Senate

General Assembly **File No. 409**

January Session, 2009 Substitute Senate Bill No. 1033

Senate, April 2, 2009

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A TAX CREDIT FOR GREEN BUILDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2009, and applicable to income years commencing on or after January 1, 2012*) (a) As used in this section:

(1) "Allowable costs" means the amounts chargeable to a capital account, including, but not limited to: (A) Construction or rehabilitation costs; (B) commissioning costs; (C) architectural and engineering fees allocable to construction or rehabilitation, including energy modeling; (D) site costs, such as temporary electric wiring, scaffolding, demolition costs and fencing and security facilities; and (E) costs of carpeting, partitions, walls and wall coverings, ceilings, lighting, plumbing, electrical wiring, mechanical, heating, cooling and ventilation but "allowable costs" does not include the purchase of land, any remediation costs or the cost of telephone systems or computers;

(2) "Brownfield" has the same meaning as in subsection (g) of

section 32-9cc of the general statutes;

(3) "Eligible project" means a real estate development project that is designed to meet or exceed the applicable LEED Green Building Rating System gold certification or other certification determined by the Commissioner of Environmental Protection to be equivalent but if a single project has more than one building, "eligible project" means only the building or buildings within such project that is designed to meet or exceed the applicable LEED Green Building Rating System gold certification or other certification determined by the Commissioner of Environmental Protection to be equivalent;

(4) "Energy Star" means the voluntary labeling program administered by the United States Environmental Protection Agency designed to identify and promote energy-efficient products, equipment and buildings;

(5) "Enterprise zone" means an area in a municipality designated by the Commissioner of Economic and Community Development as an enterprise zone in accordance with the provisions of section 32-70 of the general statutes;

(6) "LEED Accredited Professional Program" means the professional accreditation program for architects, engineers and other building professionals as administered by the United States Green Building Council;

(7) "LEED Green Building Rating System" means the Leadership in Energy and Environmental Design green building rating system developed by the United States Green Building Council as of the date that the project is registered with the United States Green Building Council;

(8) "Mixed-use development" means a development consisting of one or more buildings that includes residential use and in which no more than seventy-five per cent of the interior square footage has at least one of the following uses: (A) Commercial use; (B) office use; (C)

retail use; or (D) any other nonresidential use that the Secretary of the Office of Policy and Management determines does not pose a public health threat or nuisance to nearby residential areas;

(9) "Secretary" means the Secretary of the Office of Policy and Management; and

(10) "Site improvements" means any construction work on, or improvement to, streets, roads, parking facilities, sidewalks, drainage structures and utilities.

(b) For income years commencing on and after January 1, 2012, there shall be allowed a credit for all taxpayers against any tax due under the provisions of chapter 207, 208, 209, 210, 212 or 229 of the general statutes for the construction or renovation of an eligible project that meets the requirements of subsection (c) of this section, and, in the case of a newly constructed building, for which a certificate of occupancy has been issued not earlier than January 1, 2010.

(c) (1) To be eligible for a tax credit under this section a project shall: (A) Not have energy use that exceeds (i) seventy per cent of the energy use permitted by the state building code for new construction, or (ii) eighty per cent of the energy use permitted by the state energy code for renovation or rehabilitation of a building; and (B) use equipment and appliances that meet Energy Star standards, if applicable, including, but not limited to, refrigerators, dishwashers and washing machines.

(2) The credit shall be equivalent to a base credit as follows: (A) For new construction or major renovation of a building but not other site improvements certified by the LEED Green Building Rating System or other system determined by the Commissioner of Environmental Protection to be equivalent, (i) eight per cent of allowable costs for a gold rating or other rating determined by the Commissioner of Environmental Protection to be equivalent, and (ii) ten and one-half per cent of allowable costs for a platinum rating or other rating determined by the Commissioner of Environmental Protection to be

