

CHAPTER 567

(House Bill 598)

AN ACT concerning

Maryland Heritage Structure Rehabilitation Tax Credit Program

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

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

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

Article – State Finance and Procurement

5A–303.

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

(2) “Business entity” means:

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

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

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

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

1. listed in the National Register of Historic Places;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is properly chargeable to a capital account;

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

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

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

1. State or local grant;

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

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

4. other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that

is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

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

- (i) for owner-occupied residential property, \$5,000; or
- (ii) for all other property, the greater of:
 1. the adjusted basis of the structure; or
 2. \$5,000.

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

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

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

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

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

1. [ensures tax credits are awarded in a manner that reflects the geographic diversity of the State] **FAVORS THE AWARD OF TAX CREDITS FOR REHABILITATION PROJECTS LOCATED IN JURISDICTIONS THAT HAVE BEEN HISTORICALLY UNDERREPRESENTED IN THE AWARD OF TAX CREDITS FOR**

COMMERCIAL REHABILITATIONS, BASED ON THE NUMBER OF NATIONAL REGISTER STRUCTURES IN EACH JURISDICTION;

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

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

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

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

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

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

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

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

(5) ~~Not~~ **EXCEPT AS PROVIDED IN SUBSECTION (D)(3)(III) OF THIS SECTION, NOT** more than [50%] **75%** of the total credit amounts under initial credit certificates issued for any fiscal year may be issued for projects in a single county or Baltimore City.

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

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

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

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

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

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

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

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

(c) (1) Except as otherwise provided in this section, for the taxable year in which a certified rehabilitation is completed, an individual or business entity may

claim a tax credit in an amount equal to 20% of the individual's or business entity's qualified rehabilitation expenditures for the rehabilitation.

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

1. \$3,000,000; or
2. the maximum amount specified under the initial credit certificate issued for the rehabilitation.

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

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

1. the phased rehabilitation of the same structure or property;
2. the separate rehabilitation of different components of the same structure or property; or
3. the rehabilitation of multiple structures that are functionally related to serve an overall purpose.

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

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

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

(d) (1) In this subsection, “Reserve Fund” means the Heritage Structure Rehabilitation Tax Credit Reserve Fund established under paragraph (2) of this subsection.

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

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

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

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

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

2. IF THE AGGREGATE CREDIT AMOUNTS UNDER INITIAL CREDIT CERTIFICATES ISSUED IN A FISCAL YEAR TOTAL LESS THAN THE AMOUNT APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR AS A RESULT OF THE LIMITATION UNDER SUBSECTION (B)(5) OF THIS SECTION, ANY EXCESS AMOUNT MAY BE ISSUED UNDER INITIAL CREDIT CERTIFICATES FOR PROJECTS IN A COUNTY OR BALTIMORE CITY IN THE SAME FISCAL YEAR, WITHOUT REGARD TO THE LIMITATION UNDER SUBSECTION (B)(5) OF THIS SECTION.

~~3.~~ 3. IF SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, IF the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

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

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

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

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

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

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

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

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

B. the final certified credit amount for the project.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The individual or business entity that claimed the tax credit shall pay the amount to be recaptured as determined under subparagraph (i) of this

paragraph as taxes payable to the State for the taxable year in which the disqualifying work is performed.

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

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

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

(iii) whether the credit is allowable as claimed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. for approval of the proposed rehabilitation; and

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

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

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

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

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

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

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

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

(i) the total number of applicants for:

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

2. approval of plans of proposed rehabilitations; or

3. certification of the completed rehabilitations;

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

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

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

- (i) owner-occupied single family residential structures; and
- (ii) commercial rehabilitations.

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

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

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

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

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

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

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

Approved by the Governor, May 17, 2007.