

Action

MEMORANDUM

February 27, 2009

TO: County Council

FROM: Amanda M. Mihill, Legislative Analyst *Mihill*

SUBJECT: **Action:** Expedited Bill 2-09, Property Tax Credit – Renewable Energy – Amendments

Management and Fiscal Policy Committee recommendation: approve Expedited Bill 2-09 with an amendment clarifying that the Council's intent in passing the initial tax credit was to allow the credit only for individual owner-occupied residential buildings.

Background

Expedited Bill 2-09, Property Tax Credit – Renewable Energy – Amendments, sponsored by Councilmembers Berliner and Leventhal, was introduced on January 27, 2009. A public hearing was held on February 10 and there were no speakers. A Management and Fiscal Policy Committee worksession was held on February 23.

Expedited Bill 2-09 would establish a cap on the credit received for devices that generate electricity, require the Department of Permitting Services to accept certain certifications for certain devices, and generally amend the law relating to the renewable energy property tax credit. Expedited Bill 2-09 addresses issues that have arisen during the implementation of Bill 33-07, Renewable Energy, which authorized a property tax credit for renewable energy devices.

Issues/Committee Recommendations

1. Property tax credit limit for devices that generate electricity.

Under County Code §52-18R, a property tax credit is available for a solar or geothermal energy device that uses solar or geothermal energy to "heat or cool a structure, to provide hot water for

use in the structure, or to generate electricity to be used in the structure.” The amount of the credit is limited to the lower of 50% of eligible costs or a specific amount (\$5,000 for a heating system or \$1,500 for a hot water supply system).

The County received applications from residents who installed devices that generate electricity for use in a home. Because of the current law and the interpretation of that law, these applicants received tax credits for 50% of the eligible cost, which amounted to more than \$5,000. Expedited Bill 2-09 corrects this and limits the amount of the credit to \$5,000 for a solar or geothermal device that generates electricity, which is consistent with Council staff’s understanding of the Council’s intent. **The Committee recommended (3-0)** adopting the property tax credit cap in Expedited Bill 2-09.

2. Certification from outside agencies.

County Code §52-18R requires an applicant for a property tax credit to submit a certification from the Department of Permitting Services indicating that the device is a solar or geothermal energy device and is properly installed. Questions have arisen regarding whether DPS can accept certifications or inspections from municipalities (for solar systems) or the Washington Suburban Sanitary Commission (for hot water systems). Council staff has confirmed with the Director of Permitting Services that this issue has been resolved internally and DPS is accepting certifications from WSSC and municipalities for purposes of the property tax credit. **The Committee recommended (3-0)** specifically requiring DPS to accept these certifications.

3. Is the property tax credit available to owner-occupied businesses?

Staff from the County Attorney’s Office questioned whether companies (such as limited liability companies) that own residential property in which the members occupy the property as a residence can receive the credit authorized in §52-18R. The County has received such an application and Executive staff requested clarification of the Council’s intent.

§52-18R provides that “an owner of an *owner-occupied residential property* that uses a solar or geothermal energy device or an energy conservation device may receive a credit against the County property tax” (emphasis added). While the environmental impact of improvements made to a property may be substantially similar regardless of ownership of the property, Council staff understands the Council’s intent to allow the credit only for **individual** owner-occupied residential homes. This is evidenced by two main sources.

First, the Council action packet for Bill 33-07 discussed the issue of the credit for owner-occupied homes and stated:

Bill 33-07 would limit the total amount of property tax credits to \$250,000 per year, which would typically allow either 50 residents to receive credits for heating systems or 166 residents to receive credits for hot water supply systems. To assure that the maximum number of residents can take advantage of this tax credit, the Committee recommended (2-0, Councilmember Andrews absent) to limit the tax credit to one project per owner-occupied property per year.

Second, when the Council enacted Bill 33-07, the Council discussed at length whether to expand the property tax credit to include non-owner occupied homes, multi-family properties, or commercial properties. Many Councilmembers were interested in expanding the credit, but because of the limited funding for the credits and the fiscal situation, opted to allow the credit only for owner-occupied residential properties, but to ask the Sustainability Working Group review how to expand the tax credit to other properties.

