

Article - State Finance and Procurement

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§5A-303.

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

(2) “Business entity” means:

(i) a person conducting or operating a trade or business in the State;

or

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

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

(4) (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.

(5) “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.

(6) (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.

(7) “Director” means the Director of the Maryland Historical Trust.

(8) “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.

(9) “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.

(10) (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.

(11) “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.

(12) “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.

(13) “Political subdivision” means a county or municipal corporation of the State.

(14) “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.

(15) (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.

(16) (i) “Small commercial project” means a rehabilitation of a structure primarily used for commercial, income-producing purposes if the qualified rehabilitation expenditures do not exceed \$500,000.

(ii) “Small commercial project” includes a structure that is used for both commercial and residential rental purposes.

(iii) “Small commercial project” does not include a structure that is used solely for residential purposes.

(17) “Smart Growth Subcabinet” means the Smart Growth Subcabinet established under Title 9, Subtitle 14 of the State Government Article.

(18) “State unit” has the meaning stated in § 11–101 of the State Government Article.

(19) “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.

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

(i) establish procedures and standards for certifying historic structures and rehabilitations under this section;

(ii) for commercial rehabilitations, establish an application process for the award of initial credit certificates for heritage structure rehabilitation tax credits consistent with the requirements of this subsection;

(iii) for commercial rehabilitations, establish criteria, consistent with the requirements of this subsection, for evaluating, comparing, and rating plans of proposed rehabilitation that have been determined by the Director to conform with the rehabilitation standards of the United States Secretary of the Interior;

(iv) for commercial rehabilitations, establish a competitive award process for the award of initial credit certificates for heritage structure rehabilitation tax credits that favors the award of tax credits for rehabilitation projects that:

1. are consistent with and promote current growth and development policies and programs of the State;

2. are located in areas targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives;

3. are located in areas where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in Title 5,

Subtitle 7B of this article, and the appropriate local governing body or the planning board or commission, if designated by the local governing body, has certified to the Smart Growth Subcabinet those regulatory streamlining or other development incentives; and

4. include affordable and workforce housing options;

(v) for commercial rehabilitations, establish procedures to announce to the public the selection of a rehabilitation project for an award of an initial credit certificate not later than 60 days after the selection is made;

(vi) for commercial rehabilitations, determine whether the certified rehabilitation is a high performance building;

(vii) for commercial rehabilitations, establish a required external marker or, at a minimum, an internal marker for the rehabilitation project that identifies that the rehabilitation was funded by heritage structure rehabilitation tax credits;

(viii) as provided in paragraph (7) of this subsection, charge reasonable fees to certify historic structures and rehabilitations under this subtitle;

(ix) for commercial rehabilitations, require documentation that the applicant has ownership or site control of the structure in order to demonstrate the ability to meet the requirement to begin work as required under subsection (c)(3)(i)1 of this section;

(x) for commercial rehabilitations, provide a time limit for approval of the additional tax credit for high performance buildings provided for in subsection (c)(1)(ii) of this section; and

(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; and

2. specify criteria and procedures for the issuance of initial credit certificates under subsection (e) of this section.

(2) The Director may not certify that a rehabilitation is a certified rehabilitation eligible for a tax credit provided under this section unless the individual or business entity seeking certification states under oath the amount of the individual's or business entity's qualified rehabilitation expenditures.

(3) Each year, the Director may accept applications for approval of plans of proposed commercial rehabilitations and for the award of initial credit certificates for the fiscal year that begins July 1 of that year.

(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.

(5) (i) For commercial rehabilitations, the Director may not accept an application for approval of plans of proposed rehabilitation if:

1. any substantial part of the proposed rehabilitation work has begun; or

2. the applicant for a commercial rehabilitation has previously submitted three or more applications for commercial rehabilitations with total proposed rehabilitations exceeding \$500,000 in that year.

(ii) For commercial rehabilitations, the Director may accept an application for approval of plans of a proposed rehabilitation for which a substantial part of the proposed rehabilitation work has begun if the rehabilitation work has been approved under the federal historic tax credit.

(6) Except as provided in subsection (d)(3)(iii) of this section, not more than 60% of the total credit amounts under initial credit certificates issued for any fiscal year may be issued for projects in a single county or Baltimore City.

(7) (i) The Director shall adopt regulations to charge reasonable fees to certify historic structures and rehabilitations under this section which shall include:

1. a minimum fee for the second phase of the application process;

2. for a commercial rehabilitation project, a final fee that may not exceed 3% of the amount of the award of an initial credit certificate; and

3. for any other rehabilitation project, a final fee that may not exceed 3% of the amount of the credit for which the rehabilitation would be eligible based on the greater of the estimated or final qualified rehabilitation expenditures for the rehabilitation.

