

LC02879

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2004**

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - MILL BUILDING AND  
ECONOMIC REVITALIZATION ACT

Introduced By: Senators P Fogarty, and Algieri

Date Introduced: May 05, 2004

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "State Affairs and Government" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 64.9

4 MILL BUILDING AND ECONOMIC REVITALIZATION ACT

5 **42-64.9-1. Short title.** -- This chapter shall be known and may be cited as the "Mill  
6 Building and Economic Revitalization Act."

7 **42-64.9-2. Legislative findings and purpose.** -- It is found and declared that:

8 (1) Throughout the state of Rhode Island there are located numerous historic and  
9 industrial mill structures which over the past two (2) decades have experienced high vacancy  
10 rates and physical deterioration.

11 (2) Without added economic incentive, these structures are not viable for redevelopment  
12 and reuse by modern commercial and manufacturing enterprises and will continue their physical  
13 deterioration.

14 (3) The redevelopment and reuse of these historic industrial mill structures are of critical  
15 importance to the economic well-being of the state of Rhode Island and its towns and cities.

16 (4) The adoption of certain economic incentive measures will assist in stimulating the  
17 reuse and redevelopment of Rhode Island's historic industrial mill structures, and will benefit the  
18 health, safety, welfare and prosperity of the people of this state.

1           **42-64.9-3. Purpose.** -- It is the purpose of this chapter to create economic incentives for  
2 the purpose of stimulating the redevelopment and reuse of Rhode Island's historic industrial mill  
3 structures.

4           **42-64.9-4. Definitions and construction.** -- As used in this chapter, unless the context  
5 otherwise requires, the term:

- 6           (1) "Certifiable building" means a mill complex or a building:
  - 7           (i) That was constructed prior to January 1, 1950;
  - 8           (ii) Having at least two (2) floors, excluding a basement;
  - 9           (iii) Which is or will be used primarily for manufacturing, wholesale trade and other  
10 commercial purposes;
  - 11           (iv) The use of which conforms to the comprehensive plan and local land use  
12 management ordinances of the municipality in which the building is located;
  - 13           (v) That is proposed for substantial rehabilitation;
  - 14           (vi) That has been at a minimum seventy-five percent (75%) vacant for a minimum of  
15 twenty-four (24) months at the time of submission by the municipality;
  - 16           (vii) That is designated by the municipality for consideration as a certifiable building as  
17 hereinafter provided;
  - 18           (viii) Meets other requirements as established by the council; and
  - 19           (ix) Designated by the enterprise zone council as a certified building pursuant to the  
20 requirements of section 42-64.9-5.

21           (2) "Certification of an eligible business" means an annual process taking place on a  
22 calendar year basis to certify entities as eligible businesses for the purpose of this chapter.  
23 Businesses certified as eligible businesses for the purpose of this chapter, and which may also be  
24 eligible for certification as certified businesses under the provisions of section 42-64.3-3(4) must  
25 elect certification under only one designation of each certification year. This election must be  
26 made for each certification year; provided, that the business continues to be eligible for both  
27 designations on a year-to-year basis.

28           (3) "Certified building owner" means an individual, partnership, corporation, limited  
29 liability company or other entity which is listed in the appropriate municipal records of land  
30 evidence as the owner of a certified building, and may include one or more successors in title to  
31 the owner of the building at the time the building received written notice of final designation as a  
32 certified building pursuant to section 42-64.9-6. A certified building owner may include the  
33 owner of a leasehold interest with a minimum term of fifty (50) years, with respect to which a  
34 memorandum of lease has been recorded in the land evidence records.

