

HOUSE BILL 346

P1

4lr0112

By: **Chair, Environmental Matters Committee (By Request – Departmental – Planning)**

Introduced and read first time: January 22, 2014

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Historical Trust – Review of Capital Projects – Duties of Director**

3 FOR the purpose of clarifying certain duties of the Director of the Maryland Historical
4 Trust with respect to the review of certain capital projects; clarifying the
5 applicability of certain review requirements to certain categories of capital
6 projects; making stylistic changes; and generally relating to the duties of the
7 Director of the Maryland Historical Trust in reviewing capital projects.

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 5A–325 and 5A–326
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2013 Supplement)

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

15 **Article – State Finance and Procurement**

16 5A–325.

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

21 (2) The consultation shall occur:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

6 (iii) as early in the planning process as possible for a capital
7 project that uses nonbudgeted money and is subject to the reporting requirements of §
8 3–602 of this article.

9 (b) (1) State units that own or control properties may consult with the
10 **[Trust] DIRECTOR** to develop plans or interagency agreements to identify, evaluate,
11 and manage any of those properties that are listed in or eligible to be listed in the
12 Historic Register.

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

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

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

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

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

20 (2) Before the Board of Public Works may approve the use of bond
21 proceeds for the project, the Department of Budget and Management or another State
22 unit responsible for the project shall consult with the **[Trust] DIRECTOR** to determine
23 whether the project will adversely affect any property listed in or eligible to be listed
24 in the Historic Register.

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

29 (2) If the Director finds that the proposed capital project would have a
30 significant adverse effect on a listed or eligible property, the Director and the State
31 unit shall consult to determine whether a practicable plan exists to avoid, mitigate, or
32 satisfactorily reduce the adverse effect.

33 (3) If the Director and the State unit cannot agree on a plan, the State
34 unit shall submit to the Council a report of the consultations and the findings and
35 recommendations of the State unit.

1 (4) Within 30 days after receiving the report, the Council shall submit
2 to the State unit comments:

3 (i) accepting the adverse effect; or

4 (ii) recommending practicable alternatives to avoid, mitigate, or
5 satisfactorily reduce the adverse effect.

6 (5) The State unit may:

7 (i) incorporate in the project the alternatives recommended by
8 the Council; or

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

10 (6) If the State unit disagrees with the comments of the Council, the
11 State unit:

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

14 (ii) may not proceed with the project for at least 10 working
15 days after responding.

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

19 (f) The Trust shall adopt regulations that establish procedures and
20 standards for:

21 (1) administrative review and comment under this section, including
22 time frames for Trust action **BY THE TRUST OR THE DIRECTOR** on specific
23 categories of projects;

24 (2) exempting specific projects, categories of projects, or categories of
25 programs from any requirement of this section, if the exemption is found to be
26 consistent with the purposes of this subtitle and the best interests of the State,
27 considering the magnitude of the exemption and the risk of impairing historic
28 properties; and

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

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

4 (h) Failure by a State unit to comply with this section does not create a
5 private cause of action under State law.

6 5A-326.

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

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

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

15 (3) use any available historic building under its control to the extent
16 prudent and practicable before acquiring, constructing, or leasing a building to carry
17 out its responsibilities.

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

22 (c) If a historic property is to be altered substantially or destroyed by State
23 action or with financial assistance from a State unit, the State unit shall cause timely
24 steps to be taken to:

25 (1) make appropriate investigations and records;

26 (2) salvage appropriate objects and materials; and

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

29 (d) **(1)** A State unit that issues permits or licenses or provides financial
30 assistance **FOR ANY UNDERTAKING** shall cooperate with the Trust by:

31 **[(1)] (I)** giving notice to the **[Trust] DIRECTOR**, on request, of each
32 application for a permit, a license, or financial assistance; and

1 **[(2)] (II)** requiring that, where appropriate, an applicant for a permit,
2 a license, or financial assistance consult with the **[Trust] DIRECTOR** before the State
3 unit takes final action on the application.

4 **[(e) (1)] (2)** After consulting with the **[Trust] DIRECTOR**, and to avoid,
5 mitigate, or satisfactorily reduce any significant adverse effect on a property listed in
6 or eligible to be listed in the Historic Register, a State unit may:

7 **(I)** put reasonable conditions on a license, permit, or award of
8 financial assistance[.]; **AND**

9 **[(2) A State unit may] (II)** seek guidance from the Council before
10 imposing **ANY** conditions on a license, permit, or award of financial assistance.

11 **(3)** A person may appeal **IN ACCORDANCE WITH THE**
12 **ADMINISTRATIVE PROCEDURE ACT** the reasonableness of a condition imposed **BY A**
13 **STATE UNIT UNDER THIS SUBSECTION** on a license or permit [in accordance with
14 the Administrative Procedure Act].

15 **[(f)] (E)** By regulation, the Trust shall establish professional standards,
16 guidelines, and procedures to preserve historic properties owned, controlled, regulated,
17 or assisted by State units, to minimize the need for **[Trust] DIRECTOR** review, and to
18 avoid duplication and delays.

19 **[(g)] (F)** This section may be applied to any undertaking that is subject to
20 the National Historic Preservation Act, 16 U.S.C. § 470f.

21 **[(h)] (G)** Failure by a State unit to comply with this section does not create
22 a private cause of action under State law.

23 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect
24 October 1, 2014.