



Committee: Joint Government Operations & Fiscal Policy/
Transportation & Environment Committee
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #LEEDPropertyTaxCredit

AGENDA ITEM #9
March 31, 2020
Public Hearing

SUBJECT

Bill 10-20, Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit
Lead Sponsors: Councilmembers Friedson and Riemer
Co-Sponsor: Council President Katz

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

DESCRIPTION/ISSUE

Bill 10-20 would:

- (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; and
- (3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report

Bill 10-20

Legislative Request Report

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MEMORANDUM

March 26, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 10-20, Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit ¹

PURPOSE: Public hearing – no Council votes required

Bill 10-20, Property Tax Credit – Energy and Environmental Design – Eligibility Criteria and Amounts of Credit, sponsored by Lead Sponsors Councilmembers Friedson and Riemer, and Co-Sponsor Council President Katz, was introduced on March 3, 2020. A worksession of the joint Government Operations & Fiscal Policy/Transportation & Environment Committee will be scheduled at a later date.

Bill 10-20 would:

- (4) alter the eligibility criteria for the property tax credit for energy and environmental design;
- (5) alter the amounts and durations of the property tax credit for energy and environmental design by type of building; and
- (6) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design.

BACKGROUND

In June 2019, the County Executive delivered to the T&E and GO Committees a report on stakeholder *Recommendations on Montgomery County High-Performance Green Building Initiatives*. The stakeholder group recommended altering green building incentives in the County to focus more on energy reduction metrics as opposed to industry certifications alone.

Specifically, the workgroup looked at the current property tax credit for energy and environmental design under Section 52-103 of the County Code. Under the current Code, buildings are eligible for a property tax credit if they achieve certain certifications, or certification equivalents, under the Leadership in Energy and Environmental Design (LEED) rating system administered by the U.S. Green Building Council.

¹ #LEEDPropertyTaxCredit

The stakeholder workgroup recommended, and the T&E and GO Committees discussed, creating a two-tiered approach to green building tax incentives for new construction, and a separate two-tiered approach to green building tax incentives for existing buildings. For both types of buildings – new and existing – the tiers would focus, first, upon rewarding energy reduction at levels above and beyond Building Code requirements and, second, upon high-level industry certifications for green buildings.

BILL DESCRIPTION

Consistent with the recommendations of the stakeholder workgroup, Bill 10-20 would implement: (1) a two-tiered property tax credit for new commercial and multifamily construction, based upon energy reduction metrics and industry certifications; and (2) a separate two-tiered property tax credit for existing commercial and multifamily buildings, based upon energy reduction metrics and industry certifications.

With respect to new or extensively modified construction (a/k/a, “covered buildings” under the bill), the credit would be based upon the “energy reduction level” achieved by the building. The bill would define “energy reduction level” as a level of energy performance, expressed as a percentage, that the Director of Environmental Protection finds to be at least 10% better than the level of energy performance that would be achieved under the current Building Code (County Code, Chapter 8). The amount of the credit would increase as the building’s energy reduction level increased. For example, a building with an energy reduction level of 21%-30% would have a higher credit than a building with an energy reduction level of 10%-20%.

In addition to the credit based upon an energy reduction level, a covered building could receive a bonus credit for certain sustainability certifications. For example, a gold rating under LEED, or the equivalent of a gold rating as determined by the Director, would make the building eligible for a bonus credit equal to 25% of the property tax owed on the building. The total credit would be capped at 100% of the property tax owed on the building.

With respect to existing buildings, the credit would be based upon the ENERGY STAR® improvement of the building over a 12-month period. The greater the amount of ENERGY STAR improvement, the greater the amount of the credit. For example, a building that improved its ENERGY STAR score by 25-49 points would receive a higher credit than a building that improved its score by 1-24 points.

Like with new construction, an existing building could receive a bonus credit for certain sustainability certifications. For example, a building with a platinum or higher rating for LEED, or the equivalent of a platinum or higher rating as determined by the Director, would qualify for a bonus credit in the amount of 75% of the property tax owed on the building. The total amount of the credit would be capped at 100% of the property tax owed on the building.

The bill would limit the duration of the tax credit to 4 years for qualified new construction, and 2 years for qualified existing buildings. The bill also would alter the annual limits that currently apply to the tax credit for energy and environmental design. The law currently caps the credits granted by the County at \$5 million annually. The bill would retain this \$5 million annual cap for credits to eligible existing buildings, but the cap would not apply for credits to eligible new construction.

This packet contains:

Bill 10-20

Legislative Request Report

Circle #

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Bill No. 10-20
Concerning: Property Tax Credit –
Energy and Environmental Design
– Eligibility Criteria and Amounts of Credit
Revised: 02/26/2020 Draft No. 3
Introduced: March 3, 2020
Expires: September 3, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson and Riemer
Co-Sponsor: Council President Katz

AN ACT to:

- (7) alter the eligibility criteria for the property tax credit for energy and environmental design;
- (8) alter the amounts and durations of the property tax credit for energy and environmental design by type of building;
- (9) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design; and
- (10) 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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Section 52-103 is amended as follows:**

2 (a) *Definitions.* In this Section the following words have the meanings
3 indicated:

4 [(1)] Covered building. “Covered building” means a newly
5 constructed or extensively modified non- residential or multi-
6 family residential building that has or will have at least 10,000
7 square feet of gross floor area.

