



Committee Joint: Government Operations & Fiscal Policy/
Transportation & Environment
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To introduce agenda item – no vote expected

AGENDA ITEM #13A
July 20, 2021
Introduction

SUBJECT

Expedited Bill 31-21, Property Tax Credits – Energy Conservation Devices and Energy Efficient Buildings – Amendments

Lead Sponsor: Council President at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A; Introduction

DESCRIPTION/ISSUE

Expedited Bill 31-20 would:

- define and clarify terms related to property tax credits for energy conservation devices and energy-efficient buildings;
- repeal a sunset clause affecting property tax credits for energy-efficient buildings;
- provide for certain application timelines related to property tax credits; and
- generally amend the law regarding property tax credits.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Expedited Bill 31-21	©1
County Executive Memorandum	©7
Legislative Request Report	©15
Fiscal Impact Statement	©16

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Expedited Bill No. 31-21
Concerning: Property Tax Credits –
Energy Conservation Devices and
Energy Efficient Buildings –
Amendments
Revised: 7/14/2021 Draft No. 1
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) define and clarify terms related to property tax credits for energy conservation devices and energy-efficient buildings;
- (2) repeal a sunset clause affecting property tax credits for energy-efficient buildings;
- (3) provide for certain application timelines related to property tax credits; and
- (5) generally amend the law regarding property tax credits.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-103A and 52-103B

By repealing

Chapter 28, Laws of Montgomery County 2020
Section 2

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

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>

1 **Sec. 1. Sections 52-103A and 52-103B are amended as follows:**

2 **52-103A. Property tax credit — energy conservation devices for existing energy-**
 3 **efficient buildings**

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

5 * * *

6 (5) implement [a tax credit] tax credits under [Section] Sections 9-
 7 203 and 9-242(a) of the Tax-Property Article of the Maryland
 8 Code, as amended.

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

11 * * *

12 *Director* means the Director of the Department of Finance or the
 13 Director's designee.

14 Energy conservation device means any equipment, device, or material
 15 that reduces the demand for conventional fuels or increases the
 16 efficiency of these fuels, but is not a standard household appliance,
 17 including:

18 (1) insulation in any wall, roof, floor, foundation, or heating and
 19 cooling distribution system;

20 (2) a storm window or door, multi-glazed window or door, heat-
 21 absorbing or heat-reflective glazed and coated window and door
 22 system, or additional glazing, reduction in glass area, and other
 23 window and door system modification that reduces energy
 24 consumption;

25 (3) an automated energy control system;

26 (4) a heating, ventilating, or air-conditioning and distribution system
 27 modification or replacement;

- (5) caulking, weather-stripping, and air sealing;
- (6) replacement or modification of a lighting fixture to reduce the energy use of the lighting system;
- (7) an energy recovery system;
- (8) a day lighting system;
- (9) a measure that reduces the usage of water or increases the efficiency of water usage; or
- (10) any other installation or modification of equipment, device, or other material intended to decrease energy consumption.

Energy-efficient building means a non-[]residential or multi-family residential building that: (1) has or will have at least 10,000 square feet of gross floor area; (2) has received a Certificate of Occupancy from the Department of Permitting Services; (3) has achieved at least a minimum 50 percent occupancy rate for at least 12 consecutive months; and (4) has demonstrated energy improvements consistent with the requirements of this Section.

* * *

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

- (1) a description and installation date of the energy conservation device installed in the building;

* * *

- (e) *Energy Reduction Tax Credit authorized under Section 9-203 of the Tax-Property Article of the Maryland Code.*

* * *

(3) Baseline and Improved ENERGY STAR Score 12-month time periods must not:

(A) overlap;

(B) include the energy conservation device installation period;
or [and];

(C) be more than 6 calendar years apart.

* * *

(f) *Building Sustainability Tax Credit authorized under Section 9-242(a) of the Tax-Property Article of the Maryland Code.*

* * *

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

* * *

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

* * *

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

Building Code requirement means any code, standard, zoning ordinance, or other requirement related to commercial and multi-family building construction and permitting processes that applies to a newly constructed energy-efficient building.

