GO/T&E Item 1
September 16, 2020
Worksession

M E M O R A N D U M

September 11, 2020

TO: Government Operations & Fiscal Policy Committee
Transportation & Environment Committee

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 10-20, Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit [1]

PURPOSE: Worksession – recommendation expected

Expected Attendees
Department of Environmental Protection
Department of Finance

Bill 10-20, Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit, sponsored by Lead Sponsors Councilmembers Friedson and Riemer, and Co-Sponsor Council President Katz, was introduced on March 3, 2020. A public hearing was held on March 31, 2020, at which there were no speakers.

Bill 10-20 would:

(1) alter the eligibility criteria for the property tax credit for energy and environmental design;
(2) alter the amounts and durations of the property tax credit for energy and environmental design by type of building; and
(3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design.

BACKGROUND

In June 2019, the County Executive delivered to the T&E and GO Committees a report on stakeholder *Recommendations on Montgomery County High-Performance Green Building Initiatives*. The stakeholder group recommended altering green building incentives in the County to focus more on energy reduction metrics as opposed to industry certifications alone.

[1] #LEEDPropertyTaxCredit

Specifically, the workgroup looked at the current property tax credit for energy and environmental design under Section 52-103 of the County Code. Under the current Code, buildings are eligible for a property tax credit if they achieve certain certifications, or certification equivalents, under the Leadership in Energy and Environmental Design (LEED) rating system administered by the U.S. Green Building Council.

The stakeholder workgroup recommended, and the T&E and GO Committees discussed, creating a two-tiered approach to green building tax incentives for new construction, and a separate two-tiered approach to green building tax incentives for existing buildings. For both types of buildings – new and existing – the tiers would focus, first, upon rewarding energy reduction at levels above and beyond Building Code requirements and, second, upon high-level industry certifications for green buildings.

BILL DESCRIPTION

Consistent with the recommendations of the stakeholder workgroup, Bill 10-20 would implement: (1) a two-tiered property tax credit for new commercial and multifamily construction, based upon energy reduction metrics and industry certifications; and (2) a separate two-tiered property tax credit for existing commercial and multifamily buildings, based upon energy reduction metrics and industry certifications.

With respect to new or extensively modified construction (a/k/a, "covered buildings" under the bill), the credit would be based upon the "energy reduction level" achieved by the building. The bill would define "energy reduction level" as a level of energy performance, expressed as a percentage, that the Director of Environmental Protection finds to be at least 10% better than the level of energy performance that would be achieved under the current Building Code (County Code, Chapter 8). The amount of the credit would increase as the building's energy reduction level increased. For example, a building with an energy reduction level of 21%-30% would have a higher credit than a building with an energy reduction level of 10%-20%.

In addition to the credit based upon an energy reduction level, a covered building could receive a bonus credit for certain sustainability certifications. For example, a gold rating under LEED, or the equivalent of a gold rating as determined by the Director, would make the building eligible for a bonus credit equal to 25% of the property tax owed on the building. The total credit would be capped at 100% of the property tax owed on the building.

With respect to existing buildings, the credit would be based upon the ENERGY STAR® improvement of the building over a 12-month period. The greater the amount of ENERGY STAR improvement, the greater the amount of the credit. For example, a building that improved its ENERGY STAR score by 25-49 points would receive a higher credit than a building that improved its score by 1-24 points.

Like with new construction, an existing building could receive a bonus credit for certain sustainability certifications. For example, a building with a platinum or higher rating for LEED, or the equivalent of a platinum or higher rating as determined by the Director, would qualify for a bonus credit in the amount of 75% of the property tax owed on the building. The total amount of the credit would be capped at 100% of the property tax owed on the building.

The bill would limit the duration of the tax credit to 4 years for qualified new construction, and 2 years for qualified existing buildings. The bill also would alter the annual limits that currently apply to the tax credit for energy and environmental design. The law currently caps the credits granted by the County at $5 million annually. The bill would retain this $5 million annual cap for credits to eligible existing buildings, but the cap would not apply for credits to eligible new construction.

SUMMARY OF PUBLIC HEARING

A public hearing was held on March 31, 2020. There were no speakers.

ISSUES FOR THE COMMITTEES' CONSIDERATION

The Committees might wish to consider the following issues related to Bill 10-20. Many of these issues relate to the Executive's feedback on Bill 10-20. Subsequent to the bill's introduction, the Executive submitted three bills intended to implement the recommendations of the stakeholder group.

The Executive's draft bills – and Bill 10-20 – have the same goal of amending the energy and environmental design tax credit as recommended by the stakeholder group. The following discussion offers options to reconcile Bill 10-20 with the Executive's draft bills.

1. <u>Transitioning to the New Tax Credit Requirements</u>

The County Executive's Office has proposed sunsetting the current energy and environmental design tax credit over a period of several years, so that applicants who already have made investments based on the current credit may continue to apply for and receive credit.

To provide for the sunset, the Executive has proposed the following amendment to existing Section 52-103, which also are reflected in version 4 of the bill (copy enclosed) (*See* lines 3 through 18). In version 4 of the bill, dates have been inserted into the text below, based upon estimations of when the law likely will go into effect.

52-103. Property Tax Credit – energy and environmental design.

* * *

(c) *Application <u>and</u> <u>sunset</u> <u>date.</u>* [A taxpayer must apply for the credit within 1 year after the building is certified as a high performance building.] <u>To qualify for the credit a taxpayer must submit an application of intent to apply for the credit by {insert date: one year after the effective date of this Act} and either:</u>

<u>(1) for LEED-EB project certification, receive LEED-EB project certification for an eligible LEED-EB building and submit an application to the Director by {insert date: two calendar years of the effective date of this bill}; or</u>

<u>(2) for LEED-CS or LEED-NC certification, receive a building permit for an eligible LEED-CS or LEED-NC building and submit an application to the Director by {insert date: three calendar years of the effective date of this bill}.</u>

*   *   *

If the Committee adopts these amendments proposed by the Executive, it also might wish to adopt an uncodified section to sunset the entirety of Section 52-103 once applications are no longer granted under that Section. Since applications would be accepted for 3 years following the effective date of the bill, version 4 of the bill proposes that the sunset of Section 52-103 would occur 4 years after the effective date of the bill.

<u>RECOMMENDATION</u>: Decide whether to accept the Executive's proposed phase out of the current energy and environmental design tax credit (Section 52-103), together with the uncodified sunset clause described above. These amendments are reflected in the enclosed version 4 of the bill (lines 3 through 18 and 318 through 319).

2. <u>Clearly Differentiate Between Existing Buildings and New Construction</u>

As described above in the bill description section of this memorandum, Bill 10-20 is intended to create a two-tiered credit for newly constructed high performance buildings, and a separate two-tiered credit for existing high performance buildings. As originally drafted, the bill distinguishes between new and existing buildings within a single Code section (Section 15-103). The Executive's proposed bills however, create two new Code sections – one for new construction, and one for existing buildings – and phase out the existing Section 15-103.

The Executive's approach of creating two new Code sections is reasonable given the complexity of the tax credit and the varying treatment of new and existing buildings. Therefore, Council staff would support the Executive's amendments, reflected in the attached version 4 of the bill, to create distinct Code sections for new construction and existing buildings.

<u>RECOMMENDATION</u>: Decide whether to accept the Executive's proposal to create one Code section to address tax credits for newly constructed buildings, and a separate section to address tax credits for existing buildings, while phasing out the existing Code Section 15-103. These amendments are reflected in the enclosed version 4 of the bill.

3. <u>Environmental Certification Levels</u>

As recommended by the stakeholder's report, Bill 10-20 would provide bonus, supplemental credits for buildings that achieve the equivalent of certain high-level LEED ratings. The Executive has proposed incorporating additional green building certifications into the bill, such as the Living Building Certification. Supplemental credits would increase based upon the level of certification.

The following chart outlines the tax credit levels in Bill 10-20 and the tax credit levels in the Executive's proposals. As shown in the chart, the credit levels are similar under the original bill and the Executive's proposals, but the Executive's proposal includes bonus credits for a greater variety of industry certifications and alters the time periods associated with the bonus credits.

Version of Bill	Existing Buildings	New Buildings
Original bill	**TIER ONE CREDITS:** --Annual ENERGY STAR improvement of 1-24 would result in a credit equal to the amount of the improvement. --Annual ENERGY STAR improvement of 25-49 would result in a credit equal to the amount of the improvement multiplied by 1.5. --Annual ENERGY STAR improvement of 50-74 would result in a credit equal to the amount of the improvement multiplied by 2. --Annual ENERGY STAR improvement of 75 or more would result in a credit equal to the amount of the improvement multiplied by 2.5. **BONUS CREDITS:** --Gold LEED rating or equivalent would result in an additional creditof 25% of the property tax due. --Platinum LEED rating or equivalent would result in an additional credit of 75% of the property tax due. (Total credit could not exceed 100% of the tax due.)	**TIER ONE CREDITS:** --Improvement over building code of 10-20% would result in a credit equal to the amount of the improvement multiplied by 0.5. --Improvement over building code of 21-30%% would result in a credit equal to the amount of the improvement. --Improvement over building code of 31-40% would result in a credit equal to the amount of the improvement multiplied by 1.5. --Improvement over building code of 41% or more would result in a credit equal to the improvement multiplied by 2. **BONUS CREDITS:** --Gold LEED rating or equivalent would result in an additional creditof 25% of the property tax due. --Platinum LEED rating or equivalent would result in an additional credit of 75% of the property tax due. (Total credit could not exceed 100% of the tax due.)
Bill incorporating Executive's proposals	**TIER ONE CREDITS:** --Same as original bill. **BONUS CREDITS:** --LEED O+M Gold, BREEAM In-Use Excellent or an equivalent standard would result in an additional creditof 25% of the property tax due for 2 years. --LEED O+M Platinum, BREEAM In-Use Outstanding or an equivalent standard would	**TIER ONE CREDITS:** --Same as original bill. **BONUS CREDITS:** --LEED Gold, NGBS Gold, PHIUS+/PassiveHouse, BREEAM-NC Excellent or an equivalent standard would result in an additional credit of 25% of the property tax due over a period of 4 years.

Version of Bill	Existing Buildings	New Buildings
	result in an additional credit of 75% of the property tax due for 2 years. (Total credit could not exceed 100% of the tax due.)	--LBC Petal Certification, LEED Platinum, NGBS Emerald, BREEAM-NC Outstanding or an equivalent standard would result in an additional credit of 75% of the property tax due over 4 years. --Most recent version available of Living Building Certification would result in an addition credit of 75% of the tax due for 5 years. (Total credit could not exceed 100% of the tax due.)

The Committee might wish to ask DEP to discuss the additional gradations of building certifications proposed by the Executive, and the importance of benchmarking the amount of the tax credit to them. The Committee also might wish to ask DEP to comment upon awarding the credits for multiple years.

