

HOUSE BILL 882

P1

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By: **Delegate Weldon**

Introduced and read first time: February 9, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Historical Trust – Maryland Advisory Council on Historic**
3 **Preservation and Review of State Undertakings**

4 FOR the purpose of altering the composition of the Maryland Advisory Council on
5 Historic Preservation; requiring a certain consultation to occur at a certain
6 time; requiring a certain consultation to include a certain discussion and
7 consideration of the views of certain interested parties and an attempt to reach
8 a certain agreement under certain circumstances; altering a time frame within
9 which the Council is required to submit certain comments to a certain person;
10 requiring that certain comments by the Council recommend feasible
11 alternatives under certain circumstances; altering the amount of time a certain
12 person is prohibited from proceeding on a certain project under certain
13 circumstances; authorizing a certain person to bring a certain cause of action
14 within a certain time period after the Director of the Maryland Historical Trust
15 makes a certain determination; providing that a certain determination is prima
16 facie evidence in a certain mandamus action under certain circumstances;
17 providing that failure by a certain State unit to comply with certain provisions
18 of law does not create a private cause of action for money damages or equitable
19 relief under certain circumstances; requiring that certain timely steps taken by
20 a State unit under certain circumstances must be consistent with certain
21 guidelines; limiting who may make a certain appeal of a certain condition under
22 certain circumstances; requiring the Trust to incorporate certain review
23 processes in certain regulations; authorizing a certain provision of law to be
24 applied to certain undertakings in accordance with certain regulations; defining
25 certain terms; altering the definitions of certain terms; making certain stylistic
26 changes; and generally relating to the Maryland Historical Trust.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Finance and Procurement
3 Section 5A–301, 5A–324, 5A–325, and 5A–326
4 Annotated Code of Maryland
5 (2006 Replacement Volume and 2006 Supplement)

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

8 **Article – State Finance and Procurement**

9 5A–301.

10 (a) In this subtitle the following words have the meanings indicated.

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

12 (c) “Financial assistance” means action by the State or a State unit to award
13 grants, loans, loan guarantees, or insurance to a public or private entity to finance,
14 wholly or partly, an undertaking.

15 **(D) “HEAD OF THE STATE UNIT” MEANS THE SECRETARY OR THE**
16 **HIGHEST OFFICIAL OF A STATE UNIT RESPONSIBLE FOR ALL ASPECTS OF THE**
17 **UNIT’S ACTIONS.**

18 [(d)] **(E)** (1) “Historic property” means a district, site, building,
19 structure, monument, or object significant to:

20 (i) the prehistory or history of the State; or

21 (ii) the upland and underwater archaeology, architecture,
22 engineering, or culture of the State.

23 (2) “Historic property” includes related artifacts, records, and remains.

24 [(e)] **(F)** “Preservation” or “historic preservation” means the identification,
25 evaluation, recordation, documentation, curation, acquisition, protection,
26 management, rehabilitation, restoration, stabilization, maintenance, and
27 reconstruction of a historic property.

1 [(f)] (G) “State Historic Preservation Officer” means the individual who
2 administers the State Historic Preservation Program under the National Historic
3 Preservation Act of 1966, 16 U.S.C. §§ 470–470mm.

4 [(g)] (H)(1) “State unit” [has the meaning stated in § 11–101 of the State
5 Government Article.] **MEANS:**

6 (I) A PRINCIPAL DEPARTMENT OF THE EXECUTIVE
7 **BRANCH OF THE STATE GOVERNMENT;**

8 (II) AN INDEPENDENT UNIT OF STATE GOVERNMENT;

9 (III) THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN
10 **STATE UNIVERSITY, AND ST. MARY’S COLLEGE; OR**

11 (IV) THE GOVERNING BODY OF A SINGLE COUNTY OR
12 **MULTICOUNTY DISTRICT OR AUTHORITY CREATED BY STATE LAW.**

13 (2) “STATE UNIT” DOES NOT INCLUDE:

14 (I) THE BOARD OF REVIEW OF A PRINCIPAL DEPARTMENT;

15 (II) THE GOVERNING BODY OF A LOCAL GOVERNMENT; OR

16 (III) A UNIT THAT A LOCAL GOVERNMENT CREATES.

17 [(h)] (I) “Submerged” means beneath or substantially beneath water.

