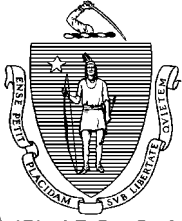


SENATE NO. 138



AN ACT HIGH PERFORMANCE BUILDING INCENTIVE PROGRAM

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

- 1 SECTION 1. The general court finds that it is the policy of the commonwealth to encourage the
2 construction, rehabilitation and maintenance of buildings in the commonwealth in such a
3 manner as to:
- 4 1. promote better environmental standards for the construction, rehabilitation and maintenance
5 of buildings;
 - 6 2. encourage economic development in green building technology within the Commonwealth;
 - 7 3. improve energy efficiency and increase generation of energy through renewable and clean
8 energy technologies;
 - 9 4. increase the demand for environmentally preferable building materials, finishes and
10 furnishings;
 - 11 5. improve the environment by decreasing the discharge of pollutants from buildings;
 - 12 6. create industry and public awareness of new technologies that can improve the quality of

13 life for building occupants; and

14 7. improve the health and productivity of building occupants; and

15 8. to facilitate the foregoing, it is necessary to create a business and personal income tax credit.

16 SECTION 2. Chapter 62 of the General Laws is hereby amended by inserting after section 6J

17 the following section:-

18 Section 6K. (a) As used in this section, the following terms shall have the following
19 meanings:

20 "Allowable costs", amounts properly chargeable to capital account, other than for land,
21 which are paid or incurred for: construction or rehabilitation; commissioning costs; interest paid
22 or incurred during the construction or rehabilitation period; legal, architectural, engineering and
23 other professional fees allocable to construction or rehabilitation; closing costs for construction,
24 rehabilitation or mortgage loans; recording taxes and filing fees incurred with respect to
25 construction or rehabilitation; site costs, such as temporary electric wiring, scaffolding,
26 demolition costs, and fencing and security facilities); and costs of furniture, carpeting,
27 partitions, walls and wall coverings, ceilings, drapes, blinds, lighting, plumbing, electrical
28 wiring and ventilation; provided that such costs shall not include the cost of telephone systems
29 and computers, other than electrical wiring costs, and shall not include the cost of fuel cells or
30 photovoltaic modules, including installation.

31 "Base building", all areas of a building not intended for occupancy by a tenant or owner,
32 including but not limited to the structural components of the building, exterior walls, floors,
33 windows, roofs, foundations, chimneys and stacks, parking areas, mechanical rooms and
34 mechanical systems, and owner-controlled and/or operated service spaces, sidewalks, main
35 lobby, shafts and vertical transportation mechanisms, stairways and corridors.

36 "Credit allowance year", the later of:

37 (1) the taxable year during which the property, construction, completion or rehabilitation
38 referred to in subsection (c) has been placed in service or has received a final certificate of
39 occupancy or

40 (2) the first taxable year with respect to which the credit may be claimed pursuant to the
41 initial credit component certificate issued pursuant to subsection (h).

42 "Commissioning", the testing and fine-tuning of heat, ventilating and air
43 conditioning and other systems to assure proper functioning and adherence to design criteria and
44 the preparation of system operation manuals and instruction of maintenance personnel.

45 "DOER", the division of energy resources.

46 "EPA", the United States Environmental Protection Agency.

47 "Economic development area", an area as defined by section 1 of chapter 121C or an
48 empowerment zone or enterprise community pursuant to section 1391 of the Internal Revenue
49 Code.

50 "Eligible building", a building located in this state which is:

51 (1) classified as commercial pursuant to the Massachusetts state building code or
52 similarly classified under any subsequent code; provided that any such building contains at least
53 twenty thousand square feet of Interior space, or

54 (2) a residential multi-family building with at least 12 dwelling units that contain at
55 least 20,000 square feet of interior space, or

56 (3) one or more residential multi-family buildings with at least 2 dwelling units that
57 are part of a single or phased construction project that contains, in the aggregate, at least 20,000
58 square feet of interior space; provided that in any single phase of such project at least 10,000

59 square feet of interior space is under construction or rehabilitation, or

60 (4) any combination of buildings described in clauses (1), (2) and (3), and

61 (5) is not a building located on freshwater wetlands or tidal wetlands as defined by
62 sections 40 and 40A of chapter 131, or on wetlands such that the construction thereof requires a
63 permit pursuant to section 404 of the Federal Clean Water Act, 33 U.S.C. s 1344.