RECOMMENDATION: Decide whether to accept the Executive's proposal to alter the determination of bonus credits under the bill. The amendments are reflected in the enclosed version 4 of the bill. *See* lines 129 through 142 and 286-302.

4. Identification of State Enabling Law

Under the amendments proposed by the Executive, the term "high performance" building would no longer be used. Since "high performance" building is the term used in the State enabling law, it might be helpful to explicitly reference the enabling law in the bill.

RECOMMENDATION: Decide whether to adopt an amendment to specifically reference the State enabling law for the tax credit. Amendments to this effect is reflected in the enclosed version 4 of the bill. *See* lines 33 through 34 and 193 through 194.

5. Annual Limits on the Tax Credit

The Office of Legislative Oversight (OLO) has estimated that Bill 10-20 would have a modest positive impact on the local economy. The Office of Management and Budget (OMB) has estimated that removing the $5 million dollar cap on credits for new construction would result in approximately $2.6 million in additional tax credits, for a total of $7.6 million in credits for buildings using energy efficient environmental design.

Under the bill, the annual limit on tax credits for existing buildings would be $5 million, but the tax credits for newly constructed buildings would be unlimited. The Executive has proposed placing a $3 million annual limit on tax credits for existing buildings, and a $5 million limit on credits for newly constructed buildings.

RECOMMENDATION: Decide whether to amend the bill to place a $3 million annual limit on tax credits for existing buildings, and a $5 million limit on newly constructed buildings.

NEXT STEPS

The joint Committee is expected to vote on whether to recommend approval of Bill 10-20 to the full Council. The Committee might wish to adopt the potential amendments described above, which are contained in the enclosed version 4 of the bill.

Bill No. 10-20
Concerning: Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit
Revised: 09/10/2020 Draft No. 4
Introduced: March 3, 2020
Expires: September 3, 2021
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. _________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson and Riemer
Co-Sponsor: Council President Katz

AN ACT to:
(1) alter the eligibility criteria for the property tax credit for energy and environmental design;
(2) alter the amounts and durations of the property tax credit for energy and environmental design by type of building;
(3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design; and
(4) generally amend the law concerning the property tax credit for energy and environmental design.

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-103

By adding
Montgomery County Code
Chapter 52, Taxation
Sections 52-103A and 52-103B

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Section 52-103 is amended, and Sections 52-103A and 52-102B are added, as follows:

52-103. Property tax credit – energy and environmental design.

* * *

(c) *Application and sunset dates*. [[A taxpayer must apply for the credit]] [within 1 year after the building is certified as a high performance building] [[on the application and in the manner that the Director of Finance requires]] To qualify for a tax credit under this Section, a taxpayer must submit an application of intent to apply for the credit by January 1, 2022 and either:

(1) for LEED-EB project certification, receive LEED-EB project certification for an eligible LEED-EB building and submit an application to the Director by January 1, 2023; or

(2) for LEED-CS or LEED-NC certification, receive a building permit for an eligible LEED-CS or LEED-NC building and submit an application to the Director by January 1, 2024.

* * *

Sec. 52-103A. Property tax credit - energy-efficient buildings

(a) *Intent.* The intent of this Section is to:

(1) encourage building owners to increase the energy performance of existing buildings;

(2) incentivize building owners to reduce the energy and climate impacts of existing buildings, as the built environment generates more than half of the County's measured community-wide greenhouse gas emissions;

(3) advance the County's aggressive climate goals of an 80 percent reduction in greenhouse gas emissions by 2027 and zero emissions by 2035;

(4) institute regular review of the tax credits outlined in this Section to ensure that they are meeting the goals under paragraphs (1) through (3); and

(5) implement a tax credit under Section 9-242(a) of the Tax-Property Article of the Maryland Code, as amended.

(b) *Definitions*. In this Section the following words have the meanings indicated:

Accredited building professional means an individual that holds a valid and current credential from a building certification organization.

Baseline ENERGY STAR Score means the ENERGY STAR score of a building calculated over any consecutive 12-month period when the scored building is at least 50 percent occupied.

BRE Global means Building Research Establishment Global.

BREEAM means the Building Research Establishment Environmental Assessment Method rating system administered by BRE Global.

Building certification organization means a third-party organization that administers the rating systems identified in this Section.

Building Sustainability Tax Credit is the property tax credit received for earned building certifications described in this Section.

Director means the Director of the Department of Finance or the Director's designee.

Energy-efficient building means a building that has received a Certificate of Occupancy from the Department of Permitting Services, achieved at least a minimum 50 percent occupancy rate for at least 12 consecutive months, and has demonstrated energy improvements consistent with the requirements of this Section.

Energy Reduction Tax Credit is the property tax credit received for energy performance improvements described in this Section.

ENERGY STAR Data Verification Checklist means a report generated in the ENERGY STAR Portfolio Manager tool to document property use details and energy consumption.

ENERGY STAR Portfolio Manager means the no-cost web-based energy management tool developed and maintained by the U.S. Environmental Protection Agency to track and assess building energy performance.

ENERGY STAR Score means the numerical measure of a building's energy use generated through the use of ENERGY STAR Portfolio Manager.

ENERGY STAR score metric reference data means the market data used by the U.S. Environmental Protection Agency to generate the ENERGY STAR Score.

Energy Use Intensity or *EUI* refers to the amount of energy used in a building per square foot per year.

Improved ENERGY STAR Score means the ENERGY STAR score of a building calculated within a consecutive 12-month period when the scored building is at least 50 percent occupied, demonstrating energy savings resulting from the use of a qualifying energy conservation device.

LEED means the *Leadership in Energy and Environmental Design* rating system administered by the USGBC.

Occupancy means the percentage of a building that is occupied and operational.

Property tax means the general County property tax and all special service area taxes.

USGBC means the United States Green Building Council.

(c) *Credit*. The Director must allow a tax credit each eligible year against the property tax imposed on an energy-efficient building under this Section.

(d) *Application*. An application by the owner of an energy-efficient building for a tax credit must be in the form prescribed by the Director and include:

(1) a description of the energy conservation device installed in the building ;

(2) the ENERGY STAR Portfolio Manager Data Verification Checklists documenting the baseline and improved (within the past year) ENERGY STAR scores of an existing energy-efficient building, signed by an accredited building professional; and

(3) if the Building Sustainability Tax Credit is sought, verified documentation demonstrating qualification within the past year for the Building Sustainability Tax Credit in subsection (f).

(e) *Energy Reduction Tax Credit.*

(1) An energy-efficient building may receive an Energy Reduction Tax Credit for achieving energy use reductions under this subsection and, if that credit is granted, may receive an additional Building Sustainability Tax Credit under subsection (f).

(2) For the Energy Reduction Tax Credit, the percentage of the annual County property tax credit, awarded for 2 years, is calculated by subtracting an energy-efficient building's 12-month baseline ENERGY STAR score from the improved 12-month ENERGY STAR score, then multiplying the difference by the multiplier below based on the improved ENERGY STAR score:

(A) If the improved ENERGY STAR score falls between 1-24, multiply the difference by 1.0;

(B) If the improved ENERGY STAR score falls between 25-49, multiply the difference by 1.5;

(C) If the improved ENERGY STAR score falls between 50-74, multiply the difference by 2.0; or

(D) If the improved ENERGY STAR score falls between 75-100, multiply the difference by 2.5.

(3) Baseline and Improved ENERGY STAR Score 12-month time periods must not overlap and must not be more than six (6) calendar years apart.

(4) The Baseline ENERGY STAR Score 12-month time period must not begin earlier than August 26, 2018. Baseline and Improved ENERGY STAR Score 12-month time periods must use the same ENERGY STAR score metric reference data.

(5) If a building is not able to earn the ENERGY STAR score due to the property use type, the Director may accept the USGBC alternative compliance path for Energy Use Intensity (EUI).

(f) *Building Sustainability Tax Credit.*

(1) The owner of an energy-efficient building seeking the Building Sustainability Tax Credit must apply for that tax credit simultaneously with the Energy Reduction Tax Credit. The amount of the Building Sustainability Tax credit must be added to the Energy Reduction Tax Credit and must be equal to:

(A) 25% of the property tax owed on the building for 2 years, if the building achieves the most recent version available of

LEED O+M Gold, BREEAM In-Use Excellent or an equivalent standard; or

(B) 50% of the property tax owed on the building for 2 years, if the building achieves the most recent version available of LEED O+M Platinum, BREEAM In-Use Outstanding or an equivalent standard.

(2) To be approved for the Building Sustainability Tax Credit, an energy-efficient building must also be approved for the Energy Reduction Tax Credit.

(g) *Total Maximum Credit.* The maximum credit that an energy-efficient building may be granted in any year must not exceed 100% of the building's annual County property tax liability.

(h) *Annual limits*. In any fiscal year, the Director must not award more than $5 million in total tax credits granted to all buildings under this Section.

(i) *Reapplications.*

(1) The owner of an energy-efficient building awarded a tax credit under this Section may reapply twice after the initial 2-year credit cycle. The maximum number of applications a building owner may submit is three (3): one initial application and two reapplications.

(2) For any reapplications, the building owner must submit a new Baseline ENERGY STAR Score for the building and describe the improvements performed to achieve the energy reduction. The Baseline ENERGY STAR Score for a reapplication may not be older than the 12-month time period used for the Improved ENERGY STAR Score for the previously approved tax credit. If an owner received a Building Sustainability Tax Credit based upon

certification as LEED O+M Gold, BREEAM In-Use Excellent or an equivalent standard, the building must achieve a higher certification as LEED O+M Platinum, BREEAM In-Use Outstanding or an equivalent standard upon reapplication.

(j) *Credit Review*.

(1) On or before October 1 of each year, the Director of Finance must prepare a report on the status of the Energy Reduction Tax Credit and Building Sustainability Tax Credit.

(2) Every 3 years, the County Executive must submit a report to the County Council reviewing the effectiveness of the Energy Reduction Tax Credit and Building Sustainability Tax Credit and make recommendations on any credit alterations.

(k) *Regulations*. The County Executive may issue regulations under method (2) to administer the Energy Reduction Tax Credit and Building Sustainability Tax Credit.

52-103B. Property tax credit - newly constructed energy-efficient buildings

(a) *Intent*. The intent of this Section is to:

(1) encourage building owners to increase the energy performance of newly constructed buildings beyond current building and zoning code requirements at time of application;

(2) incentivize building owners to reduce the energy and climate impacts of newly constructed buildings, as the built environment generates more than half of the County's measured community-wide greenhouse gas emissions;

(3) advance the County's aggressive climate goals of an 80 percent reduction in greenhouse gas emissions by 2027 and zero emissions by 2035;

(4) institute regular review of the tax credits outlined in this Section to ensure that they are meeting the goals under paragraphs (1) through (3); and

(5) implement a tax credit under Section 9-242(a) of the Tax-Property Article of the Maryland Code, as amended.