18 [(i)] (J) “Terrestrial” means relating to land above the mean high tide line
19 and above nontidal waters.

20 [(j)] (K) “Trust” means the Maryland Historical Trust.

21 [(k)] (L) “Undertaking” means a [project that involves or may result in
22 building construction, building alteration, or land disturbance.] **PROJECT, ACTIVITY,**
23 **OR PROGRAM UNDER THE DIRECT JURISDICTION OF A STATE UNIT, INCLUDING**
24 **THOSE:**

25 (1) **CARRIED OUT BY OR ON BEHALF OF THE STATE UNIT;**

- 1 (2) **CARRIED OUT WITH STATE FINANCIAL ASSISTANCE;**
2 (3) **REQUIRING A STATE PERMIT, LICENSE, OR APPROVAL; AND**
3 (4) **SUBJECT TO LOCAL REGULATION ADMINISTERED IN**
4 **ACCORDANCE WITH A DELEGATION OR APPROVAL BY A STATE UNIT.**

5 5A-324.

6 (a) There is a Maryland Advisory Council on Historic Preservation.

7 (b) (1) The Council consists of [seven] **NINE** voting members.

8 (2) The ex officio members are:

9 (i) **THE SECRETARY OF BUSINESS AND ECONOMIC**
10 **DEVELOPMENT;**

11 (II) the Secretary of General Services;

12 [(ii)] (III) the Secretary of Housing and Community
13 Development;

14 [(iii)] (IV) the Secretary of Planning; and

15 [(iv)] (V) the Secretary of Transportation.

16 (3) The Governor shall appoint the other [three] **FOUR** members, of
17 whom:

18 (i) two shall be individuals with expertise in architecture,
19 history, [archaeology,] or another appropriate discipline that relates to historic
20 preservation; [and]

21 (ii) one shall be [a member of the general public] **AN**
22 **INDIVIDUAL WITH EXPERTISE IN ARCHAEOLOGY; AND**

23 (III) **ONE SHALL BE AN INDIVIDUAL WITH EXPERIENCE IN**
24 **ECONOMIC DEVELOPMENT AND FINANCE.**

1 (4) An ex officio member may designate a deputy secretary from the
2 member's department to act in the member's absence.

3 (c) The Secretary of Planning serves as chair.

4 (d) (1) The term of an appointed member is 4 years.

5 (2) The terms of the appointed members are staggered as required by
6 the terms provided for members of the Council on October 1, 2005.

7 (3) At the end of a term, a member continues to serve until a successor
8 is appointed and qualifies.

9 (4) A member who is appointed after a term has begun serves only for
10 the rest of the term and until a successor is appointed and qualifies.

11 (e) (1) A majority of the authorized membership of the Council is a
12 quorum.

13 (2) The Council shall set the times and places of its meetings.

14 (f) A member of the Council:

15 (1) may not receive compensation as a member; but

16 (2) is entitled to reimbursement for expenses under the Standard
17 State Travel Regulations, as provided in the State budget.

18 (g) The Director of the Trust is the secretary and staff to the Council.

19 5A-325.

20 (a) (1) To the extent feasible, a State unit that submits a request or is
21 otherwise responsible for a capital project shall consult with the Trust to determine
22 whether the project will adversely affect any property listed in or eligible for listing in
23 the Historic Register.

24 (2) The consultation shall occur:

25 (i) before the State unit submits a request for the capital
26 project to the Department of Budget and Management under § 3-602 of this article;

1 (ii) before or as part of the final project planning phase for a
2 major transportation capital project as defined in § 2-103.1 of the Transportation
3 Article; or

4 (iii) as early in the planning process as possible for a capital
5 project that uses nonbudgeted money and is subject to the reporting requirements of §
6 3-602 of this article.

7 **(3) (I) THE CONSULTATION SHALL OCCUR AS EARLY IN THE**
8 **PROJECT OR PROGRAM PLANNING PROCESS AS POSSIBLE AND IN ANY CASE,**
9 **BEFORE A UNIT DECISION THAT PRECLUDES ANY VIABLE OPTIONS.**

10 **(II) THE CONSULTATION SHALL INCLUDE:**

11 **1. A MEANINGFUL DISCUSSION AND CONSIDERATION**
12 **OF THE VIEWS OF OTHER INTERESTED PARTIES; AND**

13 **2. AN ATTEMPT TO REACH AN AGREEMENT WHERE**
14 **FEASIBLE, BASED ON A FULL EXCHANGE OF INFORMATION AND IDEAS AND THE**
15 **DEVELOPMENT AND CONSIDERATION OF THE RANGE OF ALTERNATIVES.**

16 (b) (1) State units that own or control properties may consult with the
17 Trust to develop plans or interagency agreements to identify, evaluate, and manage
18 any of those properties that are listed in or eligible to be listed in the Historic Register.

