

SENATE BILL 190

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2004 Regular Session
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By: **The President (By Request - Administration) and Senators Astle, Brinkley, Colburn, Della, Giannetti, Hafer, Haines, Harris, Hollinger, Hughes, Jacobs, Jones, Kelley, Klausmeier, McFadden, Mooney, Munson, Schrader, and Stone**

Introduced and read first time: January 23, 2004

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Historical Trust - Heritage Structure Rehabilitation Tax Credit**
3 **Program**

4 FOR the purpose of altering a certain limit on the amount of any heritage structure
5 rehabilitation tax credit; altering the treatment of certain multiple structures
6 for purposes of a certain limitation on the credit amount; providing for
7 withdrawal of an application for approval of rehabilitation plans; limiting the
8 time period for submission of an application for a certificate of completion of a
9 rehabilitation; authorizing a credit to be claimed for the year a certified
10 rehabilitation is completed only if the Director of the Maryland Historical Trust
11 has issued a certificate of completion, except under certain circumstances;
12 providing for amendment of a tax return to account for a credit; authorizing the
13 Director to charge certain fees; limiting eligibility for a credit to a rehabilitation
14 for which proposed plans are approved prior to substantial completion;
15 extending the termination date for the Heritage Structure Rehabilitation Tax
16 Credit Program; revising a certain limitation on the annual aggregate amount of
17 credits that may be approved for commercial rehabilitations; providing for
18 certain determinations by the Comptroller; defining certain terms; and
19 generally relating to the Heritage Structure Rehabilitation Tax Credit Program.

20 BY repealing and reenacting, with amendments,
21 Article 83B - Department of Housing and Community Development
22 Section 5-801
23 Annotated Code of Maryland
24 (2003 Replacement Volume)

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

Article 83B - Department of Housing and Community Development

2 5-801.

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

4 (2) "Business entity" means:

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

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

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

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

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

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

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

20 B. Certified by the Director as contributing to the
21 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 (5) "Certified rehabilitation" means a completed rehabilitation of a
28 certified heritage structure which the Director certifies is substantial rehabilitation
29 in conformance with the rehabilitation standards of the United States Secretary of
30 the Interior.

31 (6) "Commercial rehabilitation" means a rehabilitation of a structure
32 other than a single-family, owner-occupied residence.

33 (7) "Director" means the Director of the Maryland Historical Trust.

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

4 (9) "Qualified rehabilitation expenditure" means any amount that:

5 (i) Is properly chargeable to capital account;

6 (ii) Is expended in the rehabilitation of a structure that by the end
7 of the taxable year in which the certified rehabilitation is completed is a certified
8 heritage structure;

9 (iii) Is expended in compliance with a plan of proposed
10 rehabilitation that has been approved by the Director and does not exceed the
11 estimated amount of proposed rehabilitation expenditures stated in the application
12 for approval of the plan of proposed rehabilitation; and

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

14 1. State or local grant;

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

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

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

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

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

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

29 1. The adjusted basis of the structure; or

30 2. \$5,000.

31 (b) (1) Except as otherwise provided in this section, for the taxable year in
32 which a certified rehabilitation is completed, a business entity or an individual may
33 claim a tax credit in an amount equal to 20% of the [taxpayer's] BUSINESS ENTITY'S
34 OR INDIVIDUAL'S qualified rehabilitation expenditures for the rehabilitation.

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

4 (3) (i) [For any rehabilitation, the] THE State tax credit allowed
5 under this section may not exceed \$3,000,000 FOR ANY COMMERCIAL
6 REHABILITATION OR \$50,000 FOR ANY OTHER REHABILITATION.

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

9 1. The phased rehabilitation of the same structure or
10 property; OR

11 2. The separate rehabilitation of different components of the
12 same structure or property[; or

13 3. The rehabilitation of multiple structures that are
14 functionally related to serve an overall purpose].

15 (4) The same tax credit may not be applied more than once against
16 different taxes.

17 (5) AT ANY TIME UP TO 12 MONTHS AFTER THE DIRECTOR APPROVES
18 PLANS FOR A REHABILITATION, THE APPLICATION FOR PLAN APPROVAL MAY BE
19 WITHDRAWN. IF AN APPROVED APPLICATION FOR PLAN APPROVAL IS WITHDRAWN,
20 THE APPROVAL IS VOID. THE APPLICATION FOR PLAN APPROVAL MAY BE
21 RESUBMITTED AS A NEW APPLICATION.

