
By: **Senators Hoffman and Middleton**
Introduced and read first time: February 1, 2002
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Heritage Structure Rehabilitation Tax Credit**

3 FOR the purpose of limiting the qualifying expenditures under the Maryland
4 Heritage Structure Rehabilitation Tax Credit allowed for a commercial
5 rehabilitation to the amount of proposed expenditures approved by the Director
6 of the Maryland Historical Trust; providing that certain expenditures funded,
7 financed, or otherwise reimbursed by certain State financial assistance do not
8 qualify for the credit; limiting the credit allowed for certain rehabilitations to a
9 certain amount; repealing a provision making the credit refundable under
10 certain circumstances; providing for the carry forward of certain unused credit
11 amounts; allowing certain unused credit amounts to be transferred under
12 certain circumstances; making the credit refundable under certain
13 circumstances for certain tax-exempt organizations and for certain
14 rehabilitations; providing that for certain rehabilitations, the credit may not be
15 claimed unless the proposed rehabilitation work and the amount of the proposed
16 rehabilitation expenditures have been approved by the Director of the Maryland
17 Historical Trust; limiting the amount of proposed rehabilitation expenditures
18 that the Director may approve for purposes of the credit for any commercial
19 project; limiting the aggregate amount of proposed rehabilitation expenditures
20 that the Director may approve for purposes of the credit in any calendar year;
21 requiring the Director to approve proposed rehabilitation expenditures for
22 purposes of the credit on a certain basis; altering certain reporting requirements
23 under the credit; limiting the amount of the credit that may be claimed for any
24 taxable year for certain rehabilitations to a certain amount; allowing certain
25 excess credit to be carried forward and applied as a credit in future tax years,
26 subject to a certain limitation; providing for the application of this Act; requiring
27 the Comptroller to allow certain amended returns and to waive certain interest
28 and penalty; providing for the allocation of the available credit for a certain
29 calendar year under certain circumstances; and generally relating to the
30 Maryland Heritage Structure Rehabilitation Tax Credit.

31 BY repealing and reenacting, with amendments,
32 Article 83B - Department of Housing and Community Development
33 Section 5-801
34 Annotated Code of Maryland

1 (1998 Replacement Volume and 2001 Supplement)

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

4 **Article 83B - Department of Housing and Community Development**

5 5-801.

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

7 (2) "Business entity" means:

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

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

12 (3) "Certified heritage area" has the meaning stated in § 13-1101(d) of
13 the Financial Institutions Article.

14 (4) (i) "Certified heritage structure" means a structure that is located
15 in the State and is:

16 1. Listed in the National Register of Historic Places;

17 2. Designated as a historic property under local law;

18 3. A. Located in a historic district listed on the National
19 Register of Historic Places or in a local historic district; and

20 B. Certified by the Director of the Maryland Historical Trust
21 as contributing to the significance of the district; or

22 4. Located in a certified heritage area and which has been
23 certified by the Maryland Heritage Areas Authority as contributing to the
24 significance of the certified heritage area.

25 (ii) "Certified heritage structure" does not include a structure that
26 is owned by the State, a political subdivision of the State, or the federal government,
27 other than a structure located on the Hippodrome site, as defined in § 13-701 of the
28 Financial Institutions Article.

29 (5) "Certified rehabilitation" means a completed rehabilitation of a
30 certified heritage structure which the Director certifies is substantial rehabilitation
31 in conformance with the rehabilitation standards of the United States Secretary of
32 the Interior.

33 (6) "COMMERCIAL REHABILITATION" MEANS A REHABILITATION OF A
34 STRUCTURE OTHER THAN A SINGLE-FAMILY, OWNER-OCCUPIED RESIDENCE.

1 [(6)] (7) "Director" means the Director of the Maryland Historical Trust.

2 [(7)] (8) "Local historic district" means a district that the governing body
3 of a county or municipal corporation, or the Mayor and City Council of Baltimore, has
4 designated under local law as historic.

