

HOUSE BILL 1567

C8

0lr1341
CF SB 715

By: **Delegates D. Barnes, Barve, Buckel, Feldmark, Hornberger, Palakovich Carr, and Wilkins**

Introduced and read first time: February 7, 2020

Assigned to: Environment and Transportation and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Housing and Community Development – Affordable Housing Development**
3 **Credit Program**

4 FOR the purpose of establishing the Affordable Housing Development Credit Program
5 within the Division of Development Finance of the Department of Housing and
6 Community Development to provide certain owners of certain low-income housing
7 projects certain tax credits for a certain number of years; authorizing an owner or a
8 developer of a low-income housing project to submit a certain application to the
9 Department to enroll in the Program during a certain period of time; prohibiting the
10 Secretary of Housing and Community Development from approving an application
11 except under certain circumstances; requiring the Secretary to score each approved
12 application in a certain manner, determine the amount of tax credits for which an
13 applicant is eligible on a certain basis, and issue a certain tax credit eligibility
14 statement in a certain amount following completion and cost certification of the
15 qualified development; prohibiting the Secretary from issuing tax credit eligibility
16 statements exceeding a certain amount in certain fiscal years; requiring the
17 Secretary to specify in the tax credit eligibility statement a certain credit period;
18 authorizing the owner of a qualified development to claim certain Program benefits
19 for the duration of the credit period; authorizing the owner to claim a credit against
20 the insurance premium tax, the retaliatory tax, certain franchise taxes, and the
21 State income tax not exceeding a certain amount for each credit year during the
22 credit period; requiring the Division to certify the amount of the tax credit for which
23 the owner is eligible; requiring the owner to submit to certain State units, with the
24 tax return on which the credit is claimed, a certain certification; prohibiting the
25 owner from claiming the tax credit under certain circumstances; authorizing the
26 credit to be allocated among certain persons in a certain manner; allowing for the
27 carryforward of the credit under certain circumstances; authorizing the Division to
28 revoke a certain eligibility statement under certain circumstances; providing for the
29 recapture of certain credits under certain circumstances; establishing the Affordable
30 Housing Development Credit Program Fund; requiring the Division to administer

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; providing for the investment of money in and expenditures from the Fund; requiring the Governor to include a certain appropriation to the Fund in the annual budget bill for certain fiscal years; requiring the Comptroller to transfer certain amounts from the Fund to the General Fund of the State under certain circumstances; authorizing the Secretary to adopt certain regulations; requiring the Division to submit a certain report; prohibiting an individual or corporation from claiming a certain credit against the State income tax for a certain qualified workforce housing project under certain circumstances; defining certain terms; providing for the application of this Act; and generally relating to a tax credit program for affordable housing development.

BY adding to

Article – Housing and Community Development

Section 4–2701 through 4–2708 to be under the new subtitle “Subtitle 27. Affordable Housing Development Credit Program”

Annotated Code of Maryland

(2019 Replacement Volume and 2019 Supplement)

BY adding to

Article – Insurance

Section 6–105.3 and 6–303.1

Annotated Code of Maryland

(2017 Replacement Volume and 2019 Supplement)

BY adding to

Article – Tax – General

Section 8–222, 8–418, and 10–751

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–749(b)

Annotated Code of Maryland

(2016 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 – Housing and Community Development

SUBTITLE 27. AFFORDABLE HOUSING DEVELOPMENT CREDIT PROGRAM.

4–2701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

1 INDICATED.

2 (B) "CREDIT PERIOD" MEANS THE 10-YEAR PERIOD SPECIFIED ON THE TAX
3 CREDIT ELIGIBILITY STATEMENT ISSUED UNDER § 4-2703 OF THIS SUBTITLE THAT
4 BEGINS DURING THE YEAR IN WHICH THE TAX CREDIT ELIGIBILITY STATEMENT IS
5 ISSUED.

6 (C) "CREDIT YEAR" MEANS THE TAXABLE YEAR WITHIN THE CREDIT PERIOD
7 FOR WHICH AN OWNER OF A QUALIFIED DEVELOPMENT CLAIMS THE CREDIT
8 ALLOWED UNDER § 4-2704 OF THIS SUBTITLE.

9 (D) "FUND" MEANS THE AFFORDABLE HOUSING DEVELOPMENT CREDIT
10 PROGRAM FUND ESTABLISHED UNDER THIS SUBTITLE.

