

SENATE BILL 978

Q3

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CF HB 862

By: **Senators Hester, Ellis, Guzzone, Hayes, McCray, Salling, and West**

Introduced and read first time: February 3, 2020

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Historic Revitalization Tax Credit – Transferability, Funding, and Extension**
3 **(Historic Revitalization Tax Credit Improvement Act of 2020)**

4 FOR the purpose of making a certain tax credit for commercial rehabilitations under the
5 historic revitalization tax credit program transferable and refundable under certain
6 circumstances; requiring the Director of the Maryland Historical Trust, in
7 consultation with the Smart Growth Subcabinet, to adopt certain regulations;
8 altering the maximum amount of the credit for commercial rehabilitations in certain
9 fiscal years; requiring the Governor, in certain fiscal years, to include in the annual
10 State budget an appropriation of at least a certain amount for the tax credit reserve
11 fund; extending for a certain number of years the termination date of the tax credit;
12 providing for the application of this Act; and generally relating to the historic
13 revitalization tax credit.

14 BY adding to

15 Article – State Finance and Procurement
16 Section 5A–303(b)(1)(xi) and (c)(6)
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – State Finance and Procurement
21 Section 5A–303(b)(1)(xi) and (xii), (c)(2), (d), and (j)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2019 Supplement)

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

26 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5A-303.

2 (b) (1) The Director, in consultation with the Smart Growth Subcabinet, shall
3 adopt regulations to:

4 (XI) FOR COMMERCIAL REHABILITATIONS, ESTABLISH
5 PROCEDURES FOR THE TRANSFER OF THE TAX CREDIT UNDER SUBSECTION (C)(6)
6 OF THIS SECTION;

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

8 1. establish conditions regarding the percentage of the
9 structure that may be used for residential rental purposes if the structure is used for both
10 commercial and residential rental purposes;

11 2. specify criteria for determining whether a certified historic
12 structure is:

13 A. an agricultural structure; or

14 B. a post-World War II structure; and

15 3. specify criteria and procedures for the issuance of initial
16 credit certificates under subsection (e) of this section; and

17 [(xii)] (XIII) specify criteria and procedures for approval of enhanced
18 benefits under this section for Level 1 and Level 2 opportunity zone projects.

19 (c) (2) (i) [For any commercial rehabilitation] **EXCEPT AS PROVIDED IN**
20 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the State tax credit allowed under this
21 section **FOR ANY COMMERCIAL REHABILITATION** may not exceed the lesser of:

22 1. A. \$3,000,000 for any commercial rehabilitation other
23 than a Level 1 or Level 2 opportunity zone project;

24 B. \$3,150,000 for a Level 1 opportunity zone project; or

25 C. \$3,300,000 for a Level 2 opportunity zone project; or

26 2. the maximum amount specified under the initial credit
27 certificate issued for the rehabilitation.

28 (II) **FOR ANY FISCAL YEAR IN WHICH THE GOVERNOR INCLUDES**
29 **IN THE BUDGET BILL AN APPROPRIATION TO THE RESERVE FUND OF AT LEAST**
30 **\$30,000,000 THE STATE TAX CREDIT ALLOWED UNDER THIS SECTION FOR ANY**
31 **COMMERCIAL REHABILITATION MAY NOT EXCEED THE LESSER OF:**

1 **1. \$5,000,000; OR**

2 **2. THE MAXIMUM AMOUNT SPECIFIED UNDER THE**
3 **INITIAL CREDIT CERTIFICATE ISSUED FOR THE REHABILITATION.**

4 **[(ii)] (III)** For a rehabilitation other than a commercial
5 rehabilitation, the State tax credit allowed under this section may not exceed:

6 1. \$50,000 for a rehabilitation other than a Level 1 or Level
7 2 opportunity zone project;

8 2. \$55,000 for a Level 1 opportunity zone project; or

9 3. \$60,000 for a Level 2 opportunity zone project.