While the Council can amend the law to include other properties, Council staff understands that the Council's intent at the time was to allow the credit for only **individual** owner-occupied residential homes. To make this intent clear, **the Committee recommended (3-0)** the following amendment (©2, lines 19-23):

- (b) *Credit.* As authorized by §9-203 of the Tax-Property Article, an [[owner of an owner-occupied residential property]] individual who owns and occupies a single-family home that uses a solar or geothermal energy device or an energy conservation device may receive a credit against the County property tax [[credit]].

The Committee recommended (3-0) approval of Expedited Bill 2-09 with the above amendment.

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Expedited Bill No. 02-09
Concerning: Property Tax Credit -
Renewable Energy - Amendments
Revised: 2/24/2009 Draft No. 3
Introduced: January 27, 2009
Expires: July 27, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner and Leventhal

AN ACT to:

- (1) establish a cap on the credit received for a solar or geothermal energy device that generates electricity;
- (2) require the Department of Permitting Services to accept certain certifications for certain devices; and
- (3) generally amend the law relating to the renewable energy property tax credit.

By adding

Montgomery County Code
Chapter 52, Taxation
Section 52-18R

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:

28 (B) \$5,000 for a heating or cooling system [or], \$1,500 for a
29 hot water supply system, or \$5,000 for a device that
30 generates electricity.

31 * * *

32 (f) *Application.*

33 * * *

34 (2) An application must:

35 (A) be on the form that the Director requires;

36 (B) demonstrate that the taxpayer is entitled to the credit; and

37 (C) include a certification from the Department of Permitting
38 Services, indicating that the device for which the credit is
39 sought:

40 (i) is a solar or geothermal energy device; and

41 (ii) has been properly installed.

42 (3) The Department of Permitting Services must accept a
43 certification by another government agency, including a
44 municipality, that the device has been [[property]] properly
45 installed.

46 * * *

47 **Sec. 2. Applicability.**

48 The property tax credit limit under Section 52-18R, as amended by Section 1
49 of this Act, for a device that generates electricity applies to a device for which an
50 application for a credit was filed on or after January 27, 2009.

51 **Sec. 3. Expedited Effective Date**

52 The Council declares that this legislation is necessary for the immediate
53 protection of the public interest. This Act takes effect on the date on which it
54 becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 2-09, *Property Tax Credit – Renewable Energy - Amendments*

DESCRIPTION: To establish a cap on the credit received for devices that generate electricity and require the Department of Permitting Services to accept certifications of properly installed devices from other government agencies, including municipalities.

PROBLEM: The law authorizing a property tax credit for certain solar or geothermal energy device allows a person to receive a tax credit of 50% of eligible costs, which can exceed \$5,000.

Current law requires the Department of Permitting Services to certify that a geothermal or solar energy device is properly installed. Other government agencies, including municipalities, may inspect these devices, but under current law, Permitting Services is not required to accept these certifications.

GOALS AND OBJECTIVES: To establish a tax cap for certain solar and geothermal energy devices, which would allow more County residents to take advantage of the tax credit, and require Permitting Services to accept certifications for properly installed devices from other government agencies, including municipalities.

COORDINATION: Departments of Environmental Protection, Finance, and Permitting Services.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Amanda Mihill, Legislative Analyst (240) 777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: n/a

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Sec. 52-18R. Property tax credit — renewable energy.

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

“*Director*” means the Director of the Department of Finance or the Director’s designee.

“*Eligible cost*” means the cost of buying or installing a solar or geothermal energy device or energy conservation device, including any part, component, or accessory necessary to operate the device, that is installed within 12 months before a property owner submits an application to the Department of Finance under subsection (f).

“*Energy conservation device*” means a device that:

(1) reduces the demands for conventional fuels or efficiency of these fuels, including:

(A) caulking and weatherstripping doors and windows;

(B) furnace efficiency modifications, including:

(i) replacing a burner, furnace, heat pump, or boiler if the replacement substantially increases the energy efficiency of the heating system;

(ii) a device to modify flue openings that increases the energy efficiency of the heating system; and

(iii) any electrical or mechanical furnace ignition system which replaces a standing gas pilot light;

(C) a programmable thermostat;

(D) ceiling, attic, wall, or floor insulation;

(E) water heater insulation;

(F) storm windows or doors, multiglazed windows or doors, and heat-absorbed or heat-reflective glazed window or door materials;

(G) any device which controls demand of appliances and aids load management; and

(H) any other conservation device, renewable energy technology, and specific home improvement that the Director finds necessary to assure that energy conservation

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measures are effective; and

(2) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device.

