
By: **Senators Schrader, Brochin, Colburn, Conway, Dyson, Garagiola, and
Giannetti**

Introduced and read first time: March 2, 2006

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credits for Green Buildings - Additional Credits Authorized**

3 FOR the purpose of altering certain requirements for certain buildings to be eligible
4 for certain tax credits; allowing an individual or business entity to transfer
5 certain tax credits to another individual or business entity under certain
6 circumstances; authorizing an individual or business entity to whom a certain
7 credit is transferred to claim a credit against the Maryland income tax under
8 certain circumstances; altering the maximum annual and aggregate amount of
9 initial credit certificates that the Maryland Energy Administration may issue;
10 requiring certain regulations to be adopted that establish a certain process for
11 the reallocation of certain credits; 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 and 2005 Supplement)

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:

1. construction or rehabilitation;
 2. commissioning costs;
 3. interest paid or incurred during the construction or
4 rehabilitation period;
 4. architectural, engineering, and other professional fees
5 allocable to construction or rehabilitation;
 5. closing costs for construction, rehabilitation, or mortgage
6 loans;
 6. recording taxes and filing fees incurred with respect to
7 construction or rehabilitation; and
 7. finishes and furnishings consistent with the regulations
8 adopted by the Administration under this section, lighting, plumbing, electrical
9 wiring, and ventilation.
- 10
- 11 (ii) "Allowable costs" does not include:
- 12 1. the cost of telephone systems and computers, other than
13 electrical wiring costs;
 - 14 2. legal fees allocable to construction or rehabilitation;
 - 15 3. site costs, including temporary electric wiring, scaffolding,
16 demolition costs, and fencing and security facilities;
 - 17 4. finishes or furnishings that are not consistent with the
18 regulations adopted by the Administration under this section; or
 - 19 5. the cost of purchasing or installing fuel cells, wind
20 turbines, or photovoltaic modules.

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

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

31 (6) "BUSINESS ENTITY" MEANS:

1 (I) A PERSON CONDUCTING OR OPERATING A TRADE OR BUSINESS
2 IN THE STATE; OR

3 (II) AN ORGANIZATION OPERATING IN THE STATE THAT IS EXEMPT
4 FROM TAXATION UNDER § 510(C)(3) OF THE INTERNAL REVENUE CODE.

5 (7) "Commissioning" means:

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

9 (ii) the preparation of system operation manuals and instruction of
10 maintenance personnel.

11 [(7)] (8) "Credit allowance year" means the later of:

12 (i) the taxable year during which:

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

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

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

19 [(8)] (9) "Eligible building" means a building located in the State that:

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

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

24 3. is any combination of buildings described in item 1 or 2 of
25 this item;

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

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

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

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

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

2 1. is located in a priority funding area under § 5-7B-02 of
3 the State Finance and Procurement Article or on a qualified brownfields site as
4 defined under Article 83A, § 5-1401 of the Code; or

5 2. is not an increase of more than 25% in the square footage
6 of the building.

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

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

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

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

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

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

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

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

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

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

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

34 (iii) in the case of wind turbines, meet any applicable noise
35 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 may claim a credit against the State
7 income tax as provided under this section for green buildings and green building
8 components.

9 (2) If the credit allowed under this section exceeds the State income tax,
10 any unused credit may be carried forward and applied for succeeding taxable years
11 until the earlier of:

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

13 (ii) the expiration of the 10th year after the taxable year for which
14 the credit was allowed.

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

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

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

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

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

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

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

32 (II) A CREDIT MAY NOT BE TRANSFERRED UNDER THIS PARAGRAPH
33 UNLESS THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING A CREDIT
34 ALLOWABLE UNDER THIS SECTION:

35 1. HAS NOT CLAIMED THE CREDIT OR ANY PORTION OF THE
36 CREDIT;

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

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

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

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

11 2. IS SUBJECT TO THE SAME REQUIREMENTS AND
12 LIMITATIONS IN CLAIMING THE CREDIT UNDER THIS SECTION THAT WOULD HAVE
13 BEEN APPLICABLE TO THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING THE
14 CREDIT.

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

19 (ii) The initial credit certificate issued under this paragraph:

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

22 2. shall apply only to property placed in service on or before
23 the expiration date.

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

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

28 (v) The Administration may not issue initial credit certificates, in
29 the aggregate, for more than [\$25,000,000] \$50,000,000 worth of credits.

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

| | |
|----------------------------------------|-------------------------------|
| 32 Credits in the aggregate may not be | With respect to taxable years |
| 33 allowed for more than: | beginning: |
| 34 \$1 million | 2003 |
| 35 \$2 million | 2004 |
| 36 \$3 million | 2005 |
| 37 \$4 million | 2006 |
| 38 \$5 million | 2007 |

| | | |
|---|-------------------|------|
| 1 | [\$4] \$9 million | 2008 |
| 2 | [\$3] \$8 million | 2009 |
| 3 | [\$2] \$7 million | 2010 |
| 4 | [\$1] \$6 million | 2011 |
| 5 | \$5 MILLION | 2012 |

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

11 (viii) 1. The Administration may not issue an initial credit
12 certificate after December 31, [2011] 2012.

13 2. THE ADMINISTRATION AND THE COMPTROLLER SHALL
14 ADOPT REGULATIONS THAT ESTABLISH A PROCESS FOR THE REALLOCATION OF
15 CREDITS ISSUED PRIOR TO JULY 1, 2006 THAT PROVIDES THAT ANY CREDIT ISSUED
16 PRIOR TO JULY 1, 2006 SHALL BE ALLOWED TO BE CLAIMED PRIOR TO ANY CREDIT
17 ISSUED ON OR AFTER JULY 1, 2006, REGARDLESS OF THE ORIGINAL CREDIT
18 ALLOWANCE YEAR.

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 July 1, 2006 and shall be applicable to all taxable years beginning after December 31,
27 2005.