AN ACT to:
(1) alter the eligibility criteria for the property tax credit for energy and environmental design;
(2) alter the amounts and durations of the property tax credit for energy and environmental design by type of building;
(3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design; and
(4) generally amend the law concerning the property tax credit for energy and environmental design.

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-103

By adding
Montgomery County Code
Chapter 52, Taxation
Sections 52-103A and 52-103B

The County Council for Montgomery County, Maryland approves the following Act:
Sec 1. Section 52-103 is amended, and Sections 52-103A and 52-103B are added, as follows:

52-103. Property tax credit – energy and environmental design.

* * *

(c) Application and sunset dates. [[A taxpayer must apply for the credit]] [within 1 year after the building is certified as a high performance building] [[on the application and in the manner that the Director of Finance requires]] To qualify for a tax credit under this Section, a taxpayer must submit an application of intent to apply for the credit by January 1, 2022 and either:

(1) for LEED-EB project certification, receive LEED-EB project certification for an eligible LEED-EB building and submit an application to the Director by January 1, 2023;

or

(2) for LEED-CS or LEED-NC certification, receive a building permit for an eligible LEED-CS or LEED-NC building and submit an application to the Director by January 1, 2024.

* * *

Sec. 52-103A. Property tax credit - energy-efficient buildings

(a) Intent. The intent of this Section is to:

(1) encourage building owners to increase the energy performance of existing buildings;

(2) incentivize building owners to reduce the energy and climate impacts of existing buildings, as the built environment generates more than half of the County’s measured community-wide greenhouse gas emissions;
(3) advance the County’s aggressive climate goals of an 80 percent reduction in greenhouse gas emissions by 2027 and zero emissions by 2035;

(4) institute regular review of the tax credits outlined in this Section to ensure that they are meeting the goals under paragraphs (1) through (3); and

(5) implement a tax credit under Section 9-242(a) of the Tax-Property Article of the Maryland Code, as amended.

(b) Definitions. In this Section the following words have the meanings indicated:

Accredited building professional means an individual that holds a valid and current credential from a building certification organization.

Baseline ENERGY STAR Score means the ENERGY STAR score of a building calculated over any consecutive 12-month period when the scored building is at least 50 percent occupied.

BRE Global means the Building Research Establishment Global.

BREEAM means the Building Research Establishment Environmental Assessment Method rating system administered by BRE Global.

Building certification organization means a third-party organization that administers the rating systems identified in this Section.

Building Sustainability Tax Credit is the property tax credit received for earned building certifications described in this Section.

Director means the Director of the Department of Finance or the Director’s designee.

Energy-efficient building means a non-residential or multi-family residential building that: (1) has or will have at least 10,000 square feet of gross floor area; (2) has received a Certificate of Occupancy from the
Department of Permitting Services; (3) has achieved at least a minimum 50 percent occupancy rate for at least 12 consecutive months; and (4) has demonstrated energy improvements consistent with the requirements of this Section.

Energy Reduction Tax Credit is the property tax credit received for energy performance improvements described in this Section.

ENERGY STAR Data Verification Checklist means a report generated in the ENERGY STAR Portfolio Manager tool to document property use details and energy consumption.

ENERGY STAR Portfolio Manager means the no-cost web-based energy management tool developed and maintained by the U.S. Environmental Protection Agency to track and assess building energy performance.

ENERGY STAR Score means the numerical measure of a building’s energy use generated through the use of ENERGY STAR Portfolio Manager.

ENERGY STAR score metric reference data means the market data used by the U.S. Environmental Protection Agency to generate the ENERGY STAR Score.

Energy Use Intensity or EUI refers to the amount of energy used in a building per square foot per year.

Improved ENERGY STAR Score means the ENERGY STAR score of a building calculated within a consecutive 12-month period when the scored building is at least 50 percent occupied, demonstrating energy savings resulting from the use of a qualifying energy conservation device.

LEED means the Leadership in Energy and Environmental Design rating system administered by the USGBC.

Occupancy means the percentage of a building that is occupied and
operational.

Property tax means the general County property tax and all special service area taxes.

USGBC means the United States Green Building Council.

(c) Credit. The Director must allow a tax credit each eligible year against the property tax imposed on an energy-efficient building under this Section.

(d) Application. An application by the owner of an energy-efficient building for a tax credit must be in the form prescribed by the Director and include:

(1) a description of the energy conservation device installed in the building;

(2) the ENERGY STAR Portfolio Manager Data Verification Checklists documenting the baseline and improved (within the past year) ENERGY STAR scores of an existing energy-efficient building, signed by an accredited building professional; and

(3) if the Building Sustainability Tax Credit is sought, verified documentation demonstrating qualification within the past year for the Building Sustainability Tax Credit in subsection (f).

(e) Energy Reduction Tax Credit.

(1) An energy-efficient building may receive an Energy Reduction Tax Credit for achieving energy use reductions under this subsection and, if that credit is granted, may receive an additional Building Sustainability Tax Credit under subsection (f).

