



Maryland
DEPARTMENT OF PLANNING
MARYLAND HISTORICAL TRUST

HEARING DATE: February 21, 2020

BILL NO: HB0862

COMMITTEE: Ways and Means

POSITION: Letter of Information with Amendments

FOR INFORMATION CONTACT: Adam Gruz (410) 767-4613

TITLE:

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

BILL ANALYSIS:

HB862, cross filed with SB978, would extend the life of the Historic Revitalization Tax Credit Program by four years to 2028, and would **require** increased appropriations by the Governor for competitive commercial tax credit awards according to the following schedule: \$15M in FY2022; \$20M in FY23; \$25M in FY24; \$30M in FY25. SB978 also increases the per project cap on competitive commercial tax credit awards up to \$5M in those years when appropriations total \$30M.

In addition, the bill would permit the amount of a competitive commercial tax credit certified by Maryland Historical Trust (MHT) but not claimed for tax purposes by the awardee to be transferred in whole or in part to any individual or business entity. The amount of the transferred tax credit may be used by the transferee either against the total tax otherwise payable by the transferee in that taxable year or, if the credit exceeds the state income tax of the transferee, the transferee may claim a refund in the amount of the excess or transfer the remainder of the tax credit to any individual or business entity.

POSITION AND RATIONALE:

HB862 requires MHT to establish a regulatory framework to govern what certain individuals and businesses can claim when filing State tax returns. Specifically, the bill mandates that MHT, by regulation, establish procedures that would enable an individual or business entity who receives from MHT a certification of a completed commercial rehabilitation to transfer to another all or a portion of the tax credit for which the individual or business entity is entitled as a result of the certification.

Consistent with its statutory purpose and technical expertise, however, MHT's role under the Historic Revitalization Tax Credit statute, §5A-303 of the State Finance & Procurement Article, is to certify historic rehabilitation projects and the amount of qualified expenditures for such projects. Once MHT has certified a rehabilitation and the amount of qualified expenditures, the process of claiming the tax credit for income tax purposes is a tax filing matter over which MHT has no role or authority.

As proposed in SB978, §5A-303(b)(1)(xi) would **require** MHT to establish regulations through which MHT would evaluate and makes decisions related to private third-party agreements and transactions as to who between the parties can claim a tax credit, the amount of the credit, and when the credit can be claimed. These sorts of determinations should more appropriately be reserved to the Comptroller's Office.

There is precedent in the current Historic Revitalization Tax Credit statutory framework for **not** creating this sort of regulatory role for MHT. As currently enacted, the statute permits in §5A-303(c)(5) that the tax credit allowed as a result of MHT certification can be "allocated" among partners, members, or shareholders in "any manner agreed to . . . in writing;" the statute, however, creates no regulatory role for MHT in determining how partners, managers, or shareholders who have allocated a certification amongst themselves might go about claiming the credit on their tax returns. Functionally, the "transfer" of the available credit as proposed in SB978 is no different from the "allocation" permitted under Section 5A-303(c)(5).

MHT recommends the following amendment to the bill:

AMENDMENT No. 1

On page 2, strike in their entirety lines beginning with line 4 down through line 6; in line 7 strike (xii) and substitute (xi); and in line 17 strike (xiii) and substitute (xii).