

SB 43 Testimony.pdf

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Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Wednesday, January 31, 2024

Testimony in Support of Senate Bill 43: Maryland Historical Trust - Disputes

Chairman Guzzone and esteemed members of the Budget and Taxation Committee,

Senate Bill 43, a crucial initiative aimed at ensuring the positive impact of protecting historic sites and properties in the state of Maryland through arbitration. This measure plays a pivotal role in safeguarding the beautiful history of our state.

Senate Bill 43 proposes authorizing arbitration for disputes regarding certain applications for a permit, grant, tax credit, or authorization for a change or alteration of property subject to a historic easement. This requirement is indispensable for ensuring the protection of historic sites in all parts of Maryland.

Arbitration is a consensual, neutral, and confidential procedure that produces a final decision that is easily enforceable and less expensive than a judicial proceeding. Arbitration is beneficial to all parties involved within the Maryland Historical Trust.

This method not only protects and sustains cultural heritage but also fosters economic development, enabling communities (and individuals) to respond to changes from social to economic in a confidential and consensual manner. Decisions made through arbitration are easily enforceable and generally agreeable to all parties.

Historic sites in Maryland possess a rich history and traditions that celebrate our state's achievements and resilience. These sites create a sense of connectedness between Maryland

constituents and their state, as well as among the citizens of our lovely state.

Arbitration is renowned for providing a cost-effective, enforceable agreement between parties, and it brings predictability within a contract. Authorizing the Maryland Historical Trust to use arbitration to resolve disputes helps protect the classical assets of our prepossessing state. A sense of community is developed through the preservation of historical sites.

The history of our state is diverse and encompasses a wide range of cultures that connect to their own history through Maryland's historical sites. This bill seeks to add to the richness of that history and foster a sense of importance for Maryland's historical sites.

Thank you for your attention to this critical matter, and I urge you to support the passage of Senate Bill 43.

Respectfully,

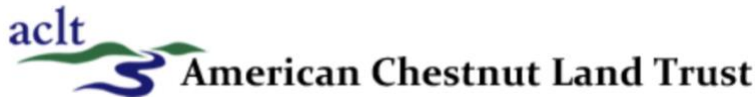


Senator Antonio L. Hayes
40th Legislative District – MD

SB 43 Testimony- Final.pdf

Uploaded by: Ann Jones

Position: UNF



Senate Bill 43 – Maryland Historic Trust – Arbitration

Position: Unfavorable

Hearing: January 31, 2024 – Senate Budget and Taxation Committee

TO: Guy Guzzone, Chair; Jim Rosapepe Vice Chair; and committee members

The undersigned organizations, representatives of Maryland’s land trust community, urge you to reject Senate Bill 43. While this specific legislation deals with historic preservation easements the principals are equally applicable to land preservation.

Easements are perpetual and must remain so. They are also voluntary, and so the landowner makes the choice to permanently protect their land, often at significant financial sacrifice. Land Trusts are the entities that accept the perpetual stewardship of those easements.

Many landowners can recoup some portion of the value of their easement donation by taking a federal income tax deduction. In order to claim this deduction, the easement must precisely follow the rules of the Internal Revenue Service (IRS). Subjecting

easements to arbitration would negate the perpetual nature of the easement and preclude the landowners eligibility for an income tax deduction.

As non-profit, charitable organizations, land trusts are formed to act in the public good. As such they are prohibited from engaging in activities that create an impermissible private benefit. Using arbitration to interpret the terms of a deed of easement clearly opens a window that may increase the value of the property, bestowing impermissible private benefit on a property owner.

Finally, and perhaps most importantly, land trusts are responsible for upholding the wishes of the original easement Grantor. Families make this voluntary, perpetual commitment after careful thought and deliberation. We take the confidence entrusted in us very seriously. If subsequent owners disagree with the easement terms, we have both the legal and moral obligation to ensure that the terms of the initial easement are upheld.

Thank you for your consideration, and we urge an unfavorable vote on SB 43.

