

**Department of Legislative Services**  
 Maryland General Assembly  
 2007 Session

**FISCAL AND POLICY NOTE**

House Bill 778 (Delegate Rosenberg, *et al.*)  
 Ways and Means

**Income Tax Credits for Green Buildings - Additional Credits Authorized**

This bill expands the existing State income tax credit for Green Buildings by: (1) allowing nonprofit organizations to claim the credit; (2) making the tax credit transferable; (3) expanding the buildings eligible by allowing buildings with at least 10,000 square feet of interior space to qualify; and (4) allowing the Maryland Energy Administration (MEA) to authorize an additional \$25 million in credits in tax years 2008 through 2012. MEA and the Comptroller’s Office are required to adopt regulations that establish a process for ensuring that any credit issued prior to July 1, 2007 can be claimed prior to any credit issued after July 1, 2007.

The bill takes effect July 1, 2007 and applies to tax year 2007 and beyond.

**Fiscal Summary**

**State Effect:** General fund revenues could decrease by \$4.4 million in FY 2008 from making the credit transferable. Future year losses reflect anticipated claim schedule under current law versus under the provisions of the bill. FY 2009 through 2012 also reflect additional credits authorized in tax years 2008 through 2011. No effect on expenditures.

| (\$ in millions) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|------------------|---------|---------|---------|---------|---------|
| GF Revenue       | (\$4.4) | (\$8.1) | (\$6.7) | (\$5.5) | (\$4.4) |
| Expenditure      | \$0     | \$0     | \$0     | \$0     | \$0     |
| Net Effect       | (\$4.4) | (\$8.1) | (\$6.7) | (\$5.5) | (\$4.4) |

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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### Analysis

**Bill Summary:** Credits can be transferred if: (1) no portion of the credit has been claimed; (2) the entire amount of the credit is transferred; and (3) the transferor notifies the Comptroller's Office within 30 days. **Exhibit 1** lists the amount of credits MEA can authorize under current law and the bill.

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**Exhibit 1**  
**Credits Authorized**  
**Current Law and HB 778**  
**(\$ in Millions)**

| <u>Tax Year</u> | <u>Current Law</u> | <u>HB 778</u> | <u>Increase</u> |
|-----------------|--------------------|---------------|-----------------|
| 2003            | \$1.0              | \$1.0         | \$0             |
| 2004            | 2.0                | 2.0           | 0               |
| 2005            | 3.0                | 3.0           | 0               |
| 2006            | 4.0                | 4.0           | 0               |
| 2007            | 5.0                | 5.0           | 0               |
| 2008            | 4.0                | 9.0           | 5.0             |
| 2009            | 3.0                | 8.0           | 5.0             |
| 2010            | 2.0                | 7.0           | 5.0             |
| 2011            | 1.0                | 6.0           | 5.0             |
| 2012            | <u>0</u>           | <u>5.0</u>    | <u>5.0</u>      |
| <b>Total</b>    | <b>\$25.0</b>      | <b>\$50.0</b> | <b>\$25.0</b>   |

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**Current Law:** The credit is not transferable and any unused amount of the credit can be carried forward 10 tax years. An individual or corporation is eligible to claim the credit. Buildings must have at least 20,000 feet of interior space in order to qualify for the credit.

**Background:** The following is an overview on the State's existing Green Building Tax Credit and green building programs in other states and local jurisdictions.

### ***State Green Building Tax Credit***

Businesses that construct or rehabilitate a building that conforms to specific standards intended to save energy and to mitigate environmental impact may take a credit for a portion of the cost. The building must be located in either a priority funding area or a qualified brownfields site and cannot be located in a wetlands area. The total amount of credits certified for all taxpayers each year (calendar 2003 through 2011) is subject to the limitations in Exhibit 1. Credits are allowed for amounts spent on or after July 1, 2001. Allowable costs may not exceed in the aggregate: \$120 per square foot for that portion of the building that is owner occupied; and \$60 per square foot for that portion of the building that comprises the tenant space. The credit is the sum of four credit components.

