

# HOUSE BILL 47

Q3  
HB 1024/07 – W&M

(PRE-FILED)

8lr1017

---

By: **Delegate Ross**

Requested: November 5, 2007

Introduced and read first time: January 9, 2008

Assigned to: Ways and Means

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Credit for Low Impact Development**

3 FOR the purpose of allowing a credit against the State income tax for the costs of  
4 using certain conservation techniques and practices in construction projects;  
5 allowing certain unused credit amounts to be carried forward to certain taxable  
6 years; requiring the Department of the Environment to adopt certain  
7 regulations establishing certain eligibility standards; providing for issuance of  
8 certain initial credit certificates by the Department; limiting the aggregate  
9 amount of initial credit certificates that the Department may issue and limiting  
10 the amounts of initial credit certificates that may be issued with respect to  
11 certain taxable years; prohibiting the Department from issuing an initial credit  
12 certificate after a certain date; requiring a taxpayer claiming a credit to obtain  
13 and file with the income tax return a certain eligibility certificate from an  
14 architect or professional engineer regarding compliance with certain  
15 requirements; authorizing the Comptroller and the Department of the  
16 Environment to adopt certain regulations; requiring the Comptroller and the  
17 Department to submit certain reports to the Governor and the General  
18 Assembly by certain dates; requiring the Department to establish a certain  
19 advisory committee to study certain conservation techniques and practices and  
20 develop certain criteria for building projects to qualify for the tax credit;  
21 defining certain terms; providing for the application of this Act; and generally  
22 relating to a State income tax credit for low impact development techniques.

23 BY adding to

24 Article – Tax – General

25 Section 10–726

26 Annotated Code of Maryland

27 (2004 Replacement Volume and 2007 Supplement)

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Tax - General**

4 **10-726.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
6 MEANINGS INDICATED.

7 (2) "CREDIT ALLOWANCE YEAR" MEANS THE LATER OF:

8 (I) THE TAXABLE YEAR DURING WHICH THE PROPERTY FOR  
9 WHICH THE CREDIT IS ALLOWED UNDER THIS SECTION IS ORIGINALLY PLACED  
10 IN SERVICE; OR

11 (II) THE EARLIEST TAXABLE YEAR FOR WHICH THE CREDIT  
12 MAY BE CLAIMED UNDER THE INITIAL CREDIT CERTIFICATE ISSUED UNDER  
13 SUBSECTION (E) OF THIS SECTION.

14 (3) "DEPARTMENT" MEANS THE MARYLAND DEPARTMENT OF  
15 THE ENVIRONMENT.

16 (4) (I) "LOW IMPACT DEVELOPMENT TECHNIQUE" MEANS A  
17 TECHNIQUE USED IN A SITE DESIGN STRATEGY INTENDED TO MAINTAIN OR  
18 REPLICATE THE PREDEVELOPMENT HYDROLOGIC AND WATER QUALITY REGIME  
19 OF A BUILDING SITE.

20 (II) "LOW IMPACT DEVELOPMENT TECHNIQUE" INCLUDES:

21 1. OPTIMIZING CONSERVATION OF NATURAL  
22 FEATURES, SUCH AS DRAINAGE PATTERNS, SOILS, AND VEGETATION;

23 2. MINIMIZING USE OF IMPERVIOUS SURFACES,  
24 SUCH AS PAVED SURFACES, CONCRETE CHANNELS, AND PIPES;

25 3. SLOWING DOWN RUNOFF TO MAINTAIN  
26 DISCHARGE TIMING AND TO INCREASE INFILTRATION AND  
27 EVAPOTRANSPIRATION;

28 4. USE OF AT-THE-SOURCE INTEGRATED CONTROL  
29 TECHNIQUES, SUCH AS BIORETENTION, VEGETATED SWALES, AND  
30 INFILTRATION DEVICES; AND

1                   **5. POLLUTION PREVENTION MEASURES TO REDUCE**  
2 **THE INTRODUCTION OF POLLUTANTS INTO THE ENVIRONMENT.**

