

HOUSE BILL 598

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By: **Delegates Hixson, Barkley, Barve, Dumais, Elmore, Gilchrist, Hucker, Kaiser, Lawton, Manno, McIntosh, Montgomery, Rice, Ross, Simmons, and Stukes**

Introduced and read first time: February 8, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Heritage Structure Rehabilitation Tax Credit Program**

3 FOR the purpose of requiring the Director of the Maryland Historical Trust to adopt
4 certain regulations to establish certain criteria for plans of proposed
5 rehabilitation for purposes of the Maryland heritage structure rehabilitation tax
6 credits; altering a certain limit on the award of initial credit certificates for
7 projects in a single jurisdiction; altering certain preferences for the award of
8 initial credit certificates to certain commercial rehabilitations; repealing a
9 requirement that a certain percentage of tax credits be provided for certain
10 nonprofit organizations; altering certain provisions relating to certain authority
11 of the Director to charge certain fees to certify heritage structures and
12 rehabilitations; altering a certain time period for completing commercial
13 rehabilitations for purposes of the credit; authorizing the Governor to include
14 certain appropriations to a certain fund in the annual budget bill; defining a
15 certain term; altering certain definitions; extending the termination date of the
16 credit; providing for the application of this Act; and generally relating to the
17 Maryland Heritage Structure Rehabilitation Tax Credit Program.

18 BY repealing and reenacting, with amendments,
19 Article – State Finance and Procurement
20 Section 5A–303
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 5A–303.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) “Business entity” means:

7 (i) a person conducting or operating a trade or business in the
8 State; or

9 (ii) an organization operating in Maryland that is exempt from
10 taxation under § 501(c)(3) of the Internal Revenue Code.

11 (3) “Certified heritage area” has the meaning stated in § 13–1101 of
12 the Financial Institutions Article.

13 (4) (i) “Certified heritage structure” means a structure that is
14 located in the State and is:

15 1. listed in the National Register of Historic Places;

16 2. designated as a historic property under local law and
17 determined by the Director to be eligible for listing on the National Register of Historic
18 Places;

19 3. A. located in a historic district listed on the
20 National Register of Historic Places or in a local historic district that the Director
21 determines is eligible for listing on the National Register of Historic Places; and

22 B. certified by the Director as contributing to the
23 significance of the district; or

24 4. located in a certified heritage area and certified by the
25 Maryland Heritage Areas Authority as contributing to the significance of the certified
26 heritage area.

27 (ii) “Certified heritage structure” does not include a structure
28 that is owned by the State, a political subdivision of the State, or the federal
29 government.

1 (5) “Certified rehabilitation” means a completed rehabilitation of a
2 certified heritage structure that the Director certifies is a substantial rehabilitation in
3 conformance with the rehabilitation standards of the United States Secretary of the
4 Interior.

5 (6) “Commercial rehabilitation” means a rehabilitation of a structure
6 other than a single-family, owner-occupied residence.

7 (7) “Director” means the Director of the Maryland Historical Trust.

8 (8) “Local historic district” means a district that the governing body of
9 a county or municipal corporation, or the Mayor and City Council of Baltimore, has
10 designated under local law as historic.

11 **(9) “NATIONAL REGISTER STRUCTURE” MEANS A STRUCTURE**
12 **THAT IS:**

13 **(I) LISTED ON THE NATIONAL REGISTER OF HISTORIC**
14 **PLACES; OR**

15 **(II) LOCATED IN A HISTORIC DISTRICT LISTED ON THE**
16 **NATIONAL REGISTER OF HISTORIC PLACES AND CERTIFIED BY THE DIRECTOR**
17 **AS CONTRIBUTING TO THE SIGNIFICANCE OF THE DISTRICT.**

18 **[(9)] (10)** “Qualified rehabilitation expenditure” means any amount
19 that:

20 (i) is properly chargeable to a capital account;

21 (ii) is expended in the rehabilitation of a structure that by the
22 end of the calendar year in which the certified rehabilitation is completed is a certified
23 heritage structure;

24 (iii) is expended in compliance with a plan of proposed
25 rehabilitation that has been approved by the Director; and

26 (iv) is not funded, financed, or otherwise reimbursed by any:

27 1. State or local grant;

1 2. grant made from the proceeds of tax-exempt bonds
2 issued by the State, a political subdivision of the State, or an instrumentality of the
3 State or of a political subdivision of the State;

4 3. State tax credit other than the tax credit under this
5 section; or

6 4. other financial assistance from the State or a political
7 subdivision of the State, other than a loan that must be repaid at an interest rate that
8 is greater than the interest rate on general obligation bonds issued by the State at the
9 most recent bond sale prior to the time the loan is made.

