

Chapter 98

(House Bill 346)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 5A–325 and 5A–326
Annotated Code of Maryland
(2009 Replacement Volume and 2013 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–325.

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

(2) The consultation shall occur:

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

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

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

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

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

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

- (i) is not being carried out by a State unit;
- (ii) uses the proceeds of State general obligation bonds; and
- (iii) is not otherwise reviewed by the Trust under this section.

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

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

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

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

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

- (i) accepting the adverse effect; or
- (ii) recommending practicable alternatives to avoid, mitigate, or satisfactorily reduce the adverse effect.

(5) The State unit may:

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

(ii) disagree with the comments of the Council.

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

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

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

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

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

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

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

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

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

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

5A-326.

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

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

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

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

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

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

(1) make appropriate investigations and records;

(2) salvage appropriate objects and materials; and

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 8, 2014.