(b) *Applicability.* The credit authorized by this Section applies to any tax year beginning January 1, 2022.

(c) *Definitions*. In this Section the following words have the meanings indicated:

BRE Global means Building Research Establishment Global.

BREEAM means the Building Research Establishment Environmental Assessment Method rating system administered by BRE Global.

New Building Sustainability Tax Credit is the property tax credit received for earned building certifications described in this Section.

Director means the Director of the Department of Finance or the Director's designee.

Newly constructed energy-efficient building means:

(A) An unoccupied "core and shell" building with full mechanical systems, electrical distribution infrastructure, and a weather-sealed thermal envelope that has achieved substantial completion and received a Certificate of Occupancy from the Department of Permitting Services within the past year;

(B) A newly constructed building that has achieved substantial completion and received a Certificate of Occupancy from the Department of Permitting Services within the past year; or

(C) A building that has undergone a major renovation that warrants bringing the entire building up to current building code standards and has received final inspection and approval from the Department of Permitting Services.

New Building Energy Reduction Tax Credit is the property tax credit received for energy performance improvements described in this Section.

LBC or *Living Building Certification* means the Living Building Certification administered by the International Living Future Institute.

LEED means the *Leadership in Energy and Environmental Design* rating system administered by the USGBC. In this Section, LEED building certification includes all eligible rating systems for newly constructed non-single-family-residential buildings.

NGBS means the National Green Building Standard rating system administered by Home Innovation Research Labs.

PassiveHouse means the PassiveHouse standard administered by PHIUS.

PHIUS means the PassiveHouse Institute US.

Property tax means the general County property tax and all special service area taxes.

USGBC means the United States Green Building Council.

(d) *Credit*. The Director must allow a tax credit each eligible year against the property tax imposed on a newly constructed energy-efficient building under this Section.

(e) *Application*.

(1) An application by the owner of a newly constructed energy-efficient building for a tax credit must be in the form prescribed by the Director and include:

(A) a certification from the Department of Permitting Services within the past year indicating the percentage performance above current building code requirements at time of application demonstrated by the newly constructed energy-efficient building; and

(B) if the New Building Sustainability Tax Credit is sought, verified documentation demonstrating qualification within the past year for the New Building Sustainability Tax Credit.

(2) A building owner that has received either a New Building Energy Reduction Tax Credit or a New Building Sustainability Tax Credit may not reapply for either credit for the same newly constructed building in any later tax year.

(f) *New Building Energy Reduction Tax Credit.*

(1) A newly constructed energy-efficient building may receive an Energy Reduction Tax Credit for achieving energy use reductions as outlined in this subsection and, if that credit is granted, may receive an additional Building Sustainability Tax Credit as described in subsection (g).

(2) To be eligible for the New Building Energy Reduction Tax Credit, a newly constructed energy-efficient building owned by the applicant must achieve a minimum 10 percent increase in energy performance above the current applicable building and zoning code requirements at time of application using an energy modeling software approved by the Department of Permitting Services.

(3) For the New Building Energy Reduction Tax Credit, the percentage of the annual County property tax credit awarded for 4

years is calculated by rounding a newly constructed energy-efficient building's performance above building code and zoning requirements to the nearest whole number and multiplying it by the multiplier below:

(A) If the building's performance above code is between 10 and 20 percent, multiply the building performance percentage figure by 0.5;

(B) If the building's performance above code is between 21 and 30 percent, multiply the building performance percentage figure by 1.0;

(C) If the building's performance above code is between 31 and 40 percent, multiply the building performance percentage figure by 1.5; and

(D) If the building's performance above code is above 40 percent, multiply the building performance percentage figure by 2.0.

(g) *New Building Sustainability Tax Credit.* The owner of a newly constructed energy-efficient building seeking the New Building Energy Tax Credit must apply for that tax credit simultaneously with the New Building Energy Reduction Tax Credit.

(1) The amount of the credit, in addition to the New Building Energy Reduction Tax Credit, is:

(A) 25% of the property tax owed on the building for 4 years if the building achieves the most recent version available of LEED Gold, NGBS Gold, PHIUS+/PassiveHouse, BREEAM-NC Excellent or an equivalent standard;

(B) 75% of the property tax owed on the building for 4 years if the building achieves the most recent version available of LBC Petal Certification, LEED Platinum, NGBS Emerald, BREEAM-NC Outstanding or an equivalent standard; and

(C) 75% of the property tax owed on the building for 5 years if the building achieves the most recent version available of Living Building Certification.

(2) To be approved for the New Building Sustainability Tax Credit, an energy-efficient building must also be approved for the New Building Energy Reduction Tax Credit.

(h) *Total Maximum Credit.* The maximum credit that an energy-efficient building may be granted in any fiscal year must not exceed 100% of the building's annual property tax liability.

(i) *Credit Review.*

(1) By October 1 of each year, the Director must prepare a report on the status of the New Building Energy Reduction Tax Credit and New Building Sustainability Tax Credit.

(2) Every 3 years, the County Executive must submit a report to the Council reviewing the effectiveness of the New Building Energy Reduction Tax Credit and new Building Sustainability Tax Credit and make recommendations on any credit alterations.

(j) *Regulations*. The County Executive may issue regulations under method (2) to administer the New Building Energy Reduction Tax Credit and New Building Sustainability Tax Credit.

Sec. 2. Sunset Clause. Section 52-103 of the County Code must sunset, and must and have no further force and effect, on January 1, 2025.

LEGISLATIVE REQUEST REPORT

Bill 10-20
Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit

DESCRIPTION:	The bill would: (1) alter the eligibility criteria for the property tax credit for energy and environmental design; (2) alter the amounts and durations of the property tax credit for energy and environmental design by type of building; and (3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design.
PROBLEM:	The current property tax credit for energy and environmental design will allow buildings that simply meet, but do not exceed, the building code to receive credits.
GOALS AND OBJECTIVES:	Incentivize energy and environmental design standards that reduce energy consumption.
COORDINATION:	DEP
FISCAL IMPACT:	OMB
ECONOMIC IMPACT:	Office of Legislative Oversight (OLO)
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A

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Economic Impact Statement

Office of Legislative Oversight

Bill 10-20

Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit

SUMMARY

Overall, the Office of Legislative Oversight (OLO) expects Bill 10-20 to have a positive, yet modest, impact on the Montgomery County economy.

BACKGROUND

Property tax credits are one tool in the County government's toolkit to reach its greenhouse gas (GHG) reduction goals.[1] Under the current property tax credit for energy and environmental design, owners of commercial and multifamily buildings receive tax credits for attaining specific building certifications or equivalents.[2] The purpose of Bill 10-20 is to shift the focus from attaining building certifications to achieving greater reductions in commercial building energy use, which compromises "more than 26% of the County's measured GHG emissions."[3] Bill 10-20 would incentivize energy reduction in the commercial building sector by altering the following three features of the current property tax credit policy:

- "the eligibility criteria for the property tax credit for energy and environmental design,"
- "the amounts and durations of the property tax credit for energy and environmental design by type of building," and
- "annual limits on the total amounts of property tax credits granted by the County for energy and environmental design."[4]

If passed, Bill 10-20 would generate economic impacts for the County economy primarily through removing the $5 million annual cap on credits given to eligible new construction[5] and incentivizing energy reduction in private commercial and multifamily buildings.

INFORMATION, ASSUMPTIONS

This analysis illustrates how Bill 10-20 could generate positive, yet modest, local multiplier effects. To do so, OLO uses Regional Input-Output Modeling System (RIMS II) multipliers for Montgomery County developed by the U.S. Bureau of Economic Analysis. These multipliers are "ratios of total changes to initial changes in regional economic activity."[6] Using these multipliers, OLO illustrates how the injection of funds from

[1] County Council for Montgomery County Maryland. Emergency Climate Mobilization. Resolution No. 18-974. December 5, 2017.
[2] County Council for Montgomery County Maryland. Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit. Bill No. 10-20. Legislative Request Report. March 3, 2020. 9, and County Council for Montgomery County Maryland. Memorandum. Christine Wellons. February 27, 2020. 1-2.
[3] Commercial/Multifamily Stakeholder Work Group. Recommendations on Montgomery County High-Performance Green Building Incentives. March 2019. 11.
[4] County Council for Montgomery County. Property Tax Credit. 1.
[5] County Council for Montgomery County. Memorandum. 3.
[6] US Bureau of Economic Analysis. *RIMS II: An Essential Tool for Regional Developers and Planners*. 3-1.

and METHODOLOGIES

removing the $5 million cap on property tax credits could increase the following economic dimensions of the Montgomery County economy:

- Output – total market value of industry output (sales)
- Earnings – employee compensation plus net earnings of sole proprietors and partnerships
- Employment – number of full- and part-time employees
- Value added – total value of income generated from production[7]

VARIABLES

The variables that could affect economic impacts in the County are the following:

- Total amount of property tax credit awarded per year (based on energy reduction levels and sustainability certification bonus for new buildings and backlogged buildings)
- Total energy costs per year for households living in multifamily residential properties, and owners/tenants of nonresidential commercial properties
- Number of property tax credits received per year
- Montgomery County property tax rate
- Energy rates by utility companies

IMPACTS

Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

The two primary factors that would create economic impacts for businesses, non-profits, and other private organizations are: (1) growth of total building credits, given the elimination of the $5 million cap for new buildings, and (2) energy savings for owners of commercial/multifamily properties.

By removing the $5 million cap on credits for new buildings, OLO expects that the total amount of property tax credits per year would increase. **Figure 1** shows the total amount from credit applications that Montgomery County Government receives every year for new and existing properties. Since 2016, applications for property tax credits have exceeded the $5 million annual cap by more than $1.3 million. Removing the cap would result in greater tax relief for developers in the event that applications for new properties exceed $5 million.

Greater tax relief would reduce the cost of capital investments and generate a small positive multiplier effect in the County economy. To illustrate this effect, OLO used RIMS II multipliers for investments in "residential structures" and "nonresidential structures."[8] As indicated in **Table 1**, for every additional $1 million in tax savings, the local economy could see an additional $1.4 million in output, $340,000 in earnings, and six jobs.[9] Thus, in addition to reducing the cost of capital investments, Bill 10-20 could have positive, yet modest, impacts on the workforce and economic development.

[7] Ibid. G1-G3.

[8] For definitions, see US Bureau of Economic Analysis. Glossary. BEA.gov. https://www.bea.gov/help/glossary (accessed March 18, 2020).

[9] This analysis uses the average multipliers for residential and nonresidential structures.

