

# HOUSE BILL 2

Q3

5lr0651

(PRE-FILED)

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By: **Delegate Stein**

Requested: November 20, 2014

Introduced and read first time: January 14, 2015

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit – Preservation and Conservation Easements**

3 FOR the purpose of altering certain provisions of law concerning a credit against the State  
4 income tax for certain preservation and conservation easements to allow an  
5 individual or a member of a pass-through entity to claim the credit for an easement  
6 conveyed to the Maryland Environmental Trust, the Maryland Agricultural Land  
7 Preservation Foundation, or the Department of Natural Resources under certain  
8 circumstances; altering the amount of the credit allowed under certain provisions of  
9 law; authorizing a taxpayer to claim a certain credit against the Maryland estate tax  
10 under certain circumstances; providing that a grantor of an easement may transfer  
11 a certain tax credit by obtaining a certain certificate; requiring the Maryland  
12 Environmental Trust to issue a certain tax credit certificate under certain  
13 circumstances; specifying the contents of the certificate; setting a limit on the  
14 number of approved tax credit certificates issued by the Maryland Environmental  
15 Trust each year; requiring the Maryland Environmental Trust to approve  
16 applications for tax credit certificates in a certain manner; authorizing a holder of a  
17 certain tax credit certificate to transfer the certificate under certain circumstances;  
18 authorizing the Comptroller to assess and distribute a certain fee on transferred  
19 credits; requiring the Comptroller and the Department to jointly, in consultation  
20 with the Maryland Environmental Trust, adopt certain regulations; declaring the  
21 intent of the General Assembly that the issuance of tax credit certificates in  
22 accordance with this Act may not adversely impact the annual budgets of certain  
23 State agencies or programs; requiring the Maryland Environmental Trust to direct  
24 outreach to obtain donated easements in a certain manner; requiring the Maryland  
25 Environmental Trust to make a certain report to the General Assembly on or before  
26 a certain date; defining certain terms; making certain stylistic changes; providing  
27 for the application of this Act; and generally relating to a State income tax credit for  
28 certain preservation and conservation easements.

29 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General  
2 Section 10–723  
3 Annotated Code of Maryland  
4 (2010 Replacement Volume and 2014 Supplement)

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

7 **Article – Tax – General**

8 10–723.

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

11 (2) “DEPARTMENT” MEANS THE DEPARTMENT OF NATURAL  
12 RESOURCES.

13 (3) “MEMBER” MEANS:

14 (I) A SHAREHOLDER OF AN S CORPORATION;

15 (II) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP, A  
16 LIMITED PARTNERSHIP, OR A LIMITED LIABILITY PARTNERSHIP;

17 (III) A MEMBER OF A LIMITED LIABILITY COMPANY; OR

18 (IV) A BENEFICIARY OF A BUSINESS TRUST OR A STATUTORY  
19 TRUST.

20 (4) “PASS–THROUGH ENTITY” MEANS:

21 (I) AN S CORPORATION;

22 (II) A PARTNERSHIP;

23 (III) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A  
24 CORPORATION UNDER THIS TITLE; OR

25 (IV) A BUSINESS TRUST OR A STATUTORY TRUST THAT IS NOT  
26 TAXED AS A CORPORATION UNDER THIS TITLE.

27 [(a)] (B) (1) An individual OR A MEMBER OF A PASS–THROUGH ENTITY  
28 may claim a credit against the State income tax as provided in this section for an easement  
29 conveyed to the Maryland Environmental Trust, [or] the Maryland Agricultural Land

1 Preservation Foundation, **OR THE DEPARTMENT** for the purpose of preserving open space,  
2 natural resources, agriculture, forest land, watersheds, significant ecosystems, viewsheds,  
3 or historic properties, if:

4 (i) the easement is perpetual; and

5 (ii) the easement is accepted and approved by the Board of Public  
6 Works.

7 (2) Subject to subsection [(c)(2)] **(D)(2)** of this section, the credit under this  
8 section shall be allowed for the taxable year in which the [donation] **CONVEYANCE** is  
9 approved by the Board of Public Works.

