

Chapter 842

(House Bill 1454)

AN ACT concerning

**Heritage Structure Rehabilitation Tax Credit – Commercial Rehabilitations –
~~Transferability and Affordable Housing~~**

FOR the purpose of ~~making the State income tax credit under the heritage structure rehabilitation tax credit program transferable and refundable under certain circumstances;~~ authorizing a certain additional tax credit under the program for certain commercial rehabilitations that qualify as affordable housing; requiring that the amount of an expired or unclaimed initial credit certificate remain in a certain Reserve Fund and increase the amount of initial credit certificates that the Maryland Historical Trust may issue for the following fiscal year; repealing a requirement that the rehabilitation of certain structures be treated as a single commercial rehabilitation under the program; requiring the Director of the Maryland Historical Trust, in consultation with the Smart Growth Subcabinet, to adopt certain regulations; providing for the application of this Act; defining a certain term; and generally relating to the heritage structure rehabilitation tax credit program.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 5A–303(a) through (c)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 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) (1) In this section the following words have the meanings indicated.

(2) “AFFORDABLE HOUSING” MEANS A PROJECT OR UNDERTAKING THAT ~~IS ELIGIBLE FOR~~ HAS RECEIVED AN ALLOCATION OF FEDERAL LOW-INCOME HOUSING TAX CREDITS BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE MOST RECENT STATE ALLOCATION PLAN.

[(2)] (3) “Business entity” means:

(i) a person conducting or operating a trade or business in the State;
or

(ii) an organization operating in Maryland that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

[(3)] (4) “Certified heritage area” has the meaning stated in § 13–1101 of the Financial Institutions Article.

[(4)] (5) (i) “Certified historic structure” means a structure that is located in the State and is:

1. listed in the National Register of Historic Places;

2. designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;

3. A. located in a historic district listed on the National Register of Historic Places or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places; and

B. certified by the Director as contributing to the significance of the district; or

4. located in a certified heritage area and certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area.

(ii) “Certified historic structure” does not include a structure that is owned by the State, a political subdivision of the State, or the federal government.

[(5)] (6) “Certified rehabilitation” means a completed rehabilitation of a certified historic structure that the Director certifies is a substantial rehabilitation in conformance with the rehabilitation standards of the United States Secretary of the Interior.

[(6)] (7) (i) “Commercial rehabilitation” means a rehabilitation of a structure other than a single-family, owner-occupied residence.

(ii) “Commercial rehabilitation” does not include a small commercial project.

[(7)] (8) “Director” means the Director of the Maryland Historical Trust.

[(8)] (9) “Financial assistance” means action by the State or a State unit to award grants, loans, loan guarantees, or insurance to a public or private entity to finance, wholly or partly, a project that involves or may result in building construction, building alteration, or land disturbance.

[(9)] (10) “High performance building” means a building that:

(i) meets or exceeds the current version of the U.S. Green Building Council’s LEED (Leadership in Energy and Environmental Design) green building rating system gold rating; or

(ii) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services under § 3–602.1 of this article.

[(10)] (11) (i) “Historic property” means a district, site, building, structure, monument, or object significant to:

1. the prehistory or history of the State; or

2. the upland or underwater archeology, architecture, engineering, or culture of the State.

(ii) “Historic property” includes related artifacts, records, and remains.

[(11)] (12) “Local historic district” means a district that the governing body of a county or municipal corporation, or the Mayor and City Council of Baltimore, has designated under local law as historic.

[(12)] (13) “National register structure” means a structure that is:

(i) listed on the National Register of Historic Places; or

(ii) located in a historic district listed on the National Register of Historic Places and certified by the Director as contributing to the significance of the district.

[(13)] (14) “Political subdivision” means a county or municipal corporation of the State.

[(14)] (15) “Qualified rehabilitation expenditure” means any amount that:

(i) is properly chargeable to a capital account;

(ii) is expended in the rehabilitation of a structure that by the end of the calendar year in which the certified rehabilitation is completed is a certified historic structure;

(iii) is expended in compliance with a plan of proposed rehabilitation that has been approved by the Director; and

(iv) is not funded, financed, or otherwise reimbursed by any:

1. State or local grant;

2. grant made from the proceeds of tax-exempt bonds issued by the State, a political subdivision of the State, or an instrumentality of the State or of a political subdivision of the State;

3. State tax credit other than the tax credit under this section; or

4. other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

[(15)] (16) (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:

1. 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; or

2. a small commercial project.

[(16)] (17) (i) “Small commercial project” means a rehabilitation of a structure primarily used for commercial, income-producing purposes if the qualified rehabilitation expenditures do not exceed \$500,000.

