

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Planning  
(DLS Control No. 20-057)**

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**Overview and Legal and Fiscal Impact**

These regulations implement Chapters 314 (House Bill 759) and 633 (House Bill 862) of 2020 by altering regulatory provisions related to Historic Revitalization Tax Credit Certifications. More specifically, the regulations (1) expand the type of projects eligible for a small commercial tax credit to include condominium or cooperative housing projects under certain circumstances; and (2) allow the allocation or transfer of certain tax credits.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Planning:**

Historical and Cultural Programs:

Heritage Structure Rehabilitation Tax Credit Certifications: COMAR 34.04.07.02 -.03

Heritage Structure Rehabilitation Tax Credit Certifications: COMAR 34.04.07.05-.06

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**Legal Analysis**

**Background**

Chapter 314 authorized the rehabilitation of a condominium or cooperative project to qualify for the historic revitalization small commercial tax credit if the rehabilitation is undertaken by the governing body of the condominium or cooperative housing corporation and the rehabilitation targets only the common elements of the structure. Chapter 633 authorized, subject to specified requirements, the commercial tax credit under the Historic Revitalization Tax Credit Program to be transferrable. Both Acts apply beginning with tax year 2020. As mentioned, the regulations implement Chapters 314 and 633.

**Summary of Regulations**

The regulations establish that a rehabilitation project of a structure that is a condominium or cooperative housing project qualifies as a certified rehabilitation eligible for the small commercial tax credit under the Historic Revitalization Tax Credit Program if certain requirements

are met. Procedurally, the regulations require that a Part 2 application for the small commercial tax credit for a condominium or cooperative housing project be submitted by the governing body of the condominium or cooperative housing project. The regulations also establish a number of related definitions.

The regulations also provide for the allocation or transfer of a tax credit under the Historic Revitalization Tax Credit Program. If a business entity files an application for a tax credit, the amount of the tax credit may be allocated among the partners, members, or shareholders of the business entity. For a competitive commercial tax credit, the credit may be transferred in whole or in part by a certain applicant to one or more individuals, or a business entity, as specified. A tax credit amount under the program that is allocated or transferred to an individual or business entity may be applied against the total tax otherwise payable by that individual or business entity for the taxable year during which the certified rehabilitation was completed. If the tax credit amount allocated or transferred to an individual or business exceeds the total tax payable by the individual or business, that individual or business may claim a refund for the excess, or transfer the amount not claimed to another person. All agreements related to the allocation or transfer of a tax credit amount under the program must be in writing and executed by all parties to the agreement.

### **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. Section 5A-303, as amended by Chapters 314 and 633 of 2020, requires the Director of the Maryland Historic Trust to adopt regulations to certify historic structures and rehabilitations, and provide for a competitive award process for certain rehabilitation projects to be awarded credit certificates for certain historic revitalization tax credits, including eligibility requirements and an application process. The regulations must also establish (1) application procedures for governing bodies of condominiums and cooperative housing corporations; and (2) conditions regarding the rehabilitation of common elements of condominiums and cooperative projects. The section also requires the Director to adopt regulations to establish procedures for the transfer of the commercial tax credit for commercial rehabilitations.

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

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations implement provisions of Chapter 314 of 2020 (House Bill 759), which allows certain condominiums and cooperative projects to qualify for the small commercial tax

credit, and Chapter 633 of 2020 (House Bill 862), which allows the commercial tax credit to be transferable subject to specified requirements.

As the regulations implement the provisions of Chapters 314 and 633, the department advises that the regulations have minimal or no fiscal impact. The Department of Legislative Services concurs and notes that the fiscal and policy notes for House Bill 759 and House Bill 862 estimate that the Acts will not alter the fiscal impact of the program beyond that provided under current law.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **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.

### **Contact Information**

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