

SENATE BILL 1235

Q3

8lr3976

By: **Senator Jennings**

Introduced and read first time: March 2, 2018

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit – Preservation and Conservation Easements – Credit**
3 **Transfer**

4 FOR the purpose of authorizing a grantor of certain preservation and conservation
5 easements to transfer a tax credit allowed against the State income tax for the
6 conveyance of the easements by obtaining a certain tax credit certificate; requiring
7 the Maryland Environmental Trust to issue a certain tax credit certificate under
8 certain circumstances; requiring the tax credit certificate to contain certain
9 information; limiting the number of tax credit certificates that the Trust may issue
10 each year; requiring the Trust to approve applications for tax credit certificates in a
11 certain manner; authorizing a holder of a certain tax credit certificate to transfer the
12 certificate under certain circumstances; authorizing the Comptroller to assess and
13 distribute a certain fee; requiring the Comptroller and the Department of Natural
14 Resources, in consultation with the Trust, to jointly adopt certain regulations;
15 declaring the intent of the General Assembly; requiring the Trust to direct outreach
16 to obtain donated easements in a certain manner; requiring the Trust to report to
17 the General Assembly on or before a certain date; providing for the application of
18 this Act; and generally relating to a State income tax credit for the conveyance of
19 preservation and conservation easements.

20 BY repealing and reenacting, with amendments,
21 Article – Tax – General
22 Section 10–723
23 Annotated Code of Maryland
24 (2016 Replacement Volume and 2017 Supplement)

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

27 **Article – Tax – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10-723.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Department" means the Department of Natural Resources.

4 (3) "Member" means:

5 (i) a shareholder of an S corporation;

6 (ii) a general or limited partner of a partnership, a limited
7 partnership, or a limited liability partnership;

8 (iii) a member of a limited liability company; or

9 (iv) a beneficiary of a business trust or a statutory trust.

10 (4) "Pass-through entity" means:

11 (i) an S corporation;

12 (ii) a partnership;

13 (iii) a limited liability company that is not taxed as a corporation
14 under this title; or

15 (iv) a business trust or a statutory trust that is not taxed as a
16 corporation under this title.

17 (b) (1) An individual or a member of a pass-through entity may claim a credit
18 against the State income tax as provided in this section for an easement conveyed to the
19 Maryland Environmental Trust, the Maryland Agricultural Land Preservation
20 Foundation, or the Department for the purpose of preserving open space, natural resources,
21 agriculture, forest land, watersheds, significant ecosystems, viewsheds, or historic
22 properties, if:

23 (i) the easement is perpetual; and

24 (ii) the easement is accepted and approved by the Board of Public
25 Works.

26 (2) Subject to subsection (d)(2) of this section, the credit under this section
27 shall be allowed for the taxable year in which the conveyance is approved by the Board of
28 Public Works.

29 (c) (1) Except as otherwise provided in this section, the amount of the credit
30 allowed under this section is the amount by which the fair market value of the property

1 before the conveyance of the easement exceeds the fair market value of the property after
2 the conveyance of the easement.

3 (2) The fair market value of the property before and after the conveyance
4 of the easement shall be substantiated by an appraisal prepared by a certified real estate
5 appraiser, as defined under § 16–101 of the Business Occupations and Professions Article.

6 (3) The amount of the credit shall be reduced by the amount of any
7 payment received for the easement.

8 (d) (1) For any taxable year, the credit allowed under this section may not
9 exceed the lesser of:

10 (i) the State income tax for that taxable year; or

11 (ii) \$5,000.

12 (2) If the credit otherwise allowable under subsection (c) of this section
13 exceeds the limit under paragraph (1) of this subsection, a taxpayer may apply the excess
14 as a credit against the State income tax for succeeding taxable years until the earlier of:

15 (i) the full amount of the excess is used; or

16 (ii) the expiration of the 15th taxable year after the taxable year in
17 which the conveyance was approved by the Board of Public Works.

18 (3) For each taxable year, the amount carried forward to the taxable year
19 under paragraph (2) of this subsection may not exceed the limit under paragraph (1) of this
20 subsection.

21 (4) The sum of all credits claimed by members of a pass-through entity in
22 a taxable year may not exceed the amount specified under paragraph (1)(ii) of this
23 subsection.

24 (5) (i) For a taxable year, the total aggregate amount of credits claimed
25 by members of pass-through entities under this section may not exceed \$200,000.

26 (ii) For pass-through entities, the Board of Public Works shall
27 approve credits for conveyances under this section on a first-come, first-served basis.

28 (e) The credit under this section may not be claimed for a required dedication of
29 open space for the purpose of fulfilling density requirements to obtain a subdivision or
30 building permit.

