

SENATE BILL 615

Q3

5lr2720
CF HB 2

By: **Senator Eckardt**

Introduced and read first time: February 6, 2015

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 2, 2015

CHAPTER _____

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~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~a certain date~~; requiring the Comptroller to adopt certain regulations; defining certain terms; making certain stylistic changes; providing for the application of this Act; and generally relating to a State income tax credit for certain preservation and conservation easements.

BY repealing and reenacting, with amendments,
 Article – Tax – General
 Section 10–723
 Annotated Code of Maryland
 (2010 Replacement Volume and 2014 Supplement)

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

Article – Tax – General

10–723.

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

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

(3) “MEMBER” MEANS:

(I) A SHAREHOLDER OF AN S CORPORATION;

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

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

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

(4) “PASS–THROUGH ENTITY” MEANS:

(I) AN S CORPORATION;

(II) A PARTNERSHIP;

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

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

3 [(a)] (B) (1) An individual OR A MEMBER OF A PASS-THROUGH ENTITY
4 may claim a credit against the State income tax as provided in this section for an easement
5 conveyed to the Maryland Environmental Trust, [or] the Maryland Agricultural Land
6 Preservation Foundation, OR THE DEPARTMENT for the purpose of preserving open space,
7 natural resources, agriculture, forest land, watersheds, significant ecosystems, viewsheds,
8 or historic properties, if:

9 (i) the easement is perpetual; and

10 (ii) the easement is accepted and approved by the Board of Public
11 Works.

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

15 [(b)] (C) (1) Except as otherwise provided in this section, the amount of the
16 credit allowed under this section is the amount by which the fair market value of the
17 property before the conveyance of the easement exceeds the fair market value of the
18 property after the conveyance of the easement.

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

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

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

26 (i) the State income tax for that taxable year; ~~or~~

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

28 ~~(iii) \$10,000 FOR SPOUSES FILING A JOINT RETURN, A~~
29 ~~SURVIVING SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE INTERNAL~~
30 ~~REVENUE CODE, OR A PASS-THROUGH ENTITY WITH MORE THAN ONE MEMBER.~~

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

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

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

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

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

11 (4) THE SUM OF ALL CREDITS CLAIMED BY MEMBERS OF A
12 PASS-THROUGH ENTITY IN A TAXABLE YEAR MAY NOT EXCEED THE AMOUNT
13 SPECIFIED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.

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

17 ~~(F) (1) THE GRANTOR OF AN EASEMENT MAY TRANSFER THE CREDIT~~
18 ~~UNDER THIS SECTION TO A TAXPAYER BY TRANSFERRING A TAX CREDIT~~
19 ~~CERTIFICATE ISSUED UNDER THIS SUBSECTION.~~

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

22 ~~(I) THE GRANTOR OF AN EASEMENT SUBMITS A COMPLETE~~
23 ~~APPLICATION FOR THE TAX CREDIT CERTIFICATE ON A FORM PROVIDED BY THE~~
24 ~~MARYLAND ENVIRONMENTAL TRUST; AND~~

25 ~~(II) THE CONVEYANCE OF THE EASEMENT MEETS THE~~
26 ~~REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.~~

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

29 ~~(I) THE MAXIMUM AMOUNT OF TAX CREDIT THAT MAY BE~~
30 ~~CLAIMED BY THE HOLDER OF THE CERTIFICATE;~~

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

1 ~~(III) THE EARLIEST TAXABLE YEAR FOR WHICH THE CREDIT MAY~~
2 ~~BE CLAIMED; AND~~

3 ~~(IV) THE LAST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE~~
4 ~~CLAIMED.~~

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

8 ~~(H) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, IF~~
9 ~~IN ANY CALENDAR YEAR THE NUMBER OF TAX CREDIT CERTIFICATES ISSUED IS LESS~~
10 ~~THAN THE MAXIMUM AMOUNT AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS~~
11 ~~PARAGRAPH, IN THE NEXT CALENDAR YEAR THE MARYLAND ENVIRONMENTAL~~
12 ~~TRUST MAY ISSUE ADDITIONAL CERTIFICATES ABOVE THE AMOUNT AUTHORIZED IN~~
13 ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH.~~

14 ~~(III) THE SUM OF THE TOTAL NUMBER OF CERTIFICATES ISSUED~~
15 ~~UNDER THIS SUBSECTION IN TWO CONSECUTIVE CALENDAR YEARS MAY NOT~~
16 ~~EXCEED 70.~~

17 ~~(5) THE MARYLAND ENVIRONMENTAL TRUST SHALL APPROVE ALL~~
18 ~~APPLICATIONS THAT QUALIFY FOR A TAX CREDIT CERTIFICATE UNDER THIS~~
19 ~~SUBSECTION ON A FIRST-COME, FIRST-SERVED BASIS.~~

20 ~~(C) (1) A HOLDER OF A TAX CREDIT CERTIFICATE ISSUED UNDER~~
21 ~~SUBSECTION (F) OF THIS SECTION MAY, IN ACCORDANCE WITH REGULATIONS~~
22 ~~ADOPTED UNDER SUBSECTION (H) OF THIS SECTION, TRANSFER THE TAX CREDIT~~
23 ~~CERTIFICATE TO:~~

24 ~~(I) AN INDIVIDUAL WHO IS A TAXPAYER; OR~~

25 ~~(II) A PASS THROUGH ENTITY THAT HAS AT LEAST ONE MEMBER~~
26 ~~WHO IS A TAXPAYER.~~

27 ~~(2) THE COMPTROLLER MAY ASSESS THE TRANSFEREE OF THE~~
28 ~~CREDIT A FEE TO OFFSET ADMINISTRATIVE COSTS RELATED TO THE TRANSFER.~~

29 ~~(3) THE FEE UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:~~

30 ~~(I) EQUAL 3% OF THE VALUE OF THE CREDIT; AND~~

1 ~~(H) BE DISTRIBUTED EQUALLY BETWEEN THE COMPTROLLER~~
 2 ~~AND THE MARYLAND ENVIRONMENTAL TRUST.~~

3 ~~(H) (F) THE COMPTROLLER AND THE DEPARTMENT JOINTLY, IN~~
 4 ~~CONSULTATION WITH THE MARYLAND ENVIRONMENTAL TRUST, SHALL ADOPT~~
 5 ~~REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO SPECIFY~~
 6 ~~PROCEDURES FOR THE APPLICATION FOR, APPROVAL OF, ELIGIBILITY FOR, AND~~
 7 ~~TRANSFER OF A MEMBER OF A PASS-THROUGH ENTITY TO CLAIM THE CREDIT~~
 8 ~~UNDER THIS SECTION.~~

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

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

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

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

23 ~~SECTION 4. 2.~~ AND BE IT FURTHER ENACTED, That this Act shall take effect
 24 July 1, 2015, and shall be applicable to all taxable years beginning after December 31, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.