11 (E) "MEMBER" MEANS:

12 (1) A SHAREHOLDER OF AN S CORPORATION;

13 (2) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP, LIMITED
14 PARTNERSHIP, OR LIMITED LIABILITY PARTNERSHIP;

15 (3) A MEMBER OF A LIMITED LIABILITY COMPANY; OR

16 (4) A BENEFICIARY OF A BUSINESS TRUST OR STATUTORY TRUST.

17 (F) "OWNER" MEANS A CORPORATION OR A MEMBER OF A
18 PASS-THROUGH ENTITY THAT HAS AN OWNERSHIP INTEREST IN A QUALIFIED
19 DEVELOPMENT.

20 (G) "PASS-THROUGH ENTITY" MEANS:

21 (1) AN S CORPORATION;

22 (2) A PARTNERSHIP;

23 (3) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A
24 CORPORATION UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; OR

25 (4) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT TAXED AS
26 A CORPORATION UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE.

27 (H) "PROGRAM" MEANS THE AFFORDABLE HOUSING DEVELOPMENT
28 CREDIT PROGRAM ESTABLISHED UNDER THIS SUBTITLE.

1 **(I) “QUALIFIED DEVELOPMENT” MEANS A LOW-INCOME HOUSING**
2 **PROJECT, AS SPECIFIED UNDER § 42(G) OF THE INTERNAL REVENUE CODE, THAT**
3 **IS:**

4 **(1) FINANCED WITH TAX-EXEMPT BONDS AND LOCATED IN THE**
5 **STATE;**

6 **(2) SUBJECT TO A RECORDED RESTRICTIVE COVENANT REQUIRING**
7 **THE PROPERTY TO BE MAINTAINED AND OPERATED AS LOW-INCOME HOUSING; AND**

8 **(3) IN COMPLIANCE WITH TITLE VIII OF THE FEDERAL CIVIL RIGHTS**
9 **ACT OF 1968.**

10 **4-2702.**

11 **THERE IS AN AFFORDABLE HOUSING DEVELOPMENT CREDIT PROGRAM IN**
12 **THE DIVISION.**

13 **4-2703.**

14 **(A) ON OR AFTER JULY 1, 2020, BUT BEFORE JULY 1, 2023, AN OWNER OR**
15 **A DEVELOPER OF A PROPOSED LOW-INCOME HOUSING PROJECT MAY SUBMIT AN**
16 **APPLICATION TO THE DIVISION TO ENROLL THE LOW-INCOME HOUSING PROJECT**
17 **IN THE PROGRAM.**

18 **(B) THE SECRETARY MAY NOT APPROVE AN APPLICATION UNLESS THE**
19 **APPLICATION DEMONSTRATES THAT:**

20 **(1) THE REAL PROPERTY IS OR WILL BE A QUALIFIED DEVELOPMENT;**

21 **(2) THE CREDIT IS NECESSARY FOR THE FINANCIAL VIABILITY OF THE**
22 **QUALIFIED DEVELOPMENT; AND**

23 **(3) THE OWNER OR DEVELOPER OF THE PROPOSED LOW-INCOME**
24 **HOUSING PROJECT NOTIFIES THE DEPARTMENT OF THE APPLICANT’S INTENT TO**
25 **SEEK DESIGNATION AS A QUALIFIED DEVELOPMENT BEFORE CONSTRUCTING OR**
26 **REHABILITATING THE LOW-INCOME HOUSING PROJECT.**

27 **(C) THE SECRETARY SHALL:**

28 **(1) SCORE EACH APPROVED APPLICATION IN A MANNER CONSISTENT**
29 **WITH THE STATE’S QUALIFIED ALLOCATION PLAN;**

(2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, DETERMINE THE AMOUNT OF TAX CREDITS FOR WHICH AN APPLICANT IS ELIGIBLE BASED ON THE SCORE AWARDED UNDER ITEM (1) OF THIS SUBSECTION; AND

(3) ISSUE TAX CREDIT ELIGIBILITY STATEMENTS ON A COMPETITIVE BASIS TO APPROVED APPLICANTS FOLLOWING COMPLETION AND COST CERTIFICATION OF THE QUALIFIED DEVELOPMENT.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY MAY NOT ISSUE TAX CREDIT ELIGIBILITY STATEMENTS FOR CREDIT AMOUNTS TOTALING MORE THAN \$5,000,000 PER CREDIT YEAR IN EACH OF FISCAL YEARS 2021 THROUGH 2023.

