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Introduced and read first time: February 10, 2005

Assigned to: Ways and Means

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 (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.

1 (4) The total amount allowed in the aggregate for all credits under this
2 section may not exceed the maximum set forth in the initial credit certificate obtained
3 under subsection (k) of this section.

4 (5) In determining the amount of the credits under this section, a cost
5 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:

14 1. HAS NOT CLAIMED THE CREDIT OR ANY PORTION OF THE
15 CREDIT;

16 2. TRANSFERS THE ENTIRE AMOUNT OF THE CREDIT; AND

17 3. NOTIFIES THE ADMINISTRATION WITHIN 30 DAYS AFTER
18 THE EFFECTIVE DATE OF THE TRANSFER ON A FORM APPROVED BY THE
19 COMPTROLLER IN REGULATION.

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:

35 1. shall state the earliest taxable year for which the credit
36 may be claimed and an expiration date; and