64 "Energy code", portions of the state building code that regulate energy or energy-related
65 matters.

66 "Fuel cell", a device that produces electricity directly from hydrogen or hydrocarbon fuel
67 through a non-combustive electrochemical process.

68 "Green base building", a base building which is part of an eligible building and which
69 meets the following standards:

70 (1) energy and energy efficiency.

71 (i) energy use is no more than 65 per cent, in the case of new construction of a base
72 building, or 75 per cent, in the case of rehabilitation of a base building, of the use permitted
73 under the energy code or, in the event such standard is revised or superseded, energy use shall
74 meet such other energy efficiency standards that DOER shall establish in regulations in effect at
75 the time the building permit was issued for the base building or rehabilitation thereof.

76 (ii) all appliances and any heating, cooling and water heating equipment used in the
77 base building and subject to the regulations promulgated by DOER shall meet the standards
78 established by such regulations in effect at the time the building permit was issued for the base
79 building or rehabilitation with respect to which a tax credit is claimed.

80 (2) zoning, indoor air quality, building materials, finishes and
81 furnishings.

82 (i) the base building shall comply with all applicable zoning, land use and erosion
83 control requirements, stormwater management ordinances, building code requirements and
84 environmental regulations; in the case of the rehabilitation of an existing building, all existing
85 environmental hazards shall be identified and managed in accordance with applicable laws,
86 regulations and industry guidelines.

87 (ii) buildings classified pursuant to the state building code, or similarly classified
88 under any subsequent code, shall meet the following indoor air quality requirements:

89 (A) ventilation and exchange of indoor and outdoor air shall meet the standards
90 established by regulations promulgated by DOER ;

91 (B) if smoking is permitted in specific areas of the building, separate air ventilation
92 and circulation shall be provided for smoking and non-smoking areas;

93 (C) the ventilation system shall include an air purging system that is capable of
94 replacing 100 per cent of the air on any floor, on a minimum of 2 floors at a time. The air shall
95 be purged for a period of 1 week on every floor immediately prior to initial occupancy and on
96 any floor that undergoes renovation immediately prior to re-occupancy, but if a taxpayer
97 obtains certification from a licensed professional engineer or certified industrial hygienist,
98 pursuant to regulations, verifying that off-gassing and any other contamination can be reduced
99 to comparable levels in less than 1 week, the period of purging may be shortened. The taxpayer
100 shall maintain a copy of such certification.

101 (D) building fresh air intake shall be located a minimum of 25 feet away from
102 loading areas, building exhaust fans, cooling towers and other point sources of contamination
103 and consistent with standards in regulations promulgated by DOER.

104 (E) during construction or rehabilitation, the ventilation system components,

105 pathways, and interior building materials shall be protected from contamination and moisture
106 degradation in accordance with an indoor air quality management plan for the construction or
107 rehabilitation process that meets the standards established in regulations promulgated by
108 DOER. In the event that such components, pathways and materials are not protected from
109 contamination or moisture degradation in accordance with such standards, they shall be cleaned
110 or replaced prior to occupancy.

111 (F) a licensed professional engineer, certified industrial hygienist, pursuant to
112 regulations, shall conduct indoor air quality testing with respect to representative areas within
113 the entire building, including spaces with potentially highest occupant density and use,
114 immediately following occupancy, if any, and on an annual basis, to monitor supply and return
115 air and occupied spaces for carbon monoxide, carbon dioxide, total volatile organic
116 compounds, radon, and particulate matter. All indoor air quality testing shall meet the standards
117 for duration and evaluation criteria in regulations promulgated by DOER. Once radon
118 measurements have been found to be satisfactory, subsequent annual radon testing shall not be
119 required. The taxpayer shall record baseline readings immediately following occupancy, if any,
120 and annually thereafter. In the event that the taxpayer does not establish that during a taxable
121 year during which any part of the building is occupied, indoor air quality met the standards
122 established in regulations promulgated by DOER, the base building shall not constitute a green
123 base building.