equivalent; and (B) for core and shell or commercial interior projects, (i) five per cent of allowable costs for a gold rating or other rating determined by the Commissioner of Environmental Protection to be equivalent, and (ii) seven per cent of allowable costs for a platinum rating or other rating determined by the Commissioner of Environmental Protection to be equivalent. There shall be added to the base credit one-half of one per cent of allowable costs for a development project that is (I) a mixed-use development, (II) located in a brownfield or enterprise zone, (III) does not require a sewer extension of more than one-eighth of a mile, or (IV) located within one-quarter of a mile walking distance of publicly available bus transit service or within one-half of a mile walking distance of adequate rail, light rail, streetcar or ferry transit service, provided, if a single project has more than one building, at least one building shall be located within either such distance. Allowable costs shall not exceed two hundred fifty dollars per square foot for new construction or one hundred fifty dollars for renovation or rehabilitation of a building.

(d) (1) The Secretary of the Office of Policy and Management shall issue an initial credit voucher upon determination that the applicant is likely, within a reasonable time, to place in service property qualifying for a credit under this section. Such voucher shall state: (A) The first taxable year for which the credit may be claimed, (B) the maximum amount of credit allowable, and (C) the expiration date by which such property shall be placed in service. The expiration date may be extended at the discretion of the secretary. Such voucher shall reserve the credit allowable for the applicant named in the application until the expiration date. If the expiration date is extended, the reservation of the tax credit may also be extended at the discretion of the secretary.

(2) The aggregate amount of all tax credits in initial credit vouchers issued by the secretary shall not exceed twenty-five million dollars.

(3) For each income year for which a taxpayer claims a credit under this section, the taxpayer shall obtain an eligibility certificate from an architect or professional engineer licensed to practice in this state and

accredited through the LEED Accredited Professional Program or other program determined by the Commissioner of Environmental Protection to be equivalent. Such certificate shall consist of a certification, under the seal of such architect or engineer, that the building, base building or tenant space with respect to which the credit is claimed, meets or exceeds the applicable LEED Green Building Rating System gold certification, or other certification determined by the Commissioner of Environmental Protection to be equivalent in effect at the time such certification is made. Such certification shall set forth the specific findings upon which the certification is based and shall state that the architect or engineer is accredited through the LEED Accredited Professional Program or other program determined by the Commissioner of Environmental Protection to be equivalent.

(4) To obtain the credit, the taxpayer shall file the initial credit voucher described in subdivision (1) of this subsection, the eligibility certificate described in subdivision (3) of this subsection and an application to claim the credit with the Commissioner of Revenue Services. The commissioner shall approve the claim upon determination that the taxpayer has submitted the voucher and certification required under this subdivision. The applicant shall send a copy of all such documents to the secretary.

(e) (1) A taxpayer may claim not more than a total of twenty-five per cent of allowable costs in any income year, and any percentage of tax credit that the taxpayer would otherwise be entitled to in accordance with subsection (c) of this section may be carried forward for a period of not more than five years.

(2) Tax credits are fully assignable and transferable. A project owner, including, but not limited to, a nonprofit or institutional project organization, may transfer a tax credit to a pass-through partner in return for a lump sum cash payment.

(f) Notwithstanding any provision of the general statutes, any subsequent successor in interest to the property that is eligible for a credit in accordance with subsection (c) of this section may claim such credit if the deed transferring the property assigns the subsequent successor such right, unless the deed specifies that the seller shall retain the right to claim such credit. Any subsequent tenant of a building for which a credit was granted to a taxpayer pursuant to this section may claim the credit for the period after the termination of the previous tenancy that such credit would have been allowable to the previous tenant.

Sec. 2. (NEW) (*Effective July 1, 2009*) Not later than January 1, 2011, the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Revenue Services, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, as necessary to implement the provisions of section 1 of this act.

