

Chapter 314

(House Bill 759)

AN ACT concerning

Historic Revitalization Tax Credit – Expansion – Rehabilitations of Common Elements of Condominiums and Cooperative Projects

FOR the purpose of altering the definition of “small commercial project” under the historic revitalization tax credit program to include the rehabilitation of certain condominiums and cooperative projects if the rehabilitations target only certain common elements of the condominiums or cooperative projects; requiring the Director of the Maryland Historical Trust, in consultation with the Smart Growth Subcabinet, to adopt certain regulations; defining and altering certain terms; providing for the application of this Act; and generally relating to the historic revitalization tax credit.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 5A–303(a) and (b)(1)(xi)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
 Article – State Finance and Procurement
 Section 5A–303(b)(4), (c)(1)(i), (2)(ii), and (4), and (e)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

5A–303.

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

(2) “Affordable housing” means a project or undertaking that has received an allocation of federal low-income housing tax credits by the Department of Housing and Community Development.

(3) “Agricultural structure” means a certified historic structure that is used or was used as an agricultural facility or for purposes related to agriculture.

(4) (I) “Business entity” means:

State; or

[(i)] 1. a person conducting or operating a trade or business in the

[(ii)] 2. an organization operating in Maryland that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

(II) “BUSINESS ENTITY” INCLUDES THE GOVERNING BODY OF A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION.

(5) “Certified heritage area” has the meaning stated in § 13–1101 of the Financial Institutions Article.

(6) (i) “Certified historic structure” means a structure that is located in the State and is:

1. listed in the National Register of Historic Places;

2. designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;

3. A. located in a historic district listed on the National Register of Historic Places or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places; and

B. certified by the Director as contributing to the significance of the district; or

4. located in a certified heritage area and certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area.

(ii) “Certified historic structure” does not include a structure that is owned by the State, a political subdivision of the State, or the federal government.

(7) “Certified rehabilitation” means a completed rehabilitation of a certified historic structure that the Director certifies is a substantial rehabilitation in conformance with the rehabilitation standards of the United States Secretary of the Interior.

(8) (i) “Commercial rehabilitation” means a rehabilitation of a structure other than a single–family, owner–occupied residence.

(ii) “Commercial rehabilitation” does not include a small commercial project.

(9) “COMMON ELEMENTS” ~~HAS THE MEANING STATED IN § 11-101 OF THE REAL PROPERTY ARTICLE~~ MEANS:

(I) ALL OF THE CONDOMINIUM EXCEPT THE UNITS, AS DEFINED IN § 11-101 OF THE REAL PROPERTY ARTICLE; OR

(II) ALL OF THE COOPERATIVE PROJECT EXCEPT THE UNITS, AS DEFINED IN § 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(10) “CONDOMINIUM” HAS THE MEANING STATED IN § 11-101 OF THE REAL PROPERTY ARTICLE.

(11) “COOPERATIVE HOUSING CORPORATION” HAS THE MEANING STATED IN § 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(12) “COOPERATIVE PROJECT” HAS THE MEANING STATED IN § 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

[(9)] ~~(11)~~ (13) “Director” means the Director of the Maryland Historical Trust.

[(10)] ~~(12)~~ (14) “Financial assistance” means action by the State or a State unit to award grants, loans, loan guarantees, or insurance to a public or private entity to finance, wholly or partly, a project that involves or may result in building construction, building alteration, or land disturbance.

~~(13)~~ (15) “GOVERNING BODY”, UNLESS THE CONTEXT REQUIRES OTHERWISE, HAS:

(I) WITH RESPECT TO A COOPERATIVE HOUSING CORPORATION, THE MEANING STATED IN § 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

(II) WITH RESPECT TO A CONDOMINIUM, THE MEANING STATED IN § 11-101 OF THE REAL PROPERTY ARTICLE.

[(11)] ~~(14)~~ (16) “High performance building” means a building that:

(i) meets or exceeds the current version of the U.S. Green Building Council’s LEED (Leadership in Energy and Environmental Design) green building rating system gold rating; or

(ii) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating

system, guideline, or standard approved by the Secretaries of Budget and Management and General Services under § 3–602.1 of this article.

