



## 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

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**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.

