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What Now? Why Maryland's Decision to Recognize the International Green Construction Code May Signal a Major Shift in the Means Utilized to Implement Green Construction Requirements

There is little doubt that the U.S. Green Building Council (the "Council") and its established Leadership in Energy and Environmental Design, or LEED, green building certification program have had a major impact on the United States construction industry's acceptance of, and move to, "green" construction. In fact, the LEED program has arguably been the single greatest driving force in the rise of green construction since the Council's founding in 1993. Two decades ago, the construction industry's widely accepted model building codes rarely addressed environmentally sustainable, green construction. Since that time, the LEED program has pushed owners, both public and private, to embrace—and in many instances encourage or require—energy efficient design and construction.

As with any new development, the rise in green construction projects has generated substantial investment and advances in green construction, thereby reducing prices and making environmentally friendly construction even more attractive to owners and developers. In turn, the popularity of green construction has continued to grow to a level that construction industry's stakeholders have undertaken the process of developing building codes that specifically incorporate green building principles. One such code is the International Green Construction Code, or IgCC, which is beginning to attain mainstream acceptance from major public owners.

HB 207

On May 15, 2014, Maryland Governor Martin O'Malley signed into law House Bill 207 ("HB 207"). HB 207, which became operative on October 1, 2014, effects a major change to the way Maryland law defines a "high performance building," which is a critical distinction in that state's green construction industry. See Md.

Code Ann., State Fin. & Proc. § 3-602.1. Specifically, prior to the presentation and enactment of HB 207, the Maryland Code defined a "high performance building" as one that:

[m]eets or exceeds the current version of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) Green Building Rating System Silver rating...

Md. Code Ann., State Fin. & Proc. § 3-602.1(a) (2)(i). In addition, LEED certification was the only means by which public and private developers doing business in Maryland could obtain and receive the benefits of the "high performance building" designation before HB 207.

However, HB 207 has supplemented the above definition to include any building that:

[c]omplies with a nationally recognized and accepted green building code, guideline, or

standard reviewed and recommended by the Maryland Green Building Council and approved by the Secretaries of Budget and Management and General Services.

Md. Code Ann., State Fin. & Proc. § 3-602.1(a)(2)(ii). This definition includes the IgCC. While Maryland's change to the way it defines a "high performance building" may seem trivial on its face, this action is considered by some in the green construction industry to be a game changing event that will not only impacts that state's construction industry, but signal a potential seismic shift in the industry well beyond Maryland's borders.¹

For those who provide construction services in Maryland, the "high performance building" designation has its economic benefits and is, at times, an absolute necessity. For instance, the Mayor and City Council of Baltimore are permitted to grant tax credits against the county or municipal property taxes imposed on a "high performance building" as defined by state statute.² Maryland has also seen fit to legislate that all capital projects which include the construction or major renovation of a building that is 7,500 square feet or greater, with certain exceptions, must be constructed or renovated to be a "high performance building."³

Additionally, a new school that receives State public school construction funds shall be constructed to be a high performance building.⁴ Given these legislative proclamations and incentives that effectively mandate green construction, it is easy to see why Maryland is ranked among the leading states in LEED certified projects by the Council.⁵ However, that may be changing.

LEED VS. IGCC

In order to dissect the impact HB 207 may have in Maryland and beyond, it is important to consider the differences between the LEED Green Building Rating System and other green alternatives such as the IgCC. On the one hand, LEED markets itself as "a green building certification program that recognizes best-in-class building strategies and practices,"⁶ whereby projects are scored via a certification process to determine the applicable LEED ranking—Certified, Silver, Gold, or Platinum. On the other hand, the IgCC is a first of its kind model building code, adoptable by states and/or local municipalities, which incorporates sustainability measures for construction projects and construction sites.⁷ Like LEED, the IgCC touts its product as helping make buildings more efficient, reduce waste, and have a positive impact on health, safety, and community welfare.⁸

Although there are similarities in the desired goals of requiring projects be built up to par with LEED's certification process or pursuant to IgCC's standards, the differences in the means—and the stakeholders who direct them—to reach those ends are significant. As discussed, LEED was developed by the Council, who conducts an exhaustive certification process to determine whether a project should be LEED certified; whereas the IgCC is simply a building code adopted by governmental bodies and enforced by building inspectors.