* * *

(e) *Application.*

(1) An application by the owner of a newly constructed energy-efficient building for a tax credit must be in the form prescribed by the Director and must include:

(A) a certification from the Department of Permitting Services within the past year indicating the percentage performance above current Building Code requirements at time of application demonstrated by the newly constructed energy-efficient building for the New Building Energy Reduction Tax Credit; and

(B) if the New Building Sustainability Tax Credit is sought after receiving the New Building Energy Reduction Tax Credit, verified documentation by the newly constructed energy-efficient building demonstrating qualification for the New Building Sustainability Tax Credit within [the past year for the New Building Sustainability Tax Credit] two years after obtaining a use and occupancy permit.

* * *

(f) *New Building Energy Reduction Tax Credit.*

(1) A newly constructed energy-efficient building may receive [an] a New Building Energy Reduction Tax Credit for achieving energy use reductions as outlined in this subsection and, if that credit is granted, may receive an additional New Building Sustainability Tax Credit as described in subsection (g).

(2) To be eligible for the New Building Energy Reduction Tax Credit, a newly constructed energy-efficient building owned by the applicant must achieve a minimum 10 percent increase in energy performance above the current applicable [Building and Zoning Code] building code requirements at time of application using an energy modeling software approved by the Department of Permitting Services.

(3) For the New Building Energy Reduction Tax Credit, the percentage of the annual County property tax credit awarded for 4 years is calculated by rounding a newly constructed energy-efficient building's performance above [Building Code and Zoning Code] building code requirements to the nearest whole number and multiplying it by the multiplier below:

* * *

(g) *New Building Sustainability Tax Credit.* The owner of a newly constructed energy-efficient building seeking the New Building [Energy] Sustainability Tax Credit must apply for that tax credit [simultaneously with] after receiving the New Building Energy Reduction Tax Credit.

* * *

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

* * *

Sec. 2. Section 2 of Chapter 28 of the Laws of Montgomery County 2020 is repealed as follows:

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

Sec. 3. Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date that it becomes law.




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

July 6, 2021

TO: Tom Hucker, President
County Council

FROM: Marc Elrich 
County Executive

SUBJECT: Introduction of XX-21, Chapter 52—Taxation, Property Tax Credit, Energy Efficient Buildings—Amendments

It is my pleasure to transmit the attached emergency legislation to make minor clarifying amendments to the property tax credit for energy efficient buildings established through Energy-Efficient Buildings Property Tax Credit Law.

In September 2020, Council passed Bill 10-20, which phased out the existing Energy and Environmental Design property tax credit, established a new Energy-Efficient Buildings property tax credit for commercial and residential buildings to encourage energy efficiency improvements in existing buildings and incentivize newly constructed buildings to exceed the current building code requirements. As Executive staff began developing the forms and procedures to implement this program, minor logistical challenges were found that required legislative fixes. These changes are supported by the County's Climate Change Coordinator and the Departments of Finance and Environmental Protection (DEP).

The proposed amendments will clarify the sunset provisions of the Energy and Environmental Design property tax credit program and make minor implementation improvements to the new Energy-Efficient Buildings property tax credits for existing and newly constructed buildings. Specifically included are: new definitions for energy conservation devices and building code requirements, adjustments to the acceptable application time periods to better align with realistic construction timelines, and corrections to minor oversights in the original legislation.

The attached bill (XX-21, Chapter 52—Taxation, Property Tax Credit, Energy Efficient Buildings—Amendments) does not change the intent or design of the Energy-Efficient Buildings Property Tax Credit program. To the best of Executive staff's knowledge, the structure of this green building tax credit program remains the first of its kind in the nation.

If you have any questions, please contact Lindsey Shaw in the Department of Environmental Protection at 240-447-2917 or lindsey.shaw@montgomerycountymd.gov and Mike Parent in the Department of Finance's Treasury Division at 240-777-8931 or Michael.Parent@montgomerycountymd.gov.

Expedited Bill No. XX-21
Concerning: Taxation – Property Tax
Credit
Revised: [date] Draft No. 1
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) correct the citation of the Tax-Property Article of the Maryland Code in Section 52-103;
- (2) remove the sunset clause from 2020 L.M.C., ch. 28 to ensure the full amount of tax credits are paid in full as awarded under Section 52-103(c);
- (3) improve implementation of energy-efficient building property tax credit program by defining energy conservation device and building code requirements;
- (4) clarify the acceptable time periods for submitting applications and determining performance baselines; and
- (5) generally revise County law regarding taxation.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-103A and 52-103B

2020 L.M.C., ch. 28

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:

Sec. 1. Sections 52-103A, 52-103B, and 2020 L.M.C., ch. 28 are amended as follows:

52-103A. Property tax credit — energy conservation devices for existing energy-efficient buildings.