(ii) The Director shall set the level of the fees so that the projected proceeds from the fees will cover the costs to the Trust of administering the credit under this section and the federal historic tax credit.

(iii) If a fee charged for a commercial rehabilitation is not received by the Trust within 90 days after the Trust sends notice to the applicant that the fee is due, the Trust may not:

1. issue an initial credit certificate for the commercial rehabilitation; or

2. accept an application for a commercial rehabilitation from the applicant during the 3 fiscal years following the fiscal year in which the fee was not received.

(iv) The proceeds from the fees shall be deposited in a special fund, to be used only for the purposes of paying the costs of administering the credit under this section and the federal historic tax credit.

(v) Any unused balance of the fund at the end of each fiscal year shall be transferred to the Reserve Fund established under subsection (d) of this section and shall increase the amount of the initial credit certificates that the Trust may issue for the following fiscal year.

(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.

(ii) For a commercial rehabilitation, an individual or business entity may claim an additional tax credit in an amount equal to 5% of the individual's or business entity's qualified rehabilitation expenditures if the certified rehabilitation is a certified historic structure and a high performance building.

(2) (i) For any commercial rehabilitation, the State tax credit allowed under this section may not exceed the lesser of:

1. \$3,000,000; or

2. the maximum amount specified under the initial credit certificate issued for the rehabilitation.

(ii) For a rehabilitation other than a commercial rehabilitation, the State tax credit allowed under this section may not exceed \$50,000.

(iii) For the purposes of the limitation under subparagraph (i) of this paragraph, the following shall be treated as a single commercial rehabilitation:

1. the phased rehabilitation of the same structure or property;

2. the separate rehabilitation of different components of the same structure or property; or

3. the rehabilitation of multiple structures that are functionally related to serve an overall purpose.

(3) (i) Subject to subparagraph (ii) of this paragraph, the initial credit certificate for a proposed commercial rehabilitation shall expire and the credit under this section may not be claimed if:

1. within 18 months after the initial credit certificate was issued, the applicant has not notified the Trust, in writing, that the commercial rehabilitation has begun;

2. the commercial rehabilitation is not completed within 30 months after the initial credit certificate was issued; or

3. the applicant does not submit to the Trust a request for final certification of the commercial rehabilitation within 12 months after:

A. the 30-month expiration date under subparagraph (i)2 of this paragraph; or

B. the date to which the Director postponed the expiration date under subparagraph (ii) of this paragraph.

(ii) For reasonable cause, the Director may postpone:

1. the 30-month expiration date under subparagraph (i)2 of this paragraph for an initial credit certificate for a commercial rehabilitation; or

2. if the commercial rehabilitation was completed prior to the expiration of the initial credit certificate, the deadline under subparagraph (i)3 of this paragraph for submission of a request for final certification.

(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.

(5) The State credit allowed under this section may be allocated among the partners, members, or shareholders of an entity in any manner agreed to by those persons in writing.

(d) (1) In this subsection, "Reserve Fund" means the heritage structure rehabilitation Tax Credit Reserve Fund established under paragraph (2) of this subsection.

(2) (i) There is a heritage structure rehabilitation Tax Credit Reserve Fund that is a continuing, nonlapsing special fund that is not subject to § 7-302 of this article.

(ii) The money in the Fund shall be invested and reinvested by the Treasurer, and interest and earnings shall be credited to the General Fund.

(iii) If the fees paid in any fiscal year are less than the directly related administrative costs of operating the heritage structure rehabilitation Tax Credit Program, funds in the Reserve Fund shall be used for the directly related administrative costs of the Program.

(3) (i) Subject to the provisions of this subsection, the Director shall issue an initial credit certificate for each commercial rehabilitation for which a plan of proposed rehabilitation is approved and the fees charged under subsection (b)(7)(i) of this section are paid.

(ii) An initial credit certificate issued under this subsection shall state the maximum amount of credit under this section for which the commercial rehabilitation may qualify.

(iii) 1. Except as otherwise provided in this subparagraph and in subsection (b)(7)(v) of this section, for any fiscal year, the Director may not issue initial credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.

2. If the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year as a result of the limitation under subsection (b)(6) of this section, any excess amount may be issued under initial credit certificates for projects in a county or Baltimore City in the same fiscal year, without regard to the limitation under subsection (b)(6) of this section.