(2) IF THE CREDIT AMOUNTS UNDER THE TAX CREDIT ELIGIBILITY STATEMENTS ISSUED BY THE SECRETARY TOTAL LESS THAN THE MAXIMUM PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ANY FISCAL YEAR, ANY EXCESS AMOUNT MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT ELIGIBILITY STATEMENTS THROUGH FISCAL YEAR 2023.

(3) THE SECRETARY MAY NOT ISSUE A TAX CREDIT ELIGIBILITY STATEMENT IN AN AMOUNT THAT WOULD RESULT IN A QUALIFIED DEVELOPMENT RECEIVING CREDIT AMOUNTS UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT ARE GREATER THAN THE FEDERAL HOUSING CREDITS THE QUALIFIED PROPERTY IS ELIGIBLE FOR UNDER § 42(M) OF THE INTERNAL REVENUE CODE.

(4) THE SECRETARY SHALL SPECIFY IN THE TAX CREDIT ELIGIBILITY STATEMENT THE CREDIT PERIOD FOR WHICH AN OWNER OF A QUALIFIED DEVELOPMENT MAY CLAIM A CREDIT IN ACCORDANCE WITH § 4-2704 OF THIS SUBTITLE.

4-2704.

(A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE PROGRAM BENEFITS AUTHORIZED UNDER THIS SECTION MAY BE CLAIMED BY THE OWNER OF A QUALIFIED DEVELOPMENT FOR THE DURATION OF THE CREDIT PERIOD SPECIFIED ON THE TAX CREDIT ELIGIBILITY STATEMENT.

(B) (1) FOR EACH CREDIT YEAR DURING THE CREDIT PERIOD, AN OWNER OF A QUALIFIED DEVELOPMENT MAY CLAIM A TAX CREDIT IN AN AMOUNT NOT EXCEEDING THE AMOUNT STATED ON THE TAX CREDIT ELIGIBILITY STATEMENT ISSUED TO THE OWNER UNDER § 4-2703 OF THIS SUBTITLE.

(2) THE DIVISION SHALL CERTIFY THE AMOUNT OF THE TAX CREDIT FOR WHICH AN OWNER OF A QUALIFIED DEVELOPMENT IS ELIGIBLE UNDER THIS SECTION.

(3) SUBJECT TO PARAGRAPH (5) OF THIS SECTION, THE OWNER OF A QUALIFIED DEVELOPMENT IS ELIGIBLE FOR:

(I) A CREDIT AGAINST THE INSURANCE PREMIUM TAX, ESTABLISHED UNDER § 6-105.3 OF THE INSURANCE ARTICLE;

(II) A CREDIT AGAINST THE RETALIATORY TAX, ESTABLISHED UNDER § 6-303.1 OF THE INSURANCE ARTICLE;

(III) A CREDIT AGAINST THE FINANCIAL INSTITUTION FRANCHISE TAX, ESTABLISHED UNDER § 8-222 OF THE TAX – GENERAL ARTICLE;

(IV) A CREDIT AGAINST THE PUBLIC SERVICE COMPANY FRANCHISE TAX, ESTABLISHED UNDER § 8-418 OF THE TAX – GENERAL ARTICLE;
AND

(V) A CREDIT AGAINST THE STATE INCOME TAX, ESTABLISHED UNDER § 10-751 OF THE TAX – GENERAL ARTICLE.

(4) THE OWNER OF A QUALIFIED DEVELOPMENT SHALL SUBMIT TO THE APPROPRIATE STATE UNITS, WITH THE TAX RETURN ON WHICH THE CREDIT IS CLAIMED, CERTIFICATION FROM THE DEPARTMENT THAT THE OWNER OF THE QUALIFIED DEVELOPMENT HAS MET THE REQUIREMENTS OF THIS SUBTITLE AND IS ELIGIBLE FOR THE CREDIT IN THE AMOUNT CERTIFIED BY THE DEPARTMENT.

