

APPENDIX 3

**NATIONAL AND STATE EFFORTS AND
LEGISLATION FOR HISTORIC PRESERVATION**

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Federal programs encouraging historic preservation include:

- Maintenance of the National Register of Historic Places.
- Section 106 Review of federally funded or assisted projects that impact historic resources.
- Historic Preservation Tax Credits on federal income tax for qualifying rehabilitation and adaptive reuse of historic buildings used for income-producing purposes.
- The Certified Local Government Program was created to facilitate historic preservation at the local level.

The earliest Federal preservation statute was the Antiquities Act of 1906, which authorized the President to set aside historic landmarks, structures, and objects located on lands controlled by the United States as national monuments. It required permits for archeological activities on Federal lands, and established criminal and civil penalties for violation of the act.

The Historic Sites Act of 1935 was the second major piece of Federal historic preservation legislation. This act declared it national policy to preserve for public use historic sites, buildings, and objects of national significance and directed the Secretary of the Interior to conduct various programs with respect to historic preservation.

In 1964, The United States Conference of Mayors undertook a study of historic preservation in the United States. The resulting report, "With Heritage So Rich," revealed a growing public interest in preservation and the need for a unified approach to the protection of historic resources. This report influenced Congress to enact a strong new statute establishing a nationwide preservation policy: The National Historic Preservation Act of 1966.

National Historic Preservation Act of 1966 (NHPA)

The National Historic Preservation Act (1966) and its subsequent amendments established a legal basis for the protection and preservation of historic and cultural resources. Historic resources are defined as *"any prehistoric or historic district, site, building, structures or object included in, or eligible for inclusion in the National Register; the term includes artifacts, records, and remains which are related to such a district, site, building, structure or object"*.

The Act promoted the use of historic properties to meet the contemporary needs of society. It directed the Federal Government, in cooperation with State and local governments, Native Americans, and the public, to take a leadership role in preservation. First, the Act authorized the Secretary of the Interior to expand and maintain the National Register of Historic Places. This is an inventory of districts, sites, buildings, structures, and objects significant on a national, State, or local level in American history, architecture, archeology, engineering, and culture. Once a property is eligible to be placed on the list, the property, site, or object can be qualified for Federal grants, loans, and tax incentives.

Second, NHPA encourages State and local preservation programs. States may prepare and submit for approval, programs for historic preservation to the Secretary of the Interior. Approval can be granted if they provide for the designation of a State Historic Preservation Officer (SHPO) to administer the State preservation program; establish a State historic preservation review board; and provide for adequate public participation in the State program. The SHPO must identify and inventory historic properties in the State; nominate eligible properties to the National Register; prepare and implement a statewide historic preservation plan; serve as a liaison with Federal agencies on preservation matters; and provide public information, education, and technical assistance. The NHPA also authorized a grant program, supported by the Historic Preservation Fund, to provide monies to States for historic preservation projects and to individuals for the preservation of properties listed in the National Register.

Since 1966, Congress has strengthened national preservation policy further by recognizing the importance of preserving historic aspects of the Nation's heritage in several other statutes, among them the National Environmental Policy Act and several transportation acts, and by enacting statutes directed toward the protection and preservation of archeological resources. These laws require Federal agencies to consider historic resources in their planning and decision-making and overlap with provisions of NHPA.

Section 106 Review

Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on historic properties and provide the Council an opportunity to comment on Federal projects prior to implementation. Section 106 review encourages, but does not mandate, preservation.

To successfully complete Section 106 review, Federal agencies must:

- Determine if Section 106 of NHPA applies to a given project and if so, initiate the review;
- Gather information to decide which properties in the project area are listed on or eligible for the National Register of Historic Places;
- Determine how historic properties might be affected;
- Explore alternatives to avoid or reduce harm to historic properties; and
- Reach agreement with the SHPO/tribe (and the Council in some cases) on measures to deal with any adverse effects or obtain advisory comments from the Council, which are sent to the head of the agency.

The Executive Branch has also expressed support for preservation through several Executive Orders. Examples include Executive Order No. 11593 President Nixon signed in 1971, which instituted procedures Federal agencies must follow in their property management activities. In 1996, President Clinton signed another important Executive Order No. 13006, which put forth support for locating Federal offices and facilities in historic districts and properties in the Nation's inner cities. Executive Order No. 13006 also directs Federal agencies to use and rehabilitate properties in such areas wherever feasible and reaffirms the commitment to Federal leadership in the preservation of historic properties set forth in NHPA. Another 1996 Executive Order, No. 13007, expresses support for the protection of Native American sacred sites.