(2) For the Energy Reduction Tax Credit, the percentage of the annual County property tax credit, awarded for 2 years, is calculated by subtracting an energy-efficient building’s 12-month baseline ENERGY STAR score from the improved 12-month ENERGY
STAR score, then multiplying the difference by the multiplier below based on the improved ENERGY STAR score:

(A) if the improved ENERGY STAR score falls between 1-24, multiply the difference by 1.0;

(B) if the improved ENERGY STAR score falls between 25-49, multiply the difference by 1.5;

(C) if the improved ENERGY STAR score falls between 50-74, multiply the difference by 2.0; or

(D) if the improved ENERGY STAR score falls between 75-100, multiply the difference by 2.5.

(3) Baseline and Improved ENERGY STAR Score 12-month time periods must not overlap and must not be more than 6 calendar years apart.

(4) The Baseline ENERGY STAR Score 12-month time period must not begin earlier than August 26, 2018. Baseline and Improved ENERGY STAR Score 12-month time periods must use the same ENERGY STAR score metric reference data.

(5) If a building is not able to earn the ENERGY STAR score due to the property use type, the Director may accept the USGBC alternative compliance path for Energy Use Intensity (EUI).

(f) **Building Sustainability Tax Credit.**

(1) The owner of an energy-efficient building seeking the Building Sustainability Tax Credit must apply for that tax credit simultaneously with the Energy Reduction Tax Credit. The amount of the Building Sustainability Tax Credit must be added to the Energy Reduction Tax Credit. The Building Sustainability Tax Credit must be equal to:
(A) 25% of the property tax owed on the building for 2 years, if the building achieves the most recent version available of LEED O+M Gold, BREEAM In-Use Excellent or an equivalent standard; or 

(B) 50% of the property tax owed on the building for 2 years, if the building achieves the most recent version available of LEED O+M Platinum, BREEAM In-Use Outstanding or an equivalent standard.

(2) To be approved for the Building Sustainability Tax Credit, an energy-efficient building must also be approved for the Energy Reduction Tax Credit.

(g) Total Maximum Credit. The maximum credit that an energy-efficient building may be granted in any year must not exceed 100% of the building’s annual County property tax liability.

(h) Annual limits. In any fiscal year, the Director must not award more than $5 million in total tax credits granted to all buildings under this Section.

(i) Reapplications.

(1) The owner of an energy-efficient building awarded a tax credit under this Section may reapply twice after the initial 2-year credit cycle. The maximum number of applications a building owner may submit is 3, consisting of 1 initial application and 2 reapplications.

(2) For any reapplications, the building owner must submit a new Baseline ENERGY STAR Score for the building and describe the improvements performed to achieve the energy reduction. The Baseline ENERGY STAR Score for a reapplication may not be older than the 12-month time period used for the Improved
ENERGY STAR Score for the previously approved tax credit. If an owner received a Building Sustainability Tax Credit based upon certification as LEED O+M Gold, BREEAM In-Use Excellent or an equivalent standard, the building must achieve a higher certification, such as LEED O+M Platinum, BREEAM In-Use Outstanding or an equivalent standard, upon reapplication.

(j) **Credit Review.**

(1) On or before October 1 of each year, the Director of Finance must prepare a report on the status of the Energy Reduction Tax Credit and Building Sustainability Tax Credit.

(2) Every 3 years, the County Executive must submit a report to the County Council reviewing the effectiveness of the Energy Reduction Tax Credit and Building Sustainability Tax Credit and make recommendations on any credit alterations.

(k) **Regulations.** The County Executive may issue regulations under method (2) to administer the Energy Reduction Tax Credit and the Building Sustainability Tax Credit.

**52-103B. Property tax credit - newly constructed energy-efficient buildings**

(a) **Intent.** The intent of this Section is to:

(1) encourage building owners to increase the energy performance of newly constructed buildings beyond current Building and Zoning Code requirements at time of application;

(2) incentivize building owners to reduce the energy and climate impacts of newly constructed buildings, as the built environment generates more than half of the County’s measured community-wide greenhouse gas emissions;
(3) advance the County’s aggressive climate goals of an 80 percent reduction in greenhouse gas emissions by 2027 and zero emissions by 2035;

(4) institute regular review of the tax credits outlined in this Section to ensure that they are meeting the goals under paragraphs (1) through (3); and

(5) implement a tax credit under Section 9-242(a) of the Tax-Property Article of the Maryland Code, as amended.

(b) Applicability. The credit authorized by this Section applies to any tax year beginning January 1, 2022.

(c) Definitions. In this Section the following words have the meanings indicated:

BRE Global means the Building Research Establishment Global.

BREEAM means the Building Research Establishment Environmental Assessment Method rating system administered by BRE Global.

New Building Sustainability Tax Credit is the property tax credit received for earned building certifications described in this Section.

Director means the Director of the Department of Finance or the Director’s designee.