10 **[(b)] (C)** (1) Except as otherwise provided in this section, the amount of the  
11 credit allowed under this section is the amount by which the fair market value of the  
12 property before the conveyance of the easement exceeds the fair market value of the  
13 property after the conveyance of the easement.

14 (2) The fair market value of the property before and after the conveyance  
15 of the easement shall be substantiated by an appraisal prepared by a certified real estate  
16 appraiser, as defined under § 16–101 of the Business Occupations and Professions Article.

17 (3) The amount of the credit shall be reduced by the amount of any  
18 payment received for the easement.

19 **[(c)] (D)** (1) For any taxable year, the credit allowed under this section may  
20 not exceed the lesser of:

21 (i) the State income tax for that taxable year; [or]

22 (ii) \$5,000 **IF THE CREDIT IS CLAIMED BY AN INDIVIDUAL; OR**

23 **(III) \$10,000 FOR SPOUSES FILING A JOINT RETURN, A**  
24 **SURVIVING SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE INTERNAL**  
25 **REVENUE CODE, OR A PASS-THROUGH ENTITY WITH MORE THAN ONE MEMBER.**

26 (2) If the credit otherwise allowable under subsection **[(b)] (C)** of this  
27 section exceeds the limit under paragraph (1) of this subsection, [an individual] **A**  
28 **TAXPAYER** may apply the excess as a credit against the State income tax for succeeding  
29 taxable years until the earlier of:

30 (i) the full amount of the excess is used; or

31 (ii) the expiration of the 15th taxable year after the taxable year in  
32 which the [donation] **CONVEYANCE** was approved by the Board of Public Works.

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

4 (4) IF THE TAXPAYER DIES PRIOR TO THE USE OF THE FULL AMOUNT  
5 OF THE CREDIT IN ACCORDANCE WITH THIS SUBSECTION, THE CREDIT MAY BE  
6 CLAIMED AGAINST THE TAXPAYER'S MARYLAND ESTATE TAX LIABILITY IN  
7 ACCORDANCE WITH TITLE 7 OF THIS ARTICLE.

8 [(d)] (E) The credit under this section may not be claimed for a required  
9 dedication of open space for the purpose of fulfilling density requirements to obtain a  
10 subdivision or building permit.

11 (F) (1) THE GRANTOR OF AN EASEMENT MAY TRANSFER THE CREDIT  
12 UNDER THIS SECTION TO A TAXPAYER BY TRANSFERRING A TAX CREDIT  
13 CERTIFICATE ISSUED UNDER THIS SUBSECTION.

14 (2) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, THE  
15 MARYLAND ENVIRONMENTAL TRUST SHALL ISSUE A TAX CREDIT CERTIFICATE IF:

16 (I) THE GRANTOR OF AN EASEMENT SUBMITS A COMPLETE  
17 APPLICATION FOR THE TAX CREDIT CERTIFICATE ON A FORM PROVIDED BY THE  
18 MARYLAND ENVIRONMENTAL TRUST; AND

19 (II) THE CONVEYANCE OF THE EASEMENT MEETS THE  
20 REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.

21 (3) IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, A TAX  
22 CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION SHALL STATE:

23 (I) THE MAXIMUM AMOUNT OF TAX CREDIT THAT MAY BE  
24 CLAIMED BY THE HOLDER OF THE CERTIFICATE;

25 (II) THE MAXIMUM AMOUNT OF TAX CREDIT THAT MAY BE  
26 CLAIMED BY THE HOLDER OF THE CERTIFICATE IN A SINGLE TAXABLE YEAR;

27 (III) THE EARLIEST TAXABLE YEAR FOR WHICH THE CREDIT MAY  
28 BE CLAIMED; AND

29 (IV) THE LAST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE  
30 CLAIMED.