[(12)] ~~(15)~~ (17) (i) “Historic property” means a district, site, building, structure, monument, or object significant to:

1. the prehistory or history of the State; or
2. the upland or underwater archeology, architecture, engineering, or culture of the State.

(ii) “Historic property” includes related artifacts, records, and remains.

[(13)] ~~(16)~~ (18) “Level 1 opportunity zone project” means a small commercial project or commercial rehabilitation completed by a qualified opportunity zone business if the following information is provided to the Director:

(i) the date of the qualified opportunity fund’s investment in the opportunity zone project and the amount of the investment;

(ii) the total project or business investment, including any leverage;

(iii) the address and census tract of the qualified opportunity zone business and the qualified opportunity fund;

(iv) the North American Industrial Classification System Code for the qualified opportunity zone business;

(v) an impact report, including both qualitative and quantitative data on the qualified opportunity fund’s investment in the opportunity zone project and its progress; and

(vi) any other information requested by the Director.

[(14)] ~~(17)~~ (19) “Level 2 opportunity zone project” means a small commercial project or commercial rehabilitation completed by a qualified opportunity zone business if:

(i) the requirements for a Level 1 opportunity zone project are met;

(ii) 1. accountability to residents of the communities in the qualified opportunity zone is maintained through their representation on any governing board or any advisory board of the qualified opportunity zone business; or

2. a community benefits agreement is negotiated and agreed to by community groups or strategic industry partnerships, as defined under § 11–701 of the Labor and Employment Article, in the opportunity zone and the qualified opportunity zone business that specifies a range of community benefits that the business agrees to provide as part of the development project; and

(iii) 1. for an opportunity zone project located entirely within a municipal corporation, the municipal corporation, by resolution or by letter, delivered to the Director by the municipal corporation’s authorized designee, approves the provision within the municipal corporation of the enhanced tax credits under this section; or

2. for an opportunity zone project that is not located entirely within a municipal corporation, the county, by resolution or by letter, delivered to the Director by the county’s authorized designee, approves the provision within the county of the enhanced tax credits under this section.

[(15)] ~~(18)~~ (20) “Local historic district” means a district that the governing body of a county or municipal corporation, or the Mayor and City Council of Baltimore, has designated under local law as historic.

[(16)] ~~(19)~~ (21) “National register structure” means a structure that is:

(i) listed on the National Register of Historic Places; or

(ii) located in a historic district listed on the National Register of Historic Places and certified by the Director as contributing to the significance of the district.

[(17)] ~~(20)~~ (22) “Opportunity zone project” means a certified rehabilitation within a geographical area designated and in effect as a qualified opportunity zone in the State under § 1400Z–1 of the Internal Revenue Code.

[(18)] ~~(21)~~ (23) “Political subdivision” means a county or municipal corporation of the State.

[(19)] ~~(22)~~ (24) “Post–World War II structure” means a certified historic structure that was built after December 31, 1944, but before January 1, 1970.

[(20)] ~~(23)~~ (25) “Qualified opportunity fund” has the meaning stated in § 6–1001 of the Economic Development Article.

[(21)] ~~(24)~~ (26) “Qualified opportunity zone” has the meaning stated in § 6–1001 of the Economic Development Article.

[(22)] ~~(25)~~ (27) “Qualified opportunity zone business” has the meaning stated in § 6–1001 of the Economic Development Article.

[(23)] ~~(26)~~ (28) “Qualified rehabilitation expenditure” means any amount that:

- (i) is properly chargeable to a capital account;
- (ii) is expended in the rehabilitation of a structure that by the end of the calendar year in which the certified rehabilitation is completed is a certified historic structure;
- (iii) is expended in compliance with a plan of proposed rehabilitation that has been approved by the Director; and
- (iv) is not funded, financed, or otherwise reimbursed by any:
 1. State or local grant;
 2. grant made from the proceeds of tax-exempt bonds issued by the State, a political subdivision of the State, or an instrumentality of the State or of a political subdivision of the State;
 3. State tax credit other than the tax credit under this section; or
 4. other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

[(24)] ~~(27)~~ (29) (i) “Single-family, owner-occupied residence” means a structure or a portion of a structure occupied by the owner and the owner’s immediate family as their primary or secondary residence.

- (ii) “Single-family, owner-occupied residence” includes:
 1. a residential unit in a cooperative project owned by or leased to a cooperative housing corporation, ~~as defined in § 5-6B-01 of the Corporations and Associations Article~~, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member’s immediate family under a proprietary lease; or
 2. a small commercial project.