10 [(10)] (11) “Substantial rehabilitation” means rehabilitation of a
11 structure for which the qualified rehabilitation expenditures, during the 24-month
12 period selected by the individual or business entity ending with or within the taxable
13 year, exceed:

14 (i) for owner-occupied residential property, \$5,000; or

15 (ii) for all other property, the greater of:

16 1. the adjusted basis of the structure; or

17 2. \$5,000.

18 (b) (1) The Director shall adopt regulations to:

19 (i) establish procedures and standards for certifying heritage
20 structures and rehabilitations under this section;

21 (ii) for commercial rehabilitations, establish an application
22 process for the award of initial credit certificates for Maryland heritage structure
23 rehabilitation tax credits consistent with the requirements of this subsection; [and]

24 **(III) FOR COMMERCIAL REHABILITATIONS, ESTABLISH**
25 **CRITERIA, CONSISTENT WITH THE REQUIREMENTS OF THIS SUBSECTION, FOR**
26 **EVALUATING, COMPARING, AND RATING PLANS OF PROPOSED REHABILITATION**
27 **THAT HAVE BEEN DETERMINED BY THE DIRECTOR TO CONFORM WITH THE**
28 **REHABILITATION STANDARDS OF THE UNITED STATES SECRETARY OF THE**
29 **INTERIOR; AND**

1 [(iii)] (IV) for commercial rehabilitations, establish a competitive
2 award process for the award of initial credit certificates for Maryland heritage
3 structure rehabilitation tax credits that:

4 1. [ensures tax credits are awarded in a manner that
5 reflects the geographic diversity of the State] **FAVORS THE AWARD OF TAX CREDITS
6 FOR REHABILITATION PROJECTS LOCATED IN JURISDICTIONS THAT HAVE BEEN
7 HISTORICALLY UNDERREPRESENTED IN THE AWARD OF TAX CREDITS FOR
8 COMMERCIAL REHABILITATIONS, BASED ON THE NUMBER OF NATIONAL
9 REGISTER STRUCTURES IN EACH JURISDICTION;**

10 2. favors the award of tax credits for rehabilitation
11 projects that are consistent with and promote current growth and development policies
12 and programs of the State; and

13 3. A. favors the award of tax credits for structures
14 that are listed in the National Register of Historic Places or are designated as historic
15 properties under local law and determined by the Director to be eligible for listing in
16 the National Register of Historic Places; or

17 B. favors the award of tax credits for structures that are
18 contributing buildings with historic significance and are located in historic districts
19 listed in the National Register of Historic Places.

20 (2) The Director may not certify that a rehabilitation is a certified
21 rehabilitation eligible for a tax credit provided under this section unless the individual
22 or business entity seeking certification states under oath the amount of the
23 individual's or business entity's qualified rehabilitation expenditures.

24 (3) Between January 1 and March 31 each year, the Director may
25 accept applications for approval of plans of proposed commercial rehabilitations and
26 for the award of initial credit certificates for the fiscal year that begins July 1 of that
27 year.

28 (4) For commercial rehabilitations, the Director may not accept an
29 application for approval of plans of proposed rehabilitation if:

30 (i) any substantial part of the proposed rehabilitation work has
31 begun; or

1 (ii) the applicant for a commercial rehabilitation has previously
2 submitted three or more applications for commercial rehabilitations with total
3 proposed rehabilitations exceeding \$500,000 in that year.

4 (5) Not more than [50%] **75%** of the total credit amounts under initial
5 credit certificates issued for any fiscal year may be issued for projects in a single
6 county or Baltimore City.

7 (6) [(i) Except as provided in subparagraph (ii) of this paragraph, at
8 least 10% of the total credit amounts under initial credit certificates issued for any
9 fiscal year shall be issued for proposed rehabilitation projects submitted by
10 organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

11 (ii) For any fiscal year, subparagraph (i) of this paragraph does
12 not apply to the extent that the total credit amounts applied for by organizations
13 exempt from taxation under § 501(c)(3) of the Internal Revenue Code for qualifying
14 projects is less than 10% of the maximum authorized aggregate credit amounts for the
15 fiscal year under subsection (d) of this section.

16 (7)] (i) The Director shall adopt regulations to charge a reasonable
17 fee to certify heritage structures and rehabilitations under this section.

18 [(ii) A fee charged under this paragraph shall apply only to a
19 certification for a commercial rehabilitation that is awarded an initial credit certificate
20 under this section for a fiscal year that begins on or after July 1, 2005.]