Figure 1. Total Building Credits for Received Applications by Year

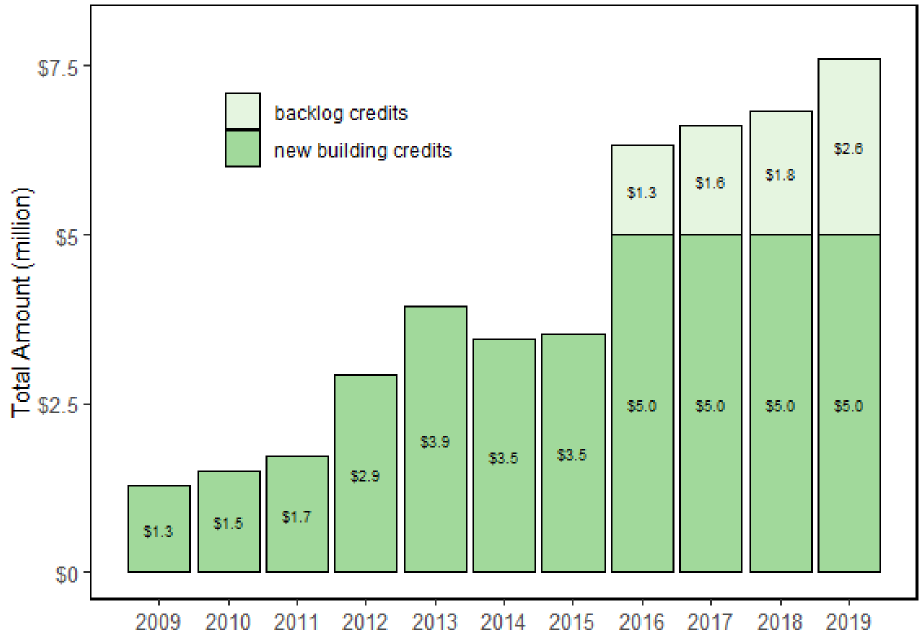

Table 1. Estimated Impacts on Output, Earnings, Employment and Value Added

Credit Increase (million)	Output (million)	Earnings (million)	Employment	Value Added (million)
$1	$1.44	$0.34	6.07	$0.82
$5	$7.22	$1.69	30.36	$4.09
$10	$14.45	$3.39	60.72	$8.17

Theoretically, these positive economic impacts would affect some of the County Council's priority indicators. In addition to lowering the cost of capital improvements, slight increases in output, earnings, and employment could enhance competitiveness and economic development. However, these effects would be small given the small increases in annual credits assumed here.

By prioritizing energy reduction, Bill 10-20 would generate energy savings for owners of commercial and multifamily properties that receive the credit. Although difficult to calculate, total annual energy savings for credit recipients would have direct impacts on key priority indicators. According to a report by Dodge Data & Analytics, a leading provider of analysis for the construction industry, constructing green buildings and performing green retrofits and renovations lower operating costs, improves occupational health and productivity, and increases property values.[10] OLO believes that energy savings would reduce net operating costs for owners of commercial and multifamily properties and very likely boost the value of these properties.

However, it should be noted that two factors could offset these potential energy savings. First, utility companies may respond to the reduced energy sales to commercial and multifamily buildings by asking the Public Services Commission for rate increases to compensate for shortfalls. Second, an increase in property taxes would offset the savings for buildings that do not attain credit for 100% of taxes.

Residents

Employment, property values, taxes paid, etc.

Bill 10-20 could impact residents through the growth of total building credits and energy savings for households living in multifamily properties. The multiplier effects on output, earnings, employment, and value-added that are discussed above would span the County. Residents would, therefore, share in these economic benefits. Moreover, due to energy savings, owners of units in multifamily properties would see a reduction in household expenses and would also benefit from potential increases in property values. However, the extent to which commercial tenants and multifamily renters would benefit is uncertain. Depending on the leasing arrangement, it is possible that landlords would "pocket" the energy savings rather than passing them to renters. Renters may or may not see a reduction in their monthly rental rates, but if multifamily buildings are individually metered and billed for energy use, renters would see a reduction on their utility bills.

WORKS CITED

Commercial/Multifamily Stakeholder Work Group. *Recommendations on Montgomery County High-Performance Green Building Incentives*. March 2019.

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County Council for Montgomery County Maryland. Memorandum. Christine Wellons. February 27, 2020.

[10] Dodge Data & Analytics. *Smart Market Report: World Green Building Trends 2018*. 32-40. https://www.construction.com/toolkit/reports/world-green-building-trends-2018 (accessed on March 18, 2020).

Dodge Data & Analytics. *Smart Market Report: World Green Building Trends 2018*.

US Bureau of Economic Analysis. *RIMS II: An Essential Tool for Regional Developers and Planners*.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO).

Fiscal Impact Statement
Bill 10-20, Property Tax Credit- Energy an Environmental Design- Eligibility Criteria and Amounts of Credit

1. **Legislative Summary**

The purpose of the proposed bill is to 1) alter the eligibility criteria for the property tax credit for energy and environmental design; 2) alter the amounts and durations of the property tax credit for energy and environmental design by type of building; and 3) alter annual limits on the total amount of property tax credits granted by the County for energy and environmental design.

Montgomery County Code Chapter 52, Article X, Section 52-103 currently allows developers to receive property tax credits for energy and environmental design if their building(s) achieve a qualified rating under any of three rating systems - LEED-CS, LEED-EB, and LEED-NC - administered by the US Green Building Council (USGBC).

The Bill will:

- Implement a property tax credit for new and existing commercial and multifamily construction based upon energy reduction metrics and industry certifications;
- with the respect to new or extensively modified construction, increase the amount of credit as the building's energy reduction level increases;
- cap the total credit at 100% of the County property tax owed on the building;
- with respect to existing buildings, base the credit upon the ENERGY STAR improvement of the building over a 12- month period;
- set the duration of the tax credit at 4 years for qualified new construction, and at 2 years for qualified existing buildings; and
- alter the current credit cap granted by the County of $5 million annually for all buildings. The bill would retain this $5 million annual credit cap to all *non-covered* buildings (existing buildings), but it would not apply to *covered building*. "Covered building" means a newly constructed or extensively modified non-residential or multi-family residential building that has or will have at least 10,000 square feet of gross floor area.

2. **Estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. (Includes data sources, assumptions, and methodology)**

Since the bill lifts the cap for annual credit for Covered buildings, the number of credit recipients could increase, affecting County property tax revenue. However, the bill also adds requirements to increase energy performance to get the credit.

Fiscal Impact Statement
Bill 10-20, Property Tax Credit- Energy an Environmental Design- Eligibility Criteria and Amounts of Credit

Fiscal Impact Data: Montgomery County, Maryland. Tax Expenditure Report – Department of Finance, October 2019

Levy Year	Amount($)	Recipients
2018	5,000,000	28
2017	5,000,000	43
2016	5,000,000	60
2015	3,534,993	65
2014	3,653,867	49
2013	4,014,625	47
2012	3,072,232	39
2011	1,717,224	15
2010	1,507,567	11
2009	1,295,677	8

Since 2016, the number of tax credit recipients has decreased year over year. Fewer new or existing buildings received a credit prior to the County reaching the annual cap of $5 million dollars.

Total Building Credits for Received Applications by Year

This table shows the total dollar amount of credit applications that the Montgomery County Government receives every year for new and existing properties. Since 2016, applications for property tax credits have exceeded the $5 million annual cap. Given this trend, removing the cap would most likely result in an increase to the total amount of County property tax credits granted to developers.

Levy Year	New Building Credits	Backlog Credits
2019	5,000,000	2,600,000
2018	5,000,000	1,800,000
2017	5,000,000	1,600,000
2016	5,000,000	1,300,000
2015	3,534,993	-
2014	3,653,867	-
2013	4,014,625	-
2012	3,072,232	-
2011	1,717,224	-
2010	1,507,567	-
2009	1,295,677	-

Table #3 Total Covered and Other credit applications submitted during 2019

This table shows that in 2019 $2.6 million worth of applications were not eligible for the property tax credit since the cap of $5 million was reached. However, with the new bill, the cap will apply only to Other or non-covered buildings (existing buildings), which in 2019 added up to $3,715,300. As a result, all Covered and non-covered applications for the credit would be granted generating a total credit of $7.6 million, $2.6 million more than the current cap specified in the County Code.

Levy year credit	New Building Credits	Backlog Credits	Total 2019
2019 Covered and Other	**$5,000,000**	**$2,600,000**	**$7,600,000**
Covered (New Construction)	$3,503,586	$384,623	$3,888,210
Other (Existing Buildings)	$1,485,866	$2,229,434	$3,715,300

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

   Based on the above charts, there is likely to be a reduction in County property tax revenue over the next six years due to this bill. There could be a loss of $2.6 million or more each year (the $2.6 million is the amount of the backlog credits from FY19). Because of this, it is difficult to make an accurate estimate as it is unknown as to the amount of eligible new or extensively modified construction that will qualify for the tax credit as the $5 million cap no longer applies to these buildings.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Bill 10-20 does not authorize future spending.

6. **An estimate of the staff time needed to implement the bill.**

   There is no anticipated need for additional staff, but there would be an increased level of staff effort, principally in DPS and DEP, to verify the energy savings achieved by applicants for the credit.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   See comment above.

8. **An estimate of costs when an additional appropriation is needed.**

   No additional appropriation is needed to implement Bill 10-20.

9. **A description of any variable that could affect revenue and cost estimates.**

   Based on the data shown in Question #2, Bill 10-20 likely will have a fiscal impact on County property tax revenue. Removing the $5 million annual cap on tax credits would allow more beneficiaries (owners of commercial and multifamily properties) to apply for the credit, which likely has some effect County's property tax revenue in FY21 and beyond. OMB attempted to model the effects of the proposed bill on the 2019 credit applications. Since the requirements of the proposed bill are based on actual energy reduction data in addition to the LEED ratings, it is difficult to calculate what the fiscal impact of the bill would have been in 2019 because only the LEED ratings data was available.

10. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    There is likely to be a reduction in County property tax revenue in FY21 and beyond due to this bill. The loss of property tax revenue could be $2.6 million or more each year. However, it is difficult to make an accurate estimate as it is unknown as to the amount of eligible new or extensively modified construction that will qualify for the tax credit as the $5 million cap no longer applies to these buildings.

11. **If a bill is likely to have no fiscal impact, why that is the case.**

    Not applicable.

Fiscal Impact Statement
Bill 10-20, Property Tax Credit- Energy an Environmental Design- Eligibility Criteria and Amounts of Credit

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Estela Boronat de Gomes, Office of Management and Budget

Stan Edwards, Department of Environmental Protection

Michael Parent, Department of Finance

Richard Madaleno

______________________________ 4/1/20

Richard S. Madaleno, Director Date

Office of Management and Budget

T&E/GO COMMITTEE #1
October 14, 2019

Briefing

MEMORANDUM

October 9, 2019

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee
Government Operations & Fiscal Policy (GO) Committee

FROM: Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Briefing: Property Tax Credit - Energy & Environmental Design[1]**

The following officials and staff are expected to attend this briefing:

- **Executive Branch Staff**
  - Adriana Hochberg, Assistant Chief Administrative Officer (and Director of County Climate Policy)
  - Stan Edwards, Chief, Environmental Policy and Compliance, Department of Environmental Protection (DEP)
  - Lindsey Robinett Shaw, Energy and Sustainability Programs Manager, DEP
  - Mark Nauman, Senior Specialist, Energy & Green Building, Department of Permitting Services (DPS)
- **Stakeholder Work Group Members**
  - Jonathan Bauer, LEED AP® O+M, Fitwel Ambassador, Sustainability Manager, The Tower Companies
  - Mike Babcock, CEM, LEED AP BD+C, O+M, Sustainable Building Partners
  - Chet Knaup, PE, LEED AP BD+C, BEMP, General Manager, SPECTRUM ENERGY, LLC

Attachments to this memorandum include:

- County Executive Transmittal Letter (©A)
- Stakeholder Work Group Report (©B-26)

NOTE: DEP's Presentation Slides for the briefing will be forwarded to the Committee when received.