19 (2) Capital projects undertaken in accordance with a plan approved by
20 the Trust or an interagency agreement are not subject to further review under this
21 section.

22 (c) (1) This subsection applies to a capital project that:

23 (i) is not being carried out by a State unit;

24 (ii) uses the proceeds of State general obligation bonds; and

25 (iii) is not otherwise reviewed by the Trust under this section.

26 (2) Before the Board of Public Works may approve the use of bond
27 proceeds for the project, the Department of Budget and Management or another State
28 unit responsible for the project shall consult with the Trust to determine whether the
29 project will adversely affect any property listed in or eligible to be listed in the Historic
30 Register.

1 (d) (1) Within 30 days after a State unit notifies the Director of a
2 proposed capital project under this section, the Director shall determine whether the
3 project would adversely affect any property listed in or eligible to be listed in the
4 Historic Register.

5 (2) If the Director finds that the proposed capital project would have a
6 significant adverse effect on a listed or eligible property, the Director and the **HEAD**
7 **OF THE** State unit shall consult to determine whether a practicable plan exists to
8 avoid, mitigate, or satisfactorily reduce the adverse effect.

9 (3) If the Director and the **HEAD OF THE** State unit cannot agree on a
10 plan, the State unit shall submit to the Council a report of the consultations and the
11 findings and recommendations of the State unit.

12 (4) Within [30] **45** days after receiving the report, the Council shall
13 submit to the **HEAD OF THE** State unit comments:

14 (i) accepting the adverse effect; or

15 (ii) recommending **FEASIBLE AND** practicable alternatives to
16 avoid, mitigate, or satisfactorily reduce the adverse effect.

17 (5) The State unit may:

18 (i) incorporate in the project the alternatives recommended by
19 the Council; or

20 (ii) disagree with the comments of the Council.

21 (6) If the State unit disagrees with the comments of the Council, the
22 **HEAD OF THE** State unit:

23 (i) shall respond in writing to the Council, explaining why the
24 State unit refuses to adopt the measures included in the comments of the Council; and

25 (ii) may not proceed with the project for at least [10] **20** working
26 days after responding.

27 (e) Except for the cost of studies and surveys, a State unit may include the
28 capital costs of preservation activities required under this subtitle as eligible project
29 costs of any project undertaken or financed by the State unit.

1 (f) The Trust shall adopt regulations that establish procedures and
2 standards for:

3 (1) administrative review and comment under this section, including
4 time frames for Trust action on specific categories of projects;

5 (2) exempting specific projects, categories of projects, or categories of
6 programs from any requirement of this section, if the exemption is found to be
7 consistent with the purposes of this subtitle and the best interests of the State,
8 considering the magnitude of the exemption and the risk of impairing historic
9 properties; and

10 (3) participation by State units, political subdivisions, private
11 organizations, and other entities in proceedings under this section that may affect
12 their interests.

13 (g) In accordance with regulations adopted under subsection (f) of this
14 section, this section may be applied to any undertaking that is subject to the National
15 Historic Preservation Act, 16 U.S.C. § 470f.

16 (h) **(1) IF THE DIRECTOR DETERMINES THAT A STATE UNIT HAS
17 FAILED TO CONSULT IN ACCORDANCE WITH THIS SECTION, WITHIN 30 DAYS
18 AFTER THE DIRECTOR MAKES THE DETERMINATION, A PERSON WITH STANDING
19 MAY BRING A PRIVATE CAUSE OF ACTION FOR MANDAMUS.**

20 **(2) IN A MANDAMUS ACTION BROUGHT UNDER THIS SUBSECTION,
21 THE DIRECTOR'S DETERMINATION THAT A STATE UNIT HAS FAILED TO
22 CONSULT IN ACCORDANCE WITH THIS SECTION SHALL CONSTITUTE PRIMA
23 FACIE EVIDENCE THAT THE STATE UNIT HAS A DUTY TO CONSULT AND HAS
24 FAILED TO DO SO.**

25 **(I)** Failure by a State unit to comply with this section does not create a
26 private cause of action **FOR MONEY DAMAGES OR EQUITABLE RELIEF** under State
27 law.

