

Chapter 383

(House Bill 1196)

AN ACT concerning

Sustainable Communities Tax Credit Program

FOR the purpose of altering the application of certain provisions relating to calculation of the amount of the Sustainable Communities tax credit that may be claimed under certain circumstances; ~~authorizing the allocation of the tax credit in a certain manner;~~ altering a certain fee; authorizing the use of a certain reserve fund for certain purposes under certain circumstances; requiring the Director of the Maryland Historical Trust to reserve a certain amount in a certain reserve fund to be used for a certain purpose; requiring additional reporting; ~~providing for the application of this Act;~~ and generally relating to the Sustainable Communities Tax Credit Program.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 5A–303(a)(6) and (18)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 5A–303(b)(6), (c)(1), (d), and (h)(1)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

~~BY adding to~~
~~Article – State Finance and Procurement~~
~~Section 5A–303(c)(5)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2010 Supplement)~~

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

Article – State Finance and Procurement

5A–303.

(a) (6) “Commercial rehabilitation” means a rehabilitation of a structure other than a single–family, owner–occupied residence.

(18) (i) “Single-family, owner-occupied residence” means a structure or a portion of a structure occupied by the owner and the owner’s immediate family as their primary or secondary residence.

(ii) “Single-family, owner-occupied residence” includes a residential unit in a cooperative project owned by or leased to a cooperative housing corporation, as defined in § 5-6B-01 of the Corporations and Associations Article, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member’s immediate family under a proprietary lease.

(b) (6) (i) The Director shall adopt regulations to charge a reasonable fee to certify historic structures and rehabilitations under this section.

(ii) The Director shall set the level of the fee so that the projected proceeds from the fee will cover the costs to the Trust of administering the credit under this section and the federal historic tax credit.

(iii) The fee charged may not exceed ~~[1%]~~ **3%** of the amount of the initial credit certificate issued for a commercial rehabilitation project or the amount of the credit for which a single-family, owner-occupied rehabilitation would be eligible based on the greater of the estimated or final qualified rehabilitation expenditures for the rehabilitation.

(iv) If the fee charged for a commercial rehabilitation is not received by the Trust within 120 days after the Trust sends notice that the fee is due, the initial credit certificate for the rehabilitation shall expire.

(v) The proceeds from the fee shall be deposited in a special fund, to be used only for the purposes of paying the costs of administering the credit under this section and the federal historic tax credit.

(vi) Any unused balance of the fund at the end of each fiscal year shall be transferred to the Reserve Fund established under subsection (d) of this section and shall increase the amount of the initial credit certificates that the Trust may issue for the following fiscal year.

(c) (1) (i) Except as otherwise provided in this section, for the taxable year in which a certified rehabilitation is completed, an individual or business entity may claim a tax credit in an amount equal to 20% of the individual’s or business entity’s qualified rehabilitation expenditures for the rehabilitation.

(ii) **[An] FOR COMMERCIAL REHABILITATIONS, AN** individual or business entity may claim a tax credit in an amount equal to 25% of the individual’s or business entity’s qualified rehabilitation expenditures if the certified rehabilitation is a certified historic structure and a high performance building.

(iii) [An] **FOR COMMERCIAL REHABILITATIONS**, AN individual or business entity may claim a tax credit in an amount equal to 10% of the individual's or business entity's qualified rehabilitation expenditures if the certified rehabilitation is a qualified rehabilitated structure.

~~(5) THE STATE CREDIT ALLOWED UNDER THIS SECTION MAY BE ALLOCATED AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF AN ENTITY IN ANY MANNER AGREED TO BY THOSE PERSONS IN WRITING.~~

(d) (1) In this subsection, "Reserve Fund" means the Sustainable Communities Tax Credit Reserve Fund established under paragraph (2) of this subsection.

(2) (i) There is a Sustainable Communities Tax Credit Reserve Fund that is a continuing, nonlapsing special fund that is not subject to § 7-302 of this article.

(ii) The money in the Fund shall be invested and reinvested by the Treasurer, and interest and earnings shall be credited to the General Fund.

(III) IF THE FEES PAID IN ANY FISCAL YEAR ARE LESS THAN THE DIRECTLY RELATED ADMINISTRATIVE COSTS OF OPERATING THE SUSTAINABLE COMMUNITIES TAX CREDIT PROGRAM, FUNDS IN THE RESERVE FUND SHALL BE USED FOR THE DIRECTLY RELATED ADMINISTRATIVE COSTS OF THE PROGRAM.

