

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 741

(Senator Hester, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Secretary of Planning – Adaptive Reuse of Historic Properties – Study

This bill requires the Secretary of Planning to contract with a consultant to conduct a study on the adaptive reuse of historic properties located within the State that are or were owned by the State or the federal government. The work of the consultant is guided by a steering committee. A final report is due by December 15, 2019, and must provide recommendations for an historic resource package to be considered by the Secretary of Planning and the General Assembly for the 2020 legislative session. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by up to \$75,000 in FY 2020 only. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Contract to Conduct the Study

The bill requires the Secretary of Planning to contract with a consultant to conduct a study on the adaptive reuse of historic properties located within the State that are or were owned by the State or the federal government. The consultant contracted to conduct the study must

be an independent, nongovernmental party with multidiscipline experience and knowledge in the areas of historic preservation, construction and development, economic development, and stakeholder engagement. The Secretary may use up to \$75,000 to pay for the costs of the study.

Steering Committee

The work of the consultant must be guided by a steering committee consisting of the Secretary (or the Secretary's designee), one member of the Senate, one member of the House of Delegates, one representative of the private sector with experience in historic preservation, and one representative of a nonprofit organization who has experience in historic preservation.

Study Requirements

Subject to the discretion of the Secretary, the study:

- must focus on complexes or campuses of multiple buildings that (1) are or were owned by the federal government or the State and (2) consist of at least three discrete buildings, which may be interconnected, that encompass at least 50,000 square feet in total gross floor area located on at least three acres of land; and
- may not include farms and other properties that are primarily used for agricultural purposes.

The study must:

- identify key success factors and primary obstacles to the preservation and redevelopment of historic properties, including how major components contribute to the delicate cost-value balance of a project, including (1) structural conditions; (2) environmental and health considerations; (3) local community economic development goals; (4) prevailing market real estate conditions; (5) material, labor, and other regulatory requirements; and (6) available tax credits and other incentives;
- develop a historic resource package of existing, new, and altered enticements, programs, and resources that could be applied to support projects, such as the preservation of campuses and complexes described above, including (1) existing federal, State, and local governmental and private programs and resources that have been used or can be used to support projects; (2) potential new support programs that could be created to help support projects; and (3) regulatory changes that might be effective in balancing financial, fiscal, economic development, preservation, and local community development goals;

- develop three case studies of historic complexes or campuses that are not yet preserved or redeveloped that (1) exemplify how the major components outlined above contribute to the delicate cost-value balance of the project and (2) demonstrate how the historic resource package developed as described above could positively impact the redevelopment of the historic complexes or campuses; and
- provide recommendations, based on the above components of the study, for a historic resource package to be considered by the Secretary and the General Assembly for the 2020 legislative session.

Reporting

By September 1, 2019, the consultant contracted to conduct the study must submit a draft report of its findings and recommendations to the Secretary and the steering committee. By December 15, 2019, the consultant must submit a final report of its findings and recommendations to the Secretary, and the Secretary must forward the report to the Governor and the General Assembly.

Current Law/Background:

Historic Preservation, In General

Various State law provisions address historic preservation in the State, through State and local regulation and incentives, under statements of purpose describing the value of historic preservation to community life and development in the State. At the State level, historic preservation efforts are led by the Maryland Historical Trust (MHT), within the Maryland Department of Planning (MDP), which also serves as the State Historic Preservation Office charged with implementing federal preservation programs at the State level. As described by MDP, MHT administers a wide variety of research, protection, and financial assistance programs that aid in both government and nongovernmental preservation-related activities. Among other things, MHT administers the Historic Preservation Easement Program and financial assistance programs that include the Maryland Heritage Structure Rehabilitation Tax Credit Program, the Maryland Heritage Areas Program, and the African American Heritage Preservation Program.

Historic Preservation Easement Program

MHT indicates that a preservation easement is a type of conservation easement – a private legal right given by the owner of a property to a qualified easement-holding organization or governmental entity by written contract to protect a property with historic, architectural, or archeological significance in perpetuity. MHT acquires easements in a variety of ways, including (1) donation by the property owner; (2) as part of a transfer of State or federal

property into private ownership; and (3) as a condition of State financing (capital grants, bond bills, or loans) for construction projects that affect historic and cultural properties. Typically, owners of easement properties agree to relinquish partial development rights, to maintain the property, to provide limited public access, and to obtain prior approval for any changes or alterations.

Uses and Owners of Easements

MHT indicated in December 2018, that it holds 706 preservation instruments, of which 679 are perpetual preservation easements and 27 are other instruments administered within MHT's overall easement portfolio. The instruments cover more than 924 properties (in a number of instances, a single instrument covers several properties) and 7,720 acres of land.

The largest categories of use of easement properties are single-family residential use (39% of easement properties) and museum use (18%), with the remainder spread over various categories of use. The owners of easements vary among individuals (39%), nonprofit organizations (21%), local governments (19%), business entities (11%), religious institutions (5%), and others (2%). For additional information on MHT's easement program, see [*Maryland Historical Trust Historic Preservation Easement Program: Report to the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee \(December 1, 2018\)*](#).

Requirements, Regulations, and Processes Applicable to Easement Properties

MHT is given various authority and duties in statute, including to carry out programs and activities to protect, preserve, and encourage the preservation of historic properties. MHT's December 2018 report describes the obligations and limitations associated with an easement, including:

- Review of proposed work – With limited exceptions, any alterations to the portion of the property protected under the easement require the prior written approval of MHT's director, through a process that includes assessment of the work's compliance with the U.S. Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Secretary of the Interior's standards), which are nationally accepted guidelines for the appropriate treatment of historic buildings.
- Inspections – MHT periodically inspects easement properties to assess compliance with the terms of the easement, and in particular the requirements for (1) prior MHT approval of any changes to the property and (2) maintenance of the property in good, clean, and safe condition.
- Limitations on Easement Modifications – Requests to modify an easement go through a review and approval process that includes requirements that (1) the modification is permitted under current law, is consistent and compatible with the

intent and purposes of the original easement terms, and is in conformance with the Secretary of the Interior's standards; and (2) the owner can demonstrate that the modification will increase or prolong the protection, maintenance, and useful life of the property.

State Expenditures: General fund expenditures increase by up to \$75,000 in fiscal 2020 only for the costs of the study required under the bill. It is assumed, for the purposes of this fiscal and policy note, that costs are incurred in fiscal 2020, though work may begin and some costs may end up being incurred, in fiscal 2019.

Additional Information

Prior Introductions: None.

Cross File: HB 1403 (Delegates Kittleman and Miller) - Rules and Executive Nominations.

Information Source(s): Maryland Department of Planning; Department of Legislative Services

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