On October 14, the Joint T&E/GO Committee will receive a briefing from DEP staff on the Stakeholder Work Group's "Recommendations on Montgomery County High-Performance Building

[1] Key words: #EnergyEfficiency, Property Tax Credit, Green Buildings

Incentives" Report, as well as the Executive's comments. Several Stakeholder Work Group members will also be available to discuss the Work Group's recommendations.

In March 2018, the Joint T&E/GO Committee under the prior Council requested that the Executive convene a stakeholder work group to discuss whether the current property tax credit for energy and environmental design is still needed and, if so, what changes to the credit should be made. An update on the work group's progress was provided to the Joint Committee on July 19, 2018.[2]

The Work Group[3] first met in April 2018. The Work Group's report was completed in March 2019. On June 19, the Executive transmitted the Work Group report to the Council, along with his recommendations.

Other County Green Building Incentives

In addition to the property tax credit up for discussion by the Joint Committee, the County currently provides a residential building property tax credit of up to $250 per property per year for eligible conservation devices/improvements. Total credits awarded annually are capped at $100,000.

The County used to have a larger tax credit (up to $5,000 per project, with total credits capped at $400,000 per year) for residential solar and geoexchange systems. This program was closed to new applicants in FY12 due to oversubscription.

At its July 2018 meeting, the Joint Committee under the prior Council expressed support for incentivizing residential green buildings or high-performance homes. DEP staff noted at the time that a separate stakeholder work group was working on that topic.

Property Tax Credit – Energy & Environmental Design Background

Since 2004, the State of Maryland has allowed local governments to provide tax credits for high performance buildings (Md Code: Property Tax Section 9-242). The County's current property tax credit dates to 2007 with the passage of Bill 37-06 (Property Tax Credit – Green Buildings).

The County's credit program is administered by the Department of Finance. Eligible new high-performance buildings can receive tax credits for 5 years. Eligible existing high-performance buildings can receive credits for 3 years.

The credit is linked to the Leadership in Energy and Environmental Design (LEED) Green Building rating system. This rating system includes criteria related to sustainability of a site, water efficiency, energy efficiency, materials, and resources, and indoor environmental quality. Newly

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[2] Prior T&E/GO Joint Committee Council Staff reports on this issue are available for download at:

- September 14, 2017: https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=13770&meta_id=142847
- March 8, 2018 https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=14689&meta_id=150477
- July 19, 2018: https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=15322&meta_id=160028

[3] For a list of organizations represented on the Work Group, please see Appendix B of the Work Group report on ©26.

constructed or extensively modified non-residential or multi-family residential buildings are eligible as shown in the charts below:

Current Property Tax Credit for Energy and Environmental Design

"Covered"* Buildings	LEED	Credit	Duration
New Buildings	Gold	25%	5 Years
	Platinum	75%	5 Years
Existing Buildings	Gold	10%	3 Years
	Platinum	50%	3 Years

*=>10,000 sq/ft gross floor area

Other Buildings	LEED	Credit	Duration
New Buildings	Silver	25%	5 Years
	Gold	50%	5 Years
	Platinum	75%	5 Years
Existing Buildings	Silver	10%	3 Years
	Gold	25%	3 Years
	Platinum	50%	3 Years

The County law limits the total value of credits provided annually to $5.0 million. Of that total, a maximum of $1.5 million can be provided annually to LEED silver or equivalent buildings and a maximum of $2.5 million can be provided annually to LEED gold or equivalent buildings. Projects that do not receive their full credit in a given year because of the cap are eligible to receive the balance of their credit in the next year.

The Stakeholder Work Group report (see ©3) notes that since its inception in March 2008 through calendar year 2018, a total of $33.4 million in tax credits was awarded across 62 applications. The annual $5.0 million cap was first reached in 2016 and then again in 2017 and 2018.

Reconsideration of the Current Tax Credit

In September 2017, the Council adopted the International Green Construction Code (IgCC) 2012, and Executive Regulation 21-15 AMII (which implemented the new code) became effective in December 2017. This code makes mandatory many elements covered in LEED certification. Since the intent of the property tax credit was to incentivize high-performance buildings that go beyond code requirements, the Joint Committee asked Executive staff to revisit the property tax credit's need and requirements.

At the Joint Committee's July 19, 2018 meeting, the Committee concurred with the following general policy priorities that the Stakeholder Group should seek to follow in its recommendations:

- Tax expenditures (i.e., the tax credit) should be provided for buildings that exceed the requirements of the new code.
- Tax credit eligibility should be adjusted as new versions of the IgCC are adopted (i.e., buildings need to exceed current standards to be eligible).
- As noted earlier, tax credits or other programs should incentivize residential green buildings or high-performance homes (not just commercial and multi-family buildings). *NOTE: DEP has noted that this work is being done via a separate stakeholder work group.*
- The credit should be aligned with the County's climate goals by shifting the focus from building certification to energy and/or greenhouse gas reductions.

Stakeholder Work Group Report

DEP staff will provide a summary of the Work Group report and its recommendations. Below are some key points.

New Tax Credit Structure

The Stakeholder Work Group recommends a 2-tier credit for new construction and a separate 2-tier credit for existing buildings (see ©13 and ©15 for summaries of both credits). For both types of buildings, the first tier focuses on energy reduction, with credits based on achieving energy performance goals. This approach would better align the tax credit with the County's greenhouse gas reduction efforts; a priority identified at the July 19, 2018 Joint Committee meeting.

For new construction, energy performance must be at least 10% above code (with the credit increasing at higher levels of performance above code). The second tier (which is only applicable when the applicant is eligible for credit under the first tier) requires a LEED Gold (25% credit) or LEED Platinum certification (75% credit) or equivalent.

For existing buildings, energy reductions must be demonstrated using ENERGY STAR Portfolio Manager, with the credit being higher for properties that obtain higher ENERGY STAR Score tiers. Like the new construction credit, the second tier is only applicable when the applicant is eligible for credit under the first tier. LEED Gold (25% credit) or LEED Platinum certification (50% credit) or equivalent is required.

The maximum total credit across both tiers is capped at 100%. Credits for new construction would be for four years (with a fifth year available for buildings that achieve "Living Building Certification.")[4] Credits for existing buildings would be for two years.

The Stakeholder Work Group recommended there be no overall cap in credits awarded annually for new construction projects, since these projects are increasing the County's accessible base. For existing buildings, where the County's accessible base may not be increased, the Work Group felt a cap was appropriate but that the cap should keep pace with inflation and/or be revisited on a regular cycle.

The Joint Committee may want to hear from DEP and the Stakeholder Work Group members regarding how the Work Group came to its recommendations regarding the eligibility criteria, level of credit to provide, the duration of the credit, etc.

Based on the Stakeholder Work Group's review of incentives provided by other jurisdictions (see ©7-9), high performance building tax credits are common in the region and throughout the country. However, most of these tax credits focus on 3rd party certification such as LEED for eligibility (like the County's current tax credit).

Also, given that the Departments of Permitting Services and Finance had representatives on the Stakeholder Work Group, Council Staff assumes that implementation/verification issues regarding the tax

[4] NOTE: given the four (or five) year timeframe for new construction property tax credits, the Council may want to consider whether additional energy intensity use verification is required during the multi-year credit period.

credit have been addressed. However, the Joint Committee may wish to hear from Executive Branch staff to affirm that the Stakeholder Work Group recommendations are feasible to implement.

High Performance Residences

As noted earlier, the current credit is limited to commercial and multi-family buildings. At its July 2018 meeting, the Joint Committee supported further exploration in providing tax credits or other incentives to other residential properties.

The Stakeholder Work Group report notes that this issue is under consideration under a separate review process by Executive staff, given the different stakeholders involved with this building type. Single-family residential homes are not eligible under the County's current credit since the State enabling law did not allow credits to single-family residential buildings at the time the County credit was created. The Executive has formed a separate Stakeholder Work Group to look at the issue of providing tax credits for high-performance single-family homes. DEP staff can provide an update on the status of this effort.

Other Incentives to Consider

The Work Group report (see ©20) also suggests a pilot program be considered for buildings that have never been benchmarked in ENERGY STAR Portfolio Manager and are not covered under the County's Building Energy Benchmarking Law (i.e. below 50,000 square feet). This program would provide a one-time incentive (the report suggests a \$500 to \$1,000 rebate) to encourage property owners to benchmark their buildings and disclose benchmarking data to the County.

Another option that has come up in prior discussions with DEP would be to amend the benchmarking law to lower the building size threshold and thus have more buildings required to benchmark and report to the County.

Sunsetting of the Existing LEED Building Incentive

The Stakeholder Work Group Report recommends phasing out the current property tax credit (assuming the new credit program is adopted) such that property owners who have made construction and business decisions based on the current tax credit should be allowed to proceed under the existing LEED building incentive. ©21-22 includes recommendations for how to phase out the current program.

Executive Recommendations

In his transmittal letter (see ©A) the County Executive expresses support for the Stakeholder Work Group's recommendations, except regarding the elimination of the annual cap for new construction. The Executive recommends an annual cap of \$3.0 million total for both new construction and existing buildings. He also suggests reallocating \$1.0 million from the tax credit program to climate initiatives beginning in FY21.[5]

[5] Since the tax credits provided annually are a "tax expenditure" or "foregone income", it is unclear how the County would formally reallocate expenditures from projected increased revenue that is obtained through a lower cap on this tax credit.

Next Steps

State Authorization

The Stakeholder Work Group report notes that the new incentives proposed appear to be unique in the State of Maryland. While arguably consistent with the intent of existing State law regarding providing property tax credits for high performance buildings, the report suggests that the County seek clarification from the State as to whether the new property tax credits would be acceptable under current State law.

Climate Change Planning

This past summer, the County Executive initiated a comprehensive climate planning effort with three technical workgroups (Clean Energy, Buildings, and Transportation), including environmental experts and advocates with staff support from DEP. These groups are developing recommendations that will be further studied and prioritized with consultant support.

