

# SENATE BILL 583

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9lr2318  
CF 9lr2895

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By: **Senator Ferguson**

Introduced and read first time: February 4, 2019

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Affordable Housing Credit**

3 FOR the purpose of allowing certain owners of qualified developments to claim a credit  
4 against the State income tax; prohibiting a credit in a taxable year from exceeding  
5 the owner's State income tax for the taxable year; prohibiting credits claimed by  
6 owners of a pass-through entity from exceeding a certain amount; allowing unused  
7 credits to be claimed in subsequent taxable years under certain circumstances;  
8 authorizing an owner of real property to submit a certain application for a tax credit  
9 certificate to the Department of Housing and Community Development; requiring  
10 the Secretary of Housing and Community Development to approve certain  
11 applications; requiring the Secretary to issue certain tax credit certificates to  
12 approved applicants in a certain manner; requiring a copy of a certificate to be  
13 attached to an income tax return on which the credit is claimed; specifying the value  
14 of tax credit certificates that may be issued in a fiscal year; prohibiting the Secretary  
15 from issuing a tax credit certificate that exceeds a certain amount; prohibiting the  
16 carryforward of a tax credit if the property ceases to be a qualified development;  
17 providing for the recapture of the tax credit under certain circumstances; defining  
18 certain terms; requiring the Department to submit a certain report; requiring the  
19 Comptroller to adopt certain regulations; and generally relating to an income tax  
20 credit for certain affordable housing development.

21 BY adding to  
22 Article – Tax – General  
23 Section 10–749  
24 Annotated Code of Maryland  
25 (2016 Replacement Volume and 2018 Supplement)

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

28 **Article – Tax – General**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-749.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF HOUSING AND  
5 COMMUNITY DEVELOPMENT.

6 (3) "MEMBER" MEANS:

7 (I) A SHAREHOLDER OF AN S CORPORATION;

8 (II) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP,  
9 LIMITED PARTNERSHIP, OR LIMITED LIABILITY PARTNERSHIP;

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

11 (IV) A BENEFICIARY OF A BUSINESS TRUST OR STATUTORY  
12 TRUST.

13 (4) "OWNER" MEANS A CORPORATION OR A MEMBER OF A  
14 PASS-THROUGH ENTITY THAT HAS AN OWNERSHIP INTEREST IN A QUALIFIED  
15 DEVELOPMENT.

16 (5) "PASS-THROUGH ENTITY" MEANS:

17 (I) AN S CORPORATION;

18 (II) A PARTNERSHIP;

19 (III) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A  
20 CORPORATION UNDER THIS TITLE; OR

21 (IV) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT  
22 TAXED AS A CORPORATION UNDER THIS TITLE.

23 (6) "QUALIFIED DEVELOPMENT" MEANS A LOW-INCOME HOUSING  
24 PROJECT, AS SPECIFIED UNDER § 42(G) OF THE INTERNAL REVENUE CODE, THAT  
25 IS:

26 (I) FINANCED WITH TAX EXEMPT BONDS AND LOCATED IN THE  
27 STATE;

1                   (II) SUBJECT TO A RECORDED RESTRICTIVE COVENANT  
2 REQUIRING THE PROPERTY TO BE MAINTAINED AND OPERATED AS LOW-INCOME  
3 HOUSING; AND

4                   (III) IN COMPLIANCE WITH TITLE VIII OF THE FEDERAL CIVIL  
5 RIGHTS ACT OF 1968.

6                   (7) "SECRETARY" MEANS THE SECRETARY OF HOUSING AND  
7 COMMUNITY DEVELOPMENT.

8                   (B) (1) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2019,  
9 BUT BEFORE JANUARY 1, 2024, THE OWNER OF A QUALIFIED DEVELOPMENT MAY  
10 CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT UP TO THE  
11 AMOUNT STATED IN THE TAX CREDIT CERTIFICATE ISSUED BY THE SECRETARY  
12 UNDER THIS SECTION.

13                   (2) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS  
14 SECTION MAY NOT EXCEED THE OWNER'S STATE INCOME TAX FOR THAT TAXABLE  
15 YEAR.

16                   (3) THE SUM OF ALL CREDITS CLAIMED BY MEMBERS OF A  
17 PASS-THROUGH ENTITY IN A TAXABLE YEAR MAY NOT EXCEED THE AMOUNT  
18 SPECIFIED IN THE TAX CREDIT CERTIFICATE.

