
By: **The Speaker (By Request - Administration) and Delegates Aumann, Bartlett, Bates, Boschert, Boteler, Cardin, Cluster, Cryor, Donoghue, Doory, Dwyer, Eckardt, Edwards, Elliott, Elmore, Frank, Gilleland, Glassman, Haddaway, Jameson, Jennings, Kach, Kelly, Kohl, Krebs, Leopold, Mayer, McComas, McConkey, McDonough, McHale, McKee, Miller, Morhaim, Myers, O'Donnell, Parker, Parrott, Proctor, Shank, Shewell, Smigiel, Sossi, Stocksdales, Stull, Weir, and Weldon**

Introduced and read first time: January 25, 2006

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 repealing a certain preference for award of initial credit
4 certificates to certain commercial rehabilitations under the Maryland Heritage
5 Structure Rehabilitation Tax Credit Program; repealing a certain limit on award
6 of initial credit certificates for projects in a single jurisdiction; authorizing the
7 Director of the Maryland Historical Trust to accept certain applications under
8 certain circumstances; altering certain definitions under the credit; altering a
9 certain time period for completing commercial rehabilitations for purposes of the
10 credit; extending to certain fiscal years a requirement that the Governor include
11 in the budget bill a certain appropriation to a certain fund; extending the
12 termination date of the program; making stylistic changes; and generally
13 relating to the Maryland Historical Trust and the Maryland Heritage Structure
14 Rehabilitation Tax Credit Program.

15 BY repealing and reenacting, with amendments,
16 Article - State Finance and Procurement
17 Section 5A-303
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2005 Supplement)

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

22 **Article - State Finance and Procurement**

23 5A-303.

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

- 1 (2) "Business entity" means:
- 2 (i) a person conducting or operating a trade or business in the
3 State; or
- 4 (ii) an organization operating in Maryland that is exempt from
5 taxation under § 501(c)(3) of the Internal Revenue Code.
- 6 (3) "Certified heritage area" has the meaning stated in § 13-1101 of the
7 Financial Institutions Article.
- 8 (4) (i) "Certified heritage structure" means a structure that is located
9 in the State and is:
- 10 1. listed in the National Register of Historic Places;
- 11 2. designated as a historic property under local law and
12 determined by the Director to be eligible for listing on the National Register of
13 Historic Places;
- 14 3. A. located in a historic district listed on the National
15 Register of Historic Places or in a local historic district that the Director determines is
16 eligible for listing on the National Register of Historic Places; and
- 17 B. certified by the Director as contributing to the significance
18 of the district; or
- 19 4. located in a certified heritage area and certified by the
20 Maryland Heritage Areas Authority as contributing to the significance of the certified
21 heritage area.
- 22 (ii) "Certified heritage structure" does not include a structure that
23 is owned by the State, a political subdivision of the State, or the federal government.
- 24 (5) "Certified rehabilitation" means a completed rehabilitation of a
25 certified heritage structure that the Director certifies is a substantial rehabilitation
26 in conformance with the rehabilitation standards of the United States Secretary of
27 the Interior.
- 28 (6) "Commercial rehabilitation" means a rehabilitation of a structure
29 other than a single-family, owner-occupied residence.
- 30 (7) "Director" means the Director of the Maryland Historical Trust.
- 31 (8) "Local historic district" means a district that the governing body of a
32 county or municipal corporation, or the Mayor and City Council of Baltimore, has
33 designated under local law as historic.
- 34 (9) "Qualified rehabilitation expenditure" means any amount that:
- 35 (i) is properly chargeable to a capital account;

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

4 (iii) is expended in compliance with [a plan] PLANS of proposed
5 rehabilitation that [has] HAVE been approved by the Director; and

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

7 1. State or local grant;

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

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

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

17 (10) "Substantial rehabilitation" means rehabilitation of a structure for
18 which the qualified rehabilitation expenditures, during the 24-month period selected
19 by the individual, or DURING THE 30-MONTH PERIOD SELECTED BY A business entity,
20 ending with or within the taxable year, exceed:

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

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

23 1. the adjusted basis of the structure; or

24 2. \$5,000.

