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**DEPARTMENT OF ARCHIVES AND HISTORY**

CHAPTER 12

Statutory Authority: 1976 Code Sections 4-9-195 and 5-21-140

12-120. Definitions

12-121. Local Governing Body Certification

12-122. Designation of Property as Historic

12-123. Criteria for Designation

12-124. Review of Rehabilitation Work

12-125. Standards for Rehabilitation

12-126. Delegation of Authority to Review Rehabilitation Work

**Synopsis:**

The Department of Archives and History (Department) proposes to amend its regulations regarding the enabling legislation for Rehabilitation of Designated Historic Buildings to bring the regulations into conformance with the revised law. Additionally, the Department seeks to clarify definitions and the process for review.

The Notice of Drafting was published in the *State Register* on April 23, 2010.

**Instructions:**

Print the regulations in accordance with the directions given below to reflect amendments.

Regulations 12-120, 12-121, 12-122, 12-123 and 12-124. Text amended

Regulation 12-125. Text remains the same

Regulation 12-126. Text deleted

**Text:**

12‑120. Definitions.

 A. “Act” means the legislation authorizing the governing bodies of counties and municipalities to grant special property tax assessments to “rehabilitated historic properties” and “low and moderate income properties.”

 B. “Administrative Review Committee” means a committee of the State Board of Review that shall include three or more members with two or more members representing the fields of architecture, architectural history, or related fields as appropriate.

 C. “Department” means the South Carolina Department of Archives and History.

 D. “Expenditures for rehabilitation” means the actual costs of rehabilitation relating to one or more of the following:

 1. Improvements located on or within the historic building as designated;

 2. Improvements outside of but directly attached to the historic building which are necessary to make the building fully useable (such as vertical circulation) but shall not include new construction of rentable/habitable floor space;

 3. Architectural and engineering services attributable to the design of the improvements; or

 4. Costs necessary to maintain the historic character or integrity of the building.

 E. “Historic Property” means tangible real property that has been granted historic designation by the local governing body. Historic Property may include more than one historic building, including a historically-related complex, such as a house and barn or courthouse and jail. Historic Property may also include non-historic buildings or structures that are not eligible for the special property tax assessment.

 F. “Local Governing Body” means county or municipal governments with jurisdiction over rehabilitated historic properties or low and moderate income rental properties seeking the special property tax assessments authorized by the Act.

 G. “National Register of Historic Places” means the list of districts, sites, buildings, structures, and objects significant in South Carolina history, architecture, archaeology, engineering, and culture, that is maintained by the Secretary of the United States Department of the Interior under authority of the National Historic Preservation Act.

 H. “Rehabilitation” means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the building(s) that are significant to its historic, architectural and cultural values.

12‑121. Local Governing Body Certification.

 A. General. The local governing body shall establish a system for preliminary and final certification of properties that are eligible under the Act. The local governing body may designate, in its discretion, an agency or department to perform its duties under the Act. The local governing body shall notify the county assessor, auditor, and treasurer that it has established the special property tax assessments and of any properties certified for the special property tax assessments.

 B. Scope. The special property tax assessment of rehabilitated historic property shall apply to the building or structure that is rehabilitated, the real property on which the building is located, and additional real property surrounding the building or structure that has been determined significant to the historic character of the building by the local governing body. The special assessment shall not apply to rehabilitation expenses on buildings or structures that are not historic.

12‑122. Designation of Property as Historic.

 A. General. The local governing body shall establish a system for designation of historic properties in cases where such a system is not already in place.

 B. Eligible Properties. The following categories of property may be designated historic by the local governing body:

 1. Properties listed individually in the National Register of Historic Places;

 2. Properties that contribute to an individual property or historic district listed in the National Register of Historic Places; or

 3. Properties fifty or more years old that meet the local governing body’s criteria for designation (see R.12‑123).

 C. Moved buildings.

 1. General. The Department discourages the moving of historic buildings from their original sites.

 2. If a building already designated historic by the local governing body is to be moved as part of rehabilitation work for which certification is sought, the owner must document that the building retains the characteristics that made it eligible for historic designation on the former site. The local governing body shall verify that the historic building retains those qualities on its new site.