Federal Tax Incentives for Historic Buildings

According to the Tax Reform Act of 1986, a property owner is eligible for a 20% tax credit, along with a 27.5 to 31.5% straight-line depreciation for the substantial rehabilitation of historic buildings for commercial, industrial and rental residential purposes (but not owner-occupied buildings), and a 10% tax credit for the substantial rehabilitation of nonresidential buildings built before 1936. The 10% tax credit is not available for rehabilitations of certified structures.

Two Federal Tax Incentive Programs currently apply to preservation activities in Pennsylvania: the rehabilitation investment tax credit and the charitable contribution deduction.

Rehabilitation investment tax credits are the most widely used incentive program. Certain expenses incurred in connection with the rehabilitation of an old building are eligible for a tax credit. Rehabilitation investment tax credits are available to owners and certain long-term leases of incoming-producing properties that are listed on the National Register of Historic Places. There are two rates: 20% for historic buildings and 10% for non-residential, non-historic buildings built before 1936.

The **charitable contribution deduction** is taken in the form of a conservation easement and enables the owner of a "certified historic structure" to receive a one-time tax deduction. A conservation easement usually involves the preservation of a building's facade by restricting the right to alter its appearance.

The Federal Tax Incentive Programs are coordinated through the State Historic Preservation Office, Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission in conjunction with the National Park Service. Federal Historic Preservation Certification Applications are available on-line.

The National Park Service “Certified Local Government” (CLG) Program

This program was created in 1980 under the National Historic Preservation Act and administered in the Commonwealth by the Pennsylvania Historical and Museum Commission; the Certified Local Government Program provides additional benefits to municipalities interested in historic preservation. Once certified, the local government is then eligible to:

- Participate directly in the federal historic preservation program.
- Have greater access to Historic Preservation Funds;
- Have greater level of information exchange with the State Historic Preservation Office (SHPO);
- Get technical assistance and training from the SHPO;
- Have a higher degree of participation in statewide preservation programs and planning.

Several critical requirements for CLG designation are:

- Adopt and enforce appropriate legislation for designation and protection of historic properties;
- Establish a qualified historic preservation commission;

- Enact a system for surveying historic properties;
- Enact a public participation component as part of the local program;
- Adequately perform duties and responsibilities delegated through the certification process.
- Continuing in-service historic preservation training for Historical Architecture Review Board (HARB) and Historical Commission members (8 hrs training annually per member);
- Regular attendance at HARB or Historical Commission meetings;
- A good faith effort by the governing body to appoint HARB members with professional qualifications and historic preservation backgrounds;
- Submittal of an annual report of the municipality's historic preservation activities;
- Continuing enforcement of the historic district ordinance

This was established to allow local governments to participate directly in the national historic preservation program and to provide funding to local governments to carry out their historic preservation responsibilities (survey, inventory, designation and protection of their historic resources). To achieve "certified local government" status in Pennsylvania a municipality applies to the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation.

All states are required to set aside 10% of their federal historic preservation grant funds to CLGs. These grants are presently offered as a ratio of 60% funding from the Pennsylvania Historical and Museum Commission (PHMC) and 40% match from the CLG.

Pennsylvania State Legislative Response to Historic Preservation: Historical and Museum Commission Act 1945

Act No. 446, approved June 6, 1945, amending the Administrative Code to consolidate the functions of the Pennsylvania Historical Commission, The State Museum and the State Archives, created the Pennsylvania Historical and Museum Commission. The Pennsylvania Historical and Museum Commission is responsible for the following historic preservation activities in the Commonwealth:

- State Historic Preservation Office for *Determination of Eligibility* and nominations to the National Register, of Historic Places;
- Section 106 Review;
- Administering Historic Preservation Grants;
- Assisting local governments with the Certified Local Government Program.

The Commission is an independent administrative board, consisting of nine citizens of the Commonwealth appointed by the Governor, the Secretary of Education ex officio, two members of the Senate appointed by the President Pro Tempore and Minority Leader, and two members of the House of Representatives appointed by the Speaker and Minority Leader. The Executive Director, appointed by the Commission to serve at its pleasure, is an ex officio member of the Environmental Quality Board, County Records Committee and the Local Government Records Committee.

