

# WINSTEAD NEWS ALERT

## GREEN BUILDING UPDATE

April 22, 2009

## TEXAS GREEN BUILDING LAW UPDATE

In order to promote a healthy, sustainable environment, April 22 is recognized by the U.S. government and organizations around the globe as "Earth Day." Winstead is commemorating this occasion by updating our friends in the Texas real estate development community about (i) several proposed green building laws that are being considered by the Texas legislature, and (ii) which of Texas' largest cities have already adopted their own green building programs.

### TEXAS LEGISLATURE

A whopping 7,154 bills were introduced in the 2009 legislative session. Among the bills are several that focus on green building. While it remains to be seen if any of these bills will be enacted, the number of bills is a sign that green building is a matter of great interest to our legislature, and that green building is gradually moving from a voluntary choice, to a legal mandate. The variety of the bills, and the different approaches proposed to deal with the same issues, is also noteworthy. It is already a challenge for the development and scientific communities to determine which green building technologies are most effective and practical. It is a greater challenge for our lawmakers, who are not experts in real estate development, green building technologies, LEED or other certification programs, to design effective green building laws. The development community should take an active role in the legislative process to reduce the amount of trial and error that will likely occur with a patchwork approach to lawmaking.

### Tax Incentives

SB 128, introduced by Sen. Rodney Ellis (D-Houston), provides that developers of new or substantially renovated commercial buildings that achieve certification under a "high-performance building standard" (without naming any particular standard) can receive a tax credit based upon the square footage of the building. For example, a new 10,000 square foot building could qualify for a credit of \$35,000. The credit could be applied against state franchise taxes, and spread over the course of five years. Generally, the tax credit could not be sold or assigned, unless the holder of the credit was a tax exempt entity.

HB 303, introduced by Harold Dutton, Jr. (D-Houston), allows building owners to receive a refund or credit for sales tax paid on labor to install tangible personal property in a building if (i) the building obtains LEED certification, and (ii) the personal property in question contributed toward the certification.

### State-Owned Buildings

SB 127, introduced by Sen. Rodney Ellis (D-Houston), SB 267, introduced by Sen. Juan Hinojosa (D-Mission), SB 670, introduced by Sen. Eliot Shapleigh (D-El Paso), HB 431, introduced by Rep. Eddie Lucio III (D-San Benito), and HB 2019, introduced by Rep. Mark Strama (D-Austin), all establish mandatory green building standards for state-owned buildings.

Although the bills deal with the same subject matter, there are slight differences that illustrate the challenges we face in developing

consensus on the right approach for green building. For example, all five of the bills deal with new construction, but not all of the bills deal with major renovations. Four bills apply to new buildings of any size, but one bill only applies to new buildings that exceed 10,000 square feet. When it comes to renovation, three of the bills are only triggered when the cost of the renovation exceeds a certain amount. Another bill would be triggered based upon the square footage affected by the renovation. There is also different criteria for determining what constitutes a green building. Some bills require that a building be eligible for LEED certification, though actual certification is not required. Other bills require actual certification, but LEED is not specified. Instead the bills require certification under a nationally-recognized, high-performance building standard approved by the State Energy Conservation Office.

### Public School Buildings

SB 670, introduced by Sen. Eliot Shapleigh (D-El Paso), SB 701, introduced by Sen. Rodney Ellis (D-Houston), HB 2337, introduced by Rep. Mike Villarreal (D-San Antonio), and HB 3149, introduced by Rep. Rafael Anchia (D-Dallas), all deal with green building standards for public grade schools.

Like the bills for state-owned buildings discussed above, these bills deal with the same subject matter, but take different approaches. Some of the bills tie funding to green building, while others simply mandate green building. Some are for new construction only, while others include renovation. The definition of renovation varies, as does the criteria

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for determining what qualifies as a green building. Two of the bills require buildings to be certified under a high performance building standard, and specifically mention LEED, Green Globes and the Texas Collaborative for High Performance Schools.

## Other Noteworthy Bills

Sen. Eliot Shapleigh (D-El Paso) also introduced SB 677 and SB 1523 this session. The first bill requires that, if a homebuilder intends to build more than 50 houses in a single subdivision, the homebuilder must offer buyers “an option to install a solar energy device on the home for heating or cooling or for the production of power.” The second bill requires that any public college or university that offers a degree program in architecture, make completion of a LEED course a condition to earning the degree.

Sen. Kip Averitt (R-Waco) introduced SB 16, which is a sweeping energy and environmental bill, that deals with subjects such as funding for new technology research, air quality, carbon dioxide sequestration, electric vehicles, energy-efficient appliances, and energy efficiency in buildings. The green building component of the bill updates our energy codes for residential and commercial construction to be based on the latest versions of the International Residential Code and the International Energy Conservation Code.

## TEXAS’ LARGEST CITIES

Over the next several years, the biggest governmental influence on green building may come from municipalities, which have the authority to enact and enforce local building and zoning codes, as well as offer tax and other incentives. Several cities in Texas were among the first in the nation to adopt green building

ordinances. Several more, such as Arlington, Fort Worth, Garland, Irving and Plano are either in the processes of developing green building ordinances, or have appointed a task force to formulate recommendations. The chart below lists the twenty largest cities in Texas, shows which cities have adopted green building programs, and briefly describes the nature of the program. As you will see, some programs apply to public buildings, while others apply to private buildings; some apply to commercial buildings, while others apply to residential; some mandate green building, while others provide optional incentives, usually in the form of accelerated permitting; and finally, some programs are tied to LEED, while others adopt unique green building standards. The information below is subject to change as cities adopt and refine their programs.

| City           | Does the City have a Green Building Program? | Does the Program Affect Public or Private Buildings? | Does the Private Buildings Program Affect Commercial or Residential Buildings? | Is the Private Buildings Program Mandatory or Incentive Based? | Standard Used                                     |
|----------------|--|--|--|--|---|
| Houston        | Yes  | Both   | Commercial   | Incentives (accelerated permitting)                            | LEED  |
| San Antonio    | Yes  | Both   | Both   | Mandatory, plus Incentives (accelerated permitting)            | LEED / Build San Antonio Green Standards          |
| Dallas         | Yes  | Both   | Both   | Mandatory, plus Incentives (accelerated permitting)            | LEED / Green Built North Texas                    |
| Austin         | Yes  | Both   | Both   | Mandatory, plus Incentives (financial)                         | LEED / Austin Energy Green Building Rating System |
| Fort Worth     | No   |  |  |  |   |
| El Paso        | Yes  | Both   | Commercial   | Incentives (financial)   | LEED  |
| Arlington      | No   |  |  |  |   |
| Corpus Christi | No   |  |  |  |   |
| Plano          | Yes  | Public   |  |  | LEED  |
| Garland        | No   |  |  |  |   |
| Laredo         | No   |  |  |  |   |
| Lubbock        | No   |  |  |  |   |
| Irving         | Yes  | Public   |  |  | LEED  |
| Amarillo       | No   |  |  |  |   |
| Brownsville    | No   |  |  |  |   |
| Grand Prairie  | No   |  |  |  |   |
| Pasadena       | No   |  |  |  |   |
| Mesquite       | No   |  |  |  |   |
| McAllen        | No   |  |  |  |   |
| Carrollton     | No   |  |  |  |   |

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