

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1403 (Delegates Kittleman and Miller)
 Rules and Executive Nominations

Maryland Historical Trust - Properties Subject to Historic Preservation
 Easements - Waiver Process

This bill requires the Maryland Historical Trust (MHT) to develop a specified waiver process, applicable in exceptional circumstances, for properties subject to a historic preservation easement held by the trust.

Fiscal Summary

State Effect: General fund expenditures increase by \$87,800 in FY 2020. Future year expenditures are annualized and reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	87,800	100,600	103,000	105,500	108,000
Net Effect	(\$87,800)	(\$100,600)	(\$103,000)	(\$105,500)	(\$108,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local governments may experience cost savings from waivers under the bill. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires MHT to develop a process for the waiver, in exceptional circumstances, of requirements, regulations, and processes applicable to a property subject to a historic preservation easement held by the trust. “Exceptional circumstances” exist if (1) the property is subject to repeated flooding or other continuing conditions that have

resulted in damage to the property's infrastructure; (2) there is an urgent need to stabilize historic structures or conduct environmental remediation at the property; (3) the cost of complying with the requirements, regulations, or processes of the trust would exceed the normal cost of an undertaking (a project that involves or may result in building construction, building alteration, or land disturbance) by 20% or more; (4) extraordinary infrastructure costs challenge the viability of an undertaking; or (5) the trust determines that, in the absence of a waiver, the property may become abandoned or dilapidated.

Current Law/Background:

Historic Preservation Easements, In General

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 and (2) 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 \$87,818 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of (1) hiring an easement administrator and (2) contractual services. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

MHT indicates that the easement administrator is needed to manage waiver requests, including conducting easement property site visits, assisting property owners in preparing and submitting data necessary to support the “exceptional circumstances” identified, analyzing and vetting the financial and technical data submitted to support the waiver request, and assisting the Office of the Attorney General with legal work associated with waivers. That workload cannot be absorbed by the existing easement administrator who reviews more than 100 projects per year. Contractual services are expected to be needed for construction management and engineering expertise which MHT staff does not have, to assist with analysis of the associated costs of undertakings for which waivers are requested.

Position	1
Salary and Fringe Benefits	\$52,459
Contractual Services	30,000
Operating Expenses	<u>5,359</u>
Total FY 2020 State Expenditures	\$87,818

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Local Expenditures: Local governments may benefit from the ability to request a waiver from MHT requirements, regulations, and processes due to exceptional circumstances. Baltimore City, for example, indicates that it owns 30 properties subject to historic preservation easements and may experience cost savings.

Small Business Effect: Small businesses may similarly benefit from the ability to request a waiver from MHT requirements and the resulting costs savings and/or business viability.

Additional Information

Prior Introductions: None.

Cross File: SB 741 (Senator Hester) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Planning; Baltimore City; Harford, Montgomery, Talbot, and Wicomico counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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md/lgc

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