American Chestnut Land Trust

Gregory Bowen, Director

Howard County Conservancy

Meg Boyd, Executive Director

Baltimore County Land Trust Alliance

Ann Jones, Director

Harford Land Trust

Kristin Kirkwood, Executive Director

Catoctin Land Trust

David Lillard, Executive Director

Land Preservation Trust

Edward Halle, Vice-President

Cecil Land Trust

Alisa Webb, Executive Director

Lower Shore Land Trust

Matt Helm, Executive Director

Eastern Shore Land Conservancy

Steve Kline, President

Scenic Rivers Land Trust

Sarah Knebel, Executive Director

Forever Maryland

Josh Hastings, Executive Director

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Uploaded by: Elizabeth Hughes

Position: UNF



Maryland DEPARTMENT OF PLANNING

HEARING DATE: January 31, 2024 at 1:00 PM

BILL NO: SB43

COMMITTEE: Budget and Taxation

POSITION: Oppose

FOR INFORMATION CONTACT: Kristin Fleckenstein (410) 767-7243

TITLE: Maryland Historical Trust - Arbitration

BILL ANALYSIS:

SB43 would allow an applicant for an MHT permit, grant, or tax credit to seek arbitration to resolve disputes between MHT and the applicant at any step in the permit, grant, or tax credit decision making process. Fees resulting from the arbitration are to be divided equally between MHT and the applicant. The provision would apply to applicants requesting approval of alterations to easement properties as well.

POSITION AND RATIONALE:

MDP is opposed to the bill because arbitration will disrupt the agency's ability to administer its programs in a manner consistent with legislative intent and because applicants to MHT programs already have access to dispute resolution mechanisms that allow them to challenge final decisions of the agency.

1. Arbitration creates an inequitable and unpredictable application environment for all applicants.

Like any other state agency, administration of a permit, tax credit, grant or easement program requires MHT to make myriad decisions based on the governing provisions in state law, regulation, and program guidelines. As an example - for grant programs, there are at least 10 decision points in the application review process before a final decision on an application may be made. MHT reviewed 189 grant applications in the past year. This bill thus would provide over 1800 opportunities for challenges to MHT decisions on grant applications alone. Similarly, for the historic tax credit program, there are 11 decision points in the application review process. MHT reviewed 239 historic tax credit applications in the past year meaning this bill creates approximately 2600 opportunities to challenge MHT decisions.

By opening up MHT's administration of its programs to challenge through arbitration at each intermediate decision step, the award of tax credits, grants and permits will be significantly delayed. Further, agency decision making that is replaced by the decision of arbitrators who do not have training or experience in the application of those federal criteria and standards that should be applied equitably to all project applications will result in an unequal playing field for applicants to MHT. Only those who can afford or have the capacity to seek arbitration will do so and the results of decision making done by arbitration will introduce variation and unpredictability across all MHT programs.

2. Annual grant and tax credit awards will be reduced to create an arbitration reserve.

Grant and tax credit funds will need to be held in reserve during each application round in order to allow for the potential award of funds to projects that are denied by the agency but then subsequently awarded by a third part arbitrator. For the competitive commercial component of the Historic Revitalization Tax Credit Program, for example, the Legislature has mandated a \$20 million annual appropriation. This will need to be reduced to \$15 million in annual awards, with \$5 million held in reserve to account for potential application award challenges that are successfully achieved through arbitration. This reduction in annual awards will prevent otherwise eligible and meaningful economic development projects from moving forward as the agency awaits arbitration challenges.

3. Opportunities to challenge final decisions of MHT already exist in program regulations and in state law.

MHT administers the Historic Preservation Capital and Non-Capital Grant Programs and the African American Heritage Preservation Grant Program. Grant applicants who are dissatisfied with the agency's final decision may already have recourse under existing law by seeking a writ of administrative mandamus from a circuit court. Administrative mandamus is available when the underlying statutory or regulatory procedure provides for no further process for review. *See* Md. R. 7-401.

MHT administers the Historic Revitalization Tax Credit Program; applicants to the competitive commercial, small commercial, and residential components of the program may appeal staff decisions to the MHT Director. Appeals to the Director's decision may be made to the MHT Board of Trustees who may overturn the decision of the Director. While decisions of the MHT Board are not a contested case that can be appealed automatically to circuit court, applicants who remain dissatisfied with the decision of MHT, may be able to seek relief through administrative mandamus. *See* Md. R. 7-401

MHT reviews approximately 260 easement change/alteration requests annually. The MHT Director approves or denies these requests based on whether or not they are consistent with the terms of the individual easement document and whether the proposed work is consistent with the Secretary of the Interior's Standards for Rehabilitation. Property owners who are dissatisfied with the Director's decision may appeal the decision of the MHT Director to the MHT Board of Trustees. While these decisions are not a contested case that can be appealed automatically to

circuit court, applicants who remain dissatisfied with the decision of MHT may be able to seek relief through administrative mandamus. *See* Md. R. 7-401

To conclude, in all MHT grant, tax credit, and easement programs, applicants have access to an appeal procedure that is written into statute, regulation, or the program's governing documents. Applicants who go through the appeal process but remain dissatisfied with the results of an appeal, may continue to seek remedies by seeking relief under administrative mandamus. In so far as there is already sufficient opportunity for applicants to pursue dispute resolution through other means, the arbitration provision outlined in SB43 is unnecessary.