The property tax credit for energy and environmental design certainly fits within the scope of issues being reviewed by the Buildings Technical Work Group in the County's Climate Change planning effort. In fact, the changes to the proposed tax credit would focus the credit more on energy performance, which would better align this credit with the County's greenhouse gas reduction efforts, as the Joint Committee sought.

However, from a process standpoint, the Council will need to consider whether it wants to give the County Executive's climate planning effort more time to prioritize potential greenhouse gas reduction actions or if it is comfortable moving forward to change the current property tax credit.

County Legislation Required

If the Council wishes to implement changes to the current property tax credit, local legislation will be needed since the current law specifically lays out eligibility requirements, the amount and duration of the credit, and annual caps on the total amount of credits that can be awarded. Other issues, such as the grandfathering of projects under the current tax credit and potential changes to the County's energy benchmarking law, will also involve legislative changes.

Attachment

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

RECEIVED
MONTGOMERY COUNTY
COUNCIL

June 19, 2019

Council President Nancy Navarro
Councilmember Tom Hucker
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Navarro and Councilmember Hucker:

As requested by the County Council T&E and GO Committees in 2018, the Executive convened a Stakeholder Work Group to discuss whether the current Property Tax Credit for Energy and Environmental Design is still needed and what a new program might look like. A revision of the tax credit is necessary following the adoption of the International Green Construction Code (IgCC). The current green building tax credit incentive structure for commercial buildings no longer acts as an incentive, as a building owner can earn a tax credit while meeting code for certain buildings.

The Commercial/Multi-family Stakeholder Work Group convened from March to December 2018, developed recommendations, and issued a report to the Executive in March 2019, which is included in this transmittal. The Executive supports the Work Group's recommendation to restructure the green building tax credit program using energy efficiency as the primary attribute necessary to unlock tax credit incentives. This new structure, focused on energy efficiency first, is a tool that will drive developers towards more energy efficient and sustainable buildings.

The Executive disagrees with only one of the Work Group recommendations in the report, regarding the annual incentive cap. In the current green building tax credit program, there is $5 million annual maximum cap. The Work Group recommended that there should be no annual incentive cap on new construction—at least initially to better inform a cap amount—and a revised cap that keeps pace with inflation for existing buildings. Because tax credits translate into fewer County taxes collected to pay for needed services, the Executive recommends a new, lower annual cap be set at $3 million for both new construction and existing buildings. In addition, and in support of the County's climate planning efforts, we will reallocate $1 million from the County green building tax credit program to fund climate initiatives, beginning in FY21. The specific initiatives to be funded with the $1 million will be defined in the Climate Action Plan, which is currently under development.

Sincerely,

Andrew Klein for

Marc Elrich
County Executive

ME:AH

FINAL

Recommendations on Montgomery County High-Performance Green Building Incentives

REPORT BY COMMERCIAL/MULTIFAMILY STAKEHOLDER WORK GROUP
MARCH 2019

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Table of Contents

Executive Summary

This report details recommendations developed by key stakeholders in the commercial building sector for a revised green building incentive for newly constructed and existing commercial and multifamily buildings. The stakeholders reviewed the uptake of Montgomery County's current green building incentive, evaluated green building incentives in other jurisdictions, and developed an innovative incentive model that would encourage the construction of new buildings that perform better than building code and spur energy improvements in existing buildings.

The design of this incentive structure embodies the spirit of the ambitious greenhouse gas (GHG) emissions reduction goals in the County Council's Climate Emergency resolution, rewards deep energy savings as well as whole-building sustainability, and builds awareness in existing building owners who may have been overlooking the importance of energy conservation.

As this report details, the stakeholders believe this balanced incentive approach—paired with other County energy programs, incentives, and financing options—will maintain Montgomery County's leadership in the sustainability space while bolstering our economic base with greener commercial building stock. The stakeholders look forward to continued conversations with the Montgomery County Council on this important issue.

Background

Montgomery County, Maryland is home to more than 6,000 commercial and multifamily properties covering more than 295 million square feet of rentable building area. The county's commercial building stock is primarily made up of general retail, office, and multifamily buildings (by total number and rentable square footage; see Appendix A).[1]

The County's 2006 Green Building Law required all privately-owned newly constructed or extensively modified non-residential or multifamily residential buildings that were at least 10,000 gross square feet to achieve a minimum of LEED Certified or equivalent. County buildings of this size were required to be LEED Silver or equivalent.

In 2007, the County created a high-performance building incentive program that provides property tax credits for newly constructed and existing buildings that achieve LEED certification above and beyond code (Property Tax Credit – Energy and Environmental Design). This tax credit incentive is authorized under Maryland state law, which allows counties to credit county property taxes for high performance buildings (MD Tax-Prop Code § 9-242). Depending on the characteristics of the building and LEED level achieved, the County provides a property tax credit from 10% to 75% over 3-5 years per building, with a maximum amount of $5 million distributed annually.

Since the establishment of this tax credit program in March 2008, the County has provided nearly $33.4 million in property tax credits *(with another $1.8 million allocated for levy year 2019 for buildings in the queue)*.[2] See summary table below:

Montgomery County Property Tax Credit Awarded for

Levy Year	Number of New Applications Received	Total Number of Projects Receiving Funds Each Year	LEED Silver	LEED Gold	LEED Platinum	Total Credit Amount Provided
2009	8	8	$ 178,068.47	$ 623,326.41	$ 594,282.16	$ 1,295,677.04
2010	3	11	$ 161,732.08	$ 738,786.20	$ 607,048.25	$ 1,507,566.52
2011	4	15	$ 218,507.75	$ 810,213.56	$ 688,502.81	$ 1,717,224.12
2012	15	24	$ 89,213.38	$ 2,004,958.50	$ 827,886.97	$ 2,922,058.85
2013	8	32	$ 228,531.77	$ 2,490,606.60	$ 1,219,915.95	$ 3,937,054.52
2014	1	28	$ 167,886.52	$ 2,424,345.87	$ 871,301.11	$ 3,463,533.49
2015	11	25	$ 149,044.92	$ 2,544,762.76	$ 841,186.42	$ 3,534,993.09
2016	4	23	$ 114,604.33	$ 2,479,096.03	$ 2,406,299.64	$ 5,000,000.00
2017	8	19	$ 112,384.39	$ 2,117,885.64	$ 2,769,729.97	$ 5,000,000.00
2018	22*	7	$ 103,001.16	$ 291,207.46	$ 4,605,791.38	$ 5,000,000.00
TOTAL	62	**	$ 1,520,974.75	$ 16,425,189.21	$ 16,431,943.85	$ 33,378,107.62

[1] Source: CoStar Commercial Real Estate Information Company. Data accessed May 2018.

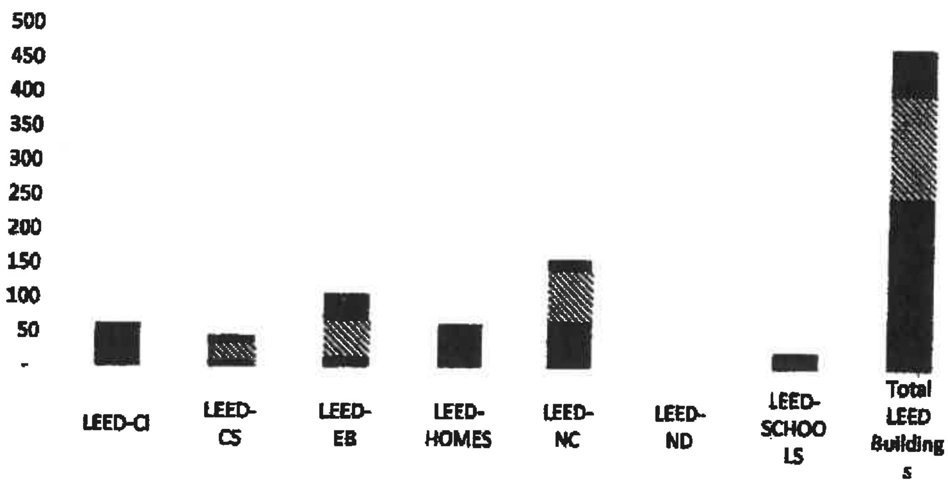
[2] The Montgomery County Department of Finance Treasury Division provided the above property tax credit data most recently on October 25, 2018.

*This number represents the total applications received by the County that are waiting in the queue for funds to be allocated to the building owner.

**This column provides insight into how many properties were receiving payment of the property tax credit each year. Because the credit for some buildings was paid out over multiple years, totaling this column would double-count properties and present a misleading figure about the number of properties that received a green building tax credit.

Comparison of LEED Certified Projects in Montgomery County, MD

All LEED Projects vs. LEED Projects Eligible for Tax Credits



	LEED-CI	LEED-CS	LEED-EB	LEED-HOMES	LEED-NC	LEED-ND	LEED-SCHOOLS	Total LEED Buildings
Applied for CountyTax Credit (Received or in Queue)		11	40		17			68
Eligible for Tax Credit		24	51	1	74			150
Not Eligible for Tax Credit	64	11	17	64	68	1	26	251

Notes: A handful of buildings in Montgomery County have achieved multiple LEED certifications, as a building can receive LEED certification at different points during the construction and ongoing operations of the building. For example, a commercial building can get LEED certified under the core & shell (LEED-CS), new construction (LEED-NC), and existing buildings (LEED-EB) certifications, and tenants of the building can pursue the commercial interiors (LEED-CI) certification.

LEED-HOMES can include low- and mid-rise multifamily buildings as allowed by USGBC. The majority of LEED-HOMES certified buildings in the County are single-family homes.

Since 2008, LEED certification has grown to become synonymous with green building, and the commercial real estate market often demands LEED certifications due to financial requirements, owner sustainability initiatives, and tenant preference. Over time, additional green building certifications have also gained recognition in the commercial building marketplace. Montgomery County spurred green building innovation with this LEED-certification-focused property tax incentive and continues to build on that leadership in the commercial sector with the establishment of a Building Energy Benchmarking Law in 2014, creation of a Commercial Property Assessed Clean Energy (C-PACE) financing program in 2015, and development of the first local-level green bank financing organization in 2016.

In September 2017, Montgomery County adopted the International Green Construction Code 2012 (IgCC 2012, Executive Regulation 21-15 AMII) which became effective on December 1, 2017. The IgCC mandates many of the elements covered in LEED certification, such that LEED is often used as an alternative compliance path for meeting IgCC in local jurisdictions that have adopted the IgCC. Montgomery County's iteration of the IgCC also includes an alternative compliance path for non-residential commercials buildings if buildings achieve LEED Silver certification and a designated number of points in the Energy and Atmosphere category.

