

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 429 (Delegate Attar)
Environment and Transportation

Maryland Historical Trust - Arbitration

This bill authorizes arbitration for an unresolved dispute between the Maryland Historical Trust (MHT) and an applicant over a permit, grant, or tax credit application made under Title 5A, Subtitle 3 (“Maryland Historical Trust”) of the State Finance and Procurement Article. The bill establishes (1) procedures for selecting an arbitrator; (2) how arbitrator fees are allocated; and (3) the right to appeal an arbitrator’s decision. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: General and/or special fund expenditures may increase annually beginning in FY 2025. Under one set of assumptions, general/special fund expenditures increase by at least \$25,500 to \$85,000 annually. Revenues are not affected.

Local Effect: Local government finances may be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: MHT or an applicant may request arbitration for an unresolved dispute over an application made under Title 5A, Subtitle 3 of the State Finance and Procurement Article. If arbitration is requested, MHT and the applicant must mutually select an arbitrator; if they are unable to do so, an arbitrator must be selected through the American Arbitration Association in accordance with its procedures. Fees assessed by the arbitrator must be shared equally between MHT and the applicant. A decision of the arbitrator is final

and binding and may be appealed by either MHT or the applicant to the Maryland State Board of Contract Appeals (MSBCA).

“Application” means an application (1) for a permit, grant, or tax credit under Subtitle 3 and (2) made in accordance with specified provisions under Subtitle 3 (§5A-326) for a change or alteration of a property subject to a historic easement.

Current Law:

Maryland Historical Trust and Board of Trustees, In General

MHT is established in State law as a body corporate and an instrumentality of the State, and is given various authority and duties in statute, including to (1) carry out programs and activities to protect, preserve, and encourage the preservation of historic properties; (2) administer programs of financial and technical assistance for historic preservation projects; and (3) make recommendations on the certification and eligibility of historic properties for tax incentives and other programs of public assistance.

Maryland Historical Trust Programs

Programs administered by MHT pursuant to Title 5A, Subtitle 3 of the State Finance and Procurement Article include the following:

- *Historic Preservation Capital Grant Program* – The Historic Preservation Capital Grant Program provides support for preservation-related acquisition and construction projects as well as for architectural, engineering, archaeology, and consulting services needed in the development of construction projects.
- *Historic Preservation Non-Capital Grant Program* – The Historic Preservation Non-Capital Grant Program funds projects for architectural research and survey, which assist in identifying important historic properties and developing a detailed record of their past and present appearance, history, and significance.
- *African American Heritage Preservation Grant Program* – The African American Heritage Preservation Grant Program, administered jointly with the Maryland Commission on African American History and Culture, funds projects to preserve buildings, sites, and communities of historical and cultural significance to the African American experience in Maryland.
- *Historic Revitalization Tax Credit Program* – The Historic Revitalization Tax Credit Program includes the competitive commercial tax credit program, which allows owners of income-producing properties to compete for a State income tax credit (capped at \$5 million) of up to 20% of eligible expenses for substantial rehabilitation projects. Projects with high-performance buildings or low-income

housing, or that are participating in the Opportunity Zone program, may be eligible for enhanced credits. Small commercial and homeowner tax credits are also included under the program.

- *Historic Preservation Easement Program* – The Historic Preservation Easement Program allows MHT to acquire easements on privately owned properties of historic, archaeological, or cultural significance to ensure appropriate maintenance and accessibility to the public. Properties subject to a historic preservation easement typically must receive prior MHT approval before any changes or alterations may be made.
- *Archaeological Research Permits* – MHT issues terrestrial archaeology permits for investigation or any other activity that may affect archeological resources on State-owned or State-controlled land, in any cave, and on certain designated private property. Underwater archaeology permits are also issued for certain types of activities in State waters.

Section 5A-326 of the State Finance and Procurement Article requires specified actions to be taken by State units – with respect to properties they own or control, permits or licenses they issue, or financial assistance they provide – related to the preservation of historic properties.