Sec. 3. (*Effective July 1, 2009*) On or before July 1, 2013, the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Revenue Services, shall prepare and submit to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and finance, revenue and bonding, a written report containing (1) the number of taxpayers applying for the credits provided in section 1 of this act; (2) the amount of such credits granted; (3) the geographical distribution of such credits granted; and (4) any other information the secretary deemed appropriate. A preliminary draft of the report shall be submitted on or before July 1, 2012, to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and finance, revenue and bonding. Such reports shall be submitted in accordance with the provisions of section 11-4a of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2009, and applicable to income years commencing on or after January 1, 2012*	New section

Sec. 2	*July 1, 2009*	New section
Sec. 3	*July 1, 2009*	New section

Statement of Legislative Commissioners:
Changes were made throughout the bill for clarity and consistency with the intent of the bill.

PD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10	FY 11	Outyears
Department of Revenue Services	GF - Revenue Loss	None	None	Significant
Policy & Mgmt., Off.	GF - Cost	40,000	40,000	40,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	10,172	10,172	10,172

Note: GF=General Fund

Municipal Impact: None

Explanation

It is anticipated that the Office of Policy and Management (OPM) will require a half time analyst with associated salary of $40,000, plus fringe benefits[1], to issue and track credit vouchers, adopt regulations and issue the report required by the bill.

The Out Years

This bill creates a corporation tax credit for investments in "green building" projects for FY 12 and FY 13. This credit is anticipated to result in a General Fund revenue loss of $1 million in FY 12 and $2 million per year thereafter.

[1] The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sSB 1033

AN ACT ESTABLISHING A TAX CREDIT FOR GREEN BUILDINGS.

SUMMARY:

This bill establishes a tax credit for taxpayers who build green buildings, i.e., buildings that meet certain energy and environmental standards. The credits can be taken against the corporation business, insurance company, air carriers, railroad company, utility company, and income taxes. The bill limits the credit for all projects at $25 million dollars.

The bill specifies the projects and their costs that are eligible for the credit. The bill entitles eligible projects to a base credit that increases with the project's rating. It allows additional credits for mixed-use projects and those located in certain areas. Taxpayers can only claim 25% of the credit in any tax years, with the remainder allowed to be carried forward for up to five years. The credits are transferrable and assignable.

The bill requires the Office of Policy and Management (OPM) secretary, in consultation with the revenue services commissioner, to adopt regulations, by January 1, 2011, to implement the bill. It requires the secretary, in consultation with the commissioner, to report to the governor and Planning and Development, and Finance, Revenue and Bonding committees by 2013 on (1) the number of taxpayers applying for the credits, (2) the amount of credits granted, (3) the geographical distribution of the granted credits, and (4) any other information deemed appropriate. A preliminary draft report must be submitted to the governor and the committees by July 1, 2012.

EFFECTIVE DATE: July 1, 2009, with the credits applying to income years starting on or after January 1, 2012.

ELIGIBLE PROJECTS AND ALLOWABLE COSTS

Under the bill, an eligible project is a real estate development located in the state that is designed to meet or exceed the applicable Leadership in Energy and Environmental Design (LEED) Green Building Rating System gold certification or equivalent standard as determined by the environmental protection commissioner. To be eligible, the project must have energy use of no more than (1) 70% of the energy use permitted by the State Building Code for new construction or (2) 80% of the energy use permitted by the state energy code for renovation or rehabilitation of a building. In addition, the project must use equipment and appliances that meet Energy Star standards, if applicable, for such things as refrigerators, dishwashers and washing machines. If a development consists of more than one building, only those buildings that meet these standards are eligible for the credit. In the case of a newly constructed building, the credits apply to buildings that receive a certificate of occupancy on or after January 1, 2010.

To count towards the credit, a development cost must be chargeable to the project's capital account. These allowable costs include, among others:

1. construction or rehabilitation costs;
2. commissioning costs;
3. architectural and engineering fees that can be allocated to construction or rehabilitation, including energy modeling;
4. site costs, such as temporary electric wiring, scaffolding, demolition costs and fencing and security facilities; and
5. costs of carpeting, partitions, walls and wall coverings, ceilings, lighting, plumbing, electrical wiring, mechanical, heating, cooling and ventilation. The purchase of land, any remediation

costs, and the cost of telephone systems or computers are not allowable costs. The bill caps allowable costs at $250 per square foot for new construction and $150 (presumably per square foot) for building renovation or rehabilitation.