*Building Credit Component:* A percentage of the allowable costs paid by the owner or tenant to make some portion of the building “green.” Each credit is limited by a dollar amount per square foot. For a whole building, 8% of the allowable costs paid for or incurred by the owner or tenant, as outlined: **base building** (areas not intended to be occupied) – 6% of the allowable costs; allowable costs may not exceed \$120 per square foot; the maximum credit amount is \$7.20 per square foot for the area that comprises the base building; **tenant space** – 6% of the allowable costs; allowable costs may not exceed \$60 per square foot; the credit cannot be claimed by the owner if the owner occupies less than 10,000 square feet of the building or by the tenant if the tenant occupies less than 5,000 square feet; the maximum credit amount is \$3.60 per square foot.

*Fuel Cell Credit Component:* 30% of the costs paid by the owner or tenant to purchase and install a fuel cell in a green whole building, base building, or tenant space. The credit cannot exceed \$1,000 per kilowatt hour of capacity and is reduced by nontaxable government grants used to purchase and install the fuel cell.

*Photovoltaic Module Credit Component:* 25% (20% if building-integrated) of the cost paid by an owner or tenant to purchase and install a photovoltaic module in a green whole building, base building, or tenant space. The costs used to determine the credit amount cannot exceed \$3 per watt of capacity and are reduced by nontaxable government grants used to purchase and install the modules. The credit cannot be taken if the Clean Energy Incentive Credit has been claimed for the installation of the photovoltaic modules.

*Wind Turbine Component:* 25% of the cost to purchase and install wind turbines that qualify as alternative energy sources and will serve a green whole building, base building, or tenant space.

### *Tax Credits Awarded to Date*

As of January 2006, MEA has issued all \$25 million in initial credit certificates allowed under the program. **Exhibit 2** lists the amount of green building projects and credits awarded by county.

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#### **Exhibit 2 Credits Awarded By County**

| <u>County</u>   | <u>Projects</u> | <u>Total Credits<br/>Awarded</u> | <u>% of Total Credits<br/>Awarded</u> |
|-----------------|-----------------|----------------------------------|---------------------------------------|
| Montgomery      | 5               | \$10,213,610                     | 41%                                   |
| Baltimore City  | 4               | 8,483,119                        | 34%                                   |
| Howard          | 3               | 1,851,330                        | 7%                                    |
| Prince George's | 1               | 1,660,000                        | 7%                                    |
| Anne Arundel    | 2               | 1,136,069                        | 5%                                    |
| Somerset        | 1               | 625,872                          | 3%                                    |
| Baltimore       | 1               | 592,000                          | 2%                                    |
| Carroll         | <u>1</u>        | <u>438,000</u>                   | <u>2%</u>                             |
| <b>Total</b>    | <b>18</b>       | <b>\$25,000,000</b>              | <b>100%</b>                           |

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These projects represent a total of 2.4 million square-feet of building space. The median project was approximately 108,000 square feet, with a minimum of approximately 26,000 and maximum of 388,000. The types of buildings constructed are: office (7), multi-unit residential (6), retail (2), mixed use, hotel, and fitness center. The median credit awarded to each unique taxpayer was \$759,400, with a minimum credit awarded of \$161,700 and maximum of \$9.5 million. Six taxpayers were awarded credits in excess of \$1 million.

### ***Green Building Programs in Other States and Local Jurisdictions***

State and local jurisdictions have a variety of programs to encourage or mandate the construction of green buildings in both the public and private sectors. Programs include green building tax credits, requirements that new public buildings meet green building standards, and mandates that larger private sector construction projects obtain Leadership in Energy and Environmental Design (LEED) or similar green building certification.

The U.S. Green Building Council has developed nationally recognized green building standards called the LEED Green Building Rating System. Projects are awarded Certified, Silver, Gold, or Platinum certifications based on the number of performance benchmarks they meet in each category. These benchmarks include energy efficiency and renewable energy, water stewardship, environmentally preferable building materials, waste reduction, indoor environment, and sustainable development.

New York and Oregon have green building tax credits that are similar to Maryland's. New York first enacted a five-year, \$25 million tax credit program in 2000. Eligible projects include office buildings and large residential buildings with greater than 20,000 square feet of interior space. The tax credit is based on 7% of eligible costs for whole buildings and 5% for base building and tenant space (6% in economic development areas). The program was reauthorized in 2005, providing an additional \$25 million in tax credits. The renewed program places a \$2 million tax credit cap on each project and allows unclaimed credits to be reissued to other applicants.