3           **(B) (1) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A CREDIT**  
4 **AGAINST THE STATE INCOME TAX AS PROVIDED UNDER THIS SECTION FOR THE**  
5 **COST OF USING LOW IMPACT DEVELOPMENT TECHNIQUES IN A BUILDING**  
6 **PROJECT THAT MEETS THE REQUIREMENTS FOR LOW IMPACT DEVELOPMENT**  
7 **THAT THE DEPARTMENT ESTABLISHES BY REGULATION.**

8                   **(2) IF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE**  
9 **STATE INCOME TAX, ANY UNUSED CREDIT MAY BE CARRIED FORWARD AND**  
10 **APPLIED FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:**

11                   **(I) THE FULL AMOUNT OF THE CREDIT IS USED; OR**

12                   **(II) THE EXPIRATION OF THE 10TH YEAR AFTER THE**  
13 **TAXABLE YEAR FOR WHICH THE CREDIT WAS ALLOWED.**

14                   **(3) THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT BE**  
15 **ALLOWED FOR ANY TAXABLE YEAR UNLESS:**

16                   **(I) THE TAXPAYER HAS OBTAINED AND FILED AN INITIAL**  
17 **CREDIT CERTIFICATE AND AN ELIGIBILITY CERTIFICATE ISSUED UNDER**  
18 **SUBSECTION (E) OF THIS SECTION;**

19                   **(II) A CERTIFICATE OF OCCUPANCY FOR THE BUILDING HAS**  
20 **BEEN ISSUED; AND**

21                   **(III) THE PROPERTY WITH RESPECT TO WHICH THE CREDIT**  
22 **IS CLAIMED IS IN SERVICE DURING THE TAXABLE YEAR.**

23           **(C) (1) FOR THE TAXABLE YEAR THAT IS THE CREDIT ALLOWANCE**  
24 **YEAR, SUBJECT TO THE LIMITATION IN PARAGRAPH (2) OF THIS SUBSECTION,**  
25 **AN INDIVIDUAL OR A CORPORATION MAY CLAIM A CREDIT IN AN AMOUNT EQUAL**  
26 **TO 5% OF THE COSTS PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION**  
27 **FOR LOW IMPACT DEVELOPMENT TECHNIQUES.**

28                   **(2) THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT**  
29 **EXCEED THE MAXIMUM SET FORTH IN THE INITIAL CREDIT CERTIFICATE**  
30 **OBTAINED UNDER SUBSECTION (E) OF THIS SECTION.**

31           **(D) (1) (I) BY REGULATION, THE DEPARTMENT SHALL ADOPT**  
32 **STANDARDS FOR BUILDING PROJECTS TO QUALIFY AS LOW IMPACT**

1 DEVELOPMENT BUILDING PROJECTS ELIGIBLE FOR THE TAX CREDIT UNDER  
2 THIS SECTION.

3 (II) THE STANDARDS ADOPTED BY THE DEPARTMENT  
4 SHALL BE CONSISTENT WITH THE CRITERIA FOR LOW IMPACT DEVELOPMENT  
5 SET FORTH BY THE LOW IMPACT DEVELOPMENT ADVISORY COMMITTEE  
6 UNDER SUBSECTION (F) OF THIS SECTION.

7 (2) THE REGULATIONS ADOPTED UNDER THIS SUBSECTION  
8 SHALL PROVIDE AT A MINIMUM THAT TO QUALIFY FOR THE TAX CREDIT UNDER  
9 THIS SECTION, THE LOW IMPACT DEVELOPMENT FEATURES OF A BUILDING  
10 PROJECT MUST RESULT IN:

11 (I) THE ON-SITE ABSORPTION OF A SPECIFIED  
12 PERCENTAGE OF STORMWATER RUNOFF THAT WOULD OTHERWISE LEAVE THE  
13 BUILDING SITE;

14 (II) THE REMOVAL OF A SPECIFIED PERCENTAGE OF  
15 NITROGEN AND PHOSPHORUS, NOT LESS THAN 70% FOR PHOSPHORUS AND 80%  
16 FOR NITROGEN, FROM THE STORMWATER RUNOFF THAT WOULD OTHERWISE  
17 LEAVE THE BUILDING SITE; AND

18 (III) THE REMOVAL OF A SPECIFIED PERCENTAGE, NOT LESS  
19 THAN 90%, OF TOTAL SUSPENDED SOLIDS FROM THE STORMWATER THAT  
20 WOULD OTHERWISE LEAVE THE BUILDING SITE.