22 (6) AN APPLICATION FOR CERTIFICATION OF A COMPLETED
23 REHABILITATION MUST BE SUBMITTED TO THE DIRECTOR WITHIN 30 MONTHS
24 AFTER THE DIRECTOR APPROVES PLANS FOR THE REHABILITATION. NO MORE THAN
25 ONE APPLICATION FOR CERTIFICATION OF COMPLETED REHABILITATIONS TO THE
26 SAME PROPERTY MAY BE SUBMITTED WITHIN ANY 24-MONTH PERIOD.

27 (7) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
28 PARAGRAPH AND PARAGRAPH (8) OF THIS SUBSECTION, THE CREDIT UNDER THIS
29 SECTION MAY BE CLAIMED FOR THE YEAR A CERTIFIED REHABILITATION IS
30 COMPLETED, ONLY IF THE DIRECTOR HAS, BY THE TIME THE RETURN IS FILED,
31 ISSUED A CERTIFICATE OF COMPLETION FOR THE CERTIFIED REHABILITATION.

32 (II) A TAXPAYER CLAIMING THE CREDIT MAY AMEND A RETURN
33 FOR THE YEAR THE CERTIFIED REHABILITATION WAS COMPLETED TO ACCOUNT FOR
34 A CERTIFICATE ISSUED SUBSEQUENT TO THE FILING OF THE ORIGINAL RETURN.

35 (III) THE PERIOD OF ALLOWABLE AMENDMENT IS GOVERNED BY
36 THE PROVISIONS OF THE TAX - GENERAL ARTICLE CONCERNING CLAIMS FOR
37 REFUND.

1 (IV) THE PROVISIONS OF THIS PARAGRAPH DO NOT EXTEND THE
2 PERIOD IN WHICH A CERTIFIED REHABILITATION MUST BE COMPLETED.

3 (8) IF THE DIRECTOR ISSUES AN AMENDED CERTIFICATION OF A
4 CERTIFIED REHABILITATION, THE TAXPAYER WHO HAS FILED A TAX RETURN
5 CLAIMING A CREDIT FOR THE CERTIFIED REHABILITATION MAY FILE AN AMENDED
6 TAX RETURN TO ACCOUNT FOR THE AMENDED CERTIFICATION, PROVIDED THAT THE
7 AMENDED TAX RETURN IS FILED WITHIN THE PERIOD ALLOWED UNDER THE TAX -
8 GENERAL ARTICLE FOR FILING REFUND CLAIMS.

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

12 (d) (1) The Director and the Maryland Heritage Areas Authority may adopt
13 regulations to establish procedures and standards for certifying heritage structures
14 and rehabilitations under this section.

15 (2) THE DIRECTOR MAY CHARGE A REASONABLE FEE TO CERTIFY A
16 HERITAGE STRUCTURE OR A REHABILITATION UNDER THIS SECTION.

17 [(2)] (3) The Director may not certify that a rehabilitation is a certified
18 rehabilitation eligible for the tax credit under this section unless the individual or
19 business entity seeking certification:

20 (I) HAS RECEIVED APPROVAL OF THE PLAN OF PROPOSED
21 REHABILITATION PRIOR TO SUBSTANTIAL COMPLETION OF THE REHABILITATION
22 WORK; AND

23 (II) [states] STATES under oath the amount of the individual's or
24 business entity's qualified rehabilitation expenditures.

25 (e) (1) In this subsection, "disqualifying work" means work that:

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

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

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

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

1 2. If the disqualifying work is performed during the first full
2 year succeeding the taxable year in which the certified rehabilitation was completed,
3 80% of the credit shall be recaptured.

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

7 4. If the disqualifying work is performed during the third full
8 year succeeding the taxable year in which the certified rehabilitation was completed,
9 40% of the credit shall be recaptured.

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

13 (ii) Except as provided under paragraph (4) of this subsection, the
14 business entity or individual that claimed the credit shall pay the amount to be
15 recaptured as determined under subparagraph (i) of this paragraph as taxes payable
16 to the State for the taxable year in which the disqualifying work is performed.

17 (4) Recapture of the credit allowed under this section is not required if
18 the business entity or individual that claimed the credit does not own an interest in
19 the certified heritage structure when the disqualifying work is performed.

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

21 (1) Operates to reduce the income tax revenue from corporations if the
22 person entitled to the refund is a corporation subject to the income tax under Title 10
23 of the Tax - General Article;

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

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

28 (i) An individual subject to the income tax under Title 10 of the Tax
29 - General Article; or

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

32 (g) (1) On or before January 15, April 15, July 15, and October 15 of each
33 year, the Director shall report to the Governor and, subject to § 2-1246 of the State
34 Government Article, to the General Assembly, on the credit allowed under this
35 section.