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

* * *

(5) implement a tax credit under Section [9-242(a)] 9-203 of the Tax-Property Article of the Maryland Code, as amended.

(b) *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.

Energy conservation device means any equipment, device, or material that reduces the demands for conventional fuels or increases the efficiency of these fuels, but is not a standard household appliance, including:

(1) insulation in any wall, roof, floor, foundation, or heating and cooling
distribution system;

(2) a storm window or door, multi-glazed window or door, heat-absorbing or heat-reflective glazed and coated window and door system, or additional glazing, reduction in glass area, and other window and door system modification that reduces energy consumption;

(3) an automated energy control system;

(4) a heating, ventilating, or air-conditioning and distribution system
modification or replacement;

(5) caulking, weather-stripping, and air sealing;

- (6) replacement or modification of a lighting fixture to reduce the energy use of the lighting system;
- (7) an energy recovery system;
- (8) a day lighting system;
- (9) the installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;
- (10) a measure that reduces the usage of water or increases the efficiency of water usage; or
- (11) any other installation or modification of equipment, device, or other material intended to decrease energy consumption.

Energy-efficient building means a non-[]residential or multi-family residential building that: (1) has or will have at least 10,000 square feet of gross floor area; (2) has received a Certificate of Occupancy from the Department of Permitting Services; (3) has achieved at least a minimum 50 percent occupancy rate for at least 12 consecutive months; and (4) has demonstrated energy improvements consistent with the requirements of this Section.

* * *

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

- (1) a description and installation date of the energy conservation device installed in the building;

* * *

- (e) *Energy Reduction Tax Credit.*

* * *

- (3) Baseline and Improved ENERGY STAR Score 12-month time periods must not overlap, must not include the energy conservation device installation period, and must not be more than 6 calendar years apart.

* * *

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

* * *

- (c) *Definitions.* In this Section the following words have the meanings indicated:

* * *

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

Building Code requirements means any code, standard, zoning ordinance, or other requirements relating to commercial and multi-family building construction and permitting processes that apply to a newly constructed energy-efficient building.

* * *

- (e) *Application.*

- (1) An application by the owner of a newly constructed energy-efficient building for a tax credit must be in the form prescribed by the Director and must include:

- (A) a certification from the Department of Permitting Services within the past year indicating the percentage performance above current Building Code requirements at time of application demonstrated by the newly constructed energy-efficient building for the New Building Energy Reduction Tax Credit; and

(B) if the New Building Sustainability Tax Credit is sought after receiving the New Building Energy Reduction Tax Credit, verified documentation by the newly constructed energy-efficient building demonstrating qualification within the past two [year] years after obtaining a use and occupancy permit [for the New Building Sustainability Tax Credit].

* * *

(f) *New Building Energy Reduction Tax Credit.*

(1) A newly constructed energy-efficient building may receive [an] a New Building Energy Reduction Tax Credit for achieving energy use reductions as outlined in this subsection and, if that credit is granted, may receive an additional New Building Sustainability Tax Credit as described in subsection (g).

(2) To be eligible for the New Building Energy Reduction Tax Credit, a newly constructed energy-efficient building owned by the applicant must achieve a minimum 10 percent increase in energy performance above the current applicable Building [and Zoning] Code requirements at time of application using an energy modeling software approved by the Department of Permitting Services.

(3) For the New Building Energy Reduction Tax Credit, the percentage of the annual County property tax credit awarded for 4 years is calculated by rounding a newly constructed energy-efficient building's performance above Building Code [and Zoning Code] requirements to the nearest whole number and multiplying it by the multiplier below:

* * *

(g) *New Building Sustainability Tax Credit.* The owner of a newly constructed energy-efficient building seeking the New Building [Energy] Sustainability Tax Credit must apply for that tax credit [simultaneously with] after receiving the New Building Energy Reduction Tax Credit.