3. Subject to subparagraph 2 of this subparagraph, if the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

4. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than paragraph (4) of this subsection, the maximum credit amounts in the aggregate for which the Director may issue initial credit certificates shall be reduced by the amount transferred.

5. In each fiscal year, the Director shall estimate the amount of fees to be collected based on the amount appropriated to the Reserve Fund and reserve the difference between the estimated fees and estimated directly related administrative costs of the Program to be used to administer the Program.

6. If the reservation of funds to administer the Program under subparagraph 5 of this subparagraph is not necessary to cover the directly related administrative costs of the Program, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

(iv) For each of fiscal years 2018 through 2022, the Governor shall include in the budget bill an appropriation to the Reserve Fund.

(v) Notwithstanding the provisions of § 7–213 of this article, the Governor may not reduce an appropriation to the Reserve Fund in the State budget as approved by the General Assembly.

(vi) The Director may not issue an initial credit certificate for any fiscal year after fiscal year 2022.

(4) (i) Except as provided in this paragraph, money appropriated to the Reserve Fund shall remain in the Fund.

(ii) 1. Within 15 days after the end of each calendar quarter, the Trust shall notify the Comptroller as to each commercial rehabilitation completed and certified during the quarter:

A. the maximum credit amount stated in the initial credit certificate for the project; and

B. the final certified credit amount for the project.

2. On notification that a project has been certified, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(iii) 1. On or before October 1 of each year, the Trust shall notify the Comptroller as to the maximum credit amount stated in the initial credit certificate for each commercial rehabilitation for which the initial credit certificate has expired under subsection (c)(3) of this section as of the end of the prior fiscal year.

2. On notification that the initial credit certificate for a project has expired under subsection (c)(3) of this section, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(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) The Director may not issue an initial credit certificate under this subsection:

(i) prior to January 1, 2015; or

(ii) after the aggregate amount of initial credit certificates issued for small commercial projects totals \$4,000,000.

(f) (1) (i) In this subsection the following words have the meanings indicated.

(ii) 1. “Dispose of” means to transfer legal title or, in the case of a leasehold, the leasehold interest.

2. “Dispose of” includes to sell in a sale-and-leaseback transaction, to transfer on the foreclosure of a security interest, or to transfer by gift.

3. “Dispose of” does not include to transfer title or the leasehold interest to a creditor on creation of a security interest.

(iii) “Disqualifying work” means work that:

1. is performed on a certified rehabilitation; and

2. if performed as part of the rehabilitation certified under this section, would have made the rehabilitation ineligible for certification.

(2) The credit allowed under this section shall be recaptured as provided in paragraph (3) of this subsection if, during the taxable year in which a certified rehabilitation is completed or any of the 4 taxable years succeeding the taxable year in which the certified rehabilitation is completed:

(i) any disqualifying work is performed on the certified rehabilitation; or

(ii) for a commercial rehabilitation, the certified rehabilitation is complete and has been disposed of.

(3) (i) 1. If the disqualifying work is performed or the certified rehabilitation is disposed of during the taxable year in which the certified rehabilitation was completed, 100% of the credit shall be recaptured.

2. If the disqualifying work is performed or the certified rehabilitation is disposed of during the first full year succeeding the taxable year in which the certified rehabilitation was completed, 80% of the credit shall be recaptured.

3. If the disqualifying work is performed or the certified rehabilitation is disposed of during the second full year succeeding the taxable year in which the certified rehabilitation was completed, 60% of the credit shall be recaptured.

4. If the disqualifying work is performed or the certified rehabilitation is disposed of during the third full year succeeding the taxable year in which the certified rehabilitation was completed, 40% of the credit shall be recaptured.

5. If the disqualifying work is performed or the certified rehabilitation is disposed of during the fourth full year succeeding the taxable year in which the certified rehabilitation was completed, 20% of the credit shall be recaptured.

(ii) The individual or business entity that claimed the tax credit shall pay the amount to be recaptured as determined under subparagraph (i) of this paragraph as taxes payable to the State for the taxable year in which the disqualifying work is performed or the certified rehabilitation is disposed of.

(g) (1) The Comptroller may determine, under the process for return examination and audit under §§ 13-301 and 13-302 of the Tax – General Article:

(i) the amount of rehabilitation expenditures used in calculating the credit;

(ii) whether such expenditures are qualified rehabilitation expenditures under this section; and

(iii) whether the credit is allowable as claimed.

(2) The authority of the Comptroller to examine and audit a tax return does not limit the authority of the Director to determine whether a rehabilitation qualifies as a certified rehabilitation or whether a certificate of certified rehabilitation has been properly issued.

