

SENATE BILL 967

Q3

8lr2055
CF HB 1454

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

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:

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 **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:

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

11 or

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

14 **[(3)] (4)** “Certified heritage area” has the meaning stated in § 13-1101 of
 15 the Financial Institutions Article.

16 **[(4)] (5)** (i) “Certified historic structure” means a structure that is
 17 located in the State and is:

18 1. listed in the National Register of Historic Places;

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

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

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

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

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

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:

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

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

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

7 **[(14)] (15)** “Qualified rehabilitation expenditure” means any amount that:

8 (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:

15 1. State or local grant;

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

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

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

28 (ii) “Single-family, owner-occupied residence” includes:

29 1. a residential unit in a cooperative project owned by or
30 leased to a cooperative housing corporation, as defined in § 5-6B-01 of the Corporations
31 and Associations Article, and leased for exclusive occupancy to, and occupied by, a member
32 of the corporation and the member’s immediate family under a proprietary lease; or

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:

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

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

9 3. are located in areas where the political subdivision has
10 implemented regulatory streamlining or other development incentives that foster
11 redevelopment and revitalization in priority funding areas, as defined in Title 5, Subtitle
12 7B of this article, and the appropriate local governing body or the planning board or
13 commission, if designated by the local governing body, has certified to the Smart Growth
14 Subcabinet those regulatory streamlining or other development incentives; and

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**

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

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

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

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

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

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

18 (ii) A small commercial project is subject to the credit recapture
19 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:

22 1. any substantial part of the proposed rehabilitation work
23 has begun; or

24 2. the applicant for a commercial rehabilitation has
25 previously submitted three or more applications for commercial rehabilitations with total
26 proposed rehabilitations exceeding \$500,000 in that year.

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

31 (6) Except as provided in subsection (d)(3)(iii) of this section, not more than
32 60% of the total credit amounts under initial credit certificates issued for any fiscal year
33 may be issued for projects in a single county or Baltimore City.

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

1 1. a minimum fee for the second phase of the application
2 process;

3 2. for a commercial rehabilitation project, a final fee that
4 may not exceed 3% of the amount of the award of an initial credit certificate; and

5 3. for any other rehabilitation project, a final fee that may
6 not exceed 3% of the amount of the credit for which the rehabilitation would be eligible
7 based on the greater of the estimated or final qualified rehabilitation expenditures for the
8 rehabilitation.

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

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

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

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

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.

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

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:**

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

32 **(II) INCREASE THE AMOUNT OF THE INITIAL CREDIT**
33 **CERTIFICATES THAT THE TRUST MAY ISSUE FOR THE FOLLOWING FISCAL YEAR.**

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

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

9 1. IS a high performance building; **OR**

10 2. **QUALIFIES AS AFFORDABLE HOUSING.**

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

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

14 2. the maximum amount specified under the initial credit
15 certificate issued for the rehabilitation.

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:

20 1. the phased rehabilitation of the same structure or
21 property; **OR**

22 2. the separate rehabilitation of different components of the
23 same structure or property]; or

24 3. the rehabilitation of multiple structures that are
25 functionally related to serve an overall purpose].

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:

29 1. within 18 months after the initial credit certificate was
30 issued, the applicant has not notified the Trust, in writing, that the commercial
31 rehabilitation has begun;

1 2. the commercial rehabilitation is not completed within 30
2 months after the initial credit certificate was issued; or

3 3. the applicant does not submit to the Trust a request for
4 final certification of the commercial rehabilitation within 12 months after:

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

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

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

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

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

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.

18 (5) The State credit allowed under this section may be allocated among the
19 partners, members, or shareholders of an entity in any manner agreed to by those persons
20 in writing.

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

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.**

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

31 **A. MAY CLAIM A REFUND IN THE AMOUNT OF THE**
32 **EXCESS; OR**

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:

Governor.

President of the Senate.

Speaker of the House of Delegates.