Under Montgomery County's current green building code and incentive program, select buildings (i.e., buildings 5,000 square feet up to 10,000 square feet) could both meet building code if using the LEED alternative compliance path and simultaneously be eligible for a green building property tax credit. In light of this, the Montgomery County Council's Transportation, Infrastructure, Energy and Environment (T&E) and Government Operations and Fiscal Policy (GO) committees started reviewing the green building tax credit program in September 2017. In March 2018, the T&E and GO committees directed the Executive Branch to convene a stakeholder work group to review the current green building incentive program and provide recommendations for a revised incentive structure. This report serves as the stakeholder work group's recommendations for Council consideration.[3]

Development of the Work Group

In April 2018, the Department of Environmental Protection (DEP) held a kick-off meeting for key stakeholders interested in developing recommendations for the County's green building incentives for commercial and multifamily buildings. DEP advertised this kick-off meeting in its various newsletters, as well as directly contacted stakeholders who were previously involved in DEP-led stakeholder work groups related to the County's benchmarking law and development of a County-level Green Bank.

Following the kick-off meeting, the work group established subcommittees to explore topics in-depth, including what other jurisdictions offer and technical elements of incentive options. As the conversation evolved, engaged stakeholders encouraged their peers and colleagues to attend meetings and provide their input. Organizations that were directly involved in the work group process are acknowledged in Appendix B.

Overarching Work Group Goals

During the kick-off meeting in April 2018, stakeholders determined the top priorities for the green building incentive to be:

1. Revise current LEED green building tax credit following the adoption of IgCC 2012 so that incentives are not given for buildings that meet code.
2. Shift primary incentive focus from building certification to energy and GHG reductions to align with the County's climate goals.

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[3] The T&E and GO committees also requested that Executive staff engage single-family residential stakeholders about the possibility of offering an incentive for green single-family residential buildings. Due to the varied stakeholders and motivators between the commercial/multifamily and single-family residential sectors, recommendations for single-family residential high-performance building incentives will be presented in a separate report.

a. Carbon and energy reductions are primary goals of the incentive recommendations. However, water efficiency, waste reduction, and stormwater management are also ancillary goals important to both the County and building owners.

3. Where feasible, ensure incentive programs adjust as building codes get more stringent so that incentives encourage buildings that exceed code requirements in effect when the building is built.

Review Process

The stakeholders developed recommendations through a series of 13 meetings over the course of eight months. Meeting times and information, agendas, notes, and evolving drafts of the incentives structure were distributed through the Commercial/Multifamily Stakeholders email list, which was administrated by DEP. The full work group met via webinar in early December 2018 to finalize the recommendations report; comments from this process have been incorporated into this final draft. Please note that participation in the process does not imply full stakeholder endorsement of any particular recommendation.

Montgomery County Government staff are incredibly grateful for the time, energy, and expertise the stakeholder work group provided during this process. Stakeholders not only brought their knowledge of the commercial building sector, but kept the goals of reducing GHG emissions and involving new building owners in the energy conversation at the forefront of each conversation. The work group members have contributed to an innovative proposal that meets the spirit of the County's declared climate emergency.

Other Factors in the Market

A variety of factors influence Montgomery County's green building market, in addition to the County providing green building incentives. These include:

- the state of the economy,
- energy prices,
- evolution of building codes
- advancements in green building standards,
- tenant awareness and demand for green buildings,
- available green building incentives from other sources, such as Federal and state programs, and utilities, and
- options for sustainably focused financing, such as C-PACE and the Montgomery County Green Bank.

Specific to the state of Maryland, Commercial Property Assessed Clean Energy (C-PACE) financing is available for local jurisdictions to enact at the local level. To date, 12 jurisdictions in the state have active Commercial PACE financing programs with five additional programs in development. The Maryland Energy Administration offers grants and financing to commercial building owners for energy efficiency and renewable energy projects. Maryland energy utilities also offer energy efficiency incentives through the EmPOWER Maryland program. The combination of utility incentives, grants, financing, and tax credits all contribute to the business case for commercial green buildings.

While Montgomery County's incentives may help the business case for constructing or renovating a sustainable building, these incentives alone are not the only motivator for building owners. Because of the uncertainty of how these factors interplay with one another, stakeholders found it challenging to pinpoint the exact dollar amount of incentive per project or the total amount that should be allocated to this program. Piloting this new incentive program with plans to revisit the structure, uptake, and allocated amount on a regular basis can help shape the success of this program.

Green Building Incentives in Other Jurisdictions

Before developing the revised green building incentive proposal, the work group reviewed existing green building incentives for the commercial and multifamily building sector in the state of Maryland and in other jurisdictions across the country.

At a high level, the incentives tend to be in one of three categories: subsidizing the cost of solar panel installation, driving demand for third-party green building certifications, and providing financial incentives for stretch codes that encourage going a percentage beyond current energy code. More specifically, some jurisdictions tie incentives to a per-kWh or per-kW savings for existing buildings to incentivize building performance over time. Other jurisdictions provide incentives for a building performing a percentage better than ASHRAE Appendix G. Other incentive programs reward building rating system certification with certain required credits (e.g., LEED Gold + commissioning prerequisites and at least one commissioning credit).

Maryland

The State of Maryland allows jurisdictions to provide property tax incentives for high performance buildings as defined by code [MD Tax-Prop Code § 9-242 (2016)] or energy conservation systems [MD Tax-Prop Code § 9-203 (2017)]. These can be used in conjunction with Federal investment tax credits for renewable energy systems (which is one element sustainable buildings likely include), as well as other incentives and financing options only available to sustainable buildings.

The following Maryland jurisdictions offer property tax credits for the commercial and multifamily building sector:

- **Baltimore County** offers 3-5-year property tax incentives for LEED Core and Shell, New Construction, and Existing Buildings certifications ranging from 10-80% based on the certification level achieved. Baltimore County also offers 5-year property tax credits for NGBS certified buildings ranging from 50-80% based on the certification level achieved. A dedicated low-interest loan program is also available for nonprofits and small businesses to make energy efficiency upgrades.

- **Carroll County** offers a 5-year property tax credit for LEED, Green Globes, or a county-recognized equivalent certification ranging from 25-75% based on the certification level achieved.

- **The City of Frederick** offers a 5-year property tax credit for certain LEED certifications (or equivalent standard) ranging from 25-75% based on the certification level achieved. For LEED Existing Building certifications or equivalent standard, buildings can earn a 3-year property tax credit ranging from 10-50% based on the certification level achieved.

- **Howard County** offers a 5-year property tax credit for LEED Core and Shell or New Construction certifications ranging from 25-75% based on the certification level achieved. For LEED Existing Building certifications, buildings can earn a 3-year property tax credit ranging from 10-50% based on the certification level achieved. There is also a separate, 3-year property tax credit for LEED certified buildings to offset the cost of energy conservation devices ranging from 14-20% based on the building certification level achieved.

- **Prince George's County** recently launched their ENERGY STAR® Certification and Green Leasing Grant Program for commercial and multifamily buildings, which provides grants up to $100,000 *(funded by the Pepco-Exelon merger)* for properties to earn and maintain a building's ENERGY STAR certification for 3 years, perform an energy audit, and initiate a green lease to promote energy efficiency practices.

Outside of Maryland

In addition to Maryland jurisdictions, stakeholders also found examples of green building incentives in other areas of the country. The most relevant or notable examples are listed below, highlighting the various *types* of incentives other jurisdictions offer for green commercial and multifamily buildings. The American Council for an Energy-Efficient Economy (ACEEE) provides a more comprehensive summary of goals, incentives, and requirements for sustainable buildings.[4]

- **Washington, DC** benefits from an extremely strong commercial building market—buildings usually command high rental rates and have low vacancies—and can mandate green building requirements more easily than other jurisdictions. As such, Washington, DC does not have a property tax credit for green building; any incentives for building upgrades are offered via the DC Sustainable Energy Utility (SEU).

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[4] ACEEE. Goal, Incentives, and Requirements for Energy Efficient Buildings. URL: https://database.aceee.org/city/requirements-incentives.

- In **Arlington, Virginia**, there is no monetary incentive for existing buildings, but a bonus density is provided for new development.
- **Charlottesville, Virginia** offers a reduced tax rate of 50% for one year if a building is built 30% better than existing code, or achieves certification under LEED or Green Globes. The city also offers a minimal incentive for solar installations and a reduced building permit fee for a green (solar or vegetative) roof.
- **Virginia Beach, Virginia** offers an unspecified reduction on building-only taxes (not the land or other improvements) for buildings that have achieve LEED, Green Globes, or ENERGY STAR certification, in addition to building 30% above state code.
- **Chicago, Illinois** *(a city with a building energy benchmarking program similar to Montgomery County)* offers expedited and possible reduced permitting fees for commercial buildings that have LEED certification along with a number of prescribed green menu features.
- **Cleveland, Ohio** offer tax abatement of up to 100% on the improvement value for LEED certified buildings.
- **Houston, Texas** provides a partial 10-year tax abatement ranging from 1-10% and expedited permitting to LEED-certified commercial buildings, as well as grants for energy retrofits.
- **New Mexico** offers a tax credit for LEED certified buildings, with a tax reduction on a tiered, per-square-foot basis. LEED Core and Shell, New Construction, Existing Buildings, and Commercial Interiors are included *(note: very few incentive programs include LEED Commercial Interiors as an eligible certification)*.
- **New York City, New York** *(where a rigorous building energy benchmarking program exists)* provides one-year tax abatement of $4.50 per square foot for green roofs and 5 to 8 ¾ percent tax relief for solar panel-related expenditures. New York State has authorizing legislation to provide significant tax credits for LEED and Green Globes certification—100% credit for the first 1-6 years based on the level achieved, and 20% each year after.
- **Toronto, Canada** has an innovative program that aims to overcome split incentives between developers and building tenants—the High Performance New Construction (HPNC) program offers up to $10,000 for modeling costs and $400-$800 for every kW in demand saved for building above Ontario Building Code requirements.
- **Boston, Massachusetts** has a number of green building requirements, and offers an innovative multifamily development opportunity. Boston donates city-owned parcels for affordable multifamily buildings (and gives subsidies to low-and-moderate income homebuyers) if the buildings are net-positive-energy buildings that are above LEED Platinum certification and supply excess energy to the grid. Some designated areas also give bonus density credits.

Proposed Recommendations on Revised Green Building Incentive

In line with the Council's climate emergency resolution, the stakeholder work group focused on GHG emission and energy reductions as key motivators for revised green building incentives. With commercial building energy use comprising more than 26% of the County's measured GHG emissions (based on 2015 data), improving the County's commercial building stock is a key strategy for achieving our climate targets.

In addition to meeting climate goals, the County's incentive program should also complement utility and state incentives and try to fill gaps where incentives do not exist or are minimal *(e.g., diminishing Federal tax credit for renewables, no incentives for solar besides financing, no water efficiency incentives)*. The proposal in this report is innovative while being realistic of our region's business climate, complementary to existing programs, and inclusive without being too generous with public dollars.