(ii) “Small commercial project” includes a structure that is used for both commercial and residential rental purposes.

(iii) “Small commercial project” does not include a structure that is used solely for residential purposes.

[(17)] (18) “Smart Growth Subcabinet” means the Smart Growth Subcabinet established under Title 9, Subtitle 14 of the State Government Article.

[(18)] (19) “State unit” has the meaning stated in § 11–101 of the State Government Article.

[(19)] (20) “Substantial rehabilitation” means rehabilitation of a structure for which the qualified rehabilitation expenditures, during the 24–month period selected by the individual or business entity ending with or within the taxable year, exceed:

(i) for single–family, owner–occupied residential property, \$5,000;
or

(ii) for all other property, the greater of:

1. the adjusted basis of the structure; or
2. \$25,000.

(b) (1) The Director, in consultation with the Smart Growth Subcabinet, shall adopt regulations to:

(i) establish procedures and standards for certifying historic structures and rehabilitations under this section;

(ii) for commercial rehabilitations, establish an application process for the award of initial credit certificates for heritage structure rehabilitation tax credits consistent with the requirements of this subsection;

(iii) for commercial rehabilitations, establish criteria, consistent with the requirements of this subsection, for evaluating, comparing, and rating plans of proposed rehabilitation that have been determined by the Director to conform with the rehabilitation standards of the United States Secretary of the Interior;

(iv) for commercial rehabilitations, establish a competitive award process for the award of initial credit certificates for heritage structure rehabilitation tax credits that favors the award of tax credits for rehabilitation projects that:

1. are consistent with and promote current growth and development policies and programs of the State;

2. are located in areas targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives;

3. are located in areas where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in Title 5, Subtitle 7B of this article, and the appropriate local governing body or the planning board or commission, if designated by the local governing body, has certified to the Smart Growth Subcabinet those regulatory streamlining or other development incentives; and

4. include affordable and workforce housing options;

(v) for commercial rehabilitations, establish procedures to announce to the public the selection of a rehabilitation project for an award of an initial credit certificate not later than 60 days after the selection is made;

(vi) for commercial rehabilitations, determine whether the certified rehabilitation is a high performance building **OR QUALIFIES AS AFFORDABLE HOUSING**;

(vii) for commercial rehabilitations, establish a required external marker or, at a minimum, an internal marker for the rehabilitation project that identifies that the rehabilitation was funded by heritage structure rehabilitation tax credits;

(viii) as provided in paragraph (7) of this subsection, charge reasonable fees to certify historic structures and rehabilitations under this subtitle;

(ix) for commercial rehabilitations, require documentation that the applicant has ownership or site control of the structure in order to demonstrate the ability to meet the requirement to begin work as required under subsection (c)(3)(i)1 of this section;

(x) for commercial rehabilitations, provide a time limit for approval of the additional tax credit for high performance buildings **OR AFFORDABLE HOUSING** provided for in subsection (c)(1)(ii) of this section; ~~and~~

~~**(XI) FOR COMMERCIAL REHABILITATIONS, ESTABLISH PROCEDURES FOR THE TRANSFER OF THE TAX CREDIT UNDER SUBSECTION (C)(6) OF THIS SECTION; AND**~~

~~(xi)~~ ~~**(XII)**~~ for small commercial projects:

1. establish conditions regarding the percentage of the structure that may be used for residential rental purposes if the structure is used for both commercial and residential rental purposes; and

2. specify criteria and procedures for the issuance of initial credit certificates under subsection (e) of this section.

(2) The Director may not certify that a rehabilitation is a certified rehabilitation eligible for a tax credit provided under this section unless the individual or business entity seeking certification states under oath the amount of the individual's or business entity's qualified rehabilitation expenditures.

(3) Each year, the Director may accept applications for approval of plans of proposed commercial rehabilitations and for the award of initial credit certificates for the fiscal year that begins July 1 of that year.

(4) (i) Except as provided in subsection (e) of this section, a small commercial project shall be treated as a single-family, owner-occupied residential property, including the limitation on the amount of the tax credit provided in subsection (c)(2)(ii) of this section.

(ii) A small commercial project is subject to the credit recapture provision in subsection (f) of this section.

(5) (i) For commercial rehabilitations, the Director may not accept an application for approval of plans of proposed rehabilitation if:

1. any substantial part of the proposed rehabilitation work has begun; or
2. the applicant for a commercial rehabilitation has previously submitted three or more applications for commercial rehabilitations with total proposed rehabilitations exceeding \$500,000 in that year.

(ii) For commercial rehabilitations, the Director may accept an application for approval of plans of a proposed rehabilitation for which a substantial part of the proposed rehabilitation work has begun if the rehabilitation work has been approved under the federal historic tax credit.