As the official agency of the Commonwealth for the conservation of Pennsylvania's historic heritage, the powers and duties of the Commission fall into these principal fields; care of historical manuscripts, public records, and objects of historic interest; museums; archaeology; publications; historic sites and properties; historic preservation; geographic names; and the promotion of public interest in Pennsylvania history.

The Commission is funded partially through an annual legislative appropriation, various grants provided by Federal programs, and private donations. Officially recognized local historical organizations may benefit financially through the Commission's eligibility to receive matching funds from various federal programs. The PHMC is active in many phases of historic preservation. The PHMC also conducts a landmark identification program, presenting identification plaques to property owners for attachment on structures included in the PA Inventory of Historical Places. The landmark identification program also includes the placement of roadside historical signs at various sites and locations having statewide and national historic significance. Today nearly 1,900 markers are placed along city roads and highways to represent sites of historical significance in Pennsylvania.

An executive order went into place to require the Office of Historic Preservation of the PHMC to approve all proposals involving the demolition of a state building. The Office of Historic Preservation was also directed to develop and implement a program that will assist the public and private sectors in implementing the Commonwealth's policy to "protect and enhance our irreplaceable resources." The Office has since implemented a five-point program to achieve the executive order as follows:

1. Registering historically or architecturally significant sites and structure on the National Register of Historic Places and on the Pennsylvania Inventory of Historic Places;
2. Advising and guiding individuals and organizations regarding historic preservation and its funding;
3. Reviewing applications for federal preservation grants;
4. Working for legislation at the state level as an effective tool in historic preservation; and

5. Working with other governmental agencies to review the impact of projects, such as highways, on the Commonwealth's historic resources.

The Contact information for the Pennsylvania Historical and Museum Commission is as follows:

Commonwealth Keystone Bldg.
2nd Floor
400 North Street
Harrisburg, PA 17120-0093

(717) 787-3362
fax: (717) 783-9924

www.phmc.state.pa.us

Pennsylvania's Bureau for Historic Preservation (Bureau)

The Bureau is part of the PHMC and serves as the State Historic Preservation Office (SHPO). The PHMC is the Commonwealth's official history agency and the Executive Director is designated as the State Historic Preservation Officer.

The Bureau provides technical assistance for the preservation, rehabilitation and restoration of historic buildings throughout Pennsylvania. The Bureau reviews architectural plans and specifications and provides comments on historic building projects for state and federal compliance. They also assist in code-related issues and accessibility programs in the form of letters of support for variances to historic buildings. In an effort to inform the general public, public agencies, local governments and other stewards of historic properties, the Bureau assists in the development and distribution of material on applying the Secretary of the Interior's *Standards for Rehabilitation*, preservation planning and the appropriate treatment and repair of historic building materials.

The Bureau also administers the Federal Rehabilitation Investment Tax Credit (RITC) program in partnership with the National Park Service. The tax credit program is one of the most successful and cost-effective programs that encourage private investment in rehabilitating historic properties such as office buildings, rental housing, hotels and retail stores. According to PHMC's website, since its inception in 1976, Pennsylvania has been a national leader in certified tax credit projects, completing over 1,800 projects and generating over \$2.5 billion in qualified rehabilitation expenditures. The Bureau provides technical assistance throughout the application process.

They can provide property owners with publications and technical assistance that discuss the appropriate treatment of historic buildings according to the Secretary of the Interior's *Standards for Rehabilitation*.

The Bureau administers the state's historic preservation program as authorized by the Pennsylvania History Code and the National Historic Preservation Act of 1966 and is guided by advisory boards and The Pennsylvania Historic Preservation Plan. A board of Commissioners, appointed by the Governor, provides oversight of the Commission.

The Pennsylvania General Assembly is in the process of considering legislation to establish a Historic Homesites Grant Program. Once established, this legislation will provide funds to the Pennsylvania Historical and Museum Commission to support rehabilitation grants (up to \$6,000) to individuals owning and residing in a historic residential building, as well as to individuals intending to purchase and reside in a historic residential building.

The buildings must serve as the owner's principal residence, must be listed in the National Register of Historic Places or be determined to be a contributing building in a listed National Register Historic District, or be located in an Act 167 historic district, or be designated as a historic property under the local ordinance or city code in Pittsburgh and Philadelphia. All work on a historic homesite must conform to the U.S. Secretary of Interior's "Standards for the Treatment of Historic Properties."