As for LEED, the Council imposes fees at various stages in the construction process for those seeking certification. For instance, the Council publishes fees in the following areas: 1) Building Operations and Maintenance; 2) Neighborhood Development; 3) Homes; 4) Campuses; and 5) Volume Programs.⁹ These fees can be substantial, as demonstrated in Table 1.¹⁰

Although the full impact of HB 207 remains to be seen, it seems a near certainty that fewer construction projects in Maryland will be LEED certified in the future as some public and private owners will choose to go the IgCC route.

BUILDING DESIGN AND CONSTRUCTION FEES. TABLE 1:

Building Design and Construction Fees	Organizational Level or Non-Members	Silver, Gold and Platinum Level Members	Members Savings
REGISTRATION	\$1,200	\$900	\$300
PRECERTIFICATION REVIEW (optional, LEED CS only)			
Flat fee (per building)	\$4,250	\$3,250	\$1,000
Expedited review (reduce from 10-25 business days to 10-12, available based on GBCI review capacity)	\$5,000		
COMBINED REVIEW: DESIGN & CONSTRUCTION			
Project gross floor area (excluding parking): less than 50,000 sq ft	\$2,750	\$2,250	\$500
Project gross floor area (excluding parking): 50,000-500,000 sq ft	\$0.045/sf	\$0.04/sf	\$0.005/sf
Project gross floor area (excluding parking): more than 500,000 sq ft	\$27,500	\$22,500	\$5,000
Expedited review (reduce from 20-25 business days to 10-12, available based on GBCI review capacity)	+\$10,000		
SPLIT REVIEW: DESIGN			
Project gross floor area (excluding parking): less than 50,000 sq ft	\$750	\$500	\$250
Project gross floor area (excluding parking): 50,000-500,000 sq ft	\$0.015/sf	\$0.01/sf	\$0.005/sf
Expedited review (reduce from 20-25 business days to 10-12, available based on GBCI review capacity)	\$5,000		
APPEALS			
Complex credits	\$800/credit		
All other credits	\$500/credit		
Expedited review (reduce from 20-25 business days to 10-12, available based on GBCI review capacity)	+\$500/credit		
FORMAL INQUIRIES			
Project CIRS	\$220/credit		

INDUSTRY RESPONSES

In light of the fees associated with LEED certification and the existence of new options available to developers and owners to obtain the “high performance building” designation (and similar designations in other jurisdictions), it will be interesting to watch as the industry reacts. First, will other states and municipalities adopt legislation similar to HB 207 that provides non-LEED options for recognized green construction? If so, will developers and owners move quickly away from LEED (and its fees) to IgCC and other approved building codes? Will the potential cost savings provided by IgCC actually materialize?

Although the full impact of HB 207 remains to be seen, it seems a near certainty that fewer construction projects in Maryland will be LEED certified in the future as some public and private owners will choose to go the IgCC route. Further, while it is premature to declare the end of LEED’s reign as green construction’s unquestioned leader, the Council, like so many capitalist marvels before, now finds its marketplace becoming increasingly crowded with competition due to its own cutting edge foresight. Only time will tell how the Council responds, but this is an issue all stakeholders in the construction industry should keep a close eye on.

¹ See Kaplow, Stuart. “Maryland Sidesteps LEED in Favor of the IgCC.” *Green Building Law Update*. 11 May 2014, last visited 22 Sept. 2014.

² Md. Code Ann., § 9-242.

³ Md. Code Ann., § 17-214.

⁴ Md. Code Ann., § 5-312.

⁵ Kriss, Jacob. “USGBC Releases the Top 10 States in Nation for LEED Green Building.” 18 Feb. 2014, last visited 22 Sept. 2014.

⁶ <http://www.usgbc.org/leed>, last visited 22 Sept. 2014.

⁷ See generally, <http://www.iccsafe.org/CS/IGCC/Pages/default.aspx>, last visited 16 Nov. 2014.

⁸ *Id.*

⁹ See <http://www.usgbc.org/cert-guide/fees>, last visited 16 Nov. 2014.

¹⁰ *Id.*

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