(6) Except as provided in subsection (d)(3)(iii) of this section, not more than 60% of the total credit amounts under initial credit certificates issued for any fiscal year may be issued for projects in a single county or Baltimore City.

(7) (i) The Director shall adopt regulations to charge reasonable fees to certify historic structures and rehabilitations under this section which shall include:

1. a minimum fee for the second phase of the application process;
2. for a commercial rehabilitation project, a final fee that may not exceed 3% of the amount of the award of an initial credit certificate; and

3. for any other rehabilitation project, 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 or final qualified rehabilitation expenditures for the rehabilitation.

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

(iii) If a fee charged for a commercial rehabilitation is not received by the Trust within 90 days after the Trust sends notice to the applicant that the fee is due, the Trust may not:

1. issue an initial credit certificate for the commercial rehabilitation; or

2. accept an application for a commercial rehabilitation from the applicant during the 3 fiscal years following the fiscal year in which the fee was not received.

(iv) The proceeds from the fees 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.

(v) 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.

(8) IF AN INITIAL CREDIT CERTIFICATE EXPIRES OR IS OTHERWISE UNCLAIMED AS PROVIDED FOR UNDER THIS SECTION, THE AMOUNT OF THE CREDIT CERTIFICATE SHALL:

(I) REMAIN IN THE RESERVE FUND ESTABLISHED UNDER SUBSECTION (D) OF THIS SECTION; AND

(II) 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) For a commercial rehabilitation, an individual or business entity may claim an additional tax credit in an amount equal to 5% of the individual's or business entity's qualified rehabilitation expenditures if the certified rehabilitation is a certified historic structure and:

1. **IS** a high performance building; **OR**
2. **QUALIFIES AS AFFORDABLE HOUSING.**

(2) (i) For any commercial rehabilitation, the State tax credit allowed under this section may not exceed the lesser of:

1. \$3,000,000; or
2. the maximum amount specified under the initial credit certificate issued for the rehabilitation.

(ii) For a rehabilitation other than a commercial rehabilitation, the State tax credit allowed under this section may not exceed \$50,000.

(iii) For the purposes of the limitation under subparagraph (i) of this paragraph, the following shall be treated as a single commercial rehabilitation:

1. the phased rehabilitation of the same structure or property; **OR**
2. the separate rehabilitation of different components of the same structure or property]; or
3. the rehabilitation of multiple structures that are functionally related to serve an overall purpose].

(3) (i) Subject to subparagraph (ii) of this paragraph, the initial credit certificate for a proposed commercial rehabilitation shall expire and the credit under this section may not be claimed if:

1. within 18 months after the initial credit certificate was issued, the applicant has not notified the Trust, in writing, that the commercial rehabilitation has begun;
2. the commercial rehabilitation is not completed within 30 months after the initial credit certificate was issued; or
3. the applicant does not submit to the Trust a request for final certification of the commercial rehabilitation within 12 months after:

A. the 30-month expiration date under subparagraph (i)2 of this paragraph; or

B. the date to which the Director postponed the expiration date under subparagraph (ii) of this paragraph.

(ii) For reasonable cause, the Director may postpone:

1. the 30-month expiration date under subparagraph (i)2 of this paragraph for an initial credit certificate for a commercial rehabilitation; or

2. if the commercial rehabilitation was completed prior to the expiration of the initial credit certificate, the deadline under subparagraph (i)3 of this paragraph for submission of a request for final certification.

(4) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the business entity or the individual for that taxable year, the individual or business entity may claim a refund in the amount of the excess.

(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.

~~(6) (i) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DIRECTOR UNDER THIS SECTION, THE AMOUNT OF THE STATE CREDIT ALLOWED, BUT NOT USED, FOR COMMERCIAL REHABILITATIONS UNDER THIS SECTION MAY BE TRANSFERRED IN WHOLE OR IN PART TO ANY INDIVIDUAL OR BUSINESS ENTITY.~~

~~(ii) 1. FOR THE TAXABLE YEAR OF ANY TRANSFER UNDER THIS PARAGRAPH, THE TRANSFEREE UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH MAY APPLY THE TAX CREDIT AGAINST THE TOTAL TAX OTHERWISE PAYABLE BY THE TRANSFEREE IN THAT TAXABLE YEAR.~~

~~2. IF THE TAX CREDIT EXCEEDS THE STATE INCOME TAX OF THE TRANSFEREE IN ANY TAXABLE YEAR, THE TRANSFEREE:~~

~~A. MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS; OR~~

~~B. TRANSFER THE REMAINDER OF THE TAX CREDIT TO ANY INDIVIDUAL OR BUSINESS ENTITY.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 26, 2018.