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By: **Delegates Rosenberg and Cardin**

Introduced and read first time: February 10, 2005

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit for Green Buildings**

3 FOR the purpose of altering certain requirements for certain buildings to be eligible  
4 for certain tax credits; making certain tax credits for certain buildings and  
5 building components refundable under certain circumstances; allowing an  
6 individual or business entity to transfer certain tax credits to another individual  
7 or business entity under certain circumstances; authorizing an individual or  
8 business entity to whom a certain credit is transferred to claim a credit against  
9 the Maryland income tax under certain circumstances; altering the maximum  
10 annual and aggregate amount of initial credit certificates that the Maryland  
11 Energy Administration may issue; defining a certain term; providing for the  
12 application of this Act; and generally relating to credits against the Maryland  
13 income tax for certain buildings and building components that meet certain  
14 energy efficiency and environmental standards.

15 BY repealing and reenacting, with amendments,

16 Article - Tax - General

17 Section 10-722(a), (b), and (k)(1)

18 Annotated Code of Maryland

19 (2004 Replacement Volume)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Tax - General**

23 10-722.

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

25 (2) "Administration" means the Maryland Energy Administration.

26 (3) (i) "Allowable costs" means amounts properly chargeable to capital  
27 account, other than for land, that are paid or incurred on or after July 1, 2001, for:

28 1. construction or rehabilitation;

- 1 2. commissioning costs;
- 2 3. interest paid or incurred during the construction or
- 3 rehabilitation period;
- 4 4. architectural, engineering, and other professional fees
- 5 allocable to construction or rehabilitation;
- 6 5. closing costs for construction, rehabilitation, or mortgage
- 7 loans;
- 8 6. recording taxes and filing fees incurred with respect to
- 9 construction or rehabilitation; and
- 10 7. finishes and furnishings consistent with the regulations
- 11 adopted by the Administration under this section, lighting, plumbing, electrical
- 12 wiring, and ventilation.

- 13 (ii) "Allowable costs" does not include:
  - 14 1. the cost of telephone systems and computers, other than
  - 15 electrical wiring costs;
  - 16 2. legal fees allocable to construction or rehabilitation;
  - 17 3. site costs, including temporary electric wiring, scaffolding,
  - 18 demolition costs, and fencing and security facilities;
  - 19 4. finishes or furnishings that are not consistent with the
  - 20 regulations adopted by the Administration under this section; or
  - 21 5. the cost of purchasing or installing fuel cells, wind
  - 22 turbines, or photovoltaic modules.

23 (4) "Applicable energy efficiency standards" means ASHRAE/IESNA  
24 Standard 90.1-1999, Energy Standard for Buildings Except Low-Rise Residential  
25 Buildings, published by the American Society of Heating, Refrigerating and  
26 Air-Conditioning Engineers.

27 (5) "Base building" means all areas of a building not intended for  
28 occupancy by a tenant or owner, including the structural components of the building,  
29 exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking  
30 areas, mechanical rooms and mechanical systems, and owner-controlled or operated  
31 service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms,  
32 stairways, and corridors.

33 (6) "BUSINESS ENTITY" MEANS:

34 (I) A PERSON CONDUCTING OR OPERATING A TRADE OR BUSINESS  
35 IN THE STATE; OR

1 (II) AN ORGANIZATION OPERATING IN THE STATE THAT IS EXEMPT  
2 FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.

3 [(6)] (7) "Commissioning" means:

4 (i) the testing and fine-tuning of heat, ventilating, and  
5 air-conditioning systems and other systems to assure proper functioning and  
6 adherence to design criteria; and

7 (ii) the preparation of system operation manuals and instruction of  
8 maintenance personnel.

9 [(7)] (8) "Credit allowance year" means the later of:

10 (i) the taxable year during which:

11 1. the property, construction, completion, or rehabilitation on  
12 which the credit allowed under this section is based is originally placed in service; or

13 2. a fuel cell, wind turbine, or photovoltaic module  
14 constitutes a qualifying alternate energy source and is fully operational; or

15 (ii) the earliest taxable year for which the credit may be claimed  
16 under the initial credit certificate issued under subsection (k) of this section.

