

Bill No. 10-20
Concerning: Property Tax Credit –
Energy and Environmental Design –
Eligibility Criteria and Amounts of
Credit
Revised: 09/10/2020 Draft No. 4
Introduced: March 3, 2020
Enacted: September 29, 2020
Executive: September 30, 2020
Effective: December 30, 2020
Sunset Date: See Section 2
Ch. 28, Laws of Mont. Co. 2020

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

28 (3) advance the County’s aggressive climate goals of an 80 percent
 29 reduction in greenhouse gas emissions by 2027 and zero emissions
 30 by 2035;

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

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

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

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

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

43 *BRE Global* means the Building Research Establishment Global.

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

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

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

50 *Director* means the Director of the Department of Finance or the
 51 Director’s designee.

52 *Energy-efficient building* means a non- residential or multi-family
 53 residential building that: (1) has or will have at least 10,000 square feet
 54 of gross floor area; (2) has received a Certificate of Occupancy from the

55 Department of Permitting Services; (3) has achieved at least a minimum
56 50 percent occupancy rate for at least 12 consecutive months; and (4) has
57 demonstrated energy improvements consistent with the requirements of
58 this Section.

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

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

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

67 ENERGY STAR Score means the numerical measure of a building's
68 energy use generated through the use of ENERGY STAR Portfolio
69 Manager.

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

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

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

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

81 Occupancy means the percentage of a building that is occupied and

82 operational.

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

85 USGBC means the United States Green Building Council.

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

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

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

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

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

99 (e) Energy Reduction Tax Credit.

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

104 (2) For the Energy Reduction Tax Credit, the percentage of the annual
 105 County property tax credit, awarded for 2 years, is calculated by
 106 subtracting an energy-efficient building's 12-month baseline
 107 ENERGY STAR score from the improved 12-month ENERGY

- 108 STAR score, then multiplying the difference by the multiplier
 109 below based on the improved ENERGY STAR score:
- 110 (A) if the improved ENERGY STAR score falls between 1-24,
 111 multiply the difference by 1.0;
- 112 (B) if the improved ENERGY STAR score falls between 25-49,
 113 multiply the difference by 1.5;
- 114 (C) if the improved ENERGY STAR score falls between 50-74,
 115 multiply the difference by 2.0; or
- 116 (D) if the improved ENERGY STAR score falls between 75-
 117 100, multiply the difference by 2.5.
- 118 (3) Baseline and Improved ENERGY STAR Score 12-month time
 119 periods must not overlap and must not be more than 6 calendar
 120 years apart.
- 121 (4) The Baseline ENERGY STAR Score 12-month time period must
 122 not begin earlier than August 26, 2018. Baseline and Improved
 123 ENERGY STAR Score 12-month time periods must use the same
 124 ENERGY STAR score metric reference data.
- 125 (5) If a building is not able to earn the ENERGY STAR score due to
 126 the property use type, the Director may accept the USGBC
 127 alternative compliance path for Energy Use Intensity (EUI).
- 128 (f) *Building Sustainability Tax Credit.*
- 129 (1) The owner of an energy-efficient building seeking the Building
 130 Sustainability Tax Credit must apply for that tax credit
 131 simultaneously with the Energy Reduction Tax Credit. The
 132 amount of the Building Sustainability Tax Credit must be added to
 133 the Energy Reduction Tax Credit. The Building Sustainability Tax
 134 Credit must be equal to:

- 135 (A) 25% of the property tax owed on the building for 2 years, if
 136 the building achieves the most recent version available of
 137 LEED O+M Gold, BREEAM In-Use Excellent or an
 138 equivalent standard; or
- 139 (B) 50% of the property tax owed on the building for 2 years, if
 140 the building achieves the most recent version available of
 141 LEED O+M Platinum, BREEAM In-Use Outstanding or an
 142 equivalent standard.
- 143 (2) To be approved for the Building Sustainability Tax Credit, an
 144 energy-efficient building must also be approved for the Energy
 145 Reduction Tax Credit.
- 146 (g) Total Maximum Credit. The maximum credit that an energy-efficient
 147 building may be granted in any year must not exceed 100% of the
 148 building’s annual County property tax liability.
- 149 (h) Annual limits. In any fiscal year, the Director must not award more than
 150 \$5 million in total tax credits granted to all buildings under this Section.
- 151 (i) Reapplications.
- 152 (1) The owner of an energy-efficient building awarded a tax credit
 153 under this Section may reapply twice after the initial 2-year credit
 154 cycle. The maximum number of applications a building owner
 155 may submit is 3, consisting of 1 initial application and 2
 156 reapplications.
- 157 (2) For any reapplications, the building owner must submit a new
 158 Baseline ENERGY STAR Score for the building and describe the
 159 improvements performed to achieve the energy reduction. The
 160 Baseline ENERGY STAR Score for a reapplication may not be
 161 older than the 12-month time period used for the Improved

162 ENERGY STAR Score for the previously approved tax credit. If
 163 an owner received a Building Sustainability Tax Credit based upon
 164 certification as LEED O+M Gold, BREEAM In-Use Excellent or
 165 an equivalent standard, the building must achieve a higher
 166 certification, such as LEED O+M Platinum, BREEAM In-Use
 167 Outstanding or an equivalent standard, upon reapplication.

