

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 387 (Senator Frosh, *et al.*)
 Budget and Taxation

High Performance Buildings Act - Applicability to Recipients of State Aid

This bill phases in over four years a requirement that any new building or major building renovation that is funded solely or partly by a grant of State aid be built as a high-performance building. Projects funded solely or partly by the Department of Housing and Community Development (DHCD) must comply either with the high-performance building standards in State law or any other applicable standards approved by the Secretary of Housing and Community Development that enhance and support affordable housing and community development.

Fiscal Summary

State Effect: General fund expenditures by the Department of General Services (DGS) increase by \$72,400 in FY 2013 to support and monitor grantees' compliance with the bill's requirements. Out-year expenditures reflect inflation. No effect on DHCD because of the exception made in the bill. No effect on revenues.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	72,400	71,800	75,500	79,300
Net Effect	\$0	(\$72,400)	(\$71,800)	(\$75,500)	(\$79,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The bill exempts units of local government that receive State grants.

Small Business Effect: Potential meaningful for small businesses (for-profit and nonprofit) that receive State aid for building construction.

Analysis

Bill Summary: The bill applies only to construction projects carried out by for-profit or nonprofit entities or associations that receive State aid during a fiscal year. It does not apply to a unit of local government that receives a State capital grant. State aid is redefined as a contribution, grant, financing assistance, or subsidy of at least \$100,000 through the State operating or capital budget or directly from a State agency. It does not include reimbursements to providers participating in a State program.

In fiscal 2013, only capital projects that receive at least 50% of their funds from grants of State aid are subject to the bill. The share of project costs supported by State funding that subjects projects to the bill's requirement declines to 40% in fiscal 2014 and 25% in fiscal 2015. Beginning in fiscal 2016, all eligible capital projects that receive any amount of State aid are subject to the bill.

The bill also increases from \$50,000 to \$100,000 the threshold at which State grants to for-profit and nonprofit organizations must be posted on the Department of Budget and Management's (DBM) website.

Current Law: Chapter 124 of 2008 required most new or renovated State buildings and new school buildings to be constructed as high-performance buildings, subject to waiver processes established by DBM, DGS, and the Board of Public Works (BPW). Between fiscal 2010 and 2014, the State funds 50% of the local share of increased school construction costs associated with high-performance buildings. Chapters 527 and 528 of 2010 added new community college capital projects that receive State funds to the requirement.

Chapter 124 defines a high-performance building as one that:

- meets or exceeds the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) criteria for a silver rating; or
- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate rating system, guideline, or standard approved by DBM and DGS.

Only new or renovated buildings that are at least 7,500 square feet and are built or renovated entirely with State funds, or in the case of community college projects that receive any State funds, are subject to the high-performance requirement. Additionally, building renovations must include the replacement of heating, ventilation, air conditioning, electrical, and plumbing systems and must retain the building shell.

Unoccupied buildings are exempt from the high-performance mandate, including warehouses, garages, maintenance facilities, transmitter buildings, and pumping stations.

For State buildings and community colleges, the waiver process must include a review by the Maryland Green Building Council and approval by DGS, DBM, and the Maryland Department of Transportation. The waiver process established by BPW must include review and approval by the Interagency Committee on School Construction.

Chapter 116 of 2007 codified the Maryland Green Building Council, which had been established by executive order but had been dormant for several years. The council was charged with:

- evaluating current green building technologies;
- recommending cost-effective green building technologies that the State may consider incorporating into the construction of new State facilities; and
- developing a list of building types for which green building technologies should not be applied.

In December 2007, the council released its report; Chapter 124 incorporated most of its major recommendations into statute.

Background: USGBC is a national coalition of building industry leaders formed to promote construction that is environmentally responsible, profitable, and that creates healthy places to live and work. USGBC developed LEED as a self-assessment tool that measures the extent to which a building meets green building criteria on six dimensions: sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process. Version 2.2 of the LEED system was released in October 2005. The rating scale has a maximum score of 69 points and four ratings:

- platinum (52-69 points);
- gold (39-51 points);
- silver (33-38 points); and
- certified (26-32 points).

LEED standards have been adopted by at least 24 states and more than 90 local governments. There are more than 1,000 LEED-certified buildings in the country.

