

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 261
Judicial Proceedings

(Senator Frosh, *et al.*)

Real Property - Commercial Buildings - Disclosures

This bill requires an owner or operator of a privately owned commercial building with over 10,000 interior square feet to, beginning January 1, 2013, disclose specified information regarding the building's energy performance to a prospective buyer and lessee of more than 2,000 square feet. A purchaser or lessee who does not receive a disclosure statement on or before entering into a contract for sale or lease has the unconditional right to rescind the contract at any time before receipt of the statement or within five days after receipt of the statement. A purchaser or lessee is also entitled to the immediate return of any deposit. The purchaser or lessee's right terminates if not exercised within 60 days after taking possession of the property.

Fiscal Summary

State Effect: The bill does not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires an owner or operator of a privately owned commercial building with an interior space of more than 10,000 square feet to, on or after January 1, 2013, disclose the building's benchmarking data and ratings to a prospective buyer and lessee of more than 2,000 square feet.

“Benchmark” means to obtain energy statistics for structures comparable to a particular structure and, if applicable, Energy Star ratings, using the EPA Portfolio Manager, an Internet-based energy management tool developed by the U.S. Environmental Protection Agency. For the purposes of the bill, a benchmark is valid for 12 months after it is established.

A purchaser or lessee who does not receive an energy benchmark disclosure statement on or before entering into a contract for sale or lease has the unconditional right to rescind the contract, upon written notice, at any time before receipt of the disclosure statement or within five days after receipt of the statement and is entitled to the immediate return of any deposit made on account of the contract. The purchaser or lessee’s right to rescind the contract terminates if not exercised within 60 days after taking possession of the property.

Current Law: The Real Property Article does not contain specific disclosure requirements similar in nature to that of the bill associated with the sale or lease of commercial property. There are, however, certain disclosure requirements (none related to energy performance) applicable to the sale and lease of residential property.

Background:

EPA Portfolio Manager/Energy Star Rating

The EPA Portfolio Manager is an online energy management tool that allows energy and water consumption of buildings to be tracked and assessed and allows the energy performance of certain types of commercial buildings to be rated on a scale of 1-100 relative to similar buildings nationwide (Energy Star rating). Energy Star indicates that a small number of State and local governments have established requirements for Energy Star or equivalent benchmarking/rating of certain public and/or private buildings, including the District of Columbia; the cities of Austin, Denver, New York, and Seattle; and California, Hawaii, Michigan, Ohio, and Washington.

There are approximately 18,000 commercial buildings in the State with over 10,000 square feet. According to Energy Star statistics, as of June 30, 2010, just over 2,500 buildings in Maryland had been Energy Star rated, representing 390 million square feet of floor space.

MEA Time-of-sale Disclosure Recommendation

The Maryland Energy Administration (MEA) recommended, in its 2010 *Maryland Energy Outlook* (MEO), that time-of-sale disclosure of energy consumption of all residential and commercial buildings for the previous year be required, subject to size

limitations. MEA indicated that such disclosure would encourage property owners to invest in energy efficiency to increase the value of their buildings and help consumers make more informed purchases.

Disclosure of a building's energy consumption, however, can be distinguished from the benchmarking requirements of this bill which compare a building's energy consumption with similar buildings to provide a measure of the building's energy performance. Disclosure of simply energy consumption and cost information appears to provide less information about a building's actual energy efficiency but imposes a negligible cost/burden on building owners. Disclosing energy performance information, on the other hand, could require additional effort, or costs to be incurred, by a building owner. There is no cost to use the EPA Portfolio Manager, however, and it does not require specific expertise to use.

Small Business Effect: Small businesses that own or develop commercial buildings with over 10,000 square feet of interior space and small businesses that provide energy audits and/or energy efficiency improvements may be meaningfully impacted by the bill.

Small businesses that own or develop commercial buildings could be positively or negatively impacted by the requirement that energy benchmarking data be disclosed when selling or leasing commercial buildings. How a given business is affected depends on the energy efficiency of the building(s) the business wants to sell or lease and whether there are any barriers to meaningfully benchmarking a building with the EPA Portfolio Manager, such as a building being largely vacant or newly constructed and without sufficient historical energy use data. The Maryland Association of Industrial and Office Properties also notes that building owners may face difficulty obtaining necessary information to input into the EPA Portfolio Manager from tenants. The extent of any impact of the benchmarking disclosure requirements on affected building owners, however, beyond the effort required to benchmark a building or buildings, appears uncertain, and would likely vary by circumstance.

Small businesses that offer energy audits and/or energy efficiency improvements may generate additional business to the extent additional benchmarking of affected commercial buildings leads to an increase in the demand for the services of energy auditors and energy efficiency contractors to make improvements to inefficient buildings.

Additional Information

Prior Introductions: None.

Cross File: HB 718 (Delegate McIntosh, *et al.*) – Environmental Matters.

Information Source(s): Maryland Energy Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation (Maryland Real Estate Commission); Secretary of State; U.S. Environmental Protection Agency; Maryland Association of Industrial and Office Properties; Department of Legislative Services

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