17 [(8)] (9) "Eligible building" means a building located in the State that:

18 (i) 1. is a building used primarily for nonresidential purposes if  
19 the building contains at least [20,000] 10,000 square feet of interior space;

20 2. is a residential multifamily building with at least 12  
21 dwelling units that contains at least [20,000] 10,000 square feet of interior space; or

22 3. is any combination of buildings described in item 1 or 2 of  
23 this item;

24 (ii) in the case of a newly constructed building for which a  
25 certificate of occupancy was not issued before July 1, 2001:

26 1. is located on a qualified brownfields site, as defined under  
27 Article 83A, § 5-1401 of the Code; or

28 2. A. is located in a priority funding area under § 5-7B-02  
29 of the State Finance and Procurement Article; and

30 B. is not located on wetlands, the alteration of which requires  
31 a permit under § 404 of the federal Clean Water Act, 33 U.S.C. § 1344; and

32 (iii) in the case of a rehabilitation of a building:

1                   1. is located in a priority funding area under § 5-7B-02 of  
2 the State Finance and Procurement Article or on a qualified brownfields site as  
3 defined under Article 83A, § 5-1401 of the Code; or  
4                   2. is not an increase of more than 25% in the square footage  
5 of the building.

6                   [(9)]       (10) "Fuel cell" means a device that produces electricity directly  
7 from hydrogen or hydrocarbon fuel through a noncombustive electrochemical process.

8                   [(10)]      (11) "Green base building" means a base building that is part of an  
9 eligible building and meets the requirements set out in subsection (i) of this section.

10                [(11)]      (12) "Green whole building" means a building for which the base  
11 building is a green base building and all tenant space is green tenant space.

12                [(12)]      (13) "Green tenant space" means tenant space in a building if the  
13 building is an eligible building and the tenant space meets the requirements of  
14 subsection (j) of this section.

15                [(13)]      (14) "Incremental cost of building-integrated photovoltaic modules"  
16 means:

17                (i)        the cost of building-integrated photovoltaic modules and any  
18 associated inverter, additional wiring or other electrical equipment for the  
19 photovoltaic modules, or additional mounting or structural materials, less the cost of  
20 spandrel glass or other building material that would have been used if  
21 building-integrated photovoltaic modules were not installed;

22                (ii)       incremental labor costs properly allocable to on-site  
23 preparation, assembly, and original installation of photovoltaic modules; and

24                (iii)       incremental costs of architectural and engineering services and  
25 designs and plans directly related to the construction or installation of photovoltaic  
26 modules.

27                [(14)]      (15) "Qualifying alternate energy sources" means  
28 building-integrated and nonbuilding-integrated photovoltaic modules, wind  
29 turbines, and fuel cells installed to serve the base building or tenant space that:

30                (i)        have the capability to monitor their actual power output;

31                (ii)       are fully commissioned upon installation, and annually  
32 thereafter, to ensure that the systems meet their design specifications; and

33                (iii)       in the case of wind turbines, meet any applicable noise  
34 ordinances.

1                   [(15)]    (16)    "Tenant improvements" means improvements that are  
2 necessary or appropriate to support or conduct the business of a tenant or occupying  
3 owner.

4                   [(16)]    (17)    "Tenant space" means the portion of a building intended for  
5 occupancy by a tenant or occupying owner.

6                   (b)       (1)    An individual or [a corporation] BUSINESS ENTITY may claim a  
7 credit against the State income tax as provided under this section for green buildings  
8 and green building components.

9                   (2)       (I)    If the credit allowed under this section IN ANY TAXABLE YEAR  
10 exceeds the State income tax PAYABLE BY THE INDIVIDUAL OR BUSINESS ENTITY  
11 FOR THAT TAXABLE YEAR, [any unused credit may be carried forward and applied for  
12 succeeding taxable years until the earlier of:

13                   (i)      the full amount of the credit is used; or

14                   (ii)     the expiration of the 10th year after the taxable year for which  
15 the credit was allowed] THE INDIVIDUAL OR BUSINESS ENTITY MAY CLAIM A  
16 REFUND IN THE AMOUNT OF THE EXCESS.

17                   (II)     A REFUND PAYABLE UNDER SUBPARAGRAPH (I) OF THIS  
18 PARAGRAPH:

19                   1.       OPERATES TO REDUCE THE INCOME TAX REVENUE FROM  
20 CORPORATIONS IF THE PERSON ENTITLED TO THE REFUND IS A CORPORATION  
21 SUBJECT TO THE INCOME TAX UNDER TITLE 10 OF THE TAX - GENERAL ARTICLE; AND

22                   2.       OPERATES TO REDUCE THE INCOME TAX REVENUE FROM  
23 INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:

24                   A.      AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER  
25 TITLE 10 OF THE TAX - GENERAL ARTICLE; OR

26                   B.      AN ORGANIZATION EXEMPT FROM TAXATION UNDER §  
27 501(C)(3) OF THE INTERNAL REVENUE CODE.

28                   (3)     For each of the credits under subsections (c) through (h) of this  
29 section, the credit may not be allowed for any taxable year unless:

30                   (i)     the taxpayer has obtained and filed an initial credit certificate  
31 and an eligibility certificate issued under subsection (k) of this section;

32                   (ii)    a certificate of occupancy for the building has been issued; and

33                   (iii)   the property with respect to which the credit is claimed is in  
34 service during the taxable year.