21 [(iii)] (II) The Director shall set the level of the fee so that the
22 projected proceeds from the fee will cover the costs to the Trust of administering the
23 credit under this section and the federal historic tax credit.

24 [(iv)] (III) The fee charged [to any project] may not exceed 1% of
25 the amount of the initial credit certificate issued for [the project] **A COMMERCIAL
26 REHABILITATION PROJECT OR THE AMOUNT OF THE CREDIT FOR WHICH A
27 SINGLE-FAMILY, OWNER-OCCUPIED REHABILITATION WOULD BE ELIGIBLE
28 BASED ON THE GREATER OF THE ESTIMATED OR FINAL QUALIFIED
29 REHABILITATION EXPENDITURES FOR THE REHABILITATION.**

30 [(v)] (IV) The proceeds from the fee shall be deposited in a
31 special fund, to be used only for the purposes of paying the costs of administering the
32 credit under this section and the federal historic tax credit.

1 [(vi)] (v) Any unused balance of the fund at the end of each
2 fiscal year shall be transferred to the Reserve Fund established under subsection (d) of
3 this section and shall increase the amount of the initial credit certificates that the
4 Trust may issue for the following fiscal year.

5 (c) (1) Except as otherwise provided in this section, for the taxable year in
6 which a certified rehabilitation is completed, an individual or business entity may
7 claim a tax credit in an amount equal to 20% of the individual's or business entity's
8 qualified rehabilitation expenditures for the rehabilitation.

9 (2) (i) For any commercial rehabilitation, the State tax credit
10 allowed under this section may not exceed the lesser of:

11 1. \$3,000,000; or

12 2. the maximum amount specified under the initial
13 credit certificate issued for the rehabilitation.

14 (ii) For a rehabilitation other than a commercial rehabilitation,
15 the State tax credit allowed under this section may not exceed \$50,000.

16 (iii) For the purposes of the limitation under subparagraph (i) of
17 this paragraph, the following shall be treated as a single commercial rehabilitation:

18 1. the phased rehabilitation of the same structure or
19 property;

20 2. the separate rehabilitation of different components of
21 the same structure or property; or

22 3. the rehabilitation of multiple structures that are
23 functionally related to serve an overall purpose.

24 (3) (i) Subject to subparagraph (ii) of this paragraph, the initial
25 credit certificate for a proposed commercial rehabilitation shall expire and the credit
26 under this section may not be claimed if the commercial rehabilitation is not
27 completed [by the end of the fiscal year following the fiscal year for which] **WITHIN 30**
28 **MONTHS AFTER** the initial credit certificate was issued.

29 (ii) For reasonable cause, the Director may postpone the
30 expiration date for an initial credit certificate for a commercial rehabilitation.

1 (4) If the tax credit allowed under this section in any taxable year
2 exceeds the total tax otherwise payable by the business entity or the individual for
3 that taxable year, the individual or business entity may claim a refund in the amount
4 of the excess.

5 (d) (1) In this subsection, "Reserve Fund" means the Heritage Structure
6 Rehabilitation Tax Credit Reserve Fund established under paragraph (2) of this
7 subsection.

8 (2) (i) There is a Heritage Structure Rehabilitation Tax Credit
9 Reserve Fund that is a continuing, nonlapsing special fund that is not subject to §
10 7-302 of this article.

11 (ii) The money in the Fund shall be invested and reinvested by
12 the Treasurer, and interest and earnings shall be credited to the General Fund.

13 (3) (i) Subject to the provisions of this subsection, the Director
14 shall issue an initial credit certificate for each commercial rehabilitation for which a
15 plan of proposed rehabilitation is approved.

16 (ii) An initial credit certificate issued under this subsection
17 shall state the maximum amount of credit under this section for which the commercial
18 rehabilitation may qualify.

19 (iii) 1. Except as otherwise provided in this subparagraph
20 and in subsection [(b)(7)(vi)] **(B)(6)(V)** of this section, for any fiscal year, the Director
21 may not issue initial credit certificates for credit amounts in the aggregate totaling
22 more than the amount appropriated to the Reserve Fund for that fiscal year in the
23 State budget as approved by the General Assembly.

24 2. If the aggregate credit amounts under initial credit
25 certificates issued in a fiscal year total less than the amount appropriated to the
26 Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve
27 Fund and may be issued under initial credit certificates for the next fiscal year.

28 3. For any fiscal year, if funds are transferred from the
29 Reserve Fund under the authority of any provision of law other than paragraph (4) of
30 this subsection, the maximum credit amounts in the aggregate for which the Director
31 may issue initial credit certificates shall be reduced by the amount transferred.