5 [(8)] (9) "Qualified rehabilitation expenditure" means any amount that
6 [is]:

7 (I) IS properly chargeable to capital account [and is];

8 (II) IS expended in the rehabilitation of a structure that by the end
9 of the taxable year in which the certified rehabilitation is completed is a certified
10 heritage structure;

11 (III) FOR A COMMERCIAL REHABILITATION, IS EXPENDED IN
12 COMPLIANCE WITH A PLAN OF PROPOSED EXPENDITURES THAT HAS BEEN
13 APPROVED BY THE DIRECTOR IN ACCORDANCE WITH SUBSECTION (D) OF THIS
14 SECTION AND DOES NOT EXCEED THE AMOUNT OF PROPOSED REHABILITATION
15 EXPENDITURES APPROVED BY THE DIRECTOR; AND

16 (IV) EXCEPT FOR A CREDIT TRANSFERRED BY THE MARYLAND
17 STADIUM AUTHORITY OR AN AUTHORITY AFFILIATE UNDER SUBSECTION (F) OF THIS
18 SECTION, IS NOT FUNDED, FINANCED, OR OTHERWISE REIMBURSED BY ANY:

19 1. STATE OR LOCAL GRANT OR LOAN;

20 2. TAX-EXEMPT BONDS ISSUED BY THE STATE, A POLITICAL
21 SUBDIVISION OF THE STATE, OR AN INSTRUMENTALITY OF THE STATE OR OF A
22 POLITICAL SUBDIVISION OF THE STATE;

23 3. STATE OR LOCAL TAX CREDIT OTHER THAN THE TAX
24 CREDIT UNDER THIS SECTION; OR

25 4. OTHER FINANCIAL ASSISTANCE FROM THE STATE OR A
26 POLITICAL SUBDIVISION OF THE STATE.

27 [(9)] (10) "Substantial rehabilitation" means rehabilitation of a structure
28 for which the qualified rehabilitation expenditures, during the 24-month period
29 selected by the taxpayer ending with or within the taxable year, exceed:

30 (i) For owner-occupied residential property, \$5,000; or

31 (ii) For all other property, the greater of:

32 1. The adjusted basis of the structure; or

33 2. \$5,000.

34 (b) (1) [Subject to subsection (e) of] EXCEPT AS OTHERWISE PROVIDED IN
35 this section, for the taxable year in which a certified rehabilitation is completed, a

1 business entity or an individual may claim a tax credit in an amount equal to 25% of
2 the taxpayer's qualified rehabilitation expenditures for the rehabilitation.

3 (2) The State tax credit allowed under this section may be allocated
4 among the partners, members, or shareholders of an entity in any manner agreed to
5 by those persons in writing.

6 (3) (I) FOR ANY COMMERCIAL REHABILITATION, THE STATE TAX
7 CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED \$1,000,000.

8 (II) FOR PURPOSES OF THE LIMITATION UNDER SUBPARAGRAPH (I)
9 OF THIS PARAGRAPH, THE FOLLOWING SHALL BE TREATED AS A SINGLE
10 REHABILITATION:

11 1. THE PHASED REHABILITATION OF THE SAME STRUCTURE
12 OR PROPERTY;

13 2. THE SEPARATE REHABILITATION OF DIFFERENT
14 COMPONENTS OF THE SAME STRUCTURE OR PROPERTY; OR

15 3. THE REHABILITATION OF MULTIPLE STRUCTURES THAT
16 ARE FUNCTIONALLY RELATED TO SERVE AN OVERALL PURPOSE, SUCH AS A MILL
17 COMPLEX, AN INDUSTRIAL COMPLEX, OR A RESIDENCE AND CARRIAGE HOUSE.

18 [(3)] (4) The same tax credit may not be applied more than once against
19 different taxes.

20 (c) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
21 IF the credit allowed under this section in any taxable year exceeds the total tax
22 otherwise payable by the business entity or the individual for that taxable year, the
23 business entity or individual may [claim a refund in the amount of the excess.

24 (d) (1) Except as provided in paragraph (2) of this subsection, a business
25 entity or individual that incurs qualified rehabilitation expenditures in the
26 rehabilitation of a certified historic structure in a state other than Maryland may
27 claim a tax credit to the same extent as provided under subsection (b) of this section
28 if the other state has in effect a reciprocal historic rehabilitation tax credit program
29 and agreement for taxpayers of that state who rehabilitate historic structures in
30 Maryland.

31 (2) A business entity or individual that qualifies for a tax credit under
32 this subsection may not claim a refund under subsection (c) of this section.