(5) In determining the amount of the credits under this section, a cost paid or incurred may not be the basis for more than one credit.

6 (6) (I) SUBJECT TO THE LIMITATIONS OF THIS PARAGRAPH, AN  
7 INDIVIDUAL OR BUSINESS ENTITY ENTITLED TO CLAIM A TAX CREDIT AS PROVIDED  
8 UNDER THIS SECTION FOR GREEN BUILDINGS AND GREEN BUILDING COMPONENTS  
9 MAY TRANSFER THE ENTIRE AMOUNT OF THE CREDIT ALLOWED UNDER THIS  
10 SECTION TO AN INDIVIDUAL OR BUSINESS ENTITY.

11 (II) A CREDIT MAY NOT BE TRANSFERRED UNDER THIS PARAGRAPH  
12 UNLESS THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING A CREDIT  
13 ALLOWABLE UNDER THIS SECTION:

20 (III) AN INDIVIDUAL OR BUSINESS ENTITY TO WHOM ANY CREDIT IS  
21 TRANSFERRED BY AN INDIVIDUAL OR BUSINESS ENTITY UNDER THIS PARAGRAPH:

22 1. MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX  
23 THAT DOES NOT EXCEED THE AMOUNT OF THE CREDIT TRANSFERRED UNDER THIS  
24 PARAGRAPH, BY FILING WITH ITS TAX RETURN A COPY OF THE FORM EVIDENCING  
25 THE TRANSFER OF THE TAX CREDIT; AND

26 2. IS SUBJECT TO THE SAME REQUIREMENTS AND  
27 LIMITATIONS IN CLAIMING THE CREDIT UNDER THIS SECTION THAT WOULD HAVE  
28 BEEN APPLICABLE TO THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING THE  
29 CREDIT.

30 (k) (1) (i) On application by a taxpayer, the Administration shall issue an  
31 initial credit certificate if the taxpayer has made a showing that the taxpayer is likely  
32 within a reasonable time to place in service property for which a credit under this  
33 section would be allowed.

34 (ii) The initial credit certificate issued under this paragraph;

3 (iii) To avoid unwarranted hardship, the Administration at its  
4 discretion may extend the expiration date stated under an initial credit certificate.

5 (iv) The initial credit certificate shall state the maximum amount of  
6 credit allowable in the aggregate for all credits allowed under this section.

7 (v) The Administration may not issue initial credit certificates, in  
8 the aggregate, for more than [\$25,000,000] \$35,000,000 worth of credits.

(vi) Except as provided in subparagraph (vii) of this paragraph, initial credit certificates shall be limited in their applicability, as follows:

11 Credits in the aggregate may With respect to taxable  
12 not be allowed for more than: years beginning:  
13 \$1 million 2003  
14 \$2 million 2004  
15 \$3 million 2005  
16 \$4 million 2006  
17 \$5 million 2007  
18 [\$4] \$5 million 2008  
19 [\$3] \$5 million 2009  
20 [\$2] \$5 million 2010  
21 [\$1] \$5 million 2011

22 (vii) As of the end of a calendar year, if certificates for credit  
23 amounts totaling less than the amount permitted with respect to taxable years  
24 beginning in that calendar year have been issued, the maximum amount that may be  
25 allowed for taxable years beginning in the subsequent calendar year shall be  
26 increased by the amount of the preceding year's shortfall.

(viii) The Administration may not issue an initial credit certificate after December 31, 2011.

29 (ix) On January 1, 2004, and each year thereafter, the  
30 Administration shall provide to the Comptroller a list of all taxpayers in the prior  
31 taxable year that have been issued an initial credit certificate and shall specify for  
32 each taxpayer the earliest taxable year for which the credit may be claimed and the  
33 maximum amount of the credit allowable in the aggregate for all credits allowed  
34 under this section.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
36 effect July 1, 2005, and shall be applicable to all taxable years beginning after  
37 December 31, 2004.