1 (iv) [1. For fiscal year 2006, the Governor shall include in the
2 budget bill an appropriation to the Reserve Fund in an amount equal to at least
3 \$20,000,000.

4 2.] For each of fiscal years [2007 and 2008] **2009 AND**
5 **2010**, the Governor shall include in the budget bill an appropriation to the Reserve
6 Fund [in an amount equal to at least \$30,000,000].

7 (v) Notwithstanding the provisions of § 7–213 of this article, the
8 Governor may not reduce an appropriation to the Reserve Fund in the State budget as
9 approved by the General Assembly.

10 (vi) The Director may not issue an initial credit certificate for
11 any fiscal year after fiscal year [2008] **2010**.

12 (4) (i) Except as provided in this paragraph, money appropriated to
13 the Reserve Fund shall remain in the Fund.

14 (ii) 1. Within 15 days after the end of each calendar quarter,
15 the Trust shall notify the Comptroller as to each commercial rehabilitation completed
16 and certified during the quarter:

17 A. the maximum credit amount stated in the initial
18 credit certificate for the project; and

19 B. the final certified credit amount for the project.

20 2. On notification that a project has been certified, the
21 Comptroller shall transfer an amount equal to the maximum credit amount stated in
22 the initial credit certificate for the project from the Reserve Fund to the General Fund.

23 (iii) 1. On or before October 1 of each year, the Trust shall
24 notify the Comptroller as to the maximum credit amount stated in the initial credit
25 certificate for each commercial rehabilitation for which the initial credit certificate has
26 expired under subsection (c)(3) of this section as of the end of the prior fiscal year.

27 2. On notification that the initial credit certificate for a
28 project has expired under subsection (c)(3) of this section, the Comptroller shall
29 transfer an amount equal to the maximum credit amount stated in the initial credit
30 certificate for the project from the Reserve Fund to the General Fund.

31 (e) (1) In this subsection, “disqualifying work” means work that:

1 (i) is performed on a certified heritage structure for which a
2 rehabilitation has been certified under this section; and

3 (ii) if performed as part of the rehabilitation certified under this
4 section, would have made the rehabilitation ineligible for certification.

5 (2) The credit allowed under this section shall be recaptured as
6 provided in paragraph (3) of this subsection if, during the taxable year in which a
7 certified rehabilitation is completed or any of the 4 taxable years succeeding the
8 taxable year in which the certified rehabilitation is completed, any disqualifying work
9 is performed on the certified heritage structure for which the certified rehabilitation
10 has been completed.

11 (3) (i) 1. If the disqualifying work is performed during the
12 taxable year in which the certified rehabilitation was completed, 100% of the credit
13 shall be recaptured.

14 2. If the disqualifying work is performed during the first
15 full year succeeding the taxable year in which the certified rehabilitation was
16 completed, 80% of the credit shall be recaptured.

17 3. If the disqualifying work is performed during the
18 second full year succeeding the taxable year in which the certified rehabilitation was
19 completed, 60% of the credit shall be recaptured.

20 4. If the disqualifying work is performed during the
21 third full year succeeding the taxable year in which the certified rehabilitation was
22 completed, 40% of the credit shall be recaptured.

23 5. If the disqualifying work is performed during the
24 fourth full year succeeding the taxable year in which the certified rehabilitation was
25 completed, 20% of the credit shall be recaptured.

26 (ii) The individual or business entity that claimed the tax credit
27 shall pay the amount to be recaptured as determined under subparagraph (i) of this
28 paragraph as taxes payable to the State for the taxable year in which the disqualifying
29 work is performed.

30 (f) (1) The Comptroller may determine, under the process for return
31 examination and audit under §§ 13-301 and 13-302 of the Tax – General Article:

1 (i) the amount of rehabilitation expenditures used in
2 calculating the credit;

3 (ii) whether such expenditures are qualified rehabilitation
4 expenditures under this section; and

5 (iii) whether the credit is allowable as claimed.

6 (2) The authority of the Comptroller to examine and audit a tax return
7 does not limit the authority of the Director to determine whether a rehabilitation
8 qualifies as a certified rehabilitation or whether a certificate of certified rehabilitation
9 has been properly issued.

10 (3) The Comptroller may adopt regulations to require that an entity
11 other than a corporation claim the tax credit on the tax return filed by that entity.

12 (4) (i) Except as otherwise provided in this paragraph, the credit
13 under this section may be claimed for the year a certified rehabilitation is completed,
14 only if the Director has, by the time the return is filed, issued a certificate of
15 completion for the certified rehabilitation.

16 (ii) A taxpayer claiming the credit may amend a return for the
17 year the certified rehabilitation was completed to account for a certificate issued
18 subsequent to the filing of the original return.

