

By: Representative Johnson

To: Ways and Means

HOUSE BILL NO. 1704

1 AN ACT TO CREATE THE "SMART GROWTH TAX CREDIT ACT" TO
2 AUTHORIZE INCOME TAX CREDITS FOR DEVELOPERS AND OWNERS WHO DESIGN
3 AND BUILD RESIDENTIAL AND MIXED-USE DEVELOPMENTS THAT MEET
4 SPECIFIC SMART GROWTH AND GREEN BUILDING CRITERIA; TO PROVIDE THE
5 AMOUNT OF THE CREDIT; TO AUTHORIZE THE CREDIT TO BE CARRIED
6 FORWARD FOR FIFTEEN YEARS FOLLOWING THE CREDIT'S FIRST ELIGIBLE
7 TAX YEAR; TO LIMIT THE DOLLAR AMOUNT OF CREDITS THAT MAY BE
8 GRANTED IN ANY ONE FISCAL YEAR; TO PROVIDE THAT THE STATE TAX
9 COMMISSION, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL
10 QUALITY, SHALL ADMINISTER THE CREDIT; TO PROVIDE FOR THE
11 CERTIFICATION OF DEVELOPMENTS AND THE MANNER IN WHICH A CREDIT MAY
12 BE CLAIMED; TO PROVIDE THE STANDARDS THAT BUILDINGS AND
13 DEVELOPMENTS MUST MEET IN ORDER TO BE ELIGIBLE FOR THE TAX CREDIT;
14 AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** This act shall be known and may be cited as the
17 "Smart Growth Tax Credit Act."

18 **SECTION 2.** As used in this act:

19 (a) "Adequate bus transit service" means at least one
20 (1) bus transit stop within a one-quarter (1/4) mile radius of the
21 geographic center of the development, with service of no less than
22 one (1) bus either:

23 (i) Every sixty (60) minutes, eighteen (18) hours
24 per day, seven (7) days per week; or

25 (ii) Thirty (30) times per weekday and fifteen
26 (15) times per weekend day, provided that there are no physical
27 impediments that prevent pedestrians from walking from the
28 development to the transit stop.

29 (b) "Adequate rail transit service" means at least one
30 (1) rail or light-rail transit stop within a one-half (1/2) mile
31 radius of the geographic center of the development, with service
32 of no less than five (5) trains during weekday peak periods,

33 provided that there are no physical impediments that prevent
34 pedestrians from walking from the development to the transit stop.

35 (c) "Allowable costs" means amounts properly chargeable
36 to a capital account, other than for purchase of land or any
37 remediation costs, which are paid or incurred for construction or
38 rehabilitation; commissioning costs; interest paid during the
39 construction or rehabilitation period; legal, architectural,
40 engineering, and other professional fees allocable to construction
41 or rehabilitation; closing costs for construction or mortgage
42 loans; recording taxes and filing fees incurred with respect to
43 construction or rehabilitation; site costs, such as temporary
44 electric wiring, scaffolding, demolition costs, and fencing and
45 security facilities; and costs of carpeting, partitions, walls and
46 wall coverings, ceilings, lighting, plumbing, electrical wiring,
47 and ventilation, provided that such costs shall not include the
48 cost of telephone systems and computers other than electrical
49 wiring costs. For commercial space, allowable costs shall not
50 exceed Two Hundred Fifty Dollars (\$250.00) per square foot of
51 interior space, except that the State Tax Commission may raise the
52 maximum allowable costs by up to ten percent (10%) on each of up
53 to two (2) occasions in the seven-year period next following the
54 date of enactment of this act. For residential space, allowable
55 costs shall not exceed one hundred ten percent (110%) of the
56 amount set by the United States Department of Housing and Urban
57 Development (HUD) as per unit limits, codified in 12 USCA
58 17151(d)(3)(ii).

59 (d) "ASHRAE" means the American Society of Heating,
60 Refrigeration, and Air-Conditioning Engineers.

61 (e) "Brownfield site" means any former or current
62 commercial or industrial site that is currently vacant or
63 underutilized, and on which there has been, or there is suspected
64 to have been, a discharge of a hazardous substance, a hazardous
65 waste, or a pollutant.