[(25)] ~~(28)~~ (30) “Small commercial project” means a rehabilitation of a structure if:

and (i) the qualified rehabilitation expenditures do not exceed \$500,000;

(ii) 1. the structure is primarily used for commercial, income-producing purposes;

2. the structure:

A. is a residential unit in a consecutive series of similar residential units that are arranged in a row, side by side; and

B. is sold as part of a development project for exclusive occupancy to, and occupied by, the resident; [or]

3. the structure is a targeted project; OR

4. **THE STRUCTURE IS A CONDOMINIUM OR COOPERATIVE PROJECT AND THE REHABILITATION TARGETS ONLY THE COMMON ELEMENTS OF THE CONDOMINIUM OR COOPERATIVE PROJECT.**

[(26)] ~~(29)~~ **(31)** “Smart Growth Subcabinet” means the Smart Growth Subcabinet established under Title 9, Subtitle 14 of the State Government Article.

[(27)] ~~(30)~~ **(32)** “State unit” has the meaning stated in § 11-101 of the State Government Article.

[(28)] ~~(31)~~ **(33)** “Substantial rehabilitation” means rehabilitation of a structure for which the qualified rehabilitation expenditures, during the 24-month period selected by the individual or business entity ending with or within the taxable year, exceed:

(i) for single-family, owner-occupied residential property, \$5,000; or

(ii) for all other property, the greater of:

1. the adjusted basis of the structure; or

2. \$25,000.

[(29)] ~~(32)~~ **(34)** “Targeted project” means a rehabilitation of:

(i) an agricultural structure; or

(ii) a post-World War II structure.

(b) (1) The Director, in consultation with the Smart Growth Subcabinet, shall adopt regulations to:

(xi) for small commercial projects:

1. establish conditions regarding the percentage of the structure that may be used for residential rental purposes if the structure is used for both commercial and residential rental purposes;

2. ESTABLISH APPLICATION PROCEDURES FOR GOVERNING BODIES OF CONDOMINIUMS AND COOPERATIVE HOUSING CORPORATIONS AND CONDITIONS REGARDING THE REHABILITATION OF COMMON ELEMENTS OF CONDOMINIUMS AND COOPERATIVE PROJECTS;

[2.] 3. specify criteria for determining whether a certified historic structure is:

A. an agricultural structure; or

B. a post–World War II structure; and

[3.] 4. specify criteria and procedures for the issuance of initial credit certificates under subsection (e) of this section; and

(4) (i) Except as provided in subsection (e) of this section, a small commercial project shall be treated as a single–family, owner–occupied residential property, including the limitation on the amount of the tax credit provided in subsection (c)(2)(ii) of this section.

(ii) A small commercial project is subject to the credit recapture provision in subsection (f) of this section.

(c) (1) (i) Except as otherwise provided in this section, for the taxable year in which a certified rehabilitation is completed, an individual or business entity may claim a tax credit in an amount equal to 20% of the individual’s or business entity’s qualified rehabilitation expenditures for the rehabilitation.

(2) (ii) For a rehabilitation other than a commercial rehabilitation, the State tax credit allowed under this section may not exceed:

1. \$50,000 for a rehabilitation other than a Level 1 or Level 2 opportunity zone project;

2. \$55,000 for a Level 1 opportunity zone project; or

3. \$60,000 for a Level 2 opportunity zone project.

(4) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the business entity or the individual for that taxable year, the individual or business entity may claim a refund in the amount of the excess.

(e) (1) Subject to the provisions of this subsection, the Director shall issue an initial credit certificate for each approved small commercial project on a first-come, first-served basis.

(2) An initial credit certificate issued under this subsection shall state the maximum amount of tax credit for which the applicant is eligible.

(3) (i) The Director may not issue an initial credit certificate under this subsection after the aggregate amount of initial credit certificates issued for small commercial projects totals \$4,000,000.

(ii) For a targeted project, the Director may not issue an initial credit certificate under this subsection:

1. after the aggregate amount of initial credit certificates issued for agricultural structures totals \$1,000,000; or

2. after the aggregate amount of initial credit certificates issued for post-World War II structures totals \$1,000,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.