

With legislation for sustainable construction incentives imminent, look at the advantages



By John V. Byl, Esq.

Bipartisan legislation is expected to be introduced in the next few weeks that will promote sustainable construction in the state of Michigan designed to make the state a leader in "green" design of new and rehabilitated buildings.

The legislation will provide financial incentives to construction and rehabilitation projects that achieve Leadership in Energy and Environmental Design (LEED) certification.

The new legislation is designed to make Michigan a leader in green design of new and rehabilitated buildings.

The impact of buildings on energy consumption is significant, buildings account for 65 percent of total U.S. electricity consumption, 36 percent of total U.S. primary energy use, and 30 percent of total U.S. greenhouse gas emissions.

Sustainable or "green" design significantly reduces or eliminates the negative impact of buildings on the environment and occupants. The LEED certification process has been the cornerstone of measuring sustainable design and construction.

The proposed legislation will encourage developers, builders, and manufacturers to achieve the highest possible levels of LEED certification. As a result, Michigan can expect to see more buildings with green roofs, geothermal systems, solar panels, wind turbines, and other features that minimize water usage, manage storm water, and limit energy consumption.

To date, developers have been reluctant to pay the increased up-front costs for the design and construction features required to achieve LEED certification. It is difficult to finance these costs, as appraisals typically do not reflect sufficient increased value to justify additional financing, despite the longterm benefits that result from energy savings.

Accordingly, the Michigan chapter of the National Brownfield Association (NBA) organized a stakeholders group in spring 2008 to develop legislation that would promote green construction through financial incentives.

Group members included banks, builders, the Department of Energy, Labor and Economic Growth, representatives of the U.S. Green Building Council, developers, the Michigan Economic Development Corp., the Michigan Department of Environmental Quality, the Michigan Municipal League, staff from the Michigan legislature, and others.

The stakeholders met six times over eight months and developed recommendations for legislation.

LEED'ing the way

The proposed legislation will create two financial incentives that will be based on achieving LEED certification. The first incentive is a tax abatement based on the level of LEED certification that a project achieves. The proposed legislation will amend the Commercial Redevelopment Act, P.A. 255 of 1978, which provides property tax abatements under certain circumstances.

Under the proposed amendments, a person planning to build a new building or rehabilitate an existing building could apply to the local municipality for property tax abatement for up to 12 years. The abatement would be 20 percent for basic LEED certification, 30 percent for silver, 40 percent for gold, and 50 percent for platinum.

Under the proposed legislation, the municipalities that would be eligible to grant the property tax abatement include cities, villages and townships with a population of at least 20,000. The local municipalities would have the discretion to award the property tax abatement.

The abatement would apply only to the increase in taxable value from the project and would apply to all real property tax millages except for debt millage. There would not be any opt out for any of the taxing jurisdictions.

There was considerable discussion regarding whether the property tax abatement should be available statewide. It was noted that it is more difficult to achieve LEED certification in rural settings, and there was some concern that allowing the abatement in rural townships could result in urban sprawl. In the end, the consensus of the stakeholders group was to limit the abatement to the municipalities identified above.

Brownfield motivation

The second proposed financial incentive is an amendment of the Brownfield Redevelopment Financing Act, Act 381 of 1996. Act 381 allows for the capture of tax increment revenue from a new project to reimburse certain eligible activities on eligible properties.

This form of financial incentive is commonly referred to as tax increment financing (TIF). Only the increased property tax revenue that results from a proposed project (i.e., taxes that are not currently paid) is captured to reimburse certain eligible expenses incurred by a developer at an eligible property.

Only sites that are deemed "brownfield" sites -- ones that are either contaminated or have a functionally obsolete building or blighted conditions -- are eligible for the TIF program.

Under the proposed legislation, sustainable design features that would be eligible for TIF reimbursement under certain circumstances are renewable energy systems (e.g., wind turbines, solar systems, and geothermal energy systems), storm-water management systems and underground parking.

These items would only be eligible for TIF reimbursement if the project is an eligible brownfield, the proposed project achieves LEED certification at any level, and the developer received credit in the LEED certification process for the item for which reimbursement is sought.

The process for receiving TIF reimbursement under Act 381 includes preparation of a brownfield plan; review of the brownfield plan by a local Brownfield Redevelopment Authority; approval of the brownfield plan by the governing body of the local municipality; and approval by the Michigan Economic Growth Authority (MEGA) if the person seeking TIF reimbursement desires to capture state/school millage in addition to all the local millage.

Under Act 381, there is no opt-out for any of the taxing jurisdictions, but the local municipality can only approve capture of the non-school millage. The school millage, which includes school operating costs of 18 mills and the state education tax of 6 mills, must be approved by MEGA.

Both of these tools will provide a powerful incentive for developers to achieve LEED certification for their proposed projects. We can expect to see a significant increase in sustainable design and construction in the state if this legislation is passed.



John V. Byl is chair of Warner Norcross & Judd LLP's environmental practice group and co-chair of the firm's economic development incentives group. He has extensive experience in brownfield redevelopment, including the procurement of tax increment financing, grants, loans and credits, and is past chair of the Environmental Section of the State Bar of Michigan. As chair of the Policy and Legislative Committee of the Michigan Chapter of the National Brownfield Association, he testified March 24 before the Senate Commerce Committee on the proposed legislation to amend the Commercial Redevelopment Act, P.A. 255 of 1978 and the Brownfield Redevelopment Financing Act, Act 381 of 1996. Contact him at (616) 752-2149 or jbyl@wnj.com.