124 (iii) the mechanical plant of the building shall be commissioned in
125 accordance with the standards established in regulations promulgated by DOER, which
126 standards shall be informed by documents such as ASHRAE G-1 and the United States General
127 Services Administration "Model Commissioning Plan and Guide Specifications". For

128 purposes of this clause the term "ASHRAE" shall mean the American Society of Heating,
129 Refrigerating and Air Conditioning Engineers, Inc.

130 (iv) separate waste disposal chutes or a carousel compactor system for recyclable
131 materials shall be provided for the recycling of waste by occupants, or recycling shall be
132 otherwise facilitated by, at a minimum, providing a readily accessible designated collection
133 area or areas with sufficient space to store recyclable materials separately between collection
134 dates.

135 (v) all plumbing fixtures in the public areas of the building shall meet the plumbing
136 fixture requirements of the state plumbing code or any successor provision in effect at the time
137 the building or rehabilitation is placed in service.

138 (vi) prior to initial occupancy and upon request, the owner of the building shall
139 provide each tenant with:

140 (1) written notification of the opportunity to apply for a tax credit pursuant to this
141 section and

142 (2) written guidelines regarding opportunities to improve the energy efficiency and
143 air quality of tenant space and to reduce and recycle waste streams.

144 (vii) all building materials, finishes and furnishings used in the base building and
145 subject to the regulations promulgated by DOER shall meet the standards established by such
146 regulations in effect at the time the building permit was issued for the building or rehabilitation,
147 but with respect to furnishings, this requirement shall apply only to newly purchased items.

148 (viii) all tenant space in the building occupied by the owner must be green tenant
149 space.

150 "Green Building" shall have the following meaning:

151 (1) a building that meets the criteria of at least a Silver rating according to the US Green
152 Building Council's LEED (Leadership in Energy and Environmental Design) Green building
153 rating system; or

154 (2) a building that meets the criteria at least a Two Globe rating according to the Green
155 Building Initiative's Green Globes rating system; or

156 (3) a building that achieves at least a comparable numeric rating according to a nationally
157 recognized, accepted, and appropriate numeric sustainable development rating system,
158 guideline, or standard.

159 "Green tenant space", tenant space in a building if such building is an eligible building and if
160 such tenant space complies with the following requirements:

161 (1) energy_and energy efficiency.

162 (i) energy use for tenant space is no more than 65 per cent in the case of new
163 construction or 75 per cent in the case of rehabilitation of the use permitted under the energy
164 code or, in the event such standard is revised or superseded, energy use shall meet such other
165 energy efficiency standards that DOER shall establish by regulations in effect at the time the
166 building permit was issued for the improvements with respect to which a tax credit is claimed.

167 (ii) all appliances and any heating, cooling and water heating equipment used in the
168 tenant space and subject to the regulations promulgated by DOER shall meet the standards
169 established by such regulations or, in the event that such standards are revised, the standards in
170 effect at the time the improvements with respect to which a tax credit is claimed are placed in
171 service.

172 (2) code requirements, indoor air quality, building materials, finishes and
173 furnishings.

174 (i) the tenant space shall comply with all applicable building code requirements and
175 environmental regulations. In the case of rehabilitation of an existing building, all existing
176 environmental hazards shall be identified and managed in accordance with applicable laws,
177 regulations and industry guidelines.

178 (ii) in the case of buildings classified, pursuant
179 to the state building code, or similarly classified under any subsequent code, ventilation
180 and exchange of indoor/outdoor air shall meet the standards established in regulations
181 promulgated by DOER.

182 (iii) for buildings in which smoking is permitted, the taxpayer shall ensure that, if
183 smoking is permitted in the tenant space, it is permitted only in areas in which the air ventilation
184 and circulation is separate from that for non-smoking areas.