20240129 SB043 MHT - Arbitration - AIA MD Letter o

Uploaded by: Jaclyn Faulkner

Position: UNF

29 January 2024

The Honorable Guy Guzzone
Chair of the Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Letter of Concern for SB0043
Maryland Historic Trust - Arbitration

Dear Chairman Guzzone and members of the Budget and Taxation Committee:

On behalf of AIA Maryland and the nearly 2,000 Architects we represent, we wish to express our concern with creating a path for shifting the resolution made by Maryland Historic Trust to arbitration. In experience of our members both in Maryland and in other states, when such concerns may arise, the appeals have moved to higher levels of state agencies or the executive branch for appeal within the state, and similarly in adjacent states. That process has resulted in successful resolution. In many cases average citizens and often, nonprofits who are working on properties with Historic Tax Credits cannot afford to pay for arbitration, and paths outside the state process may be subject to appeal.

In one case, one of our members successfully appealed state agency denials that were held up by SHA and MHT a few years ago. They appealed for support to override their agency stances to the Secretary of the Maryland Department of Transportation, who then put us in touch with the Lt. Governor. Boyd Rutherford then personally intervened and all approvals were quickly granted. Our members have successfully appealed state agency denials in at least four states including Maryland.

Maryland does have an agency appeal process that can be found here:
<https://www.courts.state.md.us/courthelp/administrativeappeals>

In New Jersey, State Historic Preservation Office opinions are regularly appealed to the Department of Environmental Protection (DEP) Commissioner, often the LT. Governor, who, in our members' experience, softens the stance of the SHPO or provides less approval conditions in a regulatory letter.

<https://www.nj.gov/dep/hpo/2protection/njrreview.htm>

Delaware's appeal process is spelled out in the language on the attached page following this note, and that process is more specific for tax credit process, but it follows the same premise as Maryland and New Jersey.

We understand that there is an interest in creating alternative paths to the appeal a MHT decision because sometimes those decisions do not necessarily seem to be in the interest of the structure or the community. Aside from cost concerns for entities that may be required to engage in arbitration, we believe arbitration would likely result in less regular and less predictable results than a process that tracks appeals through state agencies. We are not suggesting that the current process is perfect, but we do believe that it may yield

more predictable and consistent results than an independent arbitration party selected to resolve such issues.

Sincerely,

A handwritten signature in black ink, appearing to be "C. R." followed by a long horizontal line extending to the right.

Chris Parts, AIA
Director, Past President, AIA Maryland

cc:
Budget and Tax Committee

Delaware Appeal process spelled out below.

§1817. Appeals.

(a) Where any taxpayer or other person who has applied for State approval or certification that a property is a certified historic property, or that any repairs or improvements are certified rehabilitation, in accordance with this subchapter, objects to a non-certification decision by the Delaware State Historic Preservation Officer, such person shall be entitled to appeal such decision to the Delaware Secretary of State or the Secretary's designee. Such appeal shall be filed with the Delaware Secretary of State within 60 days from the issuance of such non-certification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, 29 *Del. C. §10101 et seq.* Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

(b) Where a taxpayer or other person who is or was engaged in qualified repairs in accordance with this subchapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department of Finance as set forth in Title 30 or regulations promulgated thereunder, or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act."

Section 4. Amend §1105, Chapter 11, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (g), which new subsection shall read as follows:

"(g) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 5. Amend §1801, Chapter 18, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (d), which new section shall read as follows:

"(d) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against any taxes imposed under this Chapter; provide however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 6. Amend Subchapter II, Chapter 11, Title 30 of the Delaware Code by adding thereto a new section, designated as §1112, which new section shall read as follows:

"§1112. Historic Rehabilitation.

A resident individual shall be allowed a credit against such individual's tax otherwise due under this Chapter in accordance with the provisions of the Historic Preservation Tax Credit Act (Chapter 18 of this Title), which credits shall be against any taxes imposed under this chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 7. Amend Chapter 19, Title 30 of the Delaware Code by adding thereto a new section, designated as §1908, which new section shall read as follows:

"§1908. Historic Rehabilitation.

Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Chapter 18, of this Title), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 8. This Act may be known and cited as the *Historic Preservation Tax Credit Act*.

Section 9. This Act shall be effective for Stage II approvals granted by the State Office in fiscal years commencing on or after July 1, 2000 but before June 30, 2010. The first claim for tax credits made pursuant to this Chapter shall not be effective until July 1, 2002.