10 **[(iii)] (IV)** For the purposes of the [limitation under subparagraph]
11 **LIMITATIONS UNDER SUBPARAGRAPHS (i) AND (II)** of this paragraph, the following shall
12 be treated as a single commercial rehabilitation:

13 1. the phased rehabilitation of the same structure or
14 property; or

15 2. the separate rehabilitation of different components of the
16 same structure or property.

17 **(6) (I) AN INDIVIDUAL OR BUSINESS ENTITY THAT RECEIVES A TAX**
18 **CREDIT CERTIFICATE UNDER THIS SECTION FOR ANY COMMERCIAL**
19 **REHABILITATION MAY, BY WRITTEN INSTRUMENT, TRANSFER ALL OR PART OF THE**
20 **CERTIFIED CREDIT TO ANY OTHER INDIVIDUAL OR BUSINESS ENTITY.**

21 **(II) 1. A TRANSFEREE UNDER SUBPARAGRAPH (I) OF THIS**
22 **PARAGRAPH MAY CLAIM THE TAX CREDIT AMOUNT TRANSFERRED AGAINST THE**
23 **TOTAL TAX OTHERWISE PAYABLE BY THE TRANSFEREE IN THE TAXABLE YEAR**
24 **DURING WHICH THE CREDIT IS TRANSFERRED.**

25 **2. IF THE TAX CREDIT TRANSFERRED UNDER**
26 **SUBPARAGRAPH (I) OF THIS PARAGRAPH EXCEEDS THE TOTAL TAX OTHERWISE**
27 **PAYABLE BY THE TRANSFEREE IN THE TAXABLE YEAR DURING WHICH THE CREDIT**
28 **IS TRANSFERRED, THE TRANSFEREE MAY:**

29 **A. CLAIM A REFUND IN THE AMOUNT OF THE EXCESS; OR**

30 **B. TRANSFER THE EXCESS TO ANY INDIVIDUAL OR**
31 **BUSINESS ENTITY IN THE MANNER AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**

1 **PARAGRAPH.**

2 (d) (1) In this subsection, "Reserve Fund" means the Historic Revitalization
3 Tax Credit Reserve Fund established under paragraph (2) of this subsection.

4 (2) (i) There is a Historic Revitalization Tax Credit Reserve Fund that
5 is a continuing, nonlapsing special fund that is not subject to § 7-302 of this article.

6 (ii) The money in the Fund shall be invested and reinvested by the
7 Treasurer, and interest and earnings shall be credited to the General Fund.

8 (iii) If the fees paid in any fiscal year are less than the directly related
9 administrative costs of operating the Historic Revitalization Tax Credit Program, funds in
10 the Reserve Fund shall be used for the directly related administrative costs of the Program.

11 (3) (i) Subject to the provisions of this subsection, the Director shall
12 issue an initial credit certificate for each commercial rehabilitation for which a plan of
13 proposed rehabilitation is approved and the fees charged under subsection (b)(7)(i) of this
14 section are paid.

15 (ii) An initial credit certificate issued under this subsection shall
16 state the maximum amount of credit under this section for which the commercial
17 rehabilitation may qualify.

18 (iii) 1. Except as otherwise provided in this subparagraph and in
19 subsection (b)(7)(v) of this section, for any fiscal year, the Director may not issue initial
20 credit certificates for credit amounts in the aggregate totaling more than the amount
21 appropriated to the Reserve Fund for that fiscal year in the State budget as approved by
22 the General Assembly.

23 2. If the aggregate credit amounts under initial credit
24 certificates issued in a fiscal year total less than the amount appropriated to the Reserve
25 Fund for that fiscal year as a result of the limitation under subsection (b)(6) of this section,
26 any excess amount may be issued under initial credit certificates for projects in a county or
27 Baltimore City in the same fiscal year, without regard to the limitation under subsection
28 (b)(6) of this section.

29 3. Subject to subsubparagraph 2 of this subparagraph, if the
30 aggregate credit amounts under initial credit certificates issued in a fiscal year total less
31 than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount
32 shall remain in the Reserve Fund and may be issued under initial credit certificates for the
33 next fiscal year.