8 Director. “Director” means the Director of the Department of
9 Environmental Protection or the Director’s designee.

10 Energy reduction level. “Energy reduction level” means a level
11 of energy performance, expressed as a percentage, that the
12 Director finds to be at least 10% better than the level of energy
13 performance that would be achieved under the building
14 requirements of Chapter 8, as amended.

15 ENERGY STAR. “ENERGY STAR” means a trademarked
16 program of the U.S. Environmental Protection Agency and the
17 U.S. Department of Energy to encourage energy efficiency.

18 ENERGY STAR Portfolio Manager. “ENERGY STAR Portfolio
19 Manager” means an energy management tool of the U.S.
20 Environmental Protection Agency under ENERGY STAR to
21 track energy consumption over time.

22 ENERGY STAR score. “ENERGY STAR score” means a score,
23 calculated under the ENERGY STAR Portfolio Manager, that
24 reflects the energy consumption of a building over time.

25 [(2)] *Extensively modified*. “Extensively modified” means any
26 structural modification which alters more than 50% of the
27 building’s gross floor area, as indicated on the application for a
28 building permit. Extensively modified does not include any
29 modification that is limited to one or more of the following
30 building systems: mechanical; electrical; plumbing; heating,
31 ventilation, and air conditioning (HVAC); and fire protection.

32 [(3)] *High performance building*. “High performance building”
33 means:

34 (A) [A] a covered building that achieves:

35 (1) [A gold or platinum rating from the USGBC for
36 LEED-NC, LEED-CS, or LEED-EB; or] an energy
37 reduction level; and

38 (2) [An] an energy and environmental design standard
39 that the Director [of the Department of Permitting
40 Services] finds [is equivalent to a gold or platinum
41 rating from the USGBC for LEED-NC, LEED- CS,
42 or LEED-EB; and] meets the minimum standards of
43 Section 9-242(a) of the Tax-Property Article of the
44 Maryland Code, as amended; or

45 (B) [Any other] a non-covered building that achieves:

46 (1) [A silver, gold, or platinum rating from the USGBC
47 for LEED- NC, LEED-CS, or LEED-EB; or] an
48 improved ENERGY STAR score under the
49 ENERGY STAR Portfolio Manager; and

50 (2) [An] an energy and environmental design standard
51 that the Director [of the Department of Permitting
52 Services] finds [is equivalent to the silver, gold or
53 platinum rating from the USGBC for LEED- NC,
54 LEED-CS, or LEED-EB] meets the minimum
55 standards of Section 9-242(a) of the Tax-Property
56 Article of the Maryland Code, as amended.

57 [(4) “LEED-CS”] LEED. “LEED” means the Leadership in Energy
58 and Environmental Design[- Core and Shell] rating system
59 administered by the USGBC.

60 [(5) “LEED-EB” means the Leadership in Energy and Environmental
61 Design - Existing Building rating system administered by the
62 USGBC.

63 (6) “LEED-NC” means the Leadership in Energy and
64 Environmental Design - New Construction rating system
65 administered by the USGBC.]

66 [(7)] Property tax. “Property tax” means the general County tax and
67 all special service area taxes.

68 [(8)] USGBC. “USGBC” means the US Green Building Council.

69 (b) *Credit*. Subject to the restrictions in subsections (c), (d), and (e), the
70 Director of the Department of Finance must allow a tax credit each
71 eligible year against the property tax imposed on a high performance
72 building.

73 (c) *Application.* A taxpayer must apply for the credit [within 1 year after
74 the building is certified as a high performance building] on the
75 application and in the manner that the Director of Finance requires.

76 (d) *Amount of credit.*

77 (1) For a covered high performance building, the amount of the
78 credit [is] must be the percentage of the property tax owed on the
79 building, not to exceed 100% of the property tax owed, that
80 equals the sum of the amounts under subparagraphs (A) and (B):

81 (A) *Energy reduction level.*

82 [(A)] (i) [25% of the property tax owed on the
83 building

84 for 5 years] the product of the energy reduction level
85 of the building multiplied by 0.5, if the building
86 achieves [a gold rating for LEED-NC or LEED-CS
87 or an equivalent standards] an energy reduction
88 level of at least 10% and no more than 20%;

89 [(B)] (ii) [75% of the property tax owed on the
90 building

91 for 5 years] the amount of the energy reduction level
92 of the building, if the building achieves [a platinum
93 rating for LEED-NC or LEED-CS or an equivalent
94 standard] an energy reduction level of at least 21%
95 and no more than 30%;

96 [(C)] (iii) [10% of the property tax owed on the
97 building

98 for 3 years] the product of the energy reduction level
99 of the building multiplied by 1.5, if the building
100 achieves [the gold rating for LEED-EB or an
101 equivalent standard] an energy reduction level of at
102 least 31% and no more than 40%; or

103 [(D)] (iv) [50% of the property tax owed on the
104 building

105 for 3 years] the product of the energy reduction level
106 of the building multiplied by 2, if the building
107 achieves [the platinum rating for LEED-EB or an
108 equivalent standard] an energy reduction level of at
109 least 41%; and

110 (B) Sustainability certification bonus.