66 (f) "Carpet and Rug Institute Green Label Indoor Air
67 Quality Test Program" means the testing program developed by the
68 Carpet and Rug Institute, as recognized by the Department of
69 Environmental Quality, to aid in the selection of carpet,
70 adhesives, and cushion materials which minimize adverse impacts to
71 indoor air quality.

72 (g) "Critical habitat" means a biologically diverse
73 area containing habitats of endangered and threatened plant or
74 animal species, as determined by the federal Endangered Species
75 Act, Section 3(5).

76 (h) "Critical slope area" means an area predominantly
77 characterized by either an average change in elevation greater
78 than fifteen percent (15%) of the corresponding horizontal
79 distance through the slope, otherwise referred to as a fifteen
80 percent (15%) slope, or by a very high erosion hazard as indicated
81 by an erodability factor "k" computed by the United States
82 Department of Agriculture (USDA), Soil Conservation Service for
83 soils of 0.40 or greater.

84 (i) "Developer" means the legal or beneficial owner or
85 owners of a lot or of any land proposed to be included in a
86 proposed development, including the holder of an option or
87 contract to purchase, or other person having an enforceable
88 proprietary interest in such land.

89 (j) "Development" means the division of a parcel of
90 land into two (2) or more parcels; the construction,
91 reconstruction, conversion, structural alteration, relocation, or
92 enlargement of any building or other structure, or of any mining
93 excavation or landfill; or any change in the use of any building
94 or other structure, or land, or extension of use of land for which
95 permission may be required pursuant to zoning ordinances.

96 (k) "Energy Star®" means the voluntary labeling program
97 administered by the United States Environmental Protection Agency

98 (EPA) designed to identify and promote energy-efficient products,
99 equipment, and buildings.

100 (l) "Forest Stewardship Council" means the
101 international nonprofit organization founded in 1993 to support
102 environmentally appropriate, socially beneficial, and economically
103 viable management of the world's forests.

104 (m) "Highly urbanized area" means:

105 (i) An area where thirty percent (30%) of the
106 ground within one thousand (1,000) feet of the perimeter of a
107 development site consists of impervious surface; or

108 (ii) An area located in a municipality, which the
109 State Tax Commission has determined, according to guidelines
110 established by the commission, to be built out.

111 (n) "Impervious surface" means a surface that has been
112 compacted or covered with a layer of material so that it is highly
113 resistant to infiltration by water.

114 (o) "Improvement" means any constructed element that
115 becomes part of, is placed upon, or is affixed to real estate.

116 (p) "LEED™ Green Building Rating System" means the
117 Leadership in Energy and Environmental Design green building
118 rating system developed by the United States Green Building
119 Council (USGBC).

120 (q) "LEED™ Residential Green Building Rating System"
121 means the completed version of the Leadership in Energy and
122 Environmental Design green building rating system for residential
123 buildings, as may be developed by the United States Green Building
124 Council (USGBC).

125 (r) "Lot" means a designated parcel, tract, or area of
126 land established by a plat, or otherwise permitted by law, to be
127 used, developed, or built upon as a unit.

128 (s) "Mixed-use development" means a development that
129 includes residential use and no more than seventy-five percent

130 (75%) by interior square footage of one or more of the following
131 uses:

132 (i) Commercial space;
133 (ii) Office space;
134 (iii) Retail space; or
135 (iv) Such other nonresidential uses that the State
136 Tax Commission has determined do not pose a public health threat
137 or nuisance to nearby residential areas.

138 (t) "Old-growth timber" means timber of a forest from
139 the late successional stage of forest development as defined by
140 the Department of Environmental Quality.

141 (u) "Plat" means a map or maps of a subdivision or site
142 plan.

143 (v) "Potentially eligible development" means a
144 residential or mixed-use development or redevelopment project
145 located within Mississippi.

146 (w) "Site improvements" means any construction work on,
147 or improvement in connection with, a development limited to
148 streets, roads, parking facilities, sidewalks, drainage structures
149 and utilities.

150 (x) "Smart growth development" means a potentially
151 eligible development that meets the criteria set forth in Section
152 6 of this act.

153 (y) "Stormwater management measures" means structural
154 and nonstructural control