



Senate

General Assembly

File No. 986

January Session, 2009

Substitute Senate Bill No. 1033

Senate, May 19, 2009

The Committee on Appropriations reported through SEN. HARP of the 10th 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:

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

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

13 (2) "Brownfield" has the same meaning as in subsection (g) of
14 section 32-9cc of the general statutes;

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

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

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

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

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

41 (8) "Mixed-use development" means a development consisting of
42 one or more buildings that includes residential use and in which no
43 more than seventy-five per cent of the interior square footage has at
44 least one of the following uses: (A) Commercial use; (B) office use; (C)
45 retail use; or (D) any other nonresidential use that the Secretary of the
46 Office of Policy and Management determines does not pose a public

47 health threat or nuisance to nearby residential areas;

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

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

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

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

68 (2) The credit shall be equivalent to a base credit as follows: (A) For
69 new construction or major renovation of a building but not other site
70 improvements certified by the LEED Green Building Rating System or
71 other system determined by the Commissioner of Environmental
72 Protection to be equivalent, (i) eight per cent of allowable costs for a
73 gold rating or other rating determined by the Commissioner of
74 Environmental Protection to be equivalent, and (ii) ten and one-half
75 per cent of allowable costs for a platinum rating or other rating
76 determined by the Commissioner of Environmental Protection to be
77 equivalent; and (B) for core and shell or commercial interior projects,
78 (i) five per cent of allowable costs for a gold rating or other rating

79 determined by the Commissioner of Environmental Protection to be
80 equivalent, and (ii) seven per cent of allowable costs for a platinum
81 rating or other rating determined by the Commissioner of
82 Environmental Protection to be equivalent. There shall be added to the
83 base credit one-half of one per cent of allowable costs for a
84 development project that is (I) a mixed-use development, (II) located in
85 a brownfield or enterprise zone, (III) does not require a sewer
86 extension of more than one-eighth of a mile, or (IV) located within one-
87 quarter of a mile walking distance of publicly available bus transit
88 service or within one-half of a mile walking distance of adequate rail,
89 light rail, streetcar or ferry transit service, provided, if a single project
90 has more than one building, at least one building shall be located
91 within either such distance. Allowable costs shall not exceed two
92 hundred fifty dollars per square foot for new construction or one
93 hundred fifty dollars for renovation or rehabilitation of a building.

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

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

107 (3) For each income year for which a taxpayer claims a credit under
108 this section, the taxpayer shall obtain an eligibility certificate from an
109 architect or professional engineer licensed to practice in this state and
110 accredited through the LEED Accredited Professional Program or
111 other program determined by the Commissioner of Environmental

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

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

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

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

140 (f) Notwithstanding any provision of the general statutes, any
141 subsequent successor in interest to the property that is eligible for a
142 credit in accordance with subsection (c) of this section may claim such
143 credit if the deed transferring the property assigns the subsequent
144 successor such right, unless the deed specifies that the seller shall

145 retain the right to claim such credit. Any subsequent tenant of a
146 building for which a credit was granted to a taxpayer pursuant to this
147 section may claim the credit for the period after the termination of the
148 previous tenancy that such credit would have been allowable to the
149 previous tenant.

150 (g) The Secretary of the Office of Policy and Management shall
151 establish a uniform application fee, in an amount not to exceed ten
152 thousand dollars, which shall cover all direct costs of administering the
153 tax credit program established pursuant to this section. Said secretary
154 may hire a private consultant or outside firm to administer and review
155 applications for said program.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2012</i>	New section
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section

APP *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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 - Potential Revenue Gain	See Below	See Below	See Below
Policy & Mgmt., Off.	GF - Potential Cost	See Below	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the Office of Policy and Management (OPM) to establish a uniform application fee up to \$10,000 to cover all direct costs of administering the green buildings tax credit program established by the bill. Additionally, the bill permits OPM to hire an outside consultant to administer and review applications for the program. It is anticipated that the fees collected will be sufficient to cover the costs OPM will incur to administer the program.

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.

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 year. 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 to establish a uniform application fee of up to \$10,000 to cover all direct costs of administering the tax credit program. It allows the secretary to hire a private consultant or outside firm to administer and review applications for the program.

The bill 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 environmental protection 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 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.

Legislative History

On May 6, the Senate referred the bill (File 409) to the Appropriations Committee, which added the fee and consultant

provisions.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/13/2009)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 51 Nay 0 (04/27/2009)

Appropriations Committee

Joint Favorable Substitute

Yea 40 Nay 7 (05/11/2009)