

SENATE BILL 298

Q3
SB 1009/06 – B&T

71r1200

By: **Senators Frosh, Brochin, Conway, Dyson, Garagiola, Lenett, Madaleno, Peters, and Zirkin**

Introduced and read first time: January 31, 2007

Assigned to: Budget and Taxation

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 2006 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**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10-722.

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

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

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

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

20 (ii) "Allowable costs" does not include:

- 21 1. the cost of telephone systems and computers, other
22 than electrical wiring costs;
- 23 2. legal fees allocable to construction or rehabilitation;
- 24 3. site costs, including temporary electric wiring,
25 scaffolding, demolition costs, and fencing and security facilities;
- 26 4. finishes or furnishings that are not consistent with
27 the regulations adopted by the Administration under this section; or

1 5. the cost of purchasing or installing fuel cells, wind
2 turbines, or photovoltaic modules.

3 (4) “Applicable energy efficiency standards” means ASHRAE/IESNA
4 Standard 90.1–1999, Energy Standard for Buildings Except Low–Rise Residential
5 Buildings, published by the American Society of Heating, Refrigerating and
6 Air–Conditioning Engineers.

7 (5) “Base building” means all areas of a building not intended for
8 occupancy by a tenant or owner, including the structural components of the building,
9 exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking
10 areas, mechanical rooms and mechanical systems, and owner–controlled or operated
11 service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms,
12 stairways, and corridors.

13 (6) **“BUSINESS ENTITY” MEANS:**

14 **(I) A PERSON CONDUCTING OR OPERATING A TRADE OR**
15 **BUSINESS IN THE STATE; OR**

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

19 (7) “Commissioning” means:

20 (i) the testing and fine–tuning of heat, ventilating, and
21 air–conditioning systems and other systems to assure proper functioning and
22 adherence to design criteria; and

23 (ii) the preparation of system operation manuals and
24 instruction of maintenance personnel.

25 [(7)] (8) “Credit allowance year” means the later of:

26 (i) the taxable year during which:

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

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

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

5 **[(8)] (9)** “Eligible building” means a building located in the State
6 that:

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

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

11 3. is any combination of buildings described in item 1 or
12 2 of this item;

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

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

17 2. A. is located in a priority funding area under §
18 5–7B–02 of the State Finance and Procurement Article; and

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

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

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

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

27 **[(9)] (10)** “Fuel cell” means a device that produces electricity directly
28 from hydrogen or hydrocarbon fuel through a noncombustive electrochemical process.

1 [(10)] **(11)** “Green base building” means a base building that is part of
2 an eligible building and meets the requirements set out in subsection (i) of this section.

3 [(11)] **(12)** “Green whole building” means a building for which the base
4 building is a green base building and all tenant space is green tenant space.

5 [(12)] **(13)** “Green tenant space” means tenant space in a building if the
6 building is an eligible building and the tenant space meets the requirements of
7 subsection (j) of this section.

8 [(13)] **(14)** “Incremental cost of building–integrated photovoltaic
9 modules” means:

10 (i) the cost of building–integrated photovoltaic modules and
11 any associated inverter, additional wiring or other electrical equipment for the
12 photovoltaic modules, or additional mounting or structural materials, less the cost of
13 spandrel glass or other building material that would have been used if
14 building–integrated photovoltaic modules were not installed;

15 (ii) incremental labor costs properly allocable to on–site
16 preparation, assembly, and original installation of photovoltaic modules; and

17 (iii) incremental costs of architectural and engineering services
18 and designs and plans directly related to the construction or installation of
19 photovoltaic modules.

20 [(14)] **(15)** “Qualifying alternate energy sources” means
21 building–integrated and nonbuilding–integrated photovoltaic modules, wind turbines,
22 and fuel cells installed to serve the base building or tenant space that:

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

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

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

28 [(15)] **(16)** “Tenant improvements” means improvements that are
29 necessary or appropriate to support or conduct the business of a tenant or occupying
30 owner.

1 [(16)] (17) “Tenant space” means the portion of a building intended for
2 occupancy by a tenant or occupying owner.

3 (b) (1) An individual or a corporation may claim a credit against the State
4 income tax as provided under this section for green buildings and green building
5 components.

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

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

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

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

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

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

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

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

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

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

1 **(II) A CREDIT MAY NOT BE TRANSFERRED UNDER THIS**
2 **PARAGRAPH UNLESS THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING A**
3 **CREDIT ALLOWABLE UNDER THIS SECTION:**

4 **1. HAS NOT CLAIMED THE CREDIT OR ANY PORTION**
5 **OF THE CREDIT;**

6 **2. TRANSFERS THE ENTIRE AMOUNT OF THE CREDIT;**
7 **AND**

8 **3. NOTIFIES THE ADMINISTRATION WITHIN 30 DAYS**
9 **AFTER THE EFFECTIVE DATE OF THE TRANSFER ON A FORM APPROVED BY THE**
10 **COMPROLLER IN REGULATION.**

11 **(III) AN INDIVIDUAL OR BUSINESS ENTITY TO WHOM ANY**
12 **CREDIT IS TRANSFERRED BY AN INDIVIDUAL OR BUSINESS ENTITY UNDER THIS**
13 **PARAGRAPH:**

14 **1. MAY CLAIM A CREDIT AGAINST THE STATE**
15 **INCOME TAX THAT DOES NOT EXCEED THE AMOUNT OF THE CREDIT**
16 **TRANSFERRED UNDER THIS PARAGRAPH, BY FILING WITH ITS TAX RETURN A**
17 **COPY OF THE FORM EVIDENCING THE TRANSFER OF THE TAX CREDIT; AND**

18 **2. IS SUBJECT TO THE SAME REQUIREMENTS AND**
19 **LIMITATIONS IN CLAIMING THE CREDIT UNDER THIS SECTION THAT WOULD**
20 **HAVE BEEN APPLICABLE TO THE INDIVIDUAL OR BUSINESS ENTITY**
21 **TRANSFERRING THE CREDIT.**

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

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

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

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

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

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

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

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

9 Credits in the aggregate	With respect to taxable years
10 may not be allowed	beginning:
11 for more than:	
12 \$1 million	2003
13 \$2 million	2004
14 \$3 million	2005
15 \$4 million	2006
16 \$5 million	2007
17 [\$4] \$9 million	2008
18 [\$3] \$8 million	2009
19 [\$2] \$7 million	2010
20 [\$1] \$6 million	2011
21 \$5 MILLION	2012

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 increased
26 by the amount of the preceding year's shortfall.

27 (viii) **1.** The Administration may not issue an initial credit
28 certificate after December 31, [~~2011~~] **2012**.

1 **2. THE ADMINISTRATION AND THE COMPTROLLER**
2 **SHALL ADOPT REGULATIONS THAT ESTABLISH A PROCESS FOR THE**
3 **REALLOCATION OF CREDITS ISSUED PRIOR TO JULY 1, 2007, THAT PROVIDES**
4 **THAT ANY CREDIT ISSUED PRIOR TO JULY 1, 2007, SHALL BE ALLOWED TO BE**
5 **CLAIMED PRIOR TO ANY CREDIT ISSUED ON OR AFTER JULY 1, 2007,**
6 **REGARDLESS OF THE ORIGINAL CREDIT ALLOWANCE YEAR.**

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 July 1, 2007, and shall be applicable to all taxable years beginning after December 31,
15 2006.