Newly constructed energy-efficient building means:

(A) An unoccupied non-residential or multi-family residential “core and shell” building, of at least 10,000 square feet in gross floor area, with full mechanical systems, electrical distribution infrastructure, and a weather-sealed thermal envelope that has achieved substantial completion and received a Certificate of Occupancy from the Department of Permitting Services within the past year;
(B) A newly constructed non-residential or multifamily building, of at least 10,000 square feet in gross floor area, that has achieved substantial completion and received a Certificate of Occupancy from the Department of Permitting Services within the past year; or

(C) A non-residential or multifamily building, of at least 10,000 square feet in gross floor area, that has undergone a major renovation that warrants bringing the entire building up to current Building Code standards and has received final inspection and approval from the Department of Permitting Services.

New Building Energy Reduction Tax Credit is the property tax credit received for energy performance improvements described in this Section.

LBC or Living Building Certification means the Living Building Certification administered by the International Living Future Institute.

LEED means the Leadership in Energy and Environmental Design rating system administered by the USGBC. In this Section, LEED building certification includes all eligible rating systems for newly constructed non-single-family-residential buildings.

NGBS means the National Green Building Standard rating system administered by Home Innovation Research Labs.

PassiveHouse means the PassiveHouse standard administered by PHIUS.

PHIUS means the PassiveHouse Institute US.

Property tax means the general County property tax and all special service area taxes.

USGBC means the United States Green Building Council.
(d) **Credit.** The Director must allow a tax credit each eligible year against the property tax imposed on a newly constructed energy-efficient building under this Section.

(e) **Application.**

(1) An application by the owner of a newly constructed energy-efficient building for a tax credit must be in the form prescribed by the Director and must include:

(A) a certification from the Department of Permitting Services within the past year indicating the percentage performance above current Building Code requirements at time of application demonstrated by the newly constructed energy-efficient building; and

(B) if the New Building Sustainability Tax Credit is sought, verified documentation demonstrating qualification within the past year for the New Building Sustainability Tax Credit.

(2) A building owner that has received either a New Building Energy Reduction Tax Credit or a New Building Sustainability Tax Credit may not reapply for either credit for the same newly constructed building in any later tax year.

(f) **New Building Energy Reduction Tax Credit.**

(1) A newly constructed energy-efficient building may receive an Energy Reduction Tax Credit for achieving energy use reductions as outlined in this subsection and, if that credit is granted, may receive an additional Building Sustainability Tax Credit as described in subsection (g).
To be eligible for the New Building Energy Reduction Tax Credit, a newly constructed energy-efficient building owned by the applicant must achieve a minimum 10 percent increase in energy performance above the current applicable Building and Zoning Code requirements at time of application using an energy modeling software approved by the Department of Permitting Services.

For the New Building Energy Reduction Tax Credit, the percentage of the annual County property tax credit awarded for 4 years is calculated by rounding a newly constructed energy-efficient building’s performance above Building Code and Zoning Code requirements to the nearest whole number and multiplying it by the multiplier below:

(A) if the building’s performance above Code is between 10 and 20 percent, multiply the building performance percentage figure by 0.5;

(B) if the building’s performance above Code is between 21 and 30 percent, multiply the building performance percentage figure by 1.0;

(C) if the building’s performance above Code is between 31 and 40 percent, multiply the building performance percentage figure by 1.5; or

(D) if the building’s performance above Code is above 40 percent, multiply the building performance percentage figure by 2.0.

New Building Sustainability Tax Credit. The owner of a newly constructed energy-efficient building seeking the New Building Energy
Tax Credit must apply for that tax credit simultaneously with the New Building Energy Reduction Tax Credit.

(1) The amount of the New Building Sustainability Tax Credit must be equal to:

(A) 25% of the property tax owed on the building for 4 years if the building achieves the most recent version available of LEED Gold, NGBS Gold, PHIUS+/PassiveHouse, BREEAM-NC Excellent or an equivalent standard;

(B) 75% of the property tax owed on the building for 4 years if the building achieves the most recent version available of LBC Petal Certification, LEED Platinum, NGBS Emerald, BREEAM-NC Outstanding or an equivalent standard; or

(C) 75% of the property tax owed on the building for 5 years if the building achieves the most recent version available of Living Building Certification.

(2) To be approved for the New Building Sustainability Tax Credit, an energy-efficient building must also be approved for the New Building Energy Reduction Tax Credit.

(h) Total Maximum Credit. The maximum credit under this Section that an energy-efficient building may be granted in any fiscal year must not exceed 100% of the building’s annual property tax liability.

(i) Credit Review.

(1) By October 1 of each year, the Director must prepare a report on the status of the New Building Energy Reduction Tax Credit and the New Building Sustainability Tax Credit.

(2) Every 3 years, the County Executive must submit a report to the Council reviewing the effectiveness of the New Building Energy
Reduction Tax Credit and the New Building Sustainability Tax Credit and making recommendations on any credit alterations.

(j) **Regulations.** The County Executive may issue regulations under method (2) to administer the New Building Energy Reduction Tax Credit and the New Building Sustainability Tax Credit.

**Sec. 2. Sunset Clause.** Section 52-103 of the County Code must sunset, and must and have no further force and effect, on January 1, 2025.
Approved: 

Sidney Katz, President, County Council  

Approved:  

Marc Elrich, County Executive  

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council