(3) (i) Subject to the provisions of this subsection, the Director shall issue an initial credit certificate for each commercial rehabilitation for which a plan of proposed rehabilitation is approved.

(ii) An initial credit certificate issued under this subsection shall state the maximum amount of credit under this section for which the commercial rehabilitation may qualify.

(iii) 1. Except as otherwise provided in this subparagraph and in subsection (b)(6)(vi) of this section, for any fiscal year, the Director may not issue initial credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.

2. If the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year as a result of the limitation under subsection (b)(5)(i) of this section, any excess amount may be issued under initial credit certificates for

projects in a county or Baltimore City in the same fiscal year, without regard to the limitation under subsection (b)(5)(i) of this section.

3. Subject to subparagraph 2 of this subparagraph, if the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

4. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than paragraph (4) of this subsection, the maximum credit amounts in the aggregate for which the Director may issue initial credit certificates shall be reduced by the amount transferred.

5. IN EACH FISCAL YEAR, THE DIRECTOR SHALL ESTIMATE THE AMOUNT OF FEES TO BE COLLECTED BASED ON THE AMOUNT APPROPRIATED TO THE RESERVE FUND AND RESERVE THE DIFFERENCE BETWEEN THE ESTIMATED FEES AND ESTIMATED DIRECTLY RELATED ADMINISTRATIVE COSTS OF THE PROGRAM TO BE USED TO ADMINISTER THE PROGRAM.

6. IF THE RESERVATION OF FUNDS TO ADMINISTER THE PROGRAM UNDER SUBSUBPARAGRAPH 5 OF THIS SUBPARAGRAPH IS NOT NECESSARY TO COVER THE DIRECTLY RELATED ADMINISTRATIVE COSTS OF THE PROGRAM, ANY EXCESS AMOUNT SHALL REMAIN IN THE RESERVE FUND AND MAY BE ISSUED UNDER INITIAL CREDIT CERTIFICATES FOR THE NEXT FISCAL YEAR.

(iv) For each of fiscal years 2011, 2012, 2013, and 2014, the Governor shall include in the budget bill an appropriation to the Reserve Fund.

(v) Notwithstanding the provisions of § 7-213 of this article, the Governor may not reduce an appropriation to the Reserve Fund in the State budget as approved by the General Assembly.

(vi) The Director may not issue an initial credit certificate for any fiscal year after fiscal year 2014.

(4) (i) Except as provided in this paragraph, money appropriated to the Reserve Fund shall remain in the Fund.

(ii) 1. Within 15 days after the end of each calendar quarter, the Trust shall notify the Comptroller as to each commercial rehabilitation completed and certified during the quarter:

A. the maximum credit amount stated in the initial credit certificate for the project; and

B. the final certified credit amount for the project.

2. On notification that a project has been certified, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(iii) 1. On or before October 1 of each year, the Trust shall notify the Comptroller as to the maximum credit amount stated in the initial credit certificate for each commercial rehabilitation for which the initial credit certificate has expired under subsection (c)(3) of this section as of the end of the prior fiscal year.

2. On notification that the initial credit certificate for a project has expired under subsection (c)(3) of this section, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(h) (1) On or before December 15 of each fiscal year, the Director shall report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, on:

(i) the initial credit certificates awarded for commercial rehabilitations under this section for that fiscal year;

(ii) the tax credits awarded for certified rehabilitations completed in the preceding fiscal year; [and]

(iii) whether the tax credits awarded for certified rehabilitations completed in the preceding fiscal year were located in:

1. a Main Street Maryland community;
2. beginning in fiscal 2012, a sustainable community;
3. a local historic district; or
4. a national register district; AND

(IV) THE ESTIMATED AMOUNT OF DIRECTLY RELATED ADMINISTRATIVE COSTS RESERVED IN THE RESERVE FUND, THE ESTIMATED AMOUNT OF FEES TO BE COLLECTED, THE ACTUAL DIRECTLY RELATED ADMINISTRATIVE COSTS, AND THE ACTUAL AMOUNT OF FEES COLLECTED.

~~SECTION 2. AND BE IT FURTHER ENACTED, That § 5A-303(e)(5) of the State Finance and Procurement Article, as enacted by this Act, shall be construed to apply retroactively and shall be applied to and interpreted to affect any commercial rehabilitation project for which an application of a plan of proposed rehabilitation is approved by the Director of the Maryland Historical Trust on or after January 1, 2005.~~

SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 10, 2011.