1           (4) "Eligible business" means any business, corporation, sole proprietorship, partnership,  
2 limited partnership or limited liability company or other entity which:  
3           (i) Is located in a certified building after building has undergone substantial  
4 rehabilitation as hereinafter defined;  
5           (ii) Is engaged principally in manufacturing, wholesale trade, or other commercial  
6 business activities;  
7           (iii) Whose total Rhode Island salaries and wages exceed the total Rhode Island salaries  
8 and wages paid to its employees in the prior calendar year;  
9           (iv) Has received certification from the enterprise zone council pursuant to the rules and  
10 regulations promulgated by the council; and  
11           (v) Which, as part of its annual certification:  
12           (A) Obtains certificates of good standing from the Rhode Island division of taxation, the  
13 corporations division of the Rhode Island secretary of state, and the appropriate municipal  
14 authority;  
15           (B) Provides the enterprise zone council an affidavit stating under oath that the entity  
16 seeking certification as a qualified business has not within the preceding twelve (12) months from  
17 the date of application for certification changed its legal status or location solely for the purpose  
18 of gaining favorable treatment under the provision of this chapter; and  
19           (C) Meets certain other requirements set forth by the council.  
20           (5) "Enterprise zone" means an enterprise zone established pursuant to section 42-64.3-4.  
21           (6) "Enterprise zone council" or the "council" means the enterprise zone council  
22 established pursuant to section 42-64.3-3.1, and empowered with the same authority and given  
23 the same responsibilities under that section.  
24           (7) "Municipality" means any city or town within the state, whether now existing or  
25 hereafter created.  
26           (8) "Qualified employee" means a full-time employee of an eligible business whose  
27 business activity originates and terminates from within the eligible business and certified building  
28 on a daily basis, and who is employed by the eligible business at the end of the calendar year, and  
29 who is a domiciled resident of the state of Rhode Island.  
30           (9) "Salaries and wages" means salaries, wages, tips and other compensation as defined  
31 in the Internal Revenue Code of 1986, 26 U.S.C. section 61.  
32           (10) "Substantial rehabilitation" means rehabilitation or reconstruction costs of a  
33 certified building in a dollar amount that equals or exceeds twenty percent (20%) of the market  
34 value of the certified building prior to rehabilitation or reconstruction, as said prior market value

1 is determined by a Rhode Island licensed and certified appraiser who is independent of the  
2 certified building owner or owners and their affiliated corporations, and/or any tenants of the  
3 certified building and their affiliated corporations.

4 (11) "Rehabilitation and reconstruction costs" means and includes only those amounts  
5 incurred and paid by the certified building owner, after issuance of the notice of final designation  
6 of the building, solely and exclusively for the rehabilitation of the certified building and which  
7 are incurred and paid by the certified building owner to acquire tangible personal property and  
8 structural components of the certified building which: (i) are depreciated pursuant to 26 U.S.C.  
9 section 167; (ii) have a useful life of three (3) years or more as evidenced by the tax depreciation  
10 method taken and shown on the federal tax return of the certified building owner; and (iii) are  
11 acquired by purchase as defined in 26 U.S.C. section 179(d). Rehabilitation and reconstruction  
12 costs do not include amounts incurred or paid with respect to tangible personal property and  
13 structural components of the certified building which the certified building owner leases from any  
14 other person or corporation. For the purposes of the preceding sentence, any contract or  
15 agreement to lease or rent or for a license to use the property shall be considered a lease unless  
16 the contract or agreement is treated for the federal income tax purposes of the certified building  
17 owner as an installment purchase rather than a lease.

18 (12) "Mill complex" means two (2) or more mill buildings, located on the same or  
19 contiguous parcels of land, each of which, at one time, had the same owner(s).

20 (13) "Certified building" means a building with respect to which the council has issued a  
21 written notice of final designation as a certified building pursuant to the provisions of section 42-  
22 64.9-6. A portion of a building may be treated as a separate building for purposes of this chapter  
23 if:

24 (i) It consists of a clearly identifiable part of a certifiable building, including, without  
25 limitation, one or more wings, stories, or other separable portions of a certifiable building;

26 (ii) It is held by a single owner, whether in fee or as a condominium, cooperative or  
27 leasehold interest; and

28 (iii) At least one eligible business reasonably could be operated within the confines of  
29 this portion.

30 **42-64.9-5. Building certification process.** -- (a) No later than December 1, 2000, a  
31 municipality shall submit to the enterprise zone council a list of industrial mill structures located  
32 within the municipality for consideration by the council as to whether any of these structures  
33 qualify as certifiable buildings. The council will notify the municipality as to which structures  
34 qualify as certifiable buildings.