111 (i) 25% of the property tax owed on the building, if the
112 building achieves a gold rating for LEED, or a
113 rating that the Director finds is equivalent to a gold
114 rating for LEED; or

115 (ii) 75% of the property tax owed on the building, if the
116 building achieves a platinum or higher rating for
117 LEED, or a rating that the Director finds is
118 equivalent to a platinum or higher rating for LEED.

119 (2) For [any other] a non-covered high performance building, the
120 amount of the credit [is] must be the percentage of the property
121 tax owed on the building, not to exceed 100% of the property tax
122 owed, that equals the sum of the amounts under subparagraphs
123 (A) and (B):

124 (A) ENERGY STAR improvement.

125 [(A)] (i) [25% of the property tax owed on the
126 building for 5 years] the amount that the ENERGY
127 STAR score of the building improved over 12
128 months, if the building [achieves a silver rating for
129 LEED-NC or LEED-CS or an equivalent standard]
130 improved its ENERGY STAR score by at least 1
131 and no more than 24 over the 12 months;

132 [(B)] (ii) [50% of the property tax owed on the
133 building for 5 years] the product of the amount that
134 the ENERGY STAR score of the building improved
135 over 12 months multiplied by 1.5, if the building
136 [achieves a gold rating for LEED-NC or LEED-CS
137 or an equivalent standard] improved its ENERGY
138 STAR score by at least 25 and no more than 49 over
139 the 12 months;

140 [(C)] (iii) [75% of the property tax owed on the
141 building for 5 years] the product of the amount that
142 the ENERGY STAR score of the building improved
143 over 12 months multiplied by 2, if the building

144 [achieves a platinum rating for LEED-NC or
145 LEED-CS or an equivalent standard] improved its
146 ENERGY STAR score by at least 50 and no more
147 than 74 over the 12 months; or

148 (iv) the product of the amount that the ENERGY STAR
149 score of the building improved over 12 months
150 multiplied by 2.5, if the building improved its
151 ENERGY STAR score by at least 75 over the 12
152 months; and

153 (B) Sustainability certification bonus.

154 [(D)] (i) [10%] 25% of the property tax owed on the
155 building [for 3 years], if the building achieves the
156 [silver] gold rating for [LEED-EB] LEED or [an
157 equivalent] a standard that the Director finds is
158 equivalent to the gold rating for LEED; or

159 [(E)] (ii) [25%] 75% of the property tax owed on the
160 building [for 3 years], if the building achieves the
161 [gold] platinum or higher rating for [LEED-EB]
162 LEED, or [an equivalent] a standard that the
163 Director finds is equivalent of a platinum or higher
164 rating for LEED[; and].

165 [(F) 50% of the property tax owed on the building for 3 years,
166 if the building achieves the platinum rating for LEED-EB
167 or an equivalent standard.]

168 (e) Annual limits.

- 169 (1) Subject to the annual [limits] limit for non-covered buildings in
170 paragraph (2) and the carryover rules in paragraph (3), the
171 Director must grant credits in the order in which the Department
172 of Finance receives complete applications.
- 173 (2) During any fiscal year the total credits granted to[:]
174 [(A) All] non-covered buildings under this Section must not
175 exceed \$5 million.
176 [(B) Buildings that achieve a silver rating or equivalent
177 standard must not exceed \$1.5 million; and
178 (C) Buildings that achieve a gold rating or equivalent standard
179 must not exceed \$2.5 million.]
- 180 (3) A complete application that, if granted, would cause [any of] the
181 [limits] limit set in paragraph (2) to be exceeded, must be granted
182 in the next fiscal year or years based on the order in which the
183 Department of Finance received the application.
- 184 (4) A tax credit under paragraph (d)(1) must not be granted for a
185 building for more than 4 years.
- 186 (5) A tax credit under paragraph (d)(2) must not be granted for a
187 building for more than 2 years.
- 188 (f) *Regulations.* The County Executive may issue regulations under
189 method (2) to administer this tax credit.

LEGISLATIVE REQUEST REPORT

Bill 10-20

*Property Tax Credit – Energy and Environmental
Design – Eligibility Criteria and Amounts of Credit*

DESCRIPTION:	The bill would: (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; and (3) alter annual limits on the total amounts of property tax credits granted by the County for energy and environmental design.
PROBLEM:	The current property tax credit for energy and environmental design will allow buildings that simply meet, but do not exceed, the building code to receive credits.
GOALS AND OBJECTIVES:	Incentivize energy and environmental design standards that reduce energy consumption.
COORDINATION:	DEP
FISCAL IMPACT:	OMB
ECONOMIC IMPACT:	Office of Legislative Oversight (OLO)
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A