185 (iv) during construction or rehabilitation, the ventilation system components and
186 pathways and interior building materials shall be protected from contamination and moisture
187 degradation in accordance with an indoor air quality management plan for the construction or
188 rehabilitation process that meets the standards established in regulations promulgated by
189 DOER. In the event that such components, pathways and materials are not protected from
190 contamination in accordance with such standards, they shall be cleaned or replaced prior to
191 occupancy.

192 (v) a licensed professional engineer or certified industrial hygienist pursuant to
193 regulations, shall conduct indoor air quality testing with respect to representative areas within
194 the tenant space, including spaces with potentially highest occupant density and use
195 immediately, following occupancy, if any, and on an annual basis, to monitor supply and return
196 air and occupied spaces for carbon monoxide, carbon dioxide, total volatile organic compounds,

197 radon, and particulate matter. All indoor air quality testing shall meet the standards for duration
198 and evaluation criteria required by regulations promulgated by DOER. Once radon
199 measurements have been found to be satisfactory, subsequent annual radon testing shall not be
200 required. The taxpayer shall record baseline readings immediately following occupancy, if
201 any, and annually thereafter. In the event that the taxpayer does not establish that during a
202 taxable year during which the tenant space is occupied, indoor air quality met the standards
203 established in regulations promulgated by DOER, the tenant space shall not constitute green
204 tenant space.

205 (vi) all plumbing fixtures in the tenant space shall meet the plumbing fixture
206 requirements of the state plumbing code or other applicable regulations in effect at the time the
207 improvements with respect to which a tax credit is claimed are placed in service.

208 (iii) all building materials, finishes and furnishings selected for use in the tenant
209 space and subject to the regulations promulgated by DOER shall meet the standards established
210 by such regulations or, in the event that such standards are revised, the standards in effect at the
211 time the building permit was issued for the improvements with respect to which a tax credit is
212 claimed, but with respect to furnishings, this requirement shall apply only to newly purchased
213 items.

214 "Incremental cost of building-integrated photovoltaic modules":

215 (1) the cost of building-integrated photovoltaic modules and any associated inverter,
216 additional wiring or other electrical equipment or additional mounting or structural materials,
217 less the cost of spandrel glass or other building material that would have been used in the event
218 that building-integrated photovoltaic modules were not installed,

219 (2) incremental labor costs properly allocable to on-site preparation, assembly

220 and original installation of photovoltaic modules, and

221 (3) incremental architectural and engineering services and designs and plans

222 directly related to the construction or installation of photovoltaic modules.

223 "LEED rating system", the Leadership in Energy and Environmental Design green

224 building rating system criteria developed by the United States Green Building Council.

225 "Qualifying alternate energy sources", building-integrated and non-building-integrated

226 photovoltaic modules and fuel cells installed to serve the base building or tenant space which

227 have the capability to monitor their ac output, and which are validated upon installation, and

228 annually thereafter, to ensure that such systems meet their design specifications.

229 "Substantial improvement", the reconstruction, rehabilitation, addition, repair or

230 improvement of a structure, the cost of which equals or exceeds 50 per cent of the market value

231 of the structure before the "start of construction" as defined in 780 CMR 3107.2.

232 "Tenant improvements", improvements which are necessary or appropriate to support or

233 conduct the business of a tenant or occupying owner.

234 "Tenant space", the portion of a building intended for occupancy by a tenant or

235 occupying owner.

236 (b) A taxpayer subject to tax under this chapter shall be allowed a green building credit against

237 such tax but no credit shall be allowed under this section unless the taxpayer has complied with,

238 the applicable requirements of subsection (j), . The amount of the credit shall be the sum of all

239 credit components, but the amount of each such credit component shall not exceed the limit set

240 forth in the initial credit component certificate obtained pursuant to subsection (h). In the

241 determination of such credit components, no cost paid or incurred by the taxpayer shall be the

242 basis for more than one such component.