21 (3) THE REGULATIONS ADOPTED UNDER THIS SECTION SHALL  
22 SET FORTH CRITERIA UNDER WHICH A CREDIT UNDER THIS SECTION MAY BE  
23 ALLOWED FOR THE RETROFITTING OF AN EXISTING STRUCTURE OR A  
24 PREVIOUSLY DEVELOPED SITE TO MEET THE STANDARDS FOR LOW IMPACT  
25 DEVELOPMENT ESTABLISHED UNDER THE REGULATIONS.

26 (E) (1) (I) ON APPLICATION BY A TAXPAYER, THE DEPARTMENT  
27 SHALL ISSUE AN INITIAL CREDIT CERTIFICATE IF THE TAXPAYER HAS MADE A  
28 SHOWING THAT THE TAXPAYER IS LIKELY WITHIN A REASONABLE TIME TO  
29 PLACE IN SERVICE PROPERTY FOR WHICH A CREDIT UNDER THIS SECTION  
30 WOULD BE ALLOWED.

31 (II) THE INITIAL CREDIT CERTIFICATE ISSUED UNDER THIS  
32 PARAGRAPH:

33 1. SHALL STATE THE EARLIEST TAXABLE YEAR FOR  
34 WHICH THE CREDIT MAY BE CLAIMED AND AN EXPIRATION DATE; AND

1                                   **2.    SHALL APPLY ONLY TO PROPERTY PLACED IN**  
2 **SERVICE ON OR BEFORE THE EXPIRATION DATE.**

3                                   **(III) TO AVOID UNWARRANTED HARDSHIP, THE**  
4 **DEPARTMENT AT ITS DISCRETION MAY EXTEND THE EXPIRATION DATE STATED**  
5 **UNDER AN INITIAL CREDIT CERTIFICATE.**

6                                   **(IV) THE INITIAL CREDIT CERTIFICATE SHALL STATE THE**  
7 **MAXIMUM AMOUNT OF CREDIT ALLOWABLE FOR THE CREDIT ALLOWED UNDER**  
8 **THIS SECTION.**

9                                   **(V) THE DEPARTMENT MAY NOT ISSUE INITIAL CREDIT**  
10 **CERTIFICATES, IN THE AGGREGATE, FOR MORE THAN \$9,000,000 WORTH OF**  
11 **CREDITS.**

12                                   **(VI) EXCEPT AS PROVIDED IN SUBPARAGRAPH (VII) OF THIS**  
13 **PARAGRAPH, INITIAL CREDIT CERTIFICATES SHALL BE LIMITED IN THEIR**  
14 **APPLICABILITY, AS FOLLOWS:**

15 <b>CREDITS IN THE AGGREGATE</b>	16 <b>MAY NOT BE ALLOWED FOR</b>	17 <b>MORE THAN:</b>	18 <b>WITH RESPECT TO</b>
19 <b>\$1 MILLION</b>	20 <b>\$1 MILLION</b>	21 <b>\$1 MILLION</b>	22 <b>TAXABLE YEARS</b>
23 <b>\$1 MILLION</b>	24 <b>\$1 MILLION</b>	25 <b>\$1 MILLION</b>	26 <b>BEGINNING:</b>
18 <b>\$1 MILLION</b>			2009
19 <b>\$1 MILLION</b>			2010
20 <b>\$1 MILLION</b>			2011
21 <b>\$1 MILLION</b>			2012
22 <b>\$1 MILLION</b>			2013
23 <b>\$1 MILLION</b>			2014
24 <b>\$1 MILLION</b>			2015
25 <b>\$1 MILLION</b>			2016
26 <b>\$1 MILLION</b>			2017

27                                   **(VII) AS OF THE END OF A CALENDAR YEAR, IF CERTIFICATES**  
28 **FOR CREDIT AMOUNTS TOTALING LESS THAN THE AMOUNT ALLOWED WITH**  
29 **RESPECT TO TAXABLE YEARS BEGINNING IN THAT CALENDAR YEAR HAVE BEEN**

1 ISSUED, THE MAXIMUM AMOUNT THAT MAY BE ALLOWED FOR TAXABLE YEARS  
2 BEGINNING IN THE SUBSEQUENT CALENDAR YEAR SHALL BE INCREASED BY THE  
3 AMOUNT OF THE PRECEDING YEAR'S SHORTFALL.