33 (3) If the credit allowed to a business entity or individual under this
34 subsection for any taxable year exceeds the total tax otherwise payable by the
35 business entity or the individual for that taxable year, the business entity or
36 individual may] apply the excess as a credit for succeeding taxable years until the
37 earlier of:

38 (i) The full amount of the credit is used; or

1 (ii) The expiration of the tenth taxable year after the taxable year
2 in which the rehabilitation is completed.

3 (2) IF A CERTIFIED HERITAGE STRUCTURE FOR WHICH A CERTIFIED
4 REHABILITATION HAS BEEN COMPLETED IS SOLD OR TRANSFERRED, THE AMOUNT
5 OF ANY CREDIT UNUSED AT THE TIME OF SALE OR TRANSFER MAY BE TRANSFERRED
6 TO THE INDIVIDUAL OR BUSINESS ENTITY TO WHICH THE BUILDING IS SOLD OR
7 TRANSFERRED.

8 (3) (I) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR A
9 CERTIFIED REHABILITATION THAT IS NOT A COMMERCIAL REHABILITATION IN ANY
10 TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY AN INDIVIDUAL
11 FOR THAT TAXABLE YEAR, THE INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT
12 OF THE EXCESS.

13 (II) AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER §
14 501(C)(3) OF THE INTERNAL REVENUE CODE MAY CLAIM A REFUND IN THE AMOUNT
15 BY WHICH THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS ANY STATE
16 INCOME TAX DUE ON UNRELATED BUSINESS TAXABLE INCOME AS PROVIDED UNDER
17 §§ 10-304 AND 10-812 OF THIS TITLE.

18 (D) (1) FOR A COMMERCIAL REHABILITATION, THE CREDIT UNDER THIS
19 SECTION MAY NOT BE CLAIMED UNLESS THE PROPOSED REHABILITATION WORK
20 AND THE AMOUNT OF THE PROPOSED REHABILITATION EXPENDITURES FOR THE
21 COMMERCIAL REHABILITATION HAVE BEEN APPROVED BY THE DIRECTOR IN
22 ACCORDANCE WITH THIS SUBSECTION BEFORE THE EXPENDITURES ARE MADE.

23 (2) IN ANY CALENDAR YEAR AFTER CALENDAR YEAR 2001:

24 (I) THE DIRECTOR MAY NOT APPROVE PROPOSED
25 REHABILITATION EXPENDITURES FOR ANY COMMERCIAL REHABILITATION IN AN
26 AMOUNT GREATER THAN THE AMOUNT OF EXPENDITURES THAT IF COMPLETED
27 WOULD RESULT IN A CREDIT OF \$1,000,000 FOR THAT COMMERCIAL REHABILITATION
28 UNDER THIS SECTION; AND

29 (II) THE DIRECTOR MAY NOT APPROVE PROPOSED
30 REHABILITATION EXPENDITURES FOR COMMERCIAL PROJECTS IN THE AGGREGATE
31 IN AN AMOUNT GREATER THAN THE AMOUNT OF EXPENDITURES THAT IF
32 COMPLETED WOULD RESULT IN CREDITS TOTALING \$25,000,000 IN A CALENDAR YEAR
33 FOR ALL COMMERCIAL PROJECTS FOR WHICH PROPOSED REHABILITATION
34 EXPENDITURES ARE APPROVED IN THAT CALENDAR YEAR.

35 (3) IN EACH CALENDAR YEAR, THE DIRECTOR SHALL APPROVE
36 PROPOSED REHABILITATION EXPENDITURES ON A FIRST-COME, FIRST-SERVED
37 BASIS.

38 (e) (1) The Director and the Maryland Heritage Areas Authority may adopt
39 regulations to establish procedures and standards for certifying heritage structures
40 and rehabilitations under this section.

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

5 (f) (1) In this subsection, "Authority affiliate" has the meaning stated in §
6 13-701(t) of the Financial Institutions Article.

7 (2) As authorized under § 13-708 of the Financial Institutions Article,
8 the Maryland Stadium Authority or an Authority affiliate may transfer to any
9 business entity or individual any credit under this section for qualified rehabilitation
10 expenditures of the Maryland Stadium Authority or an Authority affiliate.

11 (3) A business entity or individual to whom any credit is transferred by
12 the Maryland Stadium Authority or an Authority affiliate under this subsection may
13 claim a tax credit under this section in the full amount of the credit transferred.