243 (1) If a credit is allowed to a building owner pursuant to this subsection with respect
244 to property, and such property or an interest therein is sold, the credit for the period after the
245 sale which would have been allowable under this subsection to the prior owner had the property
246 not been sold shall be allowable to the new owner. Credit for the year of sale shall be allocated
247 between the parties on the basis of the number of days during such year that the property or
248 interest was held by each.

249 (2) If a credit is allowed to a tenant pursuant to this subsection with respect to
250 property, and if such tenancy is terminated but such property remains in use in the building by a
251 successor tenant, the credit for the period after such termination which would have been
252 allowable under this subsection to the prior tenant had the tenancy not been terminated shall be
253 allowable to the successor tenant. Credit for the year of termination shall be allocated between
254 the parties on the basis of the number of days during such year that the property was used by
255 each.

256 (3) Notwithstanding any other provision of law to the contrary, in the case of
257 allowance of credit under this section to a successor owner or tenant, as provided in
258 subparagraph (1) or (2) of this paragraph, the commissioner of DOER shall have the authority to
259 reveal to the successor owner or tenant any information, with respect to the credit of the prior
260 owner or tenant, which is the basis for the denial in whole or in part of the credit claimed by
261 such successor owner or tenant.

262 (c) The green whole-building credit component shall be equal to the applicable percentage of
263 the allowable costs paid or incurred by the taxpayer, whether owner or tenant, for either the
264 construction of a green building or the rehabilitation of a building which is not a green building
265 to be a green building, but the credit component shall not exceed the maximum amount

266 specified in the initial credit component certificate. The applicable percentage shall be 1.4 per
267 cent, except that if the building is located in an economic development area, the applicable
268 percentage shall be 1.6 per cent. The credit component amount so determined shall be allowed
269 for the credit allowance year, but only

270 if:

271 (1) the taxpayer has obtained and filed both an initial credit component certificate and an
272 eligibility certificate issued pursuant to subsection (h);

273 (2) certificate of occupancy for the building has been issued and

274 (3) where the credit allowance year is a year described in clause (2) of the definition of
275 "Credit allowance year" of subsection (a), the green building or rehabilitation remains in
276 service during such year.

277 Such credit component amount shall be allowed also for each of the next 4 succeeding taxable
278 years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant
279 to subsection (h), but the allowable costs may not exceed, in the aggregate, \$150 per square foot
280 with respect to the portion of the building which comprises the base building and \$75 per square
281 foot with respect to the portion of the building which comprises the tenant space.

282 (d) The green base building credit component shall be equal to the applicable percentage of the
283 allowable costs paid or incurred by the taxpayer, if the owner, for either the construction of a
284 green base building or for the rehabilitation of a base building which is not a green base
285 building to be a green base building, but the credit component shall not exceed the maximum
286 amount specified in the initial credit component certificate. The applicable percentage shall be 1
287 per cent, except that if the building is located in an economic development area, the applicable
288 percentage shall be 1.2 per cent. The credit component amount so determined shall be allowed

289 for the credit allowance year, but only if:

- 290 (1) the taxpayer has obtained and filed both an initial credit component certificate and
291 an eligibility certificate issued pursuant to subdivision (h),
292 (2) a certificate of occupancy for the building has been issued and
293 (3) where the credit allowance year is a year described in clause (2) of the definition of
294 "Credit allowance year" of subsection (a), the green base building or rehabilitation of a
295 base building remains in service during such year.

296 Such credit component amount shall be allowed also for each of the next 4 succeeding taxable
297 years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant
298 to subsection (h), but the allowable costs for the base building may not exceed, in the aggregate,
299 \$150 per square foot.

