SB 222

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 222 (Senator Frosh, *et al.*)
Budget and Taxation

High Performance Buildings Act - Applicability to Recipients of State Aid

This bill requires any new building or major building renovation that is funded solely or partly by a grant of State aid of at least $250,000 be built as a high-performance building. The requirement is phased in over four years beginning in fiscal 2014. 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 other approved applicable standards.

Fiscal Summary

State Effect: General fund expenditures by the Department of General Services (DGS) increase by $72,500 in FY 2014 to support and monitor grantees' compliance with the bill's requirements. Out-year expenditures generally reflect employee turnover and inflation. DHCD can likely implement the bill with existing resources. No effect on revenues.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	72,500	72,500	75,900	79,400
Net Effect	$0	($72,500)	($72,500)	($75,900)	($79,400)

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 and major renovation 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 to include financing assistance in addition to a contribution, grant, or subsidy; and the threshold is increased to State aid of at least $250,000, rather than $50,000, 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 2014, 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 2015 and 25% in fiscal 2016. Beginning in fiscal 2017, all eligible capital projects that receive State aid are subject to the bill.

The State's existing waiver process for State buildings is expanded to include projects that receive State funding. Grantees that can demonstrate that the high-performance building standards create such a significant hardship that the project cannot be completed are eligible for a waiver. Also, building types for which the U.S. Green Building Council did not have a standard as of June 1, 2011, are automatically exempt. The Secretary of Housing and Community Development may also provide waivers for projects funded by DHCD.

The bill also increases from $50,000 to $250,000 the threshold at which State aid 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. The latest standards were released in 2009, but they are in the process of being revised for 2012. The rating scale has four ratings (certified, silver, gold, and platinum).

LEED standards have been adopted by at least 34 states (including Puerto Rico). Maryland is ranked eighth in the country with 1,385 LEED registered or certified buildings.

To date, four 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. The Maryland Department of Transportation's headquarters is LEED gold certified and is estimated to save $83,000 in energy costs each year compared with standard building designs. As of September 2011, seven public schools had achieved LEED gold certification; all are currently occupied. Also, 34 schools were seeking LEED silver or gold certification; of those, 5 were occupied, 10 were under construction, and the rest were in the planning stage.

USGBC acknowledges that the special regulatory and medical requirements for hospital buildings make it difficult for them to meet LEED standards for new buildings. Therefore, it unveiled LEED for Healthcare standards in late 2011; because these standards did not exist prior to June 1, 2011, hospital and other medical facilities that receive State grants are not subject to the bill's requirements.

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 2013 capital budget, the numerous recipients of direct State grants through legislative initiatives ($15.0 million) and other miscellaneous grants in the capital budget are most likely to be affected by the bill, if their grants are at least $250,000. Other large grant programs, most notably Program Open Space, are not affected because they provide grants to units of local government, which are exempt under the bill.

State Fiscal Effect: To gauge the potential effect of the legislation on grantees and DGS, which oversees the distribution of funds to the grantees, Legislative Services analyzed the fiscal 2012 capital budget. The analysis identified 49 grantees who received at least $250,000 in State aid, but some of these are not subject to the bill's requirements. Of the total grantees, nine were hospitals and six were county or municipal governments, both of which are exempt; five additional grants were for nonconstruction capital costs (*e.g.*, boilers, water treatment, lighting). That left 29 grantees, of which 2 may not be subject to the requirements because Legislative Services could not determine whether the grants were for building construction or major renovation. Currently, State grants must be spent within three years, but in the recent past grantees had as long as eight years. Therefore, assuming current funding levels over the next few years, the number of grantees subject to the bill's requirements in a given year likely grows to about 100 and possibly as high as several hundred.

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 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 $72,537 in fiscal 2014, when the bill's requirements begin to apply. This estimate reflects the cost of hiring one new grant supervisor with expertise in LEED standards 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	$65,173
Operating Expenses	7,364
Total FY 2014 State Expenditures	**$72,537**

Future year expenditures reflect annual increases in salary and employee turnover as well as 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.

Based on a review of DHCD programs, Legislative Services has identified two programs that may be affected by the bill: Rental Housing and Special Loans. These programs provide low-interest and other favorable loans to finance affordable rental housing. They use a combination of special and federal funds as well as general obligation bond revenue, so it is unclear to what extent the bill applies to these programs. Other DHCD programs give funds primarily to local governments, which are not affected by the bill. DHCD could not predict how it will implement the bill's requirements, nor could it provide a reliable estimate of its fiscal effect. Therefore, especially given DHCD's waiver authority, DLS concludes that the bill has no material effect on DHCD program expenditures.

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 upfront 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 387 of 2011, a similar bill, received an unfavorable report from the Senate Budget and Taxation Committee. Its cross file, HB 910, was withdrawn after a hearing in the House Health and Government Operations Committee. 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 after a hearing in the House Health and Government Operations Committee.

Cross File: HB 639 (Delegates Morhaim and McIntosh) – Health and Government Operations and Appropriations.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Department of Housing and Community Development, Maryland Department of Transportation, Public School Construction Program, University System of Maryland, U.S. Green Building Council, Department of Legislative Services

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