured.]**<sup>2</sup>

1       c. In the case of a business entity that has chosen a selected  
2 rehabilitation period of 60 months, if the architectural plans change  
3 in the course of the phased rehabilitation project so that the  
4 rehabilitation of the qualified property would, upon the  
5 rehabilitation's completion, no longer qualify for a tax credit  
6 pursuant to the requirements of this act, then the business entity's  
7 tax liability for that accounting or privilege period shall be  
8 increased by the full amount of the tax credit that the officer had  
9 previously granted upon the completion of a distinct prior project  
10 phase that the business entity has applied against its tax liability in a  
11 prior accounting or privilege period. Any portion of the tax credit  
12 that the business entity has not yet used at the time of the  
13 disallowance by the officer shall be deemed void. <sup>2</sup>¶If the business  
14 entity whose credit amount is disallowed has transferred the credit  
15 amount to another individual or business entity by means of a tax  
16 credit transfer certificate issued pursuant to section 5 of this act,  
17 then the purchaser or assignee of the tax credit transfer certificate,  
18 together with the tax credit transferor, shall be held liable for the  
19 credit amount to be recaptured.¶<sup>2</sup>

20

21       8. On or before December 31, '[2014] 2015', the officer, in  
22 consultation with the director, shall prepare and submit a written  
23 report regarding the number and total monetary amount of tax  
24 credits granted for the rehabilitation of qualified properties pursuant  
25 to sections 3 and 4 of this act, the geographical distribution of the  
26 credits granted, a summary of the tax credit transfer program  
27 established pursuant to section 5 of this act, an evaluation of the  
28 effectiveness of the tax credits provided pursuant to this act in  
29 promoting the rehabilitation of historic properties,  
30 recommendations for administrative or legislative changes to  
31 increase the effectiveness of the program, and any other information  
32 that the officer or the director may deem useful or appropriate. This  
33 report shall be submitted to the Governor and, pursuant to section 2  
34 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

35

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