300 (e) The green tenant space credit component shall be equal to the applicable percentage of
301 allowable costs for tenant improvements paid or incurred by the taxpayer, whether owner or
302 tenant, in constructing, including completing, tenant space, or rehabilitating tenant space which
303 is not green tenant space to be green tenant space, but the credit component shall not exceed the
304 maximum amount specified in the initial credit component certificate. The applicable
305 percentage shall be 1 per cent, except that if the building is located in an economic development
306 area the applicable percentage shall be 1.2 per cent, but the owner, or a tenant who occupies
307 fewer than 10,000 square feet, shall qualify for such green tenant space credit component only
308 in the event that the base building is a green base building. The credit component amount so
309 determined shall be allowed for the credit allowance year, but only if:

- 310 (1) the taxpayer has obtained and filed an initial credit component certificate and an
311 eligibility certificate issued pursuant to subsection (h) and

312 (2) where the credit allowance year is a year described in clause (2) of the definition of
313 "Credit allowance year" of subsection (a), the construction, completion or rehabilitation
314 remains in service during such year.

315 Such credit component amount shall be allowed also for each of the next 4 succeeding taxable
316 years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant
317 to subsection (h), but the allowable costs for tenant space shall not exceed, in the aggregate, \$75
318 per square foot. In the event that both an owner and tenant incur such costs for tenant space with
319 respect to the same tenant space and such costs in the aggregate exceed \$75 per square foot, the
320 owner shall have priority as to costs constituting the basis for the green tenant space credit
321 component.

322 (f) A fuel cell credit component shall be allowed for the installation of a fuel cell which is a
323 qualifying alternate energy source, installed to serve a green building, green base building or
324 green tenant space. The amount of the credit component shall be 6 per cent of the sum of the
325 capitalized costs paid or incurred by the taxpayer with respect to each fuel cell installed to serve
326 such building or space, including the cost of the foundation or platform and the labor cost
327 associated with installation, such capitalized costs not to exceed \$1,000 per kilowatt of installed
328 dc rated capacity, but the credit component shall not exceed the maximum amount specified in
329 the initial credit component certificate. The fuel cell credit component amount so determined
330 shall be allowed for the credit allowance year, but only if:

331 (1) the taxpayer has obtained and filed an initial credit component certificate and an
332 eligibility certificate issued pursuant to subsection (h) and

333 (2) where the credit allowance year is a year described in clause (2) of the definition of
334 "Credit allowance year" of subsection (a), the fuel cell remains in service during such

335 year.

336 Such credit component amount shall be allowed also with respect to each of the 4 taxable years
337 next following during which the fuel cell remains in service, but the amount of any federal,
338 state or local grant received by the taxpayer and used for the purchase and installation of such
339 fuel cell and which was not included in the federal gross income of the taxpayer shall be
340 subtracted from the amount of such cost.

341 (g) A photovoltaic module credit component shall be allowed for the installation of
342 photovoltaic modules which constitute a qualifying alternate energy source installed to serve a
343 green building, green base building or green tenant space. The amount of the credit component
344 shall be 20 per cent of the incremental cost paid or incurred by the taxpayer for building-
345 integrated photovoltaic modules and 5 per cent of the cost of non-building-integrated
346 photovoltaic modules, in either case such cost not to exceed the product of (i) \$3 and (ii) the
347 number of watts included in the dc rated capacity of the photovoltaic modules, but the credit
348 component shall not exceed the maximum amount specified in the initial credit component
349 certificate. The credit component amount so determined shall be allowed for the credit
350 allowance year, but only if:

- 351 (1) the taxpayer has obtained and filed an initial credit component certificate and an
352 eligibility certificate issued pursuant to subsection (h); and
353 (2) where the credit allowance year is a year described in clause (2) of the definition of
354 "Credit allowance year" of subsection (a), the modules remain in service during such
355 year.

356 Such credit amount shall be allowed also for the 4 taxable years next following during which
357 the modules remain in service, but the amount of any federal, state or local grant received by the

358 taxpayer and used for the purchase and/or installation of such photovoltaic equipment and
359 which was not included in the federal gross income of the taxpayer shall be subtracted from the
360 amount of such cost.

