Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Planning
(DLS Control No. 16-111)

Overview and Legal and Fiscal Impact

The regulations incorporate statutory changes made to the Heritage Structure Rehabilitation Tax Credit during the 2016 legislative session.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies beyond that already assumed in the fiscal and policy note for Senate Bill 759 of 2016 (enacted as Chapter 578).

Regulations of COMAR Affected

Department of Planning:
Historical and Cultural Programs: Sustainable Communities Tax Credit Certifications: COMAR 34.04.07.01 - .09

Legal Analysis

Background

Chapter 578 of 2016 reestablishes the Sustainable Communities Tax Credit Program as the Heritage Structure Rehabilitation Tax Credit Program, extends the termination date of the program through fiscal 2022, and requires the Governor to include an appropriation for the commercial credit program in fiscal 2018 through 2022. Chapter 578 also alters certain program eligibility requirements and procedures.

Summary of Regulations

The regulations incorporate the provisions of Chapter 578 of 2016. Among other things, the regulations:

- alter and repeal various definitions, including adding a requirement to the definition of “business entity” that a person be registered to do business in the State and be in good standing with the State Department of Assessments and Taxation;

- establish the three types of credits available under the program;

- identify the requirements that must be met in order to claim any credit under the program;
- identify the types of rehabilitations eligible for and the amount of the credit allowed under each type of credit;
- require that the Maryland Historical Trust (MHT) post and maintain on its website separate and distinct Part 2 applications for each type of credit;
- establish the process for the MHT Director to review and approve or deny the Part 2 application for each type of credit;
- establish the process for the submission and approval of a Part 3 application;
- authorize, under certain circumstances, a Part 2 applicant to file a Part 3 application with the Director requesting that the Director determine that the completed rehabilitation is a certified rehabilitation;
- repeal a requirement that certain rehabilitation projects pay a certain final fee;
- establish for each type of credit the deadline for filing the Part 3 application, the information required in the application, and the process for the Director to evaluate and approve the application; and
- repeal certain provisions that relate to the delegation of certain appeals to the Director.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department cites § 5A-303 of the State Finance and Procurement Article as statutory authority for the regulations. As amended by Chapter 578, § 5A-303 makes various changes to the Program as discussed above. Additionally, § 5A-303(b) requires the MHT Director to adopt certain regulations related to the administration of the tax credit.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Section 5A-303(b)(7)(i) of the State Finance and Procurement Article requires that the MHT Director adopt regulations to charge reasonable fees to certify certain historic structures. Section 5A-303(b)(7)(i)3 requires that, for rehabilitation projects that are not commercial rehabilitation projects, the certification fee must include a final fee that may not exceed 3% of the amount of the credit for which the rehabilitation would be eligible based on the greater of the estimated final qualified rehabilitation expenditures for the rehabilitation.

Currently, COMAR 34.04.07.04M(2) prohibits the MHT Director from approving an application for certification of a completed rehabilitation of a single-family, owner-occupied residence, or small commercial rehabilitation until the applicant pays an administrative fee not to exceed 3% of the credit amount for which the rehabilitation would be eligible based on the greater of the estimated or actual qualified rehabilitation expenditures, less a $10 administrative fee previously paid. However, these regulations repeal COMAR 34.04.07.04M(2) and do not propose new regulations imposing a final fee for rehabilitation projects that are not commercial rehabilitation projects as required under § 5A-303(b)(7)(i) of the State Finance and Procurement Article.

The Department of Legislative Services contacted the department regarding this issue. The department indicates that the failure to include a new regulation imposing a final fee for rehabilitation projects that are not commercial rehabilitation projects was an unintentional omission. The department will correct this omission before publication of the regulations.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that already assumed in the fiscal and policy note for Senate Bill 759 of 2016 (enacted as Chapter 578).

Agency Estimate of Projected Fiscal Impact

The regulations implement provisions of Chapter 578 of 2016 (Senate Bill 759), which reestablished the Sustainable Communities Tax Credit Program as the Heritage Structure Rehabilitation Tax Credit Program. Any fiscal impact has already been assumed in the fiscal and policy note for that legislation.

Impact on Budget

There is no impact on the State operating or capital budget beyond that already assumed in the fiscal and policy note for Senate Bill 759 of 2016.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs as any such impact has already been accounted for in the fiscal and policy note for Senate Bill 759 of 2016.

Additional Comments

Although the regulations, as originally submitted, did not incorporate an existing fee, the department is correcting that oversight before publication. Thus, this analysis assumes collection of fee revenues is not affected by the regulations.

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