

# SENATE BILL 967

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CF HB 1454

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By: **Senators Ferguson, Eckardt, Madaleno, Middleton, and Young Young, McFadden, and Muse**

Introduced and read first time: February 5, 2018

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

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

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 5A–303(a) through (c)  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2017 Supplement)

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

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**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.



## Article – State Finance and Procurement

2 5A-303.

3 (a) (1) In this section the following words have the meanings indicated.

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

9 [ (2) ] (3) “Business entity” means:

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

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

16                           [(4)] (5) (i)    “Certified historic structure” means a structure that is  
17 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  
3. eligible to be eligible for listing on the National Register of Historic

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

B. certified by the Director as contributing to the significance

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

1                   **[(5)] (6)**    “Certified rehabilitation” means a completed rehabilitation of a  
2 certified historic structure that the Director certifies is a substantial rehabilitation in  
3 conformance with the rehabilitation standards of the United States Secretary of the  
4 Interior.

5                   **[(6)] (7)**    (i)    “Commercial rehabilitation” means a rehabilitation of a  
6 structure other than a single-family, owner-occupied residence.

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

9                   **[(7)] (8)**    “Director” means the Director of the Maryland Historical Trust.

10                  **[(8)] (9)**    “Financial assistance” means action by the State or a State unit  
11 to award grants, loans, loan guarantees, or insurance to a public or private entity to finance,  
12 wholly or partly, a project that involves or may result in building construction, building  
13 alteration, or land disturbance.

14                  **[(9)] (10)**    “High performance building” means a building that:

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

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

22                  **[(10)] (11)** (i)    “Historic property” means a district, site, building,  
23 structure, monument, or object significant to:

24                   1.    the prehistory or history of the State; or

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

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

29                  **[(11)] (12)**    “Local historic district” means a district that the governing body  
30 of a county or municipal corporation, or the Mayor and City Council of Baltimore, has  
31 designated under local law as historic.

32                  **[(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  
d certified by the Director as contributing to the significance of the

5                            [(13)] (14) "Political subdivision" means a county or municipal corporation  
6 of the State.

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

(i) is properly chargeable to a capital account;

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

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

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

1. State or local grant;

2. a grant made from the proceeds of tax-exempt bonds issued by a 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

4. other financial assistance from the State or a political  
other than a loan that must be repaid at an interest rate that is  
rate on general obligation bonds issued by the State at the most  
the time the loan is made.

25                   **[(15)] (16)** (i)    “Single-family, owner-occupied residence” means a  
26 structure or a portion of a structure occupied by the owner and the owner’s immediate  
27 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  
housing corporation, as defined in § 5-6B-01 of the Corporations  
and leased for exclusive occupancy to, and occupied by, a member  
or member's immediate family under a proprietary lease; or

2. a small commercial project.

2                   [(16)] (17) (i)    “Small commercial project” means a rehabilitation of a  
3 structure primarily used for commercial, income-producing purposes if the qualified  
4 rehabilitation expenditures do not exceed \$500,000.

5 (ii) "Small commercial project" includes a structure that is used for  
6 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.

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

13                           **[(19)] (20)** “Substantial rehabilitation” means rehabilitation of a structure  
14 for which the qualified rehabilitation expenditures, during the 24-month period selected  
15 by the individual or business entity ending with or within the taxable year, exceed:

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

1. the adjusted basis of the structure; or

2. \$25,000.

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

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

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

15 4. include affordable and workforce housing options;

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

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

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

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

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

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

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

[(xi)] (XII) for small commercial projects:

(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.

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

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

1. a minimum fee for the second phase of the application

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

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

## 1. IS a high performance building; OR

## 2. QUALIFIES AS AFFORDABLE HOUSING.

13 1. \$3,000,000; or

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

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

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

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

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

25 (II) 1. FOR THE TAXABLE YEAR OF ANY TRANSFER UNDER  
26 THIS PARAGRAPH, THE TRANSFeree UNDER SUBPARAGRAPH (I) OF THIS  
27 PARAGRAPH MAY APPLY THE TAX CREDIT AGAINST THE TOTAL TAX OTHERWISE  
28 PAYABLE BY THE TRANSFeree IN THAT TAXABLE YEAR.

1                   **B. TRANSFER THE REMAINDER OF THE TAX CREDIT TO**  
2 **ANY INDIVIDUAL OR BUSINESS ENTITY.**

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
4 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.