

SENATE BILL 709

Q3

4r2923
CF HB 789

By: ~~Senator Dyson~~ **Senators Dyson, Colburn, and Getty**

Introduced and read first time: January 31, 2014

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2014

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
4 State income tax for certain preservation and conservation easements to allow
5 an individual or a ~~corporation that receives a certain tax credit certificate~~
6 pass-through entity to claim the credit for an easement conveyed to the
7 Maryland Environmental Trust, the Maryland Agricultural Land Preservation
8 Foundation, or the Department of Natural Resources, ~~or a certain land trust~~
9 under certain circumstances; providing that a grantor of an easement may
10 transfer a certain tax credit by obtaining a certain certificate; requiring the
11 ~~Department~~ Maryland Environmental Trust to issue a certain tax credit
12 certificate under certain circumstances; specifying the contents of the
13 certificate; setting a limit on the total amount of approved tax ~~credits~~ credit
14 certificates; requiring the ~~Department~~ Maryland Environmental Trust to
15 approve applications in a certain manner; altering the amount of credit allowed
16 under certain provisions of law; authorizing a taxpayer to claim a certain credit
17 against the Maryland estate tax under certain circumstances; authorizing a
18 taxpayer or grantor of the easement to transfer the credit under certain
19 circumstances; authorizing the Comptroller to assess and distribute a certain
20 fee on the transfer of the credit; requiring the Comptroller ~~and the Department~~
21 jointly, in consultation with the Maryland Environmental Trust, to adopt
22 certain regulations; declaring the intent of the General Assembly that the
23 issuance of tax credit certificates in accordance with this Act may not adversely
24 impact the annual budgets of certain State agencies or programs; requiring the
25 Maryland Environmental Trust to direct outreach to obtain donated easements

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.



1 in a certain manner; requiring the Maryland Environmental Trust to report to
 2 the General Assembly on or before a certain date; defining certain terms;
 3 providing for the application of this Act; and generally relating to a State
 4 income tax credit for certain preservation and conservation easements.

5 BY repealing and reenacting, with amendments,
 6 Article – Tax – General
 7 Section 10–723
 8 Annotated Code of Maryland
 9 (2010 Replacement Volume and 2013 Supplement)

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

12 **Article – Tax – General**

13 10–723.

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

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

18 ~~(3) “LAND TRUST” MEANS A QUALIFIED CONSERVATION~~
 19 ~~ORGANIZATION THAT:~~

20 ~~(I) IS A QUALIFIED ORGANIZATION UNDER § 170(H)(3) OF~~
 21 ~~THE INTERNAL REVENUE CODE AND REGULATIONS ADOPTED UNDER §~~
 22 ~~170(H)(3); AND~~

23 ~~(II) HAS EXECUTED A COOPERATIVE AGREEMENT WITH THE~~
 24 ~~MARYLAND ENVIRONMENTAL TRUST.~~

25 (3) “MEMBER” MEANS:

26 (I) A SHAREHOLDER OF AN S CORPORATION;

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

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

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

1 **(4) “PASS-THROUGH ENTITY” MEANS:**

2 **(I) AN S CORPORATION;**

3 **(II) A PARTNERSHIP;**

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

6 **(IV) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT**
 7 **TAXED AS A CORPORATION UNDER THIS TITLE.**

8 **[(a)] (B) (1) An individual OR A CORPORATION THAT RECEIVES A TAX**
 9 **CREDIT CERTIFICATE FROM THE DEPARTMENT MEMBER OF A PASS-THROUGH**
 10 **ENTITY** may claim a credit against the State income tax as provided in this section for
 11 an easement conveyed to the Maryland Environmental Trust, [or] the Maryland
 12 Agricultural Land Preservation Foundation, **OR THE DEPARTMENT, OR A LAND**
 13 **TRUST** for the purpose of preserving open space, natural resources, agriculture, forest
 14 land, watersheds, significant ecosystems, viewsheds, or historic properties, if:

15 (i) the easement is perpetual; and

16 (ii) the easement is accepted and approved by:

17 ~~1.~~ the Board of Public Works; ~~OR~~

18 ~~2.~~ ~~A COUNTY AGENCY CHARGED WITH PURCHASING~~
 19 ~~EASEMENTS OR APPROVING DONATIONS.~~

20 (2) Subject to subsection [(c)(2)] **(E)(2)** of this section, the credit under
 21 this section shall be allowed for the taxable year in which the [donation]
 22 **CONVEYANCE** is approved by the Board of Public Works ~~OR A COUNTY AGENCY.~~

23 **(C) (1) THE GRANTOR OF AN EASEMENT MAY TRANSFER THE CREDIT**
 24 **UNDER THIS SECTION TO A TAXPAYER BY TRANSFERRING A TAX CREDIT**
 25 **CERTIFICATE ISSUED UNDER THIS SUBSECTION.**

26 **(2) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, ON**
 27 **APPLICATION BY A TAXPAYER OR GRANTOR OF AN EASEMENT, THE**
 28 **DEPARTMENT MARYLAND ENVIRONMENTAL TRUST** SHALL ISSUE A TAX CREDIT
 29 **CERTIFICATE IF THE TAXPAYER OR GRANTOR HAS DEMONSTRATED THAT THE**
 30 **CONVEYANCE OF THE EASEMENT HAS BEEN APPROVED BY THE BOARD OF**
 31 **PUBLIC WORKS OR A COUNTY AGENCY.**

1 ~~(2)~~ (3) ~~THE~~ IN ACCORDANCE WITH SUBSECTION (E) OF THIS
 2 SECTION, THE TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION
 3 SHALL:

4 (I) STATE THE MAXIMUM AMOUNT OF TAX CREDIT THAT
 5 MAY BE CLAIMED BY THE ~~TAXPAYER OR GRANTOR FOR THE CONVEYANCE~~
 6 HOLDER OF THE CERTIFICATE; AND

7 (II) STATE THE MAXIMUM AMOUNT OF TAX CREDIT THAT
 8 MAY BE CLAIMED BY THE HOLDER OF THE CERTIFICATE IN A SINGLE TAXABLE
 9 YEAR;

10 (III) STATE THE EARLIEST TAXABLE YEAR FOR WHICH THE
 11 CREDIT MAY BE CLAIMED; AND

12 (IV) STATE THE LAST TAXABLE YEAR FOR WHICH THE
 13 CREDIT MAY BE CLAIMED.