361 (h) (1) Upon application by a taxpayer, DOER shall issue an initial credit component certificate
362 where the taxpayer has made a showing that the taxpayer is likely within a reasonable time to
363 place in service property which would warrant the allowance of a credit under this section. Such
364 certificate shall state the first taxable year for which the credit may be claimed and an expiration
365 date, and shall apply only to property for which an occupancy permit has been issued by such
366 expiration date. Such expiration date may be extended at the discretion of DOER, in order to
367 avoid unwarranted hardship. Such certificates may be issued in years 2006-2008. Such
368 certificates shall state the maximum amount of credit component allowable for each of the 5
369 taxable years for which the credit component is allowed under subsections (b) to (g), inclusive.

370 (2) For each taxable year for which a taxpayer claims a credit under this section with
371 respect to a green building, green base building or green tenant space, a fuel cell, or
372 photovoltaic modules, the taxpayer shall obtain from an architect or professional engineer
373 licensed to practice in this state an eligibility certificate. Such certificate shall consist of a
374 certification, under the seal of such architect or engineer, that the building, base building or
375 tenant space with respect to which the credit is claimed is a green building, green base building
376 or green tenant space, respectively, that the fuel cell or photovoltaic modules constitute
377 qualifying alternate energy sources and remains in service. Such certification shall be made in
378 accordance with the standards and guidelines in effect at the time the building permit was issued
379 for the property which is the basis for the credit . Such certification shall set forth the specific
380 findings upon which the certification was based. The taxpayer shall file such certificate, and the

381 associated initial credit component certificate, with the claim for credit and shall file duplicate
382 copies with DOER. Such certificate shall include sufficient information to identify each
383 building or space, and such other information as DOER and the commissioner shall prescribe.

384 (3) If DOER has reason to believe that an architect or professional engineer, in making any
385 certification under this subsection, engaged in professional misconduct, then DOER shall so
386 inform the board of registration of architects or the board of registration of engineers and land
387 surveyors.

388 (i) Each taxpayer shall, for any taxable year for which the green building credit provided for
389 under this section is claimed, maintain records of the following information:

- 390 (1) annual energy consumption for building, base building or tenant space;
- 391 (2) annual results of air monitoring;
- 392 (3) annual confirmation that the building, base building or tenant space continues to
393 meet requirements regarding smoking areas, if provided;
- 394 (4) tenant guidelines, if applicable;
- 395 (5) all written notification of tenants and requests to remedy any
396 indoor air quality problems;
- 397 (6) initial and annual , by month, results of validation of performance of
398 photovoltaic modules and fuel cells: and
- 399 (7) certifications as to off-gassing and other contamination, as prescribed in this
400 section, where applicable.

401 (j) Each taxpayer shall also provide to DOER the information described in subsection (i), in the
402 form and at the time prescribed by DOER, such time to be determined in consultation with the
403 commissioner. Such information shall be provided to DOER with respect to each taxable year

404 with respect to which the taxpayer claims a credit under this section.

405 (k) (1) The commissioner of DOER shall promulgate regulations necessary to the
406 implementation of this section. Such regulations establishing standards may be informed by the
407 LEED rating system. Such regulations shall construe the provisions of this section in such a
408 manner as to encourage the development of green buildings, green base buildings and green
409 tenant space and to maintain high but commercially reasonable standards for obtaining tax
410 credits hereunder. Such regulations shall establish a reasonable time or period of time for
411 submission of applications, and shall establish a method for allocating initial credit component
412 certificates among eligible applicants. Regulations, standards or requirements adopted pursuant
413 to this section shall apply only to a green base building, a green building or a green tenant
414 space. DOER shall review and update such regulations at least every 2 years from the date on
415 which such regulations are promulgated.

416 (2) The commissioner of DOER shall promulgate the following, with respect to base
417 buildings:

418 (i) regulations establishing standards for energy use for eligible buildings. (ii)
419 regulations establishing standards for appliances and heating, cooling and water heating
420 equipment that, on the effective date of this section, are covered by specifications from
421 organizations such as the United States Department of Energy or Environmental Protection
422 Agency. The development of such regulations shall be informed by such specifications.
423 DOER shall review and update such regulations at least every 2 years from the date on which
424 such regulations are promulgated.