14 (g) (1) In this subsection, "disqualifying work" means work that:

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

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

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

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

28 2. If the disqualifying work is performed during the first full
29 year succeeding the taxable year in which the certified rehabilitation was completed,
30 80% of the credit shall be recaptured.

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

34 4. If the disqualifying work is performed during the third full
35 year succeeding the taxable year in which the certified rehabilitation was completed,
36 40% of the credit shall be recaptured.

1 (ii) The number of PROPOSED REHABILITATIONS APPROVED AND
2 THE NUMBER OF COMPLETED rehabilitations certified as qualifying for the tax credit
3 under this section [during the preceding calendar year];

4 (iii) The total PROPOSED REHABILITATION EXPENDITURES
5 APPROVED FOR PROPOSED REHABILITATIONS AND THE TOTAL qualified
6 rehabilitation expenditures for COMPLETED rehabilitations certified [during the
7 preceding calendar year]; and

8 (iv) The average PROPOSED REHABILITATION EXPENDITURES OF
9 PROPOSED REHABILITATIONS APPROVED AND THE AVERAGE qualified rehabilitation
10 expenditures of COMPLETED rehabilitations certified [during the preceding calendar
11 year].

12 (3) The information required under paragraph (2) of this subsection shall
13 be provided in the aggregate and separately for each of the following categories of
14 certified rehabilitations:

15 (i) Owner-occupied single family residential structures;

16 (ii) Other single family residential structures;

17 (iii) Multifamily residential structures; and

18 (iv) Nonresidential structures.

19 SECTION 2. AND BE IT FURTHER ENACTED, That:

20 (a) Except as otherwise provided in this section, this Act applies to all tax
21 credits under Article 83B, § 5-801 of the Code for any taxable year for which an
22 income tax return is required to be filed in any calendar year after 2001.

23 (b) Notwithstanding the limitation under Article 83B, § 5-801(b)(3) and (c)(1)
24 of the Code, but subject to subsection (c) of this section, with respect to any
25 rehabilitation project that received the approval of the Director of the Maryland
26 Historical Trust of the proposed rehabilitation work before February 1, 2002:

27 (1) The State tax credit allowed under Article 83B, § 5-801 of the Code
28 for a single certified rehabilitation may exceed \$1,000,000; and

29 (2) If the credit allowed in any taxable year exceeds the total tax
30 otherwise payable by the taxpayer for that taxable year, the taxpayer may claim a
31 refund in the amount of the excess.

32 (c) (1) With respect to any rehabilitation project that received the approval
33 of the Director of the Maryland Historical Trust of the proposed rehabilitation work
34 before February 1, 2002, the credit allowed for any taxable year for a single certified
35 rehabilitation may not exceed \$5,000,000 for any taxable year.

1 (2) If the credit otherwise allowable for a single certified rehabilitation
2 exceeds the limit under paragraph (1) of this subsection, the excess may be applied as
3 a credit against the State tax for succeeding taxable years until the full amount of the
4 excess is used.

5 (3) For each taxable year, the amount carried forward to the taxable year
6 under paragraph (2) of this subsection may not exceed the limitation under paragraph
7 (1) of this subsection.

8 (d) (1) Subject to paragraph (2) of this subsection, for any taxable year for
9 which a tax return is required to be filed in calendar year 2002, the Comptroller shall
10 allow amended returns to be filed and shall waive any interest or penalty imposed
11 relating to payment of tax for calendar year 2001 to the extent the Comptroller
12 determines that the interest or penalty would not have been incurred but for the
13 revisions under this Act.

14 (2) Paragraph (1) of this subsection does not apply to any interest or
15 penalty accruing on or after July 1, 2002 for any tax required to be paid for calendar
16 year 2001 that remains unpaid as of July 1, 2002.

17 (e) If the proposed rehabilitation expenditures for all commercial projects
18 approved by the Director of the Maryland Historical Trust in calendar year 2002
19 before February 1, 2002 in the aggregate are greater than the amount of expenditures
20 that if completed would result in credits totaling \$25,000,000, the Director shall
21 allocate the \$25,000,000 available credit among the projects for which the Director
22 approved proposed rehabilitation expenditures before February 1, 2002 on a prorated
23 basis.

24 SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of
25 this Act, this Act shall take effect June 1, 2002.