* * *

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

* * *

Sec. 2. 2020 L.M.C., ch. 28, is amended as follows:

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

Sec. 3. Effective Date: The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

Approved:

Tom Hucker, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

129 *This is a correct copy of Council action.*

130

Selena Mendy Singleton, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill XX-21, Chapter 52—Taxation, Property Tax Credit, Energy-Efficient Buildings— Amendments

DESCRIPTION:	The legislation proposes minor amendments to Chapter 52 (“Property Tax Credits”) related to the Energy-Efficient Buildings credit program (Sec. 52-103, 52-103A, and 52-103B).
PROBLEM:	In September 2020, Council passed Bill 10-20, which phased out the existing Energy and Environmental Design property tax credit, established a new Energy-Efficient Buildings property tax credit for commercial and residential buildings to encourage energy efficiency improvements in existing buildings and incentivize newly constructed buildings to exceed the current building code requirements. As Executive staff began developing the forms and procedures to implement this program, minor logistical challenges were found that required legislative fixes.
GOALS AND OBJECTIVES:	The proposed amendments will clarify the sunset provisions of the Energy and Environmental Design property tax credit program for LEED buildings and make minor implementation improvements to the new Energy-Efficient Buildings property tax credits for existing and newly constructed buildings. Specifically included are: new definitions for energy conservation devices and building code requirements, adjustments to the acceptable application time periods to better align with realistic construction timelines, and corrections to minor oversights in the original legislation. These amendments do not change the intent or design of the tax credit program established the Energy-Efficient Buildings Property Tax Credit program.
COORDINATION:	Department of Environmental Protection, Department of Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	N/A
SOURCE OF INFORMATION:	Lindsey Shaw, Manager of Energy and Sustainability Programs, Energy, Climate, and Compliance Division, DEP (240-777-7754) Mike Parent, Financial Programs Administrator, Treasury Division, FIN (240-777-8931)
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A

Fiscal Impact Statement
Bill XX-21, Chapter 52—Taxation, Property Tax Credit, Energy-Efficient Buildings—
Amendments

1. Legislative Summary.

Bill XX-21 proposes minor amendments to Chapter 52 (“Property Tax Credits”) related to the Energy-Efficient Buildings credit program (Sec. 52-103, 52-103A, and 52-103B). In September 2020, Council passed Bill 10-20, which phased out the existing Energy and Environmental Design property tax credit, established a new Energy-Efficient Buildings property tax credit for commercial and residential buildings to encourage energy efficiency improvements in existing buildings and incentivize newly constructed buildings to exceed the current building code requirements. As Executive staff began developing the forms and procedures to implement this program, minor logistical challenges were found that required legislative fixes.

The proposed amendments will clarify the sunset provisions of the Energy and Environmental Design property tax credit program and make minor implementation improvements to the new Energy-Efficient Buildings property tax credits for existing and newly constructed buildings. These amendments do not change the intent or design of the Energy-Efficient Buildings Property Tax Credit program.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill XX-21 makes clarifying amendments to previous legislation and is not estimated to have any further impact on revenues or expenditures than originally identified when this Law was passed in September 2020.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See the comment above in #2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Amendments to the Energy-Efficient Buildings Property Tax Credit Law do not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

There would be no anticipated need for additional staff to implement Bill XX-21. Staff that currently support the Energy-Efficient Buildings Property Tax Credit program would continue to do so.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

See comment above in #7.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriations would be required to implement amendments to the Energy-Efficient Buildings Property Tax Credit Law.

10. A description of any variable that could affect revenue and cost estimates.

Bill XX-21 makes clarifying amendments to previous legislation and is not estimated to have any further impact on revenues or expenditures than originally identified when this Law was passed in September 2020.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

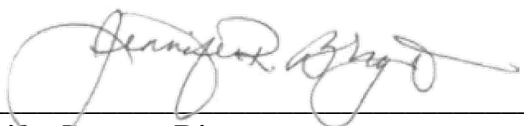
Not applicable.

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Lindsey Shaw, Department of Environmental Protection
Mike Parent, Division of Treasury, Department of Finance
Richard H. Harris, Office of Management and Budget



Jennifer Bryant, Director
Office of Management and Budget

6-10-21

Date