19 (iii) An amended return shall be filed within the period allowed
20 under the Tax – General Article for filing refund claims.

21 (iv) The provisions of this paragraph do not extend the period in
22 which a certified rehabilitation must be completed to be eligible for a tax credit under
23 this section.

24 (v) An amended return may account for an amended
25 certification issued by the Director for a certified rehabilitation.

26 (g) A refund payable under subsection (c) of this section:

27 (1) operates to reduce the income tax revenue from corporations if the
28 person entitled to the refund is a corporation subject to the income tax under Title 10
29 of the Tax – General Article;

30 (2) operates to reduce insurance premium tax revenues if the person
31 entitled to the refund is subject to taxation under Title 6 of the Insurance Article; and

1 (3) operates to reduce the income tax revenue from individuals if the
2 person entitled to the refund is:

3 (i) an individual subject to the income tax under Title 10 of the
4 Tax – General Article; or

5 (ii) an organization exempt from taxation under § 501(c)(3) of
6 the Internal Revenue Code.

7 (h) (1) On or before December 15 of each fiscal year, the Director shall
8 report to the Governor and, subject to § 2–1246 of the State Government Article, to the
9 General Assembly, on:

10 (i) the initial credit certificates awarded for commercial
11 rehabilitations under this section for that fiscal year; and

12 (ii) the tax credits awarded for certified rehabilitations
13 completed in the preceding fiscal year.

14 (2) The report required under paragraph (1) of this subsection shall
15 include for each initial credit certificate awarded for the fiscal year for a commercial
16 rehabilitation:

17 (i) the name of the owner or developer of the commercial
18 rehabilitation;

19 (ii) the name and address of the proposed or certified
20 rehabilitation and the county where the project is located;

21 (iii) the dates of receipt and approval by the Director of all
22 applications regarding the project, including applications:

23 1. for certification that a structure or property will
24 qualify as a certified heritage structure; and

25 2. for approval of the proposed rehabilitation; and

26 (iv) the maximum amount of the credit stated in the initial
27 credit certificate for the project and the estimated rehabilitation expenditures stated
28 in the application for approval of the plan of proposed rehabilitation.

1 (3) The report required under paragraph (1) of this subsection shall
2 include for each certified commercial rehabilitation completed during the preceding
3 fiscal year:

4 (i) the name of the owner or developer of the commercial
5 rehabilitation;

6 (ii) the name and address of the certified rehabilitation and the
7 county where the project is located;

8 (iii) the dates of receipt and approval by the Director of all
9 applications regarding the project; and

10 (iv) 1. the maximum amount of the credit stated in the
11 initial credit certificate for the project and the estimated rehabilitation expenditures
12 stated in the application for approval of the plan of proposed rehabilitation; and

13 2. the actual qualified rehabilitation expenditures and
14 the final amount of the credit for which the project qualified.

15 (4) The report required under paragraph (1) of this subsection shall
16 summarize for each category of certified rehabilitations:

17 (i) the total number of applicants for:

18 1. certification that a structure or property will qualify
19 as a certified heritage structure;

20 2. approval of plans of proposed rehabilitations; or

21 3. certification of the completed rehabilitations;

22 (ii) the number of proposed projects for which plans of proposed
23 rehabilitation were approved; and

24 (iii) the total estimated rehabilitation expenditures stated in
25 approved applications for approval of plans of proposed rehabilitation and the total
26 qualified rehabilitation expenditures for completed rehabilitations certified.

27 (5) The information required under paragraph (4) of this subsection
28 shall be provided in the aggregate and separately for each of the following categories of
29 certified rehabilitations:

1 (i) owner-occupied single family residential structures; and

2 (ii) commercial rehabilitations.

3 (i) (1) Subject to the provisions of this subsection, the provisions of this
4 section and the tax credit authorized under this section shall terminate as of July 1,
5 [2008] **2010**.

6 (2) On and after July 1, [2008] **2010**:

7 (i) the tax credit authorized under this section may be claimed
8 for:

9 1. a rehabilitation project, other than a commercial
10 rehabilitation, for which an application for approval of a plan of proposed
11 rehabilitation was received by the Director on or before June 30, [2008] **2010**; or

12 2. a commercial rehabilitation for which an initial credit
13 certificate has been awarded under subsection (d) of this section; and

14 (ii) the Director shall continue to report to the Governor and the
15 General Assembly as required under subsection (h) of this section for as long as any
16 rehabilitation project for which the tax credit may be claimed remains incomplete.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2007, and shall be applicable to all initial credit certificates issued on or after
19 July 1, 2007.