The Pennsylvania Historic Preservation Plan

The PHMC is gearing up to create a PA Historic Preservation Plan. Below states the agenda and goals of the plan. The agenda of the plan is to:

1. Educate Pennsylvanians About Our Heritage and Its Value
 - Bring Pennsylvania heritage alive for our children
 - Get the preservation message out
 - Reach out to elected officials and key professionals in the public and private sectors
2. Build Better Communities Through Preservation
 - Strengthen and expand preservation planning at the local and regional levels
 - Expand the use of preservation as an economic development strategy
 - Make technical assistance more available and useful to citizens and local governments
3. Provide Strong Leadership At The State Level
 - Seek increased financial support for historic preservation
 - Lead by example
 - Build strong partnerships

Historic District Designation in Pennsylvania

To establish a designation of a Historic District on the local level requires an assessment of the present status of the community's historic resources, knowledge of past historic preservation efforts, and a list of goals and objectives to be obtained in the future.

Taking advantage of historic preservation incentives available at the national, state, and local governmental levels, such as grants, income tax credits for historic rehabilitation, low-interest loans, and local tax abatements will help in the success and acceptance of preserving historic buildings in the community.

It is useful to relate local historic preservation efforts to state and national programs, which will provide a broader perspective by identifying national, state and local historic preservation organizations and government agencies as resources.

Act 167- Establishing Historical Districts

Act 167 was adopted in 1961 and amended in 1963. This Act authorizes "counties", cities, boroughs, ... and townships to create historic districts within their geographic boundaries; provides for the appointment of Boards of Historical Architectural Review; empowers governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts." It provides the necessary authority for municipalities to adopt and implement historic preservation programs.

Pennsylvania Municipalities Planning Code Act 247

The State Legislature enacted Act 247, the Pennsylvania Municipalities Code, in 1969. The Act, as enabling legislation, authorizes local governments (counties, cities, township, and boroughs) to establish by ordinances, local planning commissions, zoning regulations and subdivision regulations; and by resolution adopt a municipal comprehensive plan. In particular, Article VI, Zoning, Section 605, states:

"The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures... Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

...For the regulation, restriction, or prohibition of uses and structures at or near... (vi) places having unique historical or patriotic interest of value... ”

The combination of Act 167 and Act 247 provides the constitutional authority and legislative framework for local governments to develop, adopt and implement historic preservation programs, in conjunction with a municipal comprehensive plan based on sound planning and legal principles. The legislative authority is provided, expert legal and planning advice is available, however; local governments must yet be sold on the necessity and benefits of historic preservation.

Historic Preservation at the Local Level

Two state laws provide the legal foundation for municipalities to adopt historic ordinances and regulatory measures.

1. Act 247 - Pennsylvania Municipalities Planning Code (MPC): In 2001, two new amendments to the MPC, Act 67 and 68 strengthened the ability of local government to provide for the protection of historic resources in their comprehensive plans, zoning ordinances and subdivision ordinances.

Multi-municipal Comprehensive Plans shall consider the conservation and enhancement of natural, scenic, historic and aesthetic resources in their municipalities [§1106 (a) (6)].

Zoning ordinances may promote and preserve prime agricultural land, environmentally sensitive areas, and areas of historic significance. [§603 (C) (7)]

Zoning ordinances are required to protect natural and historic resources [§603 (G) (2)].

The governing body of each municipality may enact, amend and repeal provisions of a zoning ordinance in order to fix standards and conditions for traditional neighborhood development. In the case of either an outgrowth or extension of existing development or urban infill, a traditional neighborhood development designation may be either in the form of an overlay zone, or as an outright designation, whichever the municipality decides. Outgrowths or extensions of existing development may include development of a contiguous municipality. [Article VII-A §702 (1) (ii)].

A Historic Overlay Zoning District, unlike the protection offered through the establishment of an Act 167 Historic District, can include individual sites as well as clusters, as long as the resources are well documented and identified on an historic

resources map. An historic overlay district could require new buildings to be similar in type and scale to those already existing. Setbacks should be consistent with the common building setback. Requirements to replicate the existing building line, and height and bulk could help to preserve the existing neighborhood character.

2. Act 167 - The Historic District Act (1961): Townships and boroughs may create historic districts within their municipalities to protect the historic character through regulation of the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the district. The Pennsylvania Historical and Museum Commission must certify districts, including a *determination of eligibility* for the National Register of Historic Places: Therefore historic districts established through Act 167 are afforded the same protection from federal projects associated with National Register Properties. Act 167 requires appointment of an historic architectural review board, or HARB, to advise the local governing body on the appropriateness of building activity in the district.