Oregon's green building tax credit applies to all buildings that qualify for LEED certification. The credit equals 35% of the eligible project costs, defined as the incremental cost of meeting green building standards that are beyond the standard practice. In addition to Maryland, New York and Oregon, other states have recently considered legislation to establish green building tax credit programs, including Massachusetts, New Jersey, Pennsylvania, and Rhode Island.

In 2005, Nevada enacted legislation providing for property tax abatements of up to 50% for up to 10 years for newly constructed buildings that are LEED "Silver" certified. The law also exempts from the sales tax products and materials used in the construction of a LEED Silver building.

Many states have statutes or regulations requiring that new and renovated state-owned buildings meet LEED or similar green building standards. Arizona, California, Colorado, Connecticut, Maine, Maryland, Michigan, Missouri, Nevada, New Mexico, Pennsylvania, Rhode Island, and Washington all have policies that require various publicly-financed construction projects to meet green building standards. Many other states are considering such requirements.

Montgomery County and the District of Columbia have recently passed bills to require that larger commercial development projects meet LEED green building standards. The Montgomery County legislation requires newly constructed or extensively renovated commercial nonresidential and multifamily buildings achieve a LEED "Certified" rating if the building has at least 10,000 square feet of gross floor area. The measure approved

by the District of Columbia requires that all newly constructed and significantly renovated commercial development of greater than 50,000 square feet meet LEED standards beginning in 2012.

**State Revenues:** Exhibit 3 lists the fiscal impact of the bill in fiscal 2008 through 2019. The bill will impact State revenues in two ways. First, it expands the existing credit by making the credit transferable beginning with tax year 2007. This will affect State revenues by increasing revenue losses in the near-term while decreasing revenue losses in the out-years. It is assumed that under current law, due to insufficient tax liability, credits will be claimed and carried forward seven tax years at a rate of one-eighth per tax year and that by making the credit transferable all of the credit will be claimed in the fiscal year following the tax year in which the credit is allowed.

Second, the bill authorizes \$25 million in additional credits in tax years 2008 through 2012 which will impact State revenues in fiscal 2009 through 2013 as shown in Exhibit 3.

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**Exhibit 3**  
**HB 778 Fiscal Impact**  
**(\$ in Millions)**

| <u>Fiscal</u> | <u>Existing Credits</u> | <u>New Credits</u> | <u>Total Net Effect</u> |
|---------------|-------------------------|--------------------|-------------------------|
| 2008          | (\$4.4)                 | 0.0                | (\$4.4)                 |
| 2009          | (3.1)                   | (\$5.0)            | (8.1)                   |
| 2010          | (1.7)                   | (5.0)              | (6.7)                   |
| 2011          | (0.5)                   | (5.0)              | (5.5)                   |
| 2012          | 0.6                     | (5.0)              | (4.4)                   |
| 2013          | 1.6                     | (5.0)              | (3.4)                   |
| 2014          | 1.6                     | 0.0                | 1.6                     |
| 2015          | 1.6                     | 0.0                | 1.6                     |
| 2016          | 1.1                     | 0.0                | 1.1                     |
| 2017          | 0.6                     | 0.0                | 0.6                     |
| 2018          | 0.3                     | 0.0                | 0.3                     |
| 2019          | 0.1                     | 0.0                | 0.1                     |

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**Small Business Impact:** Small businesses that earn the credit or are transferred the credit could benefit from the bill's provision allowing credit to be transferred. According to MEA, cost premiums for approved green building projects are in the range of 5% to

6%. The current 8% tax credit would confer any small business that could claim the additional credits authorized by the bill up to a 3% premium of the costs associated with constructing a green building. Any small business subject to Montgomery County's green building standards would benefit from receiving any additional credits authorized by the bill.

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### **Additional Information**

**Prior Introductions:** SB 1009 of 2006, an identical bill, was not reported from the Senate Budget and Taxation Committee. HB 975 of 2005, as amended by the House Ways and Means Committee, only allowed buildings with at least 10,000 square feet of interior space to qualify. The bill passed the House but was not reported from Budget and Taxation.

**Cross File:** SB 298 (Senator Frosh, *et al.*) – Budget and Taxation.

**Information Source(s):** Comptroller's Office, Maryland Energy Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2007  
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