Energy conservation device does not include a standard household appliance, such as a washing machine or clothes dryer.

“Geothermal energy device” means a device that:

(1) uses geothermal energy to heat or cool a structure, to provide hot water for use in the structure, or to generate electricity to be used in the structure; and

(2) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device.

“Solar energy device” means a device that:

(1) uses solar energy to heat or cool a structure, to provide hot water for use in the structure, or to generate electricity to be used in the structure; and

(2) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device.

“Tax-Property Article” means the Tax-Property Article of the Maryland Code.

(b) *Credit.* As authorized by § 9-203 of the Tax-Property Article, an owner of an owner-occupied residential property that uses a solar or geothermal energy device or an energy conservation device may receive a credit against the County property tax credit.

(c) *Amount of Credit.*

(1) The credit allowed under this Section for a geothermal or solar energy device is the lower of:

(A) 50% of the eligible costs; or

(B) \$5,000 for a heating system or \$1,500 for a hot water supply system.

(2) In any fiscal year, a person must not receive a credit for more than 1 geothermal or solar energy device per property.

(3) In any fiscal year, the credit allowed under this Section for eligible costs for all energy conservation devices must not exceed \$250 per property.

(d) *Annual aggregate limit.*

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(1) Unless a larger amount is approved in the annual operating budget or a Council resolution, during any fiscal year, the total credits granted under this Section must not exceed:

- (A) \$250,000 for solar and geothermal energy devices; and
- (B) \$250,000 for energy conservation devices.

(2) Credits must be granted in the order in which the Department of Finance receives complete applications under subsection (f).

(3) A complete application that, if granted, would cause the limit set in paragraph (1) of this subsection to be exceeded, must be granted in the next fiscal year or years based on the order in which the Department of Finance received the application.

(e) *Carry Over.*

(1) The amount of credit in any tax year must not exceed the amount of the County property tax imposed on the property in that tax year.

(2) Any amount of credit not taken in the tax year in which an application is approved may be carried over for an additional two years.

(3) When a credit is carried over under this subsection, the full amount of the credit must be counted towards the annual aggregate limit established in subsection (d) in the year in which an application is approved.

(f) *Application.*

(1) A property owner must submit an application to the Director on or before the date that the Director sets.

(2) An application must:

- (A) be on the form that the Director requires;
- (B) demonstrate that the taxpayer is entitled to the credit; and
- (C) include a certification from the Department of Permitting Services, indicating that the device for which the credit is sought:
 - (i) is a solar or geothermal energy device; and
 - (ii) has been properly installed.

(g) *Applicability.* The credit authorized by this Section applies to any tax year beginning after June 30, 2008. (2008 L.M.C., ch. 10, § 1.)

B2-09



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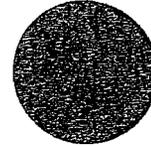
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

February 21, 2009



2009 FEB 22 AM 10:00

10:00 AM

TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director, Office of Management and Budget
SUBJECT: Expedited Bill 2-09 – Property Tax Credit – Renewable Energy Amendments

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation would establish a cap on the credit received for a solar or geothermal energy device that generates electricity; requires DPS to accept certain certifications for certain devices; and amends the law relating to the renewable energy property tax credit.

FISCAL SUMMARY

The subject legislation would modify the County's program that provides a property tax credit to individuals that install a renewable energy system. It would cap the credit an individual could receive for a particular type of system, but does not change the total amount of credits that the County would issue in a fiscal year, which remains limited to \$250,000.

The only potential fiscal impact as a result of this legislation is that more residents would be able to apply for the credit, which may slightly increase the workload for the Department of Permitting Services, which inspects the systems, and the Department of Finance, which processes the credit. Since the additional workload can be accommodated within existing resources, the legislation is not expected to have a fiscal impact on the County.

Alicia Thomas with the Department of Permitting Services and Robert Hagedoorn of Finance contributed to and concurred with this analysis.

JFB:aw

Office of the Director