BASE AND SUPPLEMENTAL CREDITS

The LEED rating system has four levels, certified, silver, gold, and platinum, with a building's rating depending on its number of "green" features.

Under the bill, the base credit for new construction or major renovation of a building (but not other site improvements) that receives a gold rating under LEED is 8% of allowable costs; for buildings that receive a platinum rating, the credit is 10.5% of allowable costs. For core and shell or commercial interior projects, the credit is 5% of allowable costs for a gold rating and 7% of allowable costs for a platinum rating. In all cases, the credit is the same for the equivalent rating under an alternative rating system, as determined by the environmental protection commissioner.

In addition, a project receives a credit of 0.5% of its allowable costs if it:

1. is a mixed use development, i.e.., one consisting of one or more buildings that includes residential use and in which no more than 75% of the interior square footage has at least one of the following uses: (a) commercial use; (b) office use; (c) retail use; or (d) any other nonresidential use that the OPM secretary determines does not pose a public health threat or nuisance to nearby residential areas;

2. is located in an enterprise zone or brownfield, as defined by statute;

3. does not require a sewer line extension of more than one-eighth mile; or

4. is located within one-quarter mile of a public bus service or within one-half mile of adequate rail, light rail, streetcar, or ferry service. (In the case of multi-building projects, at least one of the buildings must meet this criterion.)

ISSUANCE OF CREDITS

The OPM secretary must issue an initial credit certificate if he determines that the applicant is likely, within a reasonable time, to place in service property that would be eligible for a credit. The certificate must state (1) the first taxable year for which the credit may be claimed; (2) the maximum amount of credit allowable; and (3) an expiration date by which such property must be placed in service, which the secretary may extend at his discretion. The certificate must reserve the credit allowable for the applicant named in the application until the expiration date. The secretary may extend the reservation at his discretion. The secretary may not issue initial credit certificates for more than $25 million in the aggregate.

The taxpayer must obtain an eligibility certificate for each taxable year for which he or she claims a credit. The taxpayer must obtain this certificate from an architect or licensed professional engineer accredited through the LEED Accredited Professional Program or program the DEP commissioner determines to be equivalent. The document must certify, under the architect's or engineer's seal, that the building, base building, or tenant space for which the credit is claimed meets or exceeds the applicable green building rating system gold certification (or other certification the DEP commissioner considers equivalent) that was in effect when the building was certified. The certification must include the specific findings upon which it is based. It must state that the architect or engineer is accredited through the accredited professional program.

To claim the credit, the applicant must file (1) the initial credit voucher, (2) the eligibility certificate, and (3) an application to claim the credit with the revenue services commissioner. The applicant must send a copy of the documents to the OPM secretary.

TRANSFERS OF CREDITS

Under the bill, credits may be assigned or otherwise transferred. A project owner may transfer a credit to a pass-through partner in return for a lump sum payment. (This approach can be used if the project owner is a nonprofit, among other situations.)

Any subsequent successor in interest to the property that is eligible for a credit may claim it if the deed transferring the property assigns the successor this right, unless the deed specifies that the seller retains the right to claim the credit. Any subsequent tenant of a building for which a credit was granted may claim it for the period after the termination of the previous tenancy that the credit would have been allowable to the previous tenant.

BACKGROUND

LEED Rating System

The U.S. Green Building Council has established rating systems for a variety of developments. There are separate rating systems for new, and major renovations of, commercial, institutional, and government buildings; commercial building interiors; the core and shell of commercial buildings, which covers such elements as the building envelope and heating, ventilation, air conditioning systems; retail establishments; and health care facilities. LEED addresses a building's performance in five areas: sustainable site development, water savings, energy efficiency, material selection and indoor environmental quality. Participating buildings can be rated as certified, silver, gold, or platinum.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute
Yea 18 Nay 0 (03/13/2009)