Maryland Historical Trust Decisions and Appeals

For the historic preservation grant programs, MHT staff make funding recommendations to the MHT board of trustees who, in turn, make funding recommendations to the Secretary of Planning for approval or disapproval. For the African American Heritage Preservation Grant Program, the commission and the MHT board of trustees make funding recommendations to the Secretary of Planning.

For the Historic Revitalization Tax Credit, the director of MHT makes decisions on funding awards, with MHT staff making a determination of whether project work is consistent with the U.S. Secretary of the Interior’s Standards for Rehabilitation, which may be appealed to the MHT director and then to the MHT board of trustees. Similarly, requests to MHT by owners to change or alter properties subject to a historic preservation easement are reviewed and decided by the MHT director, subject to appeal to the MHT board of trustees. Permit applications are reviewed and approved by the MHT director.

Maryland Rules 7-401 – 7-403 – Writ of Mandamus

Maryland Rules 7-401 – 7-403 govern actions for judicial review of a quasi-judicial order or action of an administrative agency where judicial review is not expressly authorized by law, allowing for a person to file a petition for a writ of administrative *mandamus* with a circuit court.

The court may deny the writ of *mandamus* or issue the writ (1) remanding the case for further proceedings or (2) reversing or modifying the decision. The decision may be reversed or modified if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency (1) is unconstitutional; (2) exceeds the statutory authority or jurisdiction of the agency; (3) results from an unlawful procedure; (4) is affected by an error of law; (5) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; (6) is arbitrary or capricious; or (7) is an abuse of its discretion.

Administrative agency means any agency, board, department, district, commission, authority, commissioner, official, or other unit of the State or of a political subdivision of the State.

Maryland State Board of Contract Appeals

MSBCA is an independent agency in the Executive Branch that consists of six full-time members qualified to serve in a quasi-judicial capacity and possessing thorough knowledge of procurement practices and processes. The chairman and other members are appointed to five-year terms by the Governor with the advice and consent of the Senate. MSBCA adjudicates bid protests and contract disputes between State agencies and contractors or vendors doing business with the State. Matters involved in bid protests include the bidding process and other concerns relating to the formation of procurement contracts. Issues in contract disputes include breach, performance, modification, and termination. MSBCA decisions are subject to judicial review.

State Fiscal Effect: General and/or special fund expenditures may increase annually for MHT beginning in fiscal 2025 due to costs of arbitration. The extent of any increase in expenditures cannot be reliably estimated and depends upon the number of requests for arbitration and the costs associated with each arbitration.

For illustrative purposes only, general/special fund expenditures increase by at least \$25,500 to \$85,000 annually beginning in fiscal 2025 if it is assumed that:

- arbitration is requested with respect to 17 applications per fiscal year (which equals 4% of an estimated 422 applications received per fiscal year across the affected programs, consistent with MHT's estimation of the approximate percentage of applications that result in disputes);
- each arbitration involves 6 to 20 billed hours at a rate of at least \$500 per hour; and
- as required by the bill, the cost of the arbitration is shared by MHT and the applicant.

This estimate does not account for American Arbitration Association fees that may need to be paid to determine the arbitrator (starting at \$750 for a list of five arbitrators with credentials that best match criteria specified by the parties).

Assuming the number of appeals to MSBCA pursuant to the bill is relatively limited, the board can handle the appeals with existing resources.

This analysis assumes that arbitration decisions do not materially affect overall budgeted funding for the affected programs.

Local Fiscal Effect: To the extent local government applicants for funding under MHT grant programs request arbitration, local government finances may be affected by the costs of arbitration and any impact arbitration may have on the level of funding otherwise received by the local government applicant under the program in the absence of the bill.

Small Business Effect: Small business applicants for funding or other approvals under MHT programs may meaningfully benefit from the ability to request arbitration.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 43 (Senator Hayes) - Budget and Taxation.

Information Source(s): State Board of Contract Appeals; Maryland Historical Trust; Department of Legislative Services

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