36 (2) The report required under paragraph (1) of this subsection shall
37 include for the preceding calendar quarter, for each commercial rehabilitation that

1 was completed during the calendar quarter and for each proposed commercial
2 rehabilitation that remains incomplete as of the end of the calendar quarter:

3 (i) The name of the owner or developer that has applied for
4 approval of the tax credit;

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

7 (iii) The dates of receipt and approval by the trust of all applications
8 regarding the project, including applications for certification that a structure or
9 property will qualify as a certified heritage structure, for approval of the proposed
10 rehabilitation, and for certification of the completed rehabilitation;

11 (iv) The estimated rehabilitation expenditures stated in the
12 application for approval of the plan of proposed rehabilitation; and

13 (v) For projects completed during the calendar quarter, the final
14 qualified rehabilitation costs for the project and the amount of the credit for the
15 certified rehabilitation.

16 (3) The report required on January 15 of each year shall summarize for
17 the preceding calendar year, for each category of certified rehabilitations specified in
18 paragraph (4) of this subsection:

19 (i) The number of applicants for:

20 1. Certification that a structure or property will qualify as a
21 certified heritage structure;

22 2. Approval of proposed rehabilitations; or

23 3. Certification of completed rehabilitations;

24 (ii) The number of proposed rehabilitations approved and the
25 number of completed rehabilitations certified as qualifying for the tax credit under
26 this section; and

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

30 (4) The information required under paragraph (3) of this subsection shall
31 be provided in the aggregate and separately for each of the following categories of
32 certified rehabilitations:

33 (i) Owner-occupied single family residential structures; and

34 (ii) Commercial rehabilitations.

1 (h) (1) Subject to the provisions of this subsection, the provisions of this
2 section and the tax credit authorized under this section shall terminate as of [June 1,
3 2004] JANUARY 1, 2010.

4 (2) On and after [June 1, 2004] JANUARY 1, 2010:

5 (i) The tax credit authorized under this section may be claimed for
6 rehabilitation projects for which an application for approval of a plan of proposed
7 rehabilitation was received by the Director on or before [May 31, 2004] DECEMBER
8 31, 2009.

9 (ii) The Director shall continue to report to the Governor and the
10 General Assembly as required under subsection (g) for as long as any rehabilitation
11 project for which an application for approval of a plan of proposed rehabilitation was
12 received by the Director on or before [May 31, 2004] DECEMBER 31, 2009 remains
13 incomplete.

14 (i) (1) From February 1, 2003 through December 31, 2003, the Director may
15 not approve plans of proposed rehabilitations reflecting proposed rehabilitation
16 expenditures for commercial projects in the aggregate in an amount greater than the
17 amount of expenditures that if completed would result in credits totaling \$23,000,000
18 for all commercial projects for which plans of proposed rehabilitation are approved
19 during that period.

20 (2) In EACH CALENDAR YEAR BEGINNING WITH calendar year 2004, the
21 Director may not approve plans of proposed rehabilitations reflecting proposed
22 rehabilitation expenditures for commercial projects in the aggregate in an amount
23 greater than the amount of expenditures that if completed would result in credits
24 totaling [\$15,000,000] \$30,000,000 for all commercial projects for which plans of
25 proposed rehabilitation are approved in that year.

26 (3) In each calendar year, subject to regulations that the Director adopts,
27 the Director shall approve plans of proposed rehabilitations on a first-come, first
28 served basis.

29 (4) If a person submits a proposed rehabilitation plan that is not
30 approved in a calendar year as provided under this section, the person may reapply in
31 the next calendar year.

32 (J) (1) THE COMPTROLLER MAY DETERMINE, UNDER THE PROCESS FOR
33 RETURN EXAMINATION AND AUDIT PURSUANT TO §§ 13-301 AND 13-302 OF THE TAX -
34 GENERAL ARTICLE:

35 (I) THE AMOUNT OF REHABILITATION EXPENDITURES USED IN
36 CALCULATING THE CREDIT;

37 (II) WHETHER SUCH EXPENDITURES ARE QUALIFIED
38 REHABILITATION EXPENDITURES UNDER THIS SECTION; AND

39 (III) WHETHER THE CREDIT IS ALLOWABLE AS CLAIMED.

1 (2) THE AUTHORITY OF THE COMPTROLLER TO EXAMINE AND AUDIT A
2 TAX RETURN DOES NOT LIMIT THE AUTHORITY OF THE DIRECTOR TO DETERMINE
3 WHETHER A REHABILITATION QUALIFIES AS A CERTIFIED REHABILITATION, OR
4 WHETHER A CERTIFICATE OF CERTIFIED REHABILITATION HAS BEEN PROPERLY
5 ISSUED.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect June 1, 2004.