

Department of Legislative Services  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 234

(Senator Robey, *et al.*)

Budget and Taxation

Appropriations and Health and  
Government Operations

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**High Performance Buildings Act - Applicable to Community College Capital  
Projects**

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This bill requires that community college capital projects that receive State funds comply with the State's High Performance Building Act. It also allows community colleges to apply for waivers from this requirement under existing waiver procedures.

The bill takes effect July 1, 2010, and applies only to capital projects that have not initiated a request for proposals (RFP) for the selection of an architectural and engineering consultant on or before July 1, 2011.

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**Fiscal Summary**

**State Effect:** The bill does not affect the level of State funding for the Community College Construction Grant program. To the extent that the bill raises the total cost of State-funded community college capital projects beginning in FY 2012 and, therefore, the State share of those projects, fewer projects may receive State support. The Department of Budget and Management (DBM) and the Department of General Services (DGS) can review project proposals and waiver requests with existing budgeted resources.

**Local Effect:** To the extent the bill increases the total cost of planned projects, the local cost of community college capital projects increases by 2% beginning in FY 2012. Rather than increase local capital expenditures to fund the increase in local costs for new community college buildings, some counties may opt to fund fewer capital projects. Over time, high-performance community college buildings generate operational cost savings or cost avoidance that offsets some or all of the construction premium. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

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## Analysis

### Current Law:

*High Performance Building Act.* The High Performance Building Act (Chapter 124 of 2008) requires 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.

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 standard approved by DBM and DGS.

Only new or renovated State buildings that are at least 7,500 square feet and are built or renovated entirely with 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, 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. To date, no waiver requests for State buildings or new school buildings have been submitted.

*Community College Construction Grant Program.* The Community College Construction Grant program provides funds to assist local governments in the acquisition of property and in the design, construction, renovation, and equipping of local and regional community college buildings, site improvements, and facilities. The level of State support is based on two criteria: (1) the portion of the project that meets the eligibility requirements for State support; and (2) the State/local cost-sharing formula contained in statute. The State share of capital projects for regional colleges is 75% of project costs, while other community colleges receive between 50% and 70% of project costs, depending on the wealth of the jurisdiction.

**Background:** 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 of 2008 incorporated most of its major recommendations into statute.

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. Version 2.2 of the LEED system was released in October 2005. The rating scale has a maximum score of 69 points and four ratings:

- platinum (52-69 points);
- gold (39-51 points);
- silver (33-38 points); and
- certified (26-32 points).

LEED standards have been adopted by at least 24 states and more than 90 local governments. There are more than 1,000 LEED-certified buildings in the country.

To date, only three 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 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, 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, 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. As of January 2010, four public schools have achieved LEED gold

certification; all are currently occupied. Also, 31 schools are seeking LEED silver or gold certification; of those, 2 are occupied, 9 are under construction, and the rest are in the planning stage.

**State/Local Fiscal Effect:** The gap in construction costs between high-performance and nonhigh-performance buildings has been narrowing. Most estimates indicate that construction costs for LEED silver buildings are 2% to 5% higher than construction costs for nonhigh-performance buildings, which is consistent with Maryland's limited experience. The Green Building Council 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.

The Governor's proposed fiscal 2011 capital budget includes \$78.7 million for the Community College Construction Grant program. Those funds provide assistance to 17 projects at 12 different community colleges. However, Legislative Services advises that those projects are not affected by the bill because they likely have already issued or will issue an RFP for architectural and engineering services before the bill's effective date. Moreover, the largest funded project is a bioscience center at Montgomery College, which already builds to at least LEED silver standards as a matter of county policy.

The Governor's capital budget projects funding levels of \$80 million annually for the grant program. To the extent that the bill's requirement increases total project costs for eligible projects by 2% beginning in fiscal 2012, State costs also increase by the same percentage, or \$1.6 million. The increase in State costs could be less if some State-funded projects do not meet the size and function criteria specified in statute. Given that the total allocation to the grant program is fixed in the capital budget each year, any increase in the State cost of funded projects may result in fewer projects receiving State support.

Likewise, the local cost of eligible future community college capital projects increases by 2% beginning in fiscal 2012. However, high-performance buildings are likely to generate significant cost savings or cost avoidance over their lifespan, which eventually offsets some or all of the initial cost of construction. As noted above, the bill has no effect on Montgomery County, which already requires new buildings to be built to at least LEED silver standards.

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## **Additional Information**

**Prior Introductions:** HB 541 of 2009 was amended by the House and then passed third reading, with amendments, in the Senate, but no further action was taken. Its cross file, SB 686, was amended in both the Senate and House. A conference committee was appointed but did not reconcile the differences.

**Cross File:** None.

**Information Source(s):** Department of General Services; Baltimore City Community College; Department of Budget and Management; Charles, Frederick, Montgomery, and Somerset counties; Public School Construction Program; Maryland Higher Education Commission, Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510