34 4. For any fiscal year, if funds are transferred from the
35 Reserve Fund under the authority of any provision of law other than paragraph (4) of this
36 subsection, the maximum credit amounts in the aggregate for which the Director may issue
37 initial credit certificates shall be reduced by the amount transferred.

1 5. In each fiscal year, the Director shall estimate the amount
2 of fees to be collected based on the amount appropriated to the Reserve Fund and reserve
3 the difference between the estimated fees and estimated directly related administrative
4 costs of the Program to be used to administer the Program.

5 6. If the reservation of funds to administer the Program
6 under subparagraph 5 of this subparagraph is not necessary to cover the directly related
7 administrative costs of the Program, any excess amount shall remain in the Reserve Fund
8 and may be issued under initial credit certificates for the next fiscal year.

9 (iv) 1. **[For] SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
10 **SUBPARAGRAPH, FOR** each of fiscal years 2018 through **[2024] 2028**, the Governor shall
11 include in the budget bill an appropriation to the Reserve Fund.

12 **2. THE GOVERNOR SHALL INCLUDE IN THE BUDGET**
13 **BILL AN APPROPRIATION TO THE RESERVE FUND OF AT LEAST THE FOLLOWING**
14 **AMOUNTS:**

15 **A. FOR FISCAL YEAR 2022, \$15,000,000;**

16 **B. FOR FISCAL YEAR 2023, \$20,000,000;**

17 **C. FOR FISCAL YEAR 2024, \$25,000,000; AND**

18 **D. FOR FISCAL YEAR 2025, \$30,000,000.**

19 (v) Notwithstanding the provisions of § 7–213 of this article, the
20 Governor may not reduce an appropriation for the Reserve Fund in the State budget as
21 approved by the General Assembly.

22 (vi) The Director may not issue an initial credit certificate for any
23 fiscal year after fiscal year **[2024] 2028**.

24 (4) (i) Except as provided in this paragraph, money appropriated to the
25 Reserve Fund shall remain in the Fund.

26 (ii) 1. Within 15 days after the end of each calendar quarter, the
27 Trust shall notify the Comptroller as to each commercial rehabilitation completed and
28 certified during the quarter:

29 A. the maximum credit amount stated in the initial credit
30 certificate for the project; and

31 B. the final certified credit amount for the project.

1 2. On notification that a project has been certified, the
2 Comptroller shall transfer an amount equal to the maximum credit amount stated in the
3 initial credit certificate for the project from the Reserve Fund to the General Fund.

4 (iii) 1. On or before October 1 of each year, the Trust shall notify
5 the Comptroller as to the maximum credit amount stated in the initial credit certificate for
6 each commercial rehabilitation for which the initial credit certificate has expired under
7 subsection (c)(3) of this section as of the end of the prior fiscal year.

8 2. On notification that the initial credit certificate for a
9 project has expired under subsection (c)(3) of this section, the Comptroller shall transfer an
10 amount equal to the maximum credit amount stated in the initial credit certificate for the
11 project from the Reserve Fund to the General Fund.

12 (j) (1) Subject to the provisions of this subsection, the provisions of this section
13 and the tax credit authorized under this section shall terminate as of July 1, **[2024] 2028**.

14 (2) On and after July 1, **[2024] 2028**:

15 (i) the tax credit authorized under this section may be claimed for:

16 1. a rehabilitation project, other than a commercial
17 rehabilitation, for which an application for approval of a plan of proposed rehabilitation
18 was received by the Director on or before June 30, **[2024] 2028**; or

19 2. a commercial rehabilitation for which an initial credit
20 certificate has been awarded under subsection (d) of this section; and

21 (ii) the Director shall continue to report to the Governor and the
22 General Assembly as required under subsection (i) of this section for as long as any
23 rehabilitation project for which the tax credit may be claimed remains incomplete.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.