 3. If a building not yet designated historic is to be moved as part of rehabilitation work for which certification is sought, the local governing body shall determine whether the building meets its criteria for designation on its new site.

 4. If a building listed in the National Register of Historic Places is to be moved as part of rehabilitation work for which certification is sought, the owner must follow the specific federal procedures that enable the building to remain listed. The owner should contact the Department early in the planning process if moving is a necessary step in their project.

 D. Removal of Historic Designation.

 1. The local governing body may remove the historic designation if the property no longer possesses the qualities that made it eligible for designation.

 2. In the case that a property had been designated historic based on its listing in the National Register of Historic Places and the property is removed from the National Register, one of the following must occur:

 a. The property must be designated historic based on the local criteria; or

 b. The property loses the historic designation as of the date of removal from the National Register of Historic Places.

 3. The date of the removal of historic designation shall be the basis for the date of the end of the special property tax assessment.

 E. Technical Assistance. The Department shall provide technical assistance and advice, upon request, to the local governing body in carrying out the responsibilities under the Act.

12‑123. Criteria for Designation.

 A. General. The local governing body shall establish criteria for designation of historic properties.

 B. Categories of Significance. Categories of significance for the criteria may include but are not limited to the following:

 1. Architecture;

 2. Culture;

 3. Engineering; or

 4. History.

 C. Sample Criteria and Technical Assistance. The Department shall provide sample criteria, technical assistance, and advice, upon request, to the local governing body in carrying out the responsibilities under the Act.

12‑124. Review of Rehabilitation Work.

 A. General. The owner of any property seeking approval of rehabilitation work pursuant to the certification process of a local government (see R.12‑121) shall comply with the procedures described in this regulation.

 1. The owner shall submit a completed Rehabilitated Historic Property Application with supporting documentation to the Reviewing Authority (as defined in the Act). Owners who undertake any rehabilitation work without prior approval from the Reviewing Authority do so at their own risk and may disqualify all rehabilitation work from eligibility under the Act.

 a. In cases where the ordinance requires owners to apply for preliminary certification before any project work begins, the application must be provided to the Reviewing Authority prior to beginning any project work.

 b. In cases where the ordinance does not require owners to apply for preliminary certification before any project work begins, owners are strongly encouraged to submit the application prior to undertaking any rehabilitation work.

 c. In cases where the owner proposes changes in the proposed work prior to final approval of rehabilitation work, owners are strongly encouraged to submit the changes prior to undertaking such rehabilitation work.

 d. In cases where the owner proposes additional work after final approval of rehabilitation work but before the end of the special assessment period, owners are strongly encouraged to submit the additional work prior to undertaking such rehabilitation work.

 2. The approval of rehabilitation work is based on the Standards for Rehabilitation (see R.12‑125). The final approval of rehabilitation work by the Reviewing Authority is based on the completed work.

 B. Rehabilitated Historic Property Application.

 1. The Department shall provide a Rehabilitated Historic Property Application for owners to use when applying for the special assessment. In cases where the Department is not the Reviewing Authority, then the local governing body may develop an application that requests the same information as the application provided by the Department.

 2. Part A ‑‑Preliminary Approval of Rehabilitation Work form, shall be used by the owner to describe the historic significance of the building, and to request preliminary approval of proposed rehabilitation work.

 3. Part B ‑‑Final Approval of Rehabilitation Work form, shall be used by the owner to request final approval of completed rehabilitation work when the Reviewing Authority has already issued preliminary approval of rehabilitation work.

 4. Parts A and B shall be used by the owner to request final approval of completed rehabilitation work when the Reviewing Authority has not issued preliminary approval of rehabilitation work.

 5. Continuation/Amendment form shall be used by the owner to describe changes in the proposed work prior to final approval of rehabilitation work or to describe additional work after final approval of rehabilitation work but before the end of the special assessment period.

 C. Review Process.

 1. General. The Reviewing Authority shall review the application and determine if the rehabilitation work is consistent with the Standards for Rehabilitation. Rehabilitation work that is consistent with the Standards for Rehabilitation shall be approved. The Reviewing Authority shall notify the owner of this determination in writing. If the rehabilitation work is not consistent with the Standards for Rehabilitation, the Reviewing Authority shall deny the rehabilitation work and, where possible, advise the owner of necessary revisions. An authorized representative of the Reviewing Authority may inspect Historic Properties during the review process. The owner may appeal the determination by the Reviewing Authority that a rehabilitation project is not consistent with the Standards for Rehabilitation, see R.12-124D. In cases where the Department is the Reviewing Authority, the Department shall notify the local governing body of review decisions.