To date, only three State-funded buildings have been built as high-performance buildings. According to the Green Building Council, the Hammerman Beach Services building at Gunpowder Falls State Park, completed in 2008, cost about 3.4% more than a

nonhigh-performance building would have cost but is expected to generate 20% savings on energy costs and 40% reduction in water consumption over its lifespan. Goodpaster Hall on the campus of St. Mary's College of Maryland, completed in 2008, is estimated to have had a 1.6% cost premium but is expected to generate 30% savings on energy costs and 40% reduction in water consumption over its lifespan. The Universities of Maryland at Shady Grove building, completed in 2007 and which achieved a LEED gold rating, is estimated to have had a 2.4% cost premium but should generate 30% savings in energy costs and a 40% reduction in water consumption over its lifespan. As of January 2011, four public schools had achieved LEED gold certification; all are currently occupied. Also, 31 schools were seeking LEED silver or gold certification; of those, 2 were occupied, 9 were under construction, and the rest were in the planning stage.

Each year, the capital budget includes numerous direct grants and grant programs that provide State aid to for-profit and nonprofit entities for capital construction projects. Based on the Governor's proposed fiscal 2012 capital budget, among the largest programs likely to be affected by this bill are the Private Hospital Grant Program (\$5.0 million), Community Health Facilities Grant Program (\$3.6 million), Private Higher Education Facilities Grant Program (\$4.0 million), and numerous recipients of direct State grants through legislative initiatives (\$15.0 million) and other miscellaneous grants in the capital budget. Other large grant programs, most notably Program Open Space, are not affected because they provide grants to units of local government.

DGS advises that 218 of the 346 (63%) recipients of legislative initiative grants for capital projects in fiscal 2009 and 2010 received at least \$100,000, and therefore would have been subject to the bill's requirements had they been in effect at the time. Over the past seven years, the percentage of affected projects would have been even higher (77%).

State Fiscal Effect: DGS advises that the organizations that typically receive legislative initiative grants are small and often operate with skeleton, part-time, or volunteer staff. Individuals who operate the organizations usually do not have experience managing large capital projects and therefore rely heavily on DGS to provide guidance for implementing and managing their projects. DGS currently has just one person dedicated to overseeing the large number of grant-funded projects. Responsibilities include submitting agenda items to BPW, reviewing grantee procurement actions and contracts to protect against misuse of funds, and maintaining financial records and other necessary documentation. In order to monitor compliance with the high-performance building requirement and process any waiver requests, DGS requires additional staff support with specialized expertise in green building technologies.

Therefore, general fund expenditures by DGS increase by \$72,397 in fiscal 2013, when the bill's requirements begin to apply. This estimate reflects the cost of hiring one new

grant supervisor to ensure grantee compliance with the bill’s requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$65,736
Operating Expenses	<u>6,661</u>
Total FY 2013 State Expenditures	\$72,397

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover, as well as 1% annual increases in ongoing operating expenses.

Legislative Services assumes that DBM can alter State grants posted on its website within existing resources. Alternatively, DBM may choose to continue reporting State grants that meet the lower threshold under current law since mechanisms to collect and report the data are already established.

Small Business Effect: Most estimates indicate that construction costs for high-performance buildings are 2% to 5% higher than construction costs for nonhigh-performance buildings, which is consistent with Maryland’s limited experience. USGBC estimates that, going forward, the average cost premium for LEED silver buildings will be 2% above the cost of traditional construction. Legislative Services concurs with this estimate. However, any buildings constructed as high-performance buildings should generate substantial operational savings over their lifespan, more than covering the initial construction cost premium. To the extent that legislative grants do not cover the increased up-front construction costs associated with high-performance buildings, recipients of State grants will have to provide additional funds for the capital project.

Additional Information

Prior Introductions: SB 215 of 2010, a similar bill, was heard by the Senate Budget and Taxation Committee, but no further action was taken on the bill. Its cross file, HB 1040, was withdrawn.

Cross File: HB 910 (Delegate McIntosh, *et al.*) - Health and Government Operations and Appropriations.

Information Source(s): Department of Budget and Management, Department of General Services, Department of Housing and Community Development, Maryland Department of Transportation, Department of Legislative Services

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