4 (VIII) THE DEPARTMENT MAY NOT ISSUE AN INITIAL CREDIT  
5 CERTIFICATE AFTER DECEMBER 31, 2017.

6 (IX) ON JANUARY 1, 2010, AND EACH YEAR THEREAFTER,  
7 THE DEPARTMENT SHALL PROVIDE TO THE COMPTROLLER A LIST OF ALL  
8 TAXPAYERS IN THE PRIOR TAXABLE YEAR THAT HAVE BEEN ISSUED AN INITIAL  
9 CREDIT CERTIFICATE AND SHALL SPECIFY FOR EACH TAXPAYER THE EARLIEST  
10 TAXABLE YEAR FOR WHICH THE CREDIT MAY BE CLAIMED AND THE MAXIMUM  
11 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SECTION.

12 (2) (I) FOR EACH TAXABLE YEAR FOR WHICH A TAXPAYER  
13 CLAIMS A CREDIT UNDER THIS SECTION WITH RESPECT TO A LOW IMPACT  
14 DEVELOPMENT BUILDING PROJECT, THE TAXPAYER SHALL OBTAIN AN  
15 ELIGIBILITY CERTIFICATE FROM AN ARCHITECT OR PROFESSIONAL ENGINEER  
16 LICENSED TO PRACTICE IN THIS STATE.

17 (II) AN ELIGIBILITY CERTIFICATE ISSUED UNDER THIS  
18 PARAGRAPH SHALL CONSIST OF A CERTIFICATION, UNDER THE SEAL OF THE  
19 ARCHITECT OR ENGINEER, THAT THE PROPERTY THAT IS THE BASIS FOR THE  
20 CREDIT THAT IS CLAIMED IS IN SERVICE AND THAT THE BUILDING PROJECT  
21 MEETS THE REQUIREMENTS FOR LOW IMPACT DEVELOPMENT ESTABLISHED BY  
22 THE DEPARTMENT.

23 (III) THE CERTIFICATION UNDER SUBPARAGRAPH (II) OF  
24 THIS PARAGRAPH:

25 1. SHALL BE MADE IN ACCORDANCE WITH THE  
26 REGULATIONS ADOPTED BY THE DEPARTMENT UNDER THIS SECTION  
27 SPECIFYING THE STANDARDS AND GUIDELINES FOR THE CREDIT UNDER THIS  
28 SECTION; AND

29 2. SHALL SET FORTH THE SPECIFIC FINDINGS ON  
30 WHICH THE CERTIFICATION WAS BASED.

31 (IV) THE TAXPAYER SHALL FILE THE ELIGIBILITY  
32 CERTIFICATE AND THE ASSOCIATED INITIAL CREDIT CERTIFICATE WITH THE  
33 TAXPAYER'S INCOME TAX RETURN AND SHALL FILE DUPLICATE COPIES OF THE  
34 ELIGIBILITY CERTIFICATE WITH THE DEPARTMENT.

35 (V) THE ELIGIBILITY CERTIFICATE SHALL INCLUDE:

1                   1.    SUFFICIENT INFORMATION TO IDENTIFY EACH  
2 BUILDING PROJECT; AND

3                   2.    ANY OTHER INFORMATION THAT THE  
4 DEPARTMENT OR THE COMPTROLLER REQUIRES BY REGULATION.

5                   (3) IF THE DEPARTMENT HAS REASON TO BELIEVE THAT AN  
6 ARCHITECT OR PROFESSIONAL ENGINEER, IN MAKING ANY CERTIFICATION  
7 UNDER THIS SUBSECTION, ENGAGED IN PROFESSIONAL MISCONDUCT, THE  
8 DEPARTMENT SHALL INFORM THE APPROPRIATE PROFESSIONAL BOARD OF  
9 THE SUSPECTED MISCONDUCT.

10                  (4) (I) THE COMPTROLLER AND THE DEPARTMENT MAY  
11 ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS SECTION.