168 (j) *Credit Review.*

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

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

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

179 **52-103B. Property tax credit - newly constructed energy-efficient buildings**

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

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

184 (2) incentivize building owners to reduce the energy and climate
 185 impacts of newly constructed buildings, as the built environment
 186 generates more than half of the County’s measured community-
 187 wide greenhouse gas emissions;

- 188 (3) advance the County’s aggressive climate goals of an 80 percent
 189 reduction in greenhouse gas emissions by 2027 and zero emissions
 190 by 2035;
- 191 (4) institute regular review of the tax credits outlined in this Section to
 192 ensure that they are meeting the goals under paragraphs (1)
 193 through (3); and
- 194 (5) implement a tax credit under Section 9-242(a) of the Tax-Property
 195 Article of the Maryland Code, as amended.
- 196 **(b) Applicability.** The credit authorized by this Section applies to any tax year
 197 beginning January 1, 2022.
- 198 **(c) Definitions.** In this Section the following words have the meanings
 199 indicated:
- 200 *BRE Global* means the Building Research Establishment Global.
 201 *BREEAM* means the Building Research Establishment Environmental
 202 Assessment Method rating system administered by BRE Global.
 203 *New Building Sustainability Tax Credit* is the property tax credit received
 204 for earned building certifications described in this Section.
 205 *Director* means the Director of the Department of Finance or the
 206 Director’s designee.
- 207 *Newly constructed energy-efficient building* means:
- 208 (A) An unoccupied non-residential or multi-family residential
 209 “core and shell” building, of at least 10,000 square feet in
 210 gross floor area, with full mechanical systems, electrical
 211 distribution infrastructure, and a weather-sealed thermal
 212 envelope that has achieved substantial completion and
 213 received a Certificate of Occupancy from the Department of
 214 Permitting Services within the past year;

215 (B) A newly constructed non-residential or multifamily
 216 building, of at least 10,000 square feet in gross floor area,
 217 that has achieved substantial completion and received a
 218 Certificate of Occupancy from the Department of
 219 Permitting Services within the past year; or

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

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

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

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

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

236 *PassiveHouse* means the PassiveHouse standard administered by PHIUS.

237 *PHIUS* means the PassiveHouse Institute US.

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

240 *USGBC* means the United States Green Building Council.

- 241 (d) Credit. The Director must allow a tax credit each eligible year against the
242 property tax imposed on a newly constructed energy-efficient building
243 under this Section.
- 244 (e) Application.
- 245 (1) An application by the owner of a newly constructed energy-
246 efficient building for a tax credit must be in the form prescribed by
247 the Director and must include:
- 248 (A) a certification from the Department of Permitting Services
249 within the past year indicating the percentage performance
250 above current Building Code requirements at time of
251 application demonstrated by the newly constructed energy-
252 efficient building; and
- 253 (B) if the New Building Sustainability Tax Credit is sought,
254 verified documentation demonstrating qualification within
255 the past year for the New Building Sustainability Tax
256 Credit.
- 257 (2) A building owner that has received either a New Building Energy
258 Reduction Tax Credit or a New Building Sustainability Tax Credit
259 may not reapply for either credit for the same newly constructed
260 building in any later tax year.
- 261 (f) New Building Energy Reduction Tax Credit.
- 262 (1) A newly constructed energy-efficient building may receive an
263 Energy Reduction Tax Credit for achieving energy use reductions
264 as outlined in this subsection and, if that credit is granted, may
265 receive an additional Building Sustainability Tax Credit as
266 described in subsection (g).

- 267 (2) To be eligible for the New Building Energy Reduction Tax Credit,
 268 a newly constructed energy-efficient building owned by the
 269 applicant must achieve a minimum 10 percent increase in energy
 270 performance above the current applicable Building and Zoning
 271 Code requirements at time of application using an energy
 272 modeling software approved by the Department of Permitting
 273 Services.
- 274 (3) For the New Building Energy Reduction Tax Credit, the
 275 percentage of the annual County property tax credit awarded for 4
 276 years is calculated by rounding a newly constructed energy-
 277 efficient building's performance above Building Code and Zoning
 278 Code requirements to the nearest whole number and multiplying it
 279 by the multiplier below:
- 280 (A) if the building's performance above Code is between 10 and
 281 20 percent, multiply the building performance percentage
 282 figure by 0.5;
- 283 (B) if the building's performance above Code is between 21 and
 284 30 percent, multiply the building performance percentage
 285 figure by 1.0;
- 286 (C) if the building's performance above Code is between 31 and
 287 40 percent, multiply the building performance percentage
 288 figure by 1.5; or
- 289 (D) if the building's performance above Code is above 40
 290 percent, multiply the building performance percentage
 291 figure by 2.0.
- 292 (g) *New Building Sustainability Tax Credit.* The owner of a newly
 293 constructed energy-efficient building seeking the New Building Energy

294 Tax Credit must apply for that tax credit simultaneously with the New
 295 Building Energy Reduction Tax Credit.

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

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

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

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

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

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

315 (i) Credit Review.

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

319 (2) Every 3 years, the County Executive must submit a report to the
 320 Council reviewing the effectiveness of the New Building Energy

321 Reduction Tax Credit and the New Building Sustainability Tax
322 Credit and making recommendations on any credit alterations.

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

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

Approved:



Sidney Katz, President, County Council 9/30/2020
Date

Approved:



Marc Elrich, County Executive 9/30/20
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council 10/1/2020
Date