(3) The Comptroller may adopt regulations to require that an entity other than a corporation claim the tax credit on the tax return filed by that entity.

(4) (i) Except as otherwise provided in this paragraph, the credit under this section may be claimed for the year a certified rehabilitation is completed, only if the Director has, by the time the return is filed, issued a certificate of completion for the certified rehabilitation.

(ii) A taxpayer claiming the credit may amend a return for the year the certified rehabilitation was completed to account for a certificate issued subsequent to the filing of the original return.

(iii) An amended return shall be filed within the period allowed under the Tax – General Article for filing refund claims.

(iv) The provisions of this paragraph do not extend the period in which a certified rehabilitation must be completed to be eligible for a tax credit under this section.

(v) An amended return may account for an amended certification issued by the Director for a certified rehabilitation.

(h) A refund payable under subsection (c) of this section:

(1) operates to reduce the income tax revenue from corporations if the person entitled to the refund is a corporation subject to the income tax under Title 10 of the Tax – General Article;

(2) operates to reduce insurance premium tax revenues if the person entitled to the refund is subject to taxation under Title 6 of the Insurance Article; and

(3) operates to reduce the income tax revenue from individuals if the person entitled to the refund is:

(i) an individual subject to the income tax under Title 10 of the Tax – General Article; or

(ii) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

(i) (1) On or before December 15 of each fiscal year, the Director shall report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly, on:

(i) the initial credit certificates awarded for commercial rehabilitations and small commercial projects under this section for that fiscal year;

(ii) the tax credits awarded for certified rehabilitations completed in the preceding fiscal year;

(iii) whether the tax credits awarded for certified rehabilitations completed in the preceding fiscal year were located in:

1. a local historic district; or

2. a national register district; and

(iv) the estimated amount of directly related administrative costs reserved in the Reserve Fund, the estimated amount of fees to be collected, the actual directly related administrative costs, and the actual amount of fees collected.

(2) The report required under paragraph (1) of this subsection shall include for each initial credit certificate awarded for the fiscal year for a commercial rehabilitation:

(i) the name of the owner or developer of the commercial rehabilitation;

(ii) the name and address of the proposed or certified rehabilitation and the county where the project is located;

(iii) the dates of receipt and approval by the Director of all applications regarding the project, including applications:

1. for certification that a structure or property will qualify as a certified historic structure; and

2. for approval of the proposed rehabilitation; and

(iv) the maximum amount of the credit stated in the initial credit certificate for the project and the estimated rehabilitation expenditures stated in the application for approval of the plan of proposed rehabilitation.

(3) The report required under paragraph (1) of this subsection shall include for each certified commercial rehabilitation completed during the preceding fiscal year:

(i) the name of the owner or developer of the commercial rehabilitation;

(ii) the name and address of the certified rehabilitation and the county where the project is located;

(iii) the dates of receipt and approval by the Director of all applications regarding the project; and

(iv) 1. the maximum amount of the credit stated in the initial credit certificate for the project and the estimated rehabilitation expenditures stated in the application for approval of the plan of proposed rehabilitation; and

2. the actual qualified rehabilitation expenditures and the final amount of the credit for which the project qualified.

(4) The report required under paragraph (1) of this subsection shall summarize for each category of certified rehabilitations:

(i) the total number of applicants for:

1. certification that a structure or property will qualify as a certified historic structure;

2. approval of plans of proposed rehabilitations; or

3. certification of the completed rehabilitations;

(ii) the number of proposed projects for which plans of proposed rehabilitation were approved; and

(iii) the total estimated rehabilitation expenditures stated in approved applications for approval of plans of proposed rehabilitation and the total

qualified rehabilitation expenditures for completed rehabilitations certified.

(5) The information required under paragraph (4) of this subsection shall be provided in the aggregate and separately for each of the following categories of certified rehabilitations:

- (i) owner-occupied single family residential structures;
- (ii) small commercial projects; and
- (iii) commercial rehabilitations.

(j) (1) Subject to the provisions of this subsection, the provisions of this section and the tax credit authorized under this section shall terminate as of July 1, 2022.

(2) On and after July 1, 2022:

(i) the tax credit authorized under this section may be claimed for:

1. a rehabilitation project, other than a commercial rehabilitation, for which an application for approval of a plan of proposed rehabilitation was received by the Director on or before June 30, 2022; or

2. a commercial rehabilitation for which an initial credit certificate has been awarded under subsection (d) of this section; and

(ii) the Director shall continue to report to the Governor and the General Assembly as required under subsection (i) of this section for as long as any rehabilitation project for which the tax credit may be claimed remains incomplete.

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