1           (b) On or before May 1, 2001, any building designated by the enterprise zone council as  
2 a certifiable building may then be submitted by the municipality to the council for preliminary  
3 designation as a certified building; provided, that the municipality has given notice to the  
4 council:

5           (1) That the building conforms to the area restriction set forth in square feet in subsection  
6 (d) of this section; and

7           (2) That within six (6) months of this designation, the municipality agrees to:

8           (i) Promulgate local regulations and ordinances providing favorable local property tax  
9 treatment for certified industrial mill buildings which are substantially rehabilitated;

10           (ii) Promulgate local regulations and ordinances to expedite the building permit review  
11 and approval process required in the municipality for the rehabilitation of certified buildings;

12           (iii) Promulgate local regulations and ordinances waiving all building permit fees of the  
13 municipality for the rehabilitation of certified buildings;

14           (iv) Promulgate local regulations and ordinances adopting design standards in the  
15 municipality which encourage historic preservation of certified buildings, or alternatively, adopt  
16 design standards developed and recommended by the Rhode Island historic preservation  
17 commission;

18           (v) Promulgate local regulations and ordinances requiring that the advice of the Rhode  
19 Island historic preservation commission will be obtained for the rehabilitation of any certified  
20 building in the municipality; and

21           (vi) Establish a program for eligible businesses which coordinates the economic  
22 development activities of state and local business assistance programs and agencies, including,  
23 but not limited to, the Ocean State business development authority, the Rhode Island small  
24 business development center, the Rhode Island export assistance center, the applicable private  
25 industry council, and the applicable chamber of commerce.

26           (c) Notwithstanding anything to the contrary contained herein, the council's preliminary  
27 designation of certified buildings within any municipality shall be limited in accordance with the  
28 following:

29           (1) One certified building per municipality having a population according to the most  
30 recent federal census of less than twenty-five thousand (25,000); provided, however, that in the  
31 event one or more enterprise zones have been designated in the municipality, it may be permitted  
32 two (2) certified buildings, in which event, at least one of the certified buildings shall be located  
33 within the municipality's boundaries of an enterprise zone;

34           (2) Two (2) certified buildings per municipality having a population according to the

1 most recent federal census of between twenty-five thousand and one (25,001) and seventy-five  
2 thousand (75,000); provided, however, that in the event one or more enterprise zones have been  
3 designated in the municipality it may be permitted three (3) certified buildings, in which event, at  
4 least one of the certified buildings shall be located within the boundaries of an enterprise zone;  
5 and

6 (3) Four (4) certified buildings per municipality having a population according to the  
7 most recent federal census in excess of seventy-five thousand and one (75,001); provided,  
8 however, that in the event one or more enterprise zones have been designated in the municipality,  
9 it may be permitted six (6) certified buildings, in which event, at least two (2) of the certified  
10 buildings shall be located within the boundaries of an enterprise zone.

11 (d) The aggregate square footage of all certified buildings within any municipality shall  
12 not exceed the average of three hundred thousand (300,000) gross square feet per certified  
13 building.

14 **42-64.9-6. Notice of final designation of certified building.** -- (a) Upon notice to the  
15 council that the municipality has satisfied the requirements of section 42-64.9-5(b)(2)(i) through  
16 (vi), the council shall provide to the municipality and to the certified building owner a written  
17 notice of final designation, which notice shall include a statement that an independent appraisal is  
18 required in order to comply with the requirements of section 42-64.9-4(10).

19 (b) The certification and the benefits accruing thereto shall apply for no more than five  
20 (5) years from the date of final designation by the council, except in the case of the carryover of  
21 unused specialized investment tax credits as provided by section 44-31-2, and in no case shall the  
22 benefits accruing be applied retroactively.

23 **42-64.9-6.1. Certified building rehabilitation.** -- (a) A certified building shall be treated  
24 as having been substantially rehabilitated only if the reconstruction and rehabilitation  
25 expenditures incurred during the twenty-four (24) month period selected by the certified building  
26 owner and ending with or within the taxable year in which the rehabilitated certified building is  
27 first placed in service by the certified building owner meet the definition of "substantial  
28 rehabilitation" set forth in section 42-64.9-4(12). For purposes of determining whether the  
29 requirements of section 42-64.9-4(12) have been met, the market value of the certified building  
30 shall be determined at the beginning of the 1st day of such twenty-four (24) month period.