12                               (II) REGULATIONS ADOPTED UNDER THIS SECTION SHALL  
13 CONSTRUE THE PROVISIONS OF THIS SECTION IN SUCH A MANNER AS TO  
14 ENCOURAGE THE USE OF LOW IMPACT DEVELOPMENT TECHNIQUES AND TO  
15 MAINTAIN HIGH, BUT COMMERCIALY REASONABLE, STANDARDS FOR  
16 OBTAINING TAX CREDITS UNDER THIS SECTION.

17                  (5) ON OR BEFORE APRIL 1, 2011, AND ON OR BEFORE APRIL 1  
18 OF EACH YEAR THEREAFTER, THE COMPTROLLER AND THE DEPARTMENT  
19 JOINTLY SHALL SUBMIT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE  
20 STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY A WRITTEN  
21 REPORT REGARDING:

22                               (I) THE NUMBER OF CERTIFICATIONS AND TAXPAYERS  
23 CLAIMING THE CREDIT UNDER THIS SECTION;

24                               (II) THE AMOUNT OF THE CREDITS CLAIMED;

25                               (III) THE GEOGRAPHICAL DISTRIBUTION OF THE CREDITS  
26 CLAIMED; AND

27                               (IV) ANY OTHER AVAILABLE INFORMATION THE  
28 DEPARTMENT DETERMINES TO BE MEANINGFUL AND APPROPRIATE.

29                  (6) THE COMPTROLLER SHALL ENSURE THAT THE INFORMATION  
30 IS PRESENTED AND CLASSIFIED IN A MANNER CONSISTENT WITH THE  
31 CONFIDENTIALITY OF TAX RETURN INFORMATION.

1           **(F) (1) IN THIS SUBSECTION, "ADVISORY COMMITTEE" MEANS THE**  
2 **LOW IMPACT DEVELOPMENT ADVISORY COMMITTEE.**

3           **(2) THE DEPARTMENT SHALL ESTABLISH A LOW IMPACT**  
4 **DEVELOPMENT ADVISORY COMMITTEE.**

5           **(3) (I) THE SECRETARY SHALL APPOINT TO THE ADVISORY**  
6 **COMMITTEE REPRESENTATIVES OF THE DEPARTMENT, THE ENVIRONMENTAL**  
7 **COMMUNITY, THE CONSTRUCTION INDUSTRY, ACADEMIA, AND COUNTY AND**  
8 **MUNICIPAL GOVERNMENTS.**

9                           **(II) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE**  
10 **ADVISORY COMMITTEE.**

11                           **(III) A MEMBER MAY NOT RECEIVE COMPENSATION FOR**  
12 **SERVING ON THE ADVISORY COMMITTEE, BUT IS ENTITLED TO**  
13 **REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL**  
14 **REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

15           **(4) THE ADVISORY COMMITTEE SHALL:**

16                           **(I) STUDY LOW IMPACT DEVELOPMENT TECHNIQUES AND**  
17 **PRACTICES AND COMPARE THE COSTS AND BENEFITS OF LOW IMPACT**  
18 **DEVELOPMENT TECHNIQUES AND PRACTICES WITH CONVENTIONAL**  
19 **STORMWATER MANAGEMENT TECHNOLOGY; AND**

20                           **(II) DEVELOP MINIMUM CRITERIA FOR BUILDING PROJECTS**  
21 **TO QUALIFY AS LOW IMPACT DEVELOPMENT BUILDING PROJECTS ELIGIBLE FOR**  
22 **THE TAX CREDIT UNDER THIS SECTION, INCLUDING CRITERIA FOR:**

23                                   **1. ON-SITE ABSORPTION OF STORMWATER RUNOFF**  
24 **THAT WOULD OTHERWISE LEAVE THE BUILDING SITE;**

25                                   **2. REMOVAL OF NITROGEN AND PHOSPHORUS FROM**  
26 **STORMWATER RUNOFF THAT WOULD OTHERWISE LEAVE THE SITE; AND**

27                                   **3. REMOVAL OF SUSPENDED SOLIDS FROM**  
28 **STORMWATER THAT WOULD OTHERWISE LEAVE THE SITE.**

29           **(5) ON OR BEFORE OCTOBER 1, 2008, THE ADVISORY**  
30 **COMMITTEE SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE**  
31 **SECRETARY.**



1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 July 1, 2008, and shall be applicable to all taxable years beginning after December 31,  
3 2007.