28 5A-326.

29 (a) In cooperation with the Trust and subject to available resources, each
30 State unit shall:

1 (1) establish a program to identify, document, and nominate to the
2 Trust each property owned or controlled by the State unit that appears to qualify for
3 the Historic Register;

4 (2) ensure that no property listed in or eligible to be listed in the
5 Historic Register is inadvertently transferred, sold, demolished, destroyed,
6 substantially altered, or allowed to deteriorate significantly; and

7 (3) use any available historic building under its control to the extent
8 prudent, **FEASIBLE**, and practicable before acquiring, constructing, or leasing a
9 building to carry out its responsibilities.

10 (b) If it is prudent, **FEASIBLE**, practicable, and in the State's best interest to
11 do so, a State unit that transfers a surplus property listed in or eligible to be listed in
12 the Historic Register shall ensure that the transfer provides for the preservation or
13 enhancement of the property.

14 (c) If a historic property is to be altered substantially or destroyed by State
15 action or with financial assistance from a State unit, the State unit shall cause timely
16 steps **THAT ARE CONSISTENT WITH GUIDELINES APPROVED BY THE TRUST** to be
17 taken to:

18 (1) make appropriate investigations and records;

19 (2) salvage appropriate objects and materials; and

20 (3) deposit with the Trust the results of the investigations, the
21 records, and the recovered objects and materials.

22 (d) A State unit that issues permits or licenses or provides financial
23 assistance shall cooperate with the Trust by:

24 (1) giving notice to the Trust, on request, of each application for a
25 permit, a license, or financial assistance; and

26 (2) requiring that, where appropriate, an applicant for a permit, a
27 license, or financial assistance consult with the Trust before the State unit takes final
28 action on the application.

29 (e) (1) After consulting with the Trust, and to avoid, mitigate, or
30 satisfactorily reduce any significant adverse effect on a property listed in or eligible to

1 be listed in the Historic Register, a State unit may put reasonable conditions on a
2 license, permit, or award of financial assistance.

3 (2) A State unit may seek guidance from the Council before imposing
4 conditions on a license, permit, or award of financial assistance.

5 (3) [A person] **AN APPLICANT FOR A PERMIT OR LICENSE** may
6 appeal the reasonableness of a condition imposed on a license **IN ACCORDANCE WITH**
7 **THIS SECTION** or permit in accordance with the Administrative Procedure Act.

8 (f) By regulation, the Trust shall establish professional standards,
9 guidelines, and procedures **THAT INCORPORATE THE REVIEW PROCESS**
10 **ESTABLISHED UNDER § 5A-325 OF THIS SUBTITLE** to preserve historic properties
11 owned, controlled, regulated, or assisted by State units, to minimize the need for Trust
12 review, and to avoid duplication and delays.

13 (g) [This] **IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER**
14 **SUBSECTION (F) OF THIS SECTION, THIS** section may be applied to any undertaking
15 that is subject to the National Historic Preservation Act, 16 U.S.C. § 470f.

16 (h) (1) **IF THE DIRECTOR DETERMINES THAT A STATE UNIT HAS**
17 **FAILED TO CONSULT IN ACCORDANCE WITH THIS SECTION, WITHIN 30 DAYS**
18 **AFTER THE DETERMINATION IS MADE, A PERSON WITH STANDING MAY BRING A**
19 **PRIVATE CAUSE OF ACTION FOR MANDAMUS.**

20 (2) **IN A MANDAMUS ACTION BROUGHT UNDER THIS SUBSECTION,**
21 **THE DETERMINATION OF THE DIRECTOR THAT A STATE UNIT HAS FAILED TO**
22 **CONSULT IN ACCORDANCE WITH THIS SECTION SHALL CONSTITUTE PRIMA**
23 **FACIE EVIDENCE THAT THE STATE UNIT HAS A DUTY TO CONSULT AND HAS**
24 **FAILED TO DO SO.**

25 (I) Failure by a State unit to comply with this section does not create a
26 private cause of action **FOR MONEY DAMAGES OR EQUITABLE RELIEF** under State
27 law.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2007.