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

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

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

31 (iii) for commercial rehabilitations, establish a competitive award
32 process for the award of initial credit certificates for Maryland heritage structure
33 rehabilitation tax credits that:

34 1. ensures tax credits are awarded in a manner that reflects
35 the geographic diversity of the State; AND

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

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

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

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

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

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

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

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

25 (5) [Not more than 50% of the total credit amounts under initial credit
26 certificates issued for any fiscal year may be issued for projects in a single county or
27 Baltimore City] NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE
28 DIRECTOR MAY ACCEPT AN APPLICATION FOR APPROVAL OF PLANS OF A PROPOSED
29 REHABILITATION, EVEN THOUGH, PRIOR TO APPLICATION THE APPLICANT HAS:

30 (I) INCURRED COSTS FOR ARCHITECTURAL, ENGINEERING,
31 CONSULTANTS' SERVICES, OR LIMITED EXPLORATORY DEMOLITION NECESSARY TO
32 PREPARE THE APPLICATION; OR

33 (II) UNDERTAKEN EMERGENCY REPAIRS REQUIRED BY
34 CIRCUMSTANCES BEYOND THE APPLICANT'S CONTROL.

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

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

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

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

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

14 (iv) The fee charged to any project may not exceed 1% of the amount
15 of the initial credit certificate issued for the project.

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

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

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

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

29 1. \$3,000,000; or

30 2. the maximum amount specified under the initial credit
31 certificate issued for the rehabilitation.

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

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

36 1. the phased rehabilitation of the same structure or
37 property;

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

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

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

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

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

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

20 (2) (i) There is a Heritage Structure Rehabilitation Tax Credit
21 Reserve Fund that is a continuing, nonlapsing special fund that is not subject to §
22 7-302 of this article.

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

25 (3) (i) Subject to the provisions of this subsection, the Director shall
26 [issue] AWARD an initial credit certificate for each commercial rehabilitation for
27 which [a plan] PLANS of proposed rehabilitation [is] ARE approved.

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

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

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

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

5 (iv) 1. For fiscal year 2006, the Governor shall include in the
6 budget bill an appropriation to the Reserve Fund in an amount equal to at least
7 \$20,000,000.

8 2. For each of fiscal years 2007 [and 2008] THROUGH 2012,
9 the Governor shall include in the budget bill an appropriation to the Reserve Fund in
10 an amount equal to at least \$30,000,000.

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

14 (vi) The Director may not issue an initial credit certificate for any
15 fiscal year after fiscal year [2008] 2012.

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

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

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

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

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

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

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

36 (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 provided
6 in paragraph (3) of this subsection if, during the taxable year in which a certified
7 rehabilitation is completed or any of the 4 taxable years succeeding the taxable year
8 in which the certified rehabilitation is completed, any disqualifying work is performed
9 on the certified heritage structure for which the certified rehabilitation has been
10 completed.

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

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

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

23 5. If the disqualifying work is performed during the fourth
24 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
29 disqualifying 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 2. for approval of the PLANS OF proposed rehabilitation; and

17 (iv) the maximum amount of the credit stated in the initial credit
18 certificate for the project and the estimated rehabilitation expenditures stated in the
19 application for approval of the [plan] PLANS of proposed rehabilitation.

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

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

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

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

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

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

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

- 1 (i) the total number of applicants for:
- 2 1. certification that a structure or property will qualify as a
3 certified heritage structure;
- 4 2. approval of plans of proposed rehabilitations; or
- 5 3. certification of the completed rehabilitations;
- 6 (ii) the number of proposed projects for which plans of proposed
7 rehabilitation were approved; and
- 8 (iii) the total estimated rehabilitation expenditures stated in
9 approved applications for approval of plans of proposed rehabilitation and the total
10 qualified rehabilitation expenditures for completed rehabilitations certified.

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

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

16 (i) (1) Subject to the provisions of this subsection, the provisions of this
17 section and the tax credit authorized under this section shall terminate as of July 1,
18 [2008] 2012.

19 (2) On and after July 1, [2008] 2012:

- 20 (i) the tax credit authorized under this section may be claimed for:
- 21 1. a rehabilitation project, other than a commercial
22 rehabilitation, for which an application for approval of [a plan] PLANS of proposed
23 rehabilitation was received by the Director on or before June 30, [2008] 2012; or
- 24 2. a commercial rehabilitation for which an initial credit
25 certificate has been awarded under subsection (d) of this section; and
- 26 (ii) the Director shall continue to report to the Governor and the
27 General Assembly as required under subsection (h) of this section for as long as any
28 rehabilitation project for which the tax credit may be claimed remains incomplete.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
30 effect July 1, 2006.