With this in mind, the stakeholder group developed a two-tiered incentive structure that offers County property tax credits for energy performance and whole-building sustainability:

- **1st Tier**: Buildings must achieve a measurable reduction in energy use to earn an incentive. This is demonstrated through a building modeling software approved by the Department of Permitting Services (DPS) that building owners already use as part of the permitting process, or by the ENERGY STAR Portfolio Manager tool.
- **2nd Tier**: Buildings can earn an additional credit by achieving a certain level of a third-party-verified sustainable building certification that exhibits sustainable building features beyond energy performance.

For each tier, the greater the performance or level of certification, the higher the incentive. Sustainable building certifications are still relevant market differentiators, but energy reductions are the primary metric used in the incentive program proposal.

Ongoing Review of the Incentive Program

Stakeholders also have a strong recommendation for regularly revisiting the incentive structure to ensure that it continues to meet the County's program objectives, provides practical motivation for building and upgrading green buildings, and produces measurable GHG emissions savings. As building codes are adopted on a 3-year cycle, the stakeholders encourage a reconvening of this work group on a similar 3-year cycle following adoption of green building or energy-related building codes.

This regular work group convening will evaluate the effectiveness of the program, provide Council with updates on the commercial and multifamily building market, and ensure transparency of the incentive process for planning purposes. These opportunities to revisit the incentive structure will continue this ongoing conversation about how the County's commercial building industry can support the County's climate goals.

Building Definitions

The following definitions help categorize whether a building is eligible for the New Construction incentive track or the Existing Building incentive track. ASHRAE 90.1 defines Existing Buildings as a building or portion thereof that was previously occupied or approved for occupancy by the authority having jurisdiction. As such, the Montgomery County green building incentive program seeks to offer additional clarification to ensure building owners follow the appropriate program between New Construction and Existing Buildings. If a project meets both conditions (e.g., major restoration of an existing building to a new building type), then the applicant should follow the New Construction program.

- New Construction Definition - A building that has completed construction such that the contractor has achieved the equivalent of substantial completion and will be receiving a formal Certificate of Occupancy (CofO) from the County, then the New Construction program would likely be the appropriate application path. If a major renovation of a building warrants bringing the entire building up to current building codes, then that building would also qualify under the New Construction incentive program.

  Within the New Construction program, stakeholders agree that Core and Shell buildings with full mechanical systems and a weather-sealed thermal envelope should be included in the incentive program—as incentivizing developers to go beyond code in the Core and Shell phase of a major construction project sets the course for a sustainably built and operated building.

- Core and Shell Definition - Project includes a complete thermal enclosure system with the primary-backbone HVAC and electrical distribution infrastructure installed. The primary HVAC system and capacity that will fully serve occupied future tenant spaces must be designed, purchased, and operational as part of this project to be eligible for participation in this program. That includes full heating, cooling, and ventilation capacity anticipated for the type of commercial tenant going into the building. Only equipment purchased by the owner as part of the base building project can be included in the analysis. All non-purchased equipment, lighting and process energy must be assumed to be current energy code compliant in the Baseline and Proposed case energy analysis.

- Existing Building Definition - A building that has received a formal CofO from the County and has achieved at minimum 50% occupancy for no less than 12 contiguous months which would also meet the minimum operational characteristics and historical utility data to achieve a valid ENERGY STAR score.

New Construction

The motivation behind sustainable new construction incentives is to encourage developers and building owners to build beyond existing code. While Montgomery County's building code is already very efficient, going beyond code creates further sustainable buildings, spurs innovation, and ensures that new buildings help the County meet its GHG emission reduction goals. The work group maintained a balanced approach, suggesting innovative ideas that would keep Montgomery County's climate goals in mind while also trying to mitigate the administrative burden of processing tax credit applications or other incentives.

The stakeholder group designed an incentive framework that prioritizes stretch goals, or percentage improvements better than current building code. With this strategy, the incentive is evergreen and always stays ahead of code as building codes evolve and improve. To be eligible for the incentive, a building must first achieve designed energy performance beyond code as outlined in the table below. Once the energy requirements are met, building owners and developers are also eligible for an additional credit for the listed building certifications. This design rewards energy efficiency decisions first, whole building sustainable second, and ultimately provides the highest incentives for buildings that reach for net-zero-energy design.

As a group, stakeholders had a desire to be inclusive of building owners who have not participated in the County's incentive programs in the past, and trying to find a program that would be motivating to them. The new construction incentive should be inclusive of all building owners (not just the ones who construct LEED-eligible buildings), but of multiple major construction phases as well (core and shell and new construction) to ensure sustainable decisions occur on day one.

New Construction Green Building Property Tax Incentive

To be eligible for a property tax credit, your commercial/multifamily property must achieve a minimum 10% performance above Montgomery County's current building code requirement as indicated in the **Energy Reduction Requirement** portion of table below.

If your property satisfies the Energy Reduction Requirement, you are is then eligible for an additional tax credit percentage for achieving an approved building certification as indicated in the **Building Sustainability Bonus** portion of the table below.

If deemed eligible for this property tax credit, the property will receive a credit granted against the county taxes owed for four (4) years, capped at 100% per year.

Energy Reduction Requirement

A commercial/multifamily property must demonstrate a minimum performance of 10% above current building code requirements using a DPS-approved modeling software.

To calculate the credit granted: *Round your building's percentage above code to the nearest whole number and multiply it by the credit factor below—this will determine the green building property tax credit you will receive.*

% Above Applicable Code	Multiplier	Property Tax Credit
10-20%	0.5	5-10%
21-30%	1	21-30%
31-40%	1.5	46.5-60%
Above 40%	2	82-100%

EXAMPLE: *Building designed 24% above code * Multiplier 1.0 = 24% Property Tax Credit per year for 4 years*

Building Sustainability Bonus

*If you achieve a tier in the Energy Reduction section, you can get **additional** tax credit percentage for achieving one of the following certifications or an approved equivalent.*

An Energy Reduction credit must be earned to before receiving the Building Sustainability Bonus.

To calculate the credit granted: *Add the property tax credit percentage earned from the Energy Reduction Requirement to the percentage earned from your building's certification using the most recent certification version at the time of tax credit application.*

Eligible Building Certifications	Property Tax Credit
LEED Gold, NGBS Gold, PHIUS+/Passive House, BREEAM-NC Excellent (or equivalent)	25%
LBC Petal Certification, LEED Platinum, NGBS Emerald, BREEAM-NC Outstanding, Living Building Certification* (or equivalent)	75%

EXAMPLE: *Building 24% above code also earns LEED Platinum credit of 75% = 99% Total Property Tax Credit per year for 4 years*

Additional Notes about the New Construction Incentive Proposal

- **Commercial or multifamily buildings (core and shell and new construction) are eligible for a one-time green building incentive per the structure above. Buildings are eligible for additional green building incentives under the existing buildings structure following the initial 3-year credit cycle under new construction.**
- **LEED full building certification includes all eligible rating systems for newly constructed non-single-family-residential buildings (Building Design + Construction, Core and Shell, LEED for Homes Midrise).**
- *** If a building earns Living Building Certification, the building owner will be able to extend their 4-year property tax credit for a 5th additional year as added recognition for this high-tier building certification.**

Existing Buildings

Existing buildings in the County create a huge potential for energy and carbon reductions, and modifying an existing building to operate more efficiently can be more difficult than a green, newly constructed building. The County's current green building property tax credit provides an incentive for existing buildings that can meet the LEED Existing Buildings Operations + Maintenance (LEED-EBOM) certification. Unfortunately, for many existing buildings in the County, achieving this sustainability certification is challenging, cost-prohibitive, and out of reach. DEP has heard from a handful of building owners who are striving to be more energy efficient but cannot achieve ENERGY STAR certification, for example, which is a prerequisite for LEED-EBOM certification.

With this context in mind, along with the County's ambitious GHG emissions reduction goal, the stakeholders wanted to develop an existing building incentive framework that was more inclusive of all building owners. The group favored a program that rewards incremental steps towards saving energy, engaging building owners who may need a small incentive to get involved in the energy conversation.

Similar to the new construction building incentive proposal, this framework rewards energy efficiency before building certifications. The energy efficiency metric of using the ENERGY STAR score uses a free, Web-based, third-party system that the market is already comfortable with. Providing an incentive that relies on whole building energy performance allows the building owner to determine the best route to achieve energy savings rather than prescribing which energy conservation systems to upgrade (e.g., HVAC upgrades, building system automation, lighting, engaging tenants to change their behavior).

Some stakeholder felt strongly that any incentive offered should reflect the bigger energy and carbon reduction opportunities in existing buildings over new construction. The stakeholders recommend a multi-year pilot of this incentive structure to see its uptake in building owners who have not previously taken advantage of County incentives, the dollar amount that sparks actions, and effectiveness in reducing GHG emissions.

Existing Buildings Green Building Property Tax Incentive

To be eligible for a property tax credit, your commercial/multifamily property must demonstrate energy reductions using ENERGY STAR Portfolio Manager as indicated in the **Energy Reduction Requirement** portion of table below.

If your property satisfies the Energy Reduction Requirement, you are then eligible for an additional tax credit percentage for achieving an approved building certification as indicated in the **Building Sustainability Bonus** portion of the table below.

If deemed eligible for this property tax credit, the property will receive a credit granted against the county taxes owed for two (2) years, capped at 100% per year.

Energy Reduction Requirement

A commercial/multifamily property must:

1) *Set a 12-month baseline in the ENERGY STAR Portfolio Manager tool*
2) *Summarize actions taken to reduce energy use*
3) *Measure improved energy performance using Portfolio Manager.*

To calculate the credit granted: *Subtract your building's improved ENERGY STAR score from your baseline ENERGY STAR score, then multiply the difference by the multiplier based on the improved ENERGY STAR score tier:*

*(Improved ENERGY STAR score – Baseline ENERGY STAR score) * Multiplier of improvement tier = Annual Credit Awarded for 2 years*

Improved ENERGY STAR Score Tiers	Multiplier
1-24	1.0
25-49	1.5
50-74	2.0
75-100	2.5

EXAMPLE: *(Improved ENERGY STAR Score 80 - Baseline ENERGY STAR score 70) * Multiplier 2.5 = 25% Property Tax Credit per year for 2 years.*

Building Sustainability Bonus

*If you achieve a tier in the Energy Reduction section, you can get an **additional** tax credit percentage for achieving one of the following certifications or an approved equivalent for existing buildings.*

An Energy Reduction credit must be earned to before receiving the Building Sustainability Bonus.

To calculate the credit granted: *Add the property tax credit percentage earned from the Energy Reduction Requirement to the credit percentage earned from your building's certification below using the most recent certification version available.*

Eligible Building Certifications	Property Tax Credit
LEED O+M Gold, BREEAM In-Use Excellent (or equivalent)	25%
LEED O+M Platinum, BREEAM In-Use Outstanding (or equivalent)	50%

EXAMPLE: *25% Property Tax Credit for energy performance + LEED O+M Platinum credit of 50% = 75% Total Property Tax Credit per year for 2 years.*