(5) THE OWNER OF A QUALIFIED DEVELOPMENT MAY NOT CLAIM A CREDIT DESCRIBED UNDER PARAGRAPH (3) OF THIS SUBSECTION IN ANY TAXABLE YEAR THAT THE OWNER CLAIMS A CREDIT UNDER § 10-749 OF THE TAX – GENERAL ARTICLE FOR A QUALIFIED DEVELOPMENT THAT IS A QUALIFIED WORKFORCE HOUSING PROJECT, AS DEFINED IN § 4-2501 OF THIS TITLE.

(c) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE 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.

(2) THE SUM OF ALL CREDITS CLAIMED BY THE MEMBERS OF A PASS-THROUGH ENTITY IN A CREDIT YEAR MAY NOT EXCEED THE AMOUNT SPECIFIED ON THE TAX CREDIT ELIGIBILITY STATEMENT ISSUED TO THE OWNER OF

1 THE QUALIFIED DEVELOPMENT UNDER § 4-2703 OF THIS SUBTITLE.

2 (D) (1) THE SAME CREDIT MAY NOT BE APPLIED MORE THAN ONCE
3 AGAINST DIFFERENT TAXES BY THE SAME TAXPAYER.

4 (2) IF THE CREDIT ALLOWED UNDER THIS SUBTITLE EXCEEDS THE
5 TOTAL TAX OTHERWISE DUE FROM THE TAXPAYER IN A TAXABLE YEAR, THE
6 TAXPAYER MAY APPLY THE EXCESS AS A CREDIT FOR SUCCEEDING TAXABLE YEARS
7 UNTIL THE EARLIER OF:

8 (I) THE DATE ON WHICH THE FULL AMOUNT OF THE EXCESS IS
9 USED; OR

10 (II) THE DATE OF THE EXPIRATION OF THE 5TH TAXABLE YEAR
11 AFTER THE APPLICABLE CREDIT YEAR.

12 (3) THE CREDIT UNDER THIS SUBTITLE MAY NOT BE CARRIED BACK
13 TO A PRECEDING TAXABLE YEAR.

14 4-2705.

15 (A) THE DIVISION MAY REVOKE AN ELIGIBILITY STATEMENT UNDER THIS
16 SUBTITLE, IN WHOLE OR IN PART, IF A PROPERTY FOR WHICH AN OWNER OF A
17 QUALIFIED DEVELOPMENT RECEIVED A TAX CREDIT ELIGIBILITY STATEMENT
18 CEASES TO BE A QUALIFIED DEVELOPMENT.

19 (B) IF THE DIVISION REVOKES AN ELIGIBILITY STATEMENT AS PROVIDED
20 UNDER SUBSECTION (A) OF THIS SECTION, AN ASSESSMENT MAY BE MADE AGAINST
21 THE OWNER OF THE QUALIFIED DEVELOPMENT TO RECAPTURE ANY AMOUNT OF A
22 TAX CREDIT THAT THE OWNER HAS RECEIVED AFTER THE DATE OF REVOCATION.

23 4-2706.

24 (A) THERE IS AN AFFORDABLE HOUSING DEVELOPMENT CREDIT
25 PROGRAM FUND.

26 (B) THE DIVISION SHALL ADMINISTER THE FUND.

27 (C) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
28 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

29 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
30 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(D) THE FUND CONSISTS OF:

(1) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION; AND

(2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(E) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE GENERAL FUND OF THE STATE.

(F) FOR EACH OF THE FOLLOWING FISCAL YEARS, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION TO THE FUND IN AN AMOUNT EQUAL TO:

(1) FOR FISCAL YEAR 2022, \$5,000,000;

(2) FOR FISCAL YEAR 2023, \$10,000,000;

(3) FOR EACH OF FISCAL YEARS 2024 THROUGH 2031, \$15,000,000;

(4) FOR FISCAL YEAR 2032, \$10,000,000; AND

(5) FOR FISCAL YEAR 2033, \$5,000,000.

(G) (1) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(2) NOTWITHSTANDING THE PROVISIONS OF § 7-213 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE GOVERNOR MAY NOT REDUCE AN APPROPRIATION TO THE FUND IN THE STATE BUDGET AS APPROVED BY THE GENERAL ASSEMBLY.

(H) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION, MONEY APPROPRIATED TO THE FUND SHALL REMAIN IN THE FUND.