31 **(F) (1) THE GRANTOR OF AN EASEMENT MAY TRANSFER THE CREDIT**
32 **UNDER THIS SECTION TO A TAXPAYER BY TRANSFERRING A TAX CREDIT**
33 **CERTIFICATE ISSUED UNDER THIS SUBSECTION.**

1 **(2) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, THE**
2 **MARYLAND ENVIRONMENTAL TRUST SHALL ISSUE A TAX CREDIT CERTIFICATE IF:**

3 **(I) THE GRANTOR OF AN EASEMENT SUBMITS A COMPLETE**
4 **APPLICATION FOR THE TAX CREDIT CERTIFICATE ON A FORM PROVIDED BY THE**
5 **MARYLAND ENVIRONMENTAL TRUST; AND**

6 **(II) THE CONVEYANCE OF THE EASEMENT MEETS THE**
7 **REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.**

8 **(3) IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, A TAX**
9 **CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION SHALL STATE:**

10 **(I) THE MAXIMUM AMOUNT OF TAX CREDIT THAT MAY BE**
11 **CLAIMED BY THE HOLDER OF THE CERTIFICATE;**

12 **(II) THE MAXIMUM AMOUNT OF TAX CREDIT THAT MAY BE**
13 **CLAIMED BY THE HOLDER OF THE CERTIFICATE IN A SINGLE TAXABLE YEAR;**

14 **(III) THE EARLIEST TAXABLE YEAR FOR WHICH THE CREDIT MAY**
15 **BE CLAIMED; AND**

16 **(IV) THE LAST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE**
17 **CLAIMED.**

18 **(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
19 **MARYLAND ENVIRONMENTAL TRUST MAY NOT ISSUE MORE THAN 35 TAX CREDIT**
20 **CERTIFICATES UNDER THIS SUBSECTION IN ANY CALENDAR YEAR.**

21 **(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, IF**
22 **IN ANY CALENDAR YEAR THE NUMBER OF TAX CREDIT CERTIFICATES ISSUED IS LESS**
23 **THAN THE MAXIMUM AMOUNT AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**
24 **PARAGRAPH, IN THE NEXT CALENDAR YEAR THE MARYLAND ENVIRONMENTAL**
25 **TRUST MAY ISSUE ADDITIONAL CERTIFICATES ABOVE THE AMOUNT AUTHORIZED IN**
26 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

27 **(III) THE TOTAL NUMBER OF CERTIFICATES ISSUED UNDER THIS**
28 **SUBSECTION IN TWO CONSECUTIVE CALENDAR YEARS MAY NOT EXCEED 70.**

29 **(5) THE MARYLAND ENVIRONMENTAL TRUST SHALL APPROVE ALL**
30 **APPLICATIONS THAT QUALIFY FOR A TAX CREDIT CERTIFICATE UNDER THIS**
31 **SUBSECTION ON A FIRST-COME, FIRST-SERVED BASIS.**

1 **(G) (1) A HOLDER OF A TAX CREDIT CERTIFICATE ISSUED UNDER**
2 **SUBSECTION (F) OF THIS SECTION MAY, IN ACCORDANCE WITH REGULATIONS**
3 **ADOPTED UNDER SUBSECTION (H) OF THIS SECTION, TRANSFER THE TAX CREDIT**
4 **CERTIFICATE TO:**

5 **(I) AN INDIVIDUAL WHO IS A TAXPAYER; OR**

6 **(II) A PASS-THROUGH ENTITY THAT HAS AT LEAST ONE MEMBER**
7 **WHO IS A TAXPAYER.**

8 **(2) THE COMPTROLLER MAY ASSESS THE TRANSFEREE OF THE**
9 **CREDIT A FEE TO OFFSET ADMINISTRATIVE COSTS RELATED TO THE TRANSFER.**

10 **(3) THE FEE UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:**

11 **(I) EQUAL 3% OF THE VALUE OF THE CREDIT TRANSFERRED;**
12 **AND**

13 **(II) BE DISTRIBUTED EQUALLY BETWEEN THE COMPTROLLER**
14 **AND THE MARYLAND ENVIRONMENTAL TRUST.**

15 **[(f)] (H) (1) The Comptroller shall adopt regulations to specify procedures for**
16 **a member of a pass-through entity to claim the credit under this section.**

17 **(2) THE COMPTROLLER AND THE DEPARTMENT, IN CONSULTATION**
18 **WITH THE MARYLAND ENVIRONMENTAL TRUST, JOINTLY SHALL ADOPT**
19 **REGULATIONS TO SPECIFY PROCEDURES FOR THE APPLICATION FOR, APPROVAL**
20 **OF, ELIGIBILITY FOR, AND TRANSFER OF THE CREDIT UNDER THIS SECTION.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
22 Assembly that the issuance of tax credit certificates in accordance with this Act may not
23 adversely impact the annual budgets of State agencies or programs that purchase or
24 acquire conservation easements or property, including the Department of Natural
25 Resources and the Maryland Agricultural Land Preservation Fund.

26 SECTION 3. AND BE IT FURTHER ENACTED, That, for purposes of the tax credits
27 transferred under this Act, the Maryland Environmental Trust shall:

28 (1) use best efforts to direct its outreach to obtain donated easements in
29 those areas targeted for preservation by the State, including targeted ecological areas in
30 GreenPrint and AgPrint and properties of historic significance; and

31 (2) on or before December 1, 2020, in consultation with the Department of
32 Natural Resources, report to the General Assembly, in accordance with § 2-1246 of the
33 State Government Article, on the effectiveness of transferred tax credits in encouraging the

1 conveyance of easements.

2 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
3 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.