19                   (4) EXCEPT AS PROVIDED UNDER SUBSECTION (E) OF THIS SECTION,  
20 IF THE CREDIT OTHERWISE ALLOWABLE UNDER PARAGRAPH (1) OF THIS  
21 SUBSECTION EXCEEDS THE LIMIT UNDER PARAGRAPH (2) OF THIS SUBSECTION, A  
22 TAXPAYER MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME TAX  
23 FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

24                   (I) THE FULL AMOUNT OF THE EXCESS IS USED; OR

25                   (II) THE EXPIRATION OF THE NINTH TAXABLE YEAR AFTER THE  
26 TAXABLE YEAR IN WHICH THE TAX CREDIT CERTIFICATE WAS ISSUED.

27                   (C) (1) AN OWNER OF REAL PROPERTY MAY SUBMIT AN APPLICATION  
28 FOR A TAX CREDIT CERTIFICATE TO THE DEPARTMENT.

29                   (2) THE SECRETARY SHALL APPROVE AN APPLICATION IF THE  
30 APPLICATION DEMONSTRATES THAT THE REAL PROPERTY IS A QUALIFIED  
31 DEVELOPMENT.

1           **(3) THE SECRETARY SHALL ISSUE TAX CREDIT CERTIFICATES, IN**  
2 **ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, TO ALL APPROVED**  
3 **APPLICANTS ON A FIRST-COME, FIRST-SERVED BASIS.**

4           **(4) AN OWNER CLAIMING A CREDIT SHALL ATTACH A COPY OF THE**  
5 **CERTIFICATE TO THE INCOME TAX RETURN ON WHICH THE OWNER CLAIMS THE**  
6 **CREDIT.**

7           **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**  
8 **THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS**  
9 **TOTALING MORE THAN \$8,000,000 IN EACH OF FISCAL YEARS 2020 THROUGH 2023.**

10           **(2) IF THE CREDIT AMOUNTS UNDER THE TAX CREDIT CERTIFICATES**  
11 **ISSUED BY THE SECRETARY TOTAL LESS THAN THE MAXIMUM PROVIDED UNDER**  
12 **PARAGRAPH (1) OF THIS SUBSECTION IN ANY FISCAL YEAR, ANY EXCESS AMOUNT**  
13 **MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES**  
14 **THROUGH FISCAL YEAR 2023.**

15           **(3) THE SECRETARY MAY NOT ISSUE A TAX CREDIT CERTIFICATE IN**  
16 **AN AMOUNT THAT WOULD RESULT IN A QUALIFIED DEVELOPMENT RECEIVING A**  
17 **PERCENTAGE OF THE AVAILABLE CREDITS UNDER PARAGRAPH (1) OF THIS**  
18 **SUBSECTION THAT IS GREATER THAN THE PERCENTAGE OF AVAILABLE FEDERAL**  
19 **HOUSING CREDITS THE QUALIFIED PROPERTY IS ELIGIBLE FOR UNDER § 42(M) OF**  
20 **THE INTERNAL REVENUE CODE.**

21           **(E) (1) IF A PROPERTY FOR WHICH AN OWNER OF A QUALIFIED**  
22 **DEVELOPMENT RECEIVED A TAX CREDIT CERTIFICATE CEASES TO BE A QUALIFIED**  
23 **DEVELOPMENT, THE OWNER MAY NOT CARRY FORWARD ANY UNUSED TAX CREDITS**  
24 **UNDER SUBSECTION (B) OF THIS SECTION FOR ANY TAXABLE YEAR IN WHICH THE**  
25 **PROPERTY HAS CEASED TO BE A QUALIFIED DEVELOPMENT.**

26           **(2) THE STATE INCOME TAX SHALL BE RECAPTURED IF, WITHIN 10**  
27 **YEARS AFTER THE YEAR FOR WHICH A TAX CREDIT CERTIFICATE IS ISSUED, THE**  
28 **PROPERTY CEASES TO BE A QUALIFIED DEVELOPMENT.**

29           **(F) ON OR BEFORE JULY 1 EACH YEAR, THE DEPARTMENT SHALL REPORT**  
30 **TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT**  
31 **ARTICLE, THE GENERAL ASSEMBLY ON:**

32           **(1) THE AMOUNT OF TAX CREDIT CERTIFICATES ISSUED DURING THE**  
33 **PRIOR FISCAL YEAR;**

34           **(2) THE AMOUNT OF TAX CREDIT CERTIFICATES BEING CARRIED**

1 FORWARD FROM PRIOR FISCAL YEARS; AND

2 (3) THE IMPACT THE CREDIT HAS HAD IN INCREASING THE NUMBER  
3 OF QUALIFIED DEVELOPMENTS IN THE STATE.

4 (G) THE COMPTROLLER SHALL ADOPT REGULATIONS TO SPECIFY  
5 PROCEDURES FOR A MEMBER OF A PASS-THROUGH ENTITY TO CLAIM THE CREDIT  
6 UNDER THIS SECTION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
8 1, 2019.