1           **(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**  
2 **MARYLAND ENVIRONMENTAL TRUST MAY NOT ISSUE MORE THAN 35 TAX CREDIT**  
3 **CERTIFICATES UNDER THIS SUBSECTION IN ANY CALENDAR YEAR.**

4           **(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, IF**  
5 **IN ANY CALENDAR YEAR THE NUMBER OF TAX CREDIT CERTIFICATES ISSUED IS LESS**  
6 **THAN THE MAXIMUM AMOUNT AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**  
7 **PARAGRAPH, IN THE NEXT CALENDAR YEAR THE MARYLAND ENVIRONMENTAL**  
8 **TRUST MAY ISSUE ADDITIONAL CERTIFICATES ABOVE THE AMOUNT AUTHORIZED IN**  
9 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

10           **(III) THE SUM OF THE TOTAL NUMBER OF CERTIFICATES ISSUED**  
11 **UNDER THIS SUBSECTION IN TWO CONSECUTIVE CALENDAR YEARS MAY NOT**  
12 **EXCEED 70.**

13           **(5) THE MARYLAND ENVIRONMENTAL TRUST SHALL APPROVE ALL**  
14 **APPLICATIONS THAT QUALIFY FOR A TAX CREDIT CERTIFICATE UNDER THIS**  
15 **SUBSECTION ON A FIRST-COME, FIRST-SERVED BASIS.**

16           **(G) (1) A HOLDER OF A TAX CREDIT CERTIFICATE ISSUED UNDER**  
17 **SUBSECTION (F) OF THIS SECTION MAY, IN ACCORDANCE WITH REGULATIONS**  
18 **ADOPTED UNDER SUBSECTION (H) OF THIS SECTION, TRANSFER THE TAX CREDIT**  
19 **CERTIFICATE TO:**

20                   **(I) AN INDIVIDUAL WHO IS A TAXPAYER; OR**

21                   **(II) A PASS-THROUGH ENTITY THAT HAS AT LEAST ONE MEMBER**  
22 **WHO IS A TAXPAYER.**

23           **(2) THE COMPTROLLER MAY ASSESS THE TRANSFEREE OF THE**  
24 **CREDIT A FEE TO OFFSET ADMINISTRATIVE COSTS RELATED TO THE TRANSFER.**

25           **(3) THE FEE UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:**

26                   **(I) EQUAL 3% OF THE VALUE OF THE CREDIT; AND**

27                   **(II) BE DISTRIBUTED EQUALLY BETWEEN THE COMPTROLLER**  
28 **AND THE MARYLAND ENVIRONMENTAL TRUST.**

29           **(H) THE COMPTROLLER AND THE DEPARTMENT JOINTLY, IN**  
30 **CONSULTATION WITH THE MARYLAND ENVIRONMENTAL TRUST, SHALL ADOPT**  
31 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO SPECIFY**  
32 **PROCEDURES FOR THE APPLICATION FOR, APPROVAL OF, ELIGIBILITY FOR, AND**  
33 **TRANSFER OF THE CREDIT UNDER THIS SECTION.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General  
2 Assembly that the issuance of tax credit certificates in accordance with this Act may not  
3 adversely impact the annual budgets of State agencies or programs that purchase or  
4 acquire conservation easements or property, including the Department of Natural  
5 Resources and the Maryland Agricultural Land Preservation Fund.

6           SECTION 3. AND BE IT FURTHER ENACTED, That, for purposes of the tax credits  
7 transferred under this Act, the Maryland Environmental Trust shall:

8                   (1)     use best efforts to direct its outreach to obtain donated easements in  
9 those areas targeted for preservation by the State, including targeted ecological areas in  
10 GreenPrint and AgPrint and properties of historic significance; and

11                   (2)     on or before December 1, 2017, in consultation with the Department of  
12 Natural Resources, report to the General Assembly, in accordance with § 2-1246 of the  
13 State Government Article, on the effectiveness of transferred tax credits in encouraging the  
14 conveyance of easements.

15           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
16 1, 2015, and shall be applicable to all taxable years beginning after December 31, 2014.