 2. The Reviewing Authority shall consider the description of the rehabilitation work provided in the Part A – Preliminary Approval of Rehabilitation Work form and any attachments as the basis for the approval or denial of the rehabilitation work. In cases of discrepancy, the description in the application shall prevail over any/all attachments. After a project has received preliminary approval of rehabilitation work, the owner is responsible for reporting any proposed substantive changes in the work described in the application to the Reviewing Authority by written statement to ensure continued consistency with the Standards for Rehabilitation Such changes should be described on a Continuation/Amendment form as provided by the Reviewing Authority. The Reviewing Authority shall determine if the proposed changes are consistent with the Standards for Rehabilitation and notify the owner in writing. Owners who undertake any rehabilitation work without prior approval from the Reviewing Authority do so at their own risk and may disqualify all rehabilitation work from eligibility under the Act.

 3. The Reviewing Authority shall consider the documentation of the completed rehabilitation work for the approval or denial of the completed rehabilitation work. Approval of Part B constitutes final approval of the rehabilitation work by the Reviewing Authority.

 4. An authorized representative of the Reviewing Authority may inspect completed projects during the special assessment period to determine if the work is consistent with the Standards for Rehabilitation.

 D. Administrative Review and Appeal. An owner may appeal a denial decision by the Reviewing Authority by requesting it in writing within thirty (30) days of the date of that decision.

 1. The owner may appeal a decision of the board of architectural review by following the process provided by state law (S.C. Code of Laws, Sections 6-29-890 through 6-29-940).

 2. The owner may request an administrative review of a decision by the Department in writing within thirty (30) days of the date of that decision.

 3. The Administrative Review Committee shall hear the request, based on the application, information in the files of the Department, and additional information (if any) provided. In considering the request, the Administrative Review Committee shall take into account alleged errors in professional judgment or alleged prejudicial procedural errors by Department officials. The decision of the Administrative Review Committee may:

 a. Reverse the decision of the Department;

 b. Affirm the decision of the Department; or

 c. Resubmit the matter to the Department for further consideration.

 4. The decision of the Administrative Review Committee shall be the final administrative decision.

 E. Additional Work.

 1. Additional work on the property, other than ordinary maintenance and/or repair with matching materials, done after the final approval of rehabilitation work by the Reviewing Authority and before the expiration of the special property tax assessment shall be brought to the attention of the Reviewing Authority. Owners who undertake any rehabilitation work without prior approval from the Reviewing Authority do so at their own risk and may disqualify all rehabilitation work from eligibility under the Act.

 2. The owner shall provide complete information describing the additional work on a Continuation/Amendment form and any necessary attachments. The Reviewing Authority shall determine if the overall project remains consistent with the Standards for Rehabilitation. The Reviewing Authority shall notify the owner of this determination in writing.

 3. If the overall project including the proposed additional work, is not consistent with the Standards for Rehabilitation, the owner shall be notified in writing that the Reviewing Authority intends to rescind its approval of the project. The owner may then withdraw the request and revise the work in consultation with the Reviewing Authority. The rescission shall be effective thirty days after the date of the letter from the Reviewing Authority, unless the owner has withdrawn the proposal.

 4. The Reviewing Authority shall notify the local governing body in writing of the decision to rescind approval of the rehabilitation work.

 5. The effective date of the rescission by the Reviewing Authority shall be the basis for the end date of the special property tax assessment.

12‑125. Standards for Rehabilitation.

 A. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

 B. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

 C. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

 D. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

 E. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

 F. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

 G. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

 H. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

 I. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

 J. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Rationale:**

The purpose of amending Regulations 12-120 through 12-124, retaining Regulation 12-125 unchanged, and deleting Regulation 12-126 is to bring the language into conformance with the revised law. The proposed regulations allow the local governing body to utilize more local control, streamline the process, and have flexibility in setting up a local incentive program