425 (iii) regulations indicating the methodology by which a taxpayer shall demonstrate
426 compliance with paragraph 1 of the definition of "green base building" of subsection (a). Such

427 regulations shall include, at a minimum, a requirement to conduct hourly computer modeling for
428 1 year.

429 (iv) regulations establishing standards for the commissioning of buildings.

430 (3) The commissioner of DOER shall promulgate regulations establishing standards,
431 with respect to base buildings, for ventilation and exchange of indoor/outdoor air, indoor air
432 quality management plans for the construction or rehabilitation process, and indoor air quality
433 with respect to levels of carbon monoxide, carbon dioxide and total volatile organic compounds,
434 radon and particulate matter.

435 (4) The commissioner of DOER shall promulgate the following, with regard to base
436 buildings:

437 (i) regulations establishing standards for building materials, finishes and
438 furnishings regarding minimum percentages of recycled content and renewable source material
439 and maximum levels of toxicity and volatile organic compounds and any other standards that
440 the DOER deems appropriate. Standards shall be developed for building materials, finishes
441 and furnishings, including but not limited to concrete and concrete masonry units; wood and
442 wood products; millwork substrates; insulation; ceramic, ceramic/glass and cementitious
443 tiles; ceiling tiles and panels; flooring and carpet; paints, coatings, sealants and adhesives; and
444 furniture. The DOER shall review and update such regulations at least every 2 years from the
445 date on which such regulations are promulgated.

446 (ii) regulations establishing standards for buildings located in areas where water use
447 is not metered, which regulations shall require, at a minimum, that the building include one of
448 the following features:

449 (A) a gray water system that recovers non-sewage waste water or uses roof or ground

450 storm water collection systems, or recovers ground water from sump pumps;

451 (B) for buildings with a cooling tower system, such system shall be designed with
452 delimiters to reduce drift and evaporation; or

453 (C) for buildings with exterior plants, all such plants shall be tolerant of climate, soils
454 and natural water availability and shall not receive watering from municipal potable water
455 after a period of establishment is complete.

456 (iii) regulations establishing standards for buildings located in areas that do not have
457 sewers or that have designated storm sewers, which regulations shall require, at a minimum, that
458 the building shall include one of the following features:

459 (A) an oil grit separator or water quality pond for pretreatment of runoff from any
460 surface parking areas; or

461 (B) at least 50 per cent of non-landscaped areas, including roadways, surface
462 parking, plazas and pathways, if any, shall be comprised of pervious paving materials.

463 (iv) regulations indicating the methodology by which taxpayers shall demonstrate
464 compliance with subparagraphs (2) and (3) of the definition of "green base building" of
465 subsection (a).

466 (5) The commissioner of DOER shall promulgate regulations, with respect to tenant
467 space, indicating the methodology by which taxpayers shall demonstrate compliance with
468 paragraph (1) of the definition of "green tenant space" of subsection (a).

469 (6) The commissioner of DOER shall promulgate regulations, with respect to tenant
470 space, indicating the methodology by which taxpayers shall demonstrate compliance with
471 paragraph (2) of the definition of "green tenant space" of subsection (a).

472 SECTION 3. Funding for 3 full-time staff positions shall be made available to DOER for

473 completion of the regulations required under this act and for administration of this act.

474 Additional funding of \$150,000 shall be made available for state wide educational seminars and
475 other education programs to assist developers, tenants, and any others who may participate in
476 the green building tax credit program.

477 SECTION 4. On or before April 1, 2009 the commissioner of the division of energy resources
478 shall prepare a written report regarding the number of certifications and taxpayers claiming the
479 credit provided for under this act; the amount of the credits claimed; the geographical
480 distribution of the credits claimed; and any other such available information the commissioner
481 determines to be appropriate. The commissioner shall ensure that the information is presented
482 and classified in a manner consistent with statutory confidentiality requirements. The report
483 shall be filed with the governor, the president of the senate, the speaker of the house of
484 representatives, the chairperson of the senate finance committee and the chairperson of the
485 house ways and means committee.