31 (b) Special rule for phased rehabilitation. - In the case of any rehabilitation which may  
32 reasonably be expected to be completed in phases set forth in architectural plans and  
33 specifications completed before the rehabilitation begins, subsection (a) shall be applied by  
34 substituting "sixty (60) month period" for "twenty-four (24) month period."

1           **42-64.9-7. Specialized investment tax credit.** -- A certified building owner may be  
2 allowed a specialized investment tax credit as set out in section 44-31-2 against the tax imposed  
3 by chapters 11 and 30 of title 44.

4           **42-64.9-8. Business tax credits.** -- A taxpayer who owns and operates an eligible  
5 business within a certified building that has been substantially rehabilitated is allowed a credit  
6 against the tax imposed pursuant to chapter 11 or 30 of title 44 as follows:

7           (1) A credit equal to one hundred percent (100%) of the total amount of Rhode Island  
8 salaries and wages as are paid to qualified employees in excess of Rhode Island salaries and  
9 wages paid to the same employees in the prior calendar year. The maximum credit allowable per  
10 taxable year under the provisions of this subsection is three thousand dollars (\$3,000) per  
11 qualified employee.

12           (2) Any tax credits provided in subdivision (1) shall not offset any tax liability in years  
13 other than the year in which the taxpayer qualifies for the credit. Fiscal year taxpayers must claim  
14 the tax credit in the year in which the December 31st of the certification year falls. The credit  
15 shall not reduce the tax below the minimum tax. The credit shall be used to offset tax liability  
16 under either chapter 11 or 30 of title 44, but not both.

17           (3) In the case of a corporation, the credit allowed under this section is only allowed  
18 against the tax of that corporation included in a consolidated return that qualifies for the credit  
19 and not against the tax of other corporations that may join in the filing of a consolidated tax  
20 return.

21           (4) In the case of multiple business owners, the credit provided in subdivision (1) is  
22 apportioned according to the ownership interests of the eligible business.

23           (5) In the event that the eligible business is located within an enterprise zone and is a  
24 certified business under the provisions of section 42-64.3-6, the taxpayer must elect to use the  
25 credit provided under subdivision (1) or the credit provided in section 42-64.3-6 to offset tax  
26 liability, but the taxpayer may not elect to claim both.

27           **42-64.9-9. Interest income.** -- (a) A taxpayer is allowed a ten percent (10%) credit  
28 against taxes due under the provisions of chapter 11, 13, 14, 17, or 30 of title 44 for interest  
29 earned and paid on loans made to eligible businesses as defined in section 42-64.9-4 of this  
30 chapter, solely and exclusively for expenditures within the certified building.

31           (b) The taxpayer is further allowed a one hundred percent (100%) credit against taxes  
32 due under chapter 11, 13, 14, 17, or 30 of title 44 for interest earned on loans made solely and  
33 exclusively for the purposes of substantial rehabilitation as defined in section 42-64.9-4.

34           (c) Any tax credit herein provided shall not offset any tax liability in taxable years other

1 than the year in which the taxpayer qualifies for the credit. The credit shall not reduce the tax  
2 below the minimum, and, in the case of a corporation, shall only be allowed against the tax of that  
3 corporation included in a consolidated return that qualifies for the credit and not against the tax of  
4 other corporations that may join in the filing of a consolidated tax return.

5 (d) The taxpayer is allowed a maximum credit of ten thousand dollars (\$10,000) per  
6 taxable year under subsection (a) of this section. The taxpayer is allowed a maximum credit of  
7 twenty thousand dollars (\$20,000) per taxable year under subsection (b).

8 (e) In the event a certified building owner is also a qualified business under chapter 64.3  
9 of this title, the lender/taxpayer must elect to treat the loan described in subdivision (a) and its  
10 related interest payments as pertaining to the interest credit provided in this section or section 42-  
11 64.3-8.1, but not both.