14 ~~(3)~~ (4) THE TOTAL AMOUNT OF TAX CREDIT CERTIFICATES
 15 ISSUED BY THE ~~DEPARTMENT~~ MARYLAND ENVIRONMENTAL TRUST UNDER
 16 PARAGRAPH ~~(1)~~ (2) OF THIS SUBSECTION MAY NOT EXCEED ~~\$2,000,000 FOR ANY~~
 17 ~~CALENDAR YEAR~~ AN AMOUNT THAT WOULD ALLOW MORE THAN \$250,000 IN
 18 CREDITS TO BE CLAIMED IN A SINGLE TAXABLE YEAR.

19 ~~(4)~~ (5) THE ~~DEPARTMENT~~ MARYLAND ENVIRONMENTAL
 20 TRUST SHALL APPROVE ALL APPLICATIONS THAT QUALIFY FOR A TAX CREDIT
 21 CERTIFICATE UNDER THIS SUBSECTION ON A FIRST-COME, FIRST-SERVED
 22 BASIS.

23 [(b)] (D) (1) Except as otherwise provided in this section, the amount of
 24 the credit allowed ~~IN A TAX CREDIT CERTIFICATE ISSUED~~ under this section is the
 25 amount by which the fair market value of the property before the conveyance of the
 26 easement exceeds the fair market value of the property after the conveyance of the
 27 easement.

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

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

34 [(c)] (E) (1) For any taxable year, the credit allowed under this section
 35 may not exceed the lesser of:

1 (i) the State income tax for that taxable year; [or]

2 (ii) \$5,000 **IF THE CREDIT IS CLAIMED BY AN INDIVIDUAL ~~OR~~**
 3 **~~A CORPORATION OWNED BY A SINGLE INDIVIDUAL OR ENTITY; OR~~**

4 **(iii) \$10,000 ~~IF THE~~ FOR SPOUSES FILING A JOINT RETURN,**
 5 **A SURVIVING SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE**
 6 **INTERNAL REVENUE CODE, OR A PASS-THROUGH ENTITY WITH MORE THAN**
 7 **ONE MEMBER ~~CORPORATION IS OWNED BY MULTIPLE INDIVIDUALS OR~~**
 8 **ENTITIES.**

9 (2) If the credit otherwise allowable under subsection [(b)] (D) of this
 10 section exceeds the limit under paragraph (1) of this subsection, [an individual] A
 11 **TAXPAYER** may apply the excess as a credit against the State income tax for
 12 succeeding taxable years until the earlier of:

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

14 (ii) the expiration of the 15th taxable year after the taxable year
 15 in which the ~~donation~~ **CONVEYANCE** was approved by the Board of Public Works.

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

19 **(4) IF THE TAXPAYER DIES PRIOR TO THE USE OF THE FULL**
 20 **AMOUNT OF THE CREDIT IN ACCORDANCE WITH THIS SUBSECTION, THE CREDIT**
 21 **MAY BE CLAIMED AGAINST THE TAXPAYER'S MARYLAND ESTATE TAX LIABILITY**
 22 **IN ACCORDANCE WITH TITLE 7 OF THIS ARTICLE.**

23 **(F) (1) A TAXPAYER OR GRANTOR OF AN EASEMENT THAT RECEIVES**
 24 **A TAX CREDIT CERTIFICATE ISSUED UNDER SUBSECTION (C) OF THIS SECTION**
 25 **MAY TRANSFER THE TAX CREDIT TO:**

26 **(I) AN INDIVIDUAL WHO ~~OR A CORPORATION THAT~~ IS A**
 27 **TAXPAYER; OR**

28 **(II) A PASS-THROUGH ENTITY THAT HAS AT LEAST ONE**
 29 **MEMBER WHO IS A TAXPAYER.**

30 **(2) THE COMPTROLLER MAY ASSESS THE TRANSFEREE OF THE**
 31 **CREDIT A FEE TO OFFSET ADMINISTRATIVE COSTS RELATED TO THE TRANSFER.**

32 **(3) THE FEE UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:**

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

2 (II) BE DISTRIBUTED EQUALLY AMONG THE COMPTROLLER,
3 ~~THE DEPARTMENT,~~ AND THE MARYLAND ENVIRONMENTAL TRUST.

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

7 (H) ~~THE COMPTROLLER AND THE DEPARTMENT JOINTLY, IN~~
8 CONSULTATION WITH THE MARYLAND ENVIRONMENTAL TRUST, SHALL ADOPT
9 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO
10 SPECIFY PROCEDURES FOR THE APPLICATION FOR, APPROVAL OF, ELIGIBILITY
11 FOR, AND TRANSFER OF THE CREDIT UNDER THIS SECTION.

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

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

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

22 (2) on or before December 1, 2016, in consultation with the
23 Department of Natural Resources, report to the General Assembly, in accordance with
24 § 2-1246 of the State Government Article, on the effectiveness of transferred tax
25 credits in encouraging the conveyance of easements.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 July 1, 2014, and shall be applicable to all taxable years beginning after December 31,
28 2013.