(2) (I) WITHIN 45 DAYS AFTER AN OWNER OF A QUALIFIED DEVELOPMENT CLAIMS A TAX CREDIT IN ACCORDANCE WITH § 4-2704 OF THIS SUBTITLE, THE APPROPRIATE STATE UNIT SHALL REPORT TO THE COMPTROLLER

1 THE AMOUNT OF THE TAX CREDIT CLAIMED.

2 (II) ON RECEIPT OF THE NOTIFICATION UNDER SUBPARAGRAPH
3 (I) OF THIS PARAGRAPH, THE COMPTROLLER SHALL TRANSFER FROM THE FUND TO
4 THE GENERAL FUND OF THE STATE AN AMOUNT EQUAL TO THE AMOUNT OF THE
5 TAX CREDIT CLAIMED.

6 4-2707.

7 THE SECRETARY MAY ADOPT ANY REGULATION NECESSARY AND
8 APPROPRIATE TO CARRY OUT THIS SUBTITLE.

9 4-2708.

10 ON OR BEFORE DECEMBER 1 OF CALENDAR YEARS 2022, 2023, AND 2024, THE
11 DIVISION SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH §
12 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON THE OWNERS OF QUALIFIED
13 DEVELOPMENTS RECEIVING TAX CREDIT ELIGIBILITY STATEMENTS IN THE
14 PRECEDING FISCAL YEAR.

15 Article – Insurance

16 6-105.3.

17 A PERSON SUBJECT TO THE TAX IMPOSED UNDER THIS SUBTITLE MAY CLAIM
18 A CREDIT AGAINST THE TAX IN ACCORDANCE WITH § 4-2704 OF THE HOUSING AND
19 COMMUNITY DEVELOPMENT ARTICLE.

20 6-303.1.

21 A PERSON SUBJECT TO THE TAX IMPOSED UNDER § 6-303 OF THIS SUBTITLE
22 MAY CLAIM A CREDIT AGAINST THE TAX IN ACCORDANCE WITH § 4-2704 OF THE
23 HOUSING AND COMMUNITY DEVELOPMENT ARTICLE.

24 Article – Tax – General

25 8-222.

26 A FINANCIAL INSTITUTION MAY CLAIM A CREDIT AGAINST THE FINANCIAL
27 INSTITUTION FRANCHISE TAX IN ACCORDANCE WITH § 4-2704 OF THE HOUSING AND
28 COMMUNITY DEVELOPMENT ARTICLE.

29 8-418.

1 **A PUBLIC SERVICE COMPANY MAY CLAIM A CREDIT AGAINST THE PUBLIC**
2 **SERVICE COMPANY FRANCHISE TAX IN ACCORDANCE WITH § 4-2704 OF THE**
3 **HOUSING AND COMMUNITY DEVELOPMENT ARTICLE.**

4 10-749.

5 (b) **(1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SUBSECTION, AN individual or a corporation may claim a credit against the State income**
7 **tax in the amount determined under subsection (c) of this section for a qualified workforce**
8 **housing project.**

9 **(2) AN INDIVIDUAL OR A CORPORATION MAY NOT CLAIM THE CREDIT**
10 **UNDER THIS SECTION IN ANY TAXABLE YEAR THAT THE INDIVIDUAL OR**
11 **CORPORATION CLAIMS A CREDIT UNDER § 10-751 OF THIS SUBTITLE FOR A**
12 **QUALIFIED WORKFORCE HOUSING PROJECT THAT IS A QUALIFIED DEVELOPMENT,**
13 **AS DEFINED IN § 4-2701 OF THE HOUSING AND COMMUNITY DEVELOPMENT**
14 **ARTICLE.**

15 10-751.

16 **(A) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A CREDIT AGAINST THE**
17 **STATE INCOME TAX IN ACCORDANCE WITH § 4-2704 OF THE HOUSING AND**
18 **COMMUNITY DEVELOPMENT ARTICLE.**

19 **(B) AN INDIVIDUAL OR A CORPORATION THAT IS NOT OTHERWISE**
20 **REQUIRED TO FILE AN INCOME TAX RETURN SHALL FILE A RETURN IF THE**
21 **INDIVIDUAL OR CORPORATION IS SUBJECT TO THE RECAPTURE OF THE CREDIT IN**
22 **ACCORDANCE WITH § 4-2705 OF THE HOUSING AND COMMUNITY DEVELOPMENT**
23 **ARTICLE.**

24 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
25 **1, 2020, and shall be applicable to all taxable years beginning after December 31, 2020.**