12 **42-64.9-10. Exemption or stabilization of taxes.** -- Notwithstanding the provisions of  
13 any municipal charter or any other general, special or local law to the contrary, real property taxes  
14 for a certified building and tangible property taxes of the owner or owners of a certified building  
15 for tangible property used in the certified building may be exempted from payment, in whole or  
16 in part, notwithstanding the valuation of the property or the rate of tax, by vote of the city or town  
17 council to the extent deemed appropriate by the city or town council to carry out the purposes of  
18 this chapter. This section shall be construed to provide a complete, additional and alternative  
19 authority for the city or town council to grant exemption or stabilization of real or tangible  
20 property taxes with respect to certified buildings, and the granting of tax exemption or  
21 stabilization by the city or town council under the provisions of this section does not require the  
22 taking of any other proceedings or the happening of any condition, except for the vote of the city  
23 or town council.

24 **42-64.9-11. Expedited permit process.** -- Any building designated by the enterprise  
25 zone council as a certified building shall be immediately forwarded by the building owner to the  
26 governor and the board of directors of the Rhode Island economic development corporation for  
27 consideration as a project of critical economic concern as that term is defined in section 42-117-  
28 3(3) and shall be entitled to the benefits of chapter 117 of this title.

29 **42-64.9-12. Expiration.** -- This chapter shall terminate and be of no further effect on  
30 August 8, 2009, unless the chapter is extended by action of the general assembly.

31 **42-64.9-13. Examination of taxpayer's records.** -- The tax administrator and his or her  
32 agents, for the purpose of ascertaining the correctness of any credit claimed under the provisions  
33 of this chapter, may examine any books, paper, records, or memoranda bearing upon the matters  
34 required to be included in the return, report, or other statement, and may require the attendance of



1 the person executing the return, report, or other statement, or of any officer or employee of any  
2 taxpayer, or the attendance of any other person, and may examine the person under oath  
3 respecting any matter which the tax administrator or his or her agent deems pertinent or material  
4 in determining the eligibility for credits claimed.

5 **42-64.9-14. Penalties.** -- Any taxpayer or employee, officer or agent of any taxpayer that  
6 willfully fails to comply with the provisions of this chapter or otherwise submits false or  
7 misleading information shall be guilty of a felony and upon conviction shall be fined an amount  
8 not more than three (3) times the amount of the tax credit received by the taxpayer, or imprisoned  
9 not more than one year, or both.

10 **42-64.9-15. Revocation of certification.** -- The council has the power to revoke the  
11 certification of any building certified under section 42-64.9-5 of this chapter and to revoke the  
12 eligibility of any business defined as an eligible business under section 42-64.9-4.

13 **42-64.9-16. Additional rules and regulations.** -- (a) The state tax administration shall  
14 promulgate appropriate rules and regulations to ensure the proper administration of the taxation  
15 provisions of this chapter. The council shall promulgate appropriate rules and regulations with  
16 respect to the building certification process, and the certification of eligible businesses, and shall  
17 advise the tax administrator of them and shall promulgate any other rules and regulations that  
18 may be necessary to carry out the provisions of this chapter.

19 (b) In addition to the rules and regulations as provided in subsection (a), the Rhode  
20 Island economic development corporation, with assistance from the department of administration  
21 office of systems planning and subject to the approval of the enterprise zone council, shall adopt  
22 performance standards in order to evaluate the effectiveness of this chapter in accomplishing its  
23 stated purpose.

24 (c) The evaluation, according to the performance standards established by subsection (b),  
25 shall be conducted and reported on an annual basis for each of the years the provisions of this  
26 chapter are in force.

27 **42-64.9-17. Severability.** -- If the provisions of this chapter or the application of this  
28 chapter to any person or circumstances is held invalid, the invalidity shall not affect other  
29 provisions or applications of the chapter which can be given effect without the invalid provision  
30 or application, and to this end the provisions of this chapter are declared to be severable.

31 **42-64.9-18. Applicability.** -- The provisions of this chapter apply to all buildings that  
32 have been designated by the enterprise zone council as certifiable buildings pursuant to chapter  
33 64.5 of this title for all years commencing with the year of the designation.

34 SECTION 2. This act shall take effect upon passage and shall apply retroactively to

1 August 8, 2003.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO STATE AFFAIRS AND GOVERNMENT - MILL BUILDING AND  
ECONOMIC REVITALIZATION ACT

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1           This act would reenact the Mill Building and Economic Revitalization Act which  
2 terminated by statute on August 8, 2003 and would further retroactively apply the provisions of  
3 the act to the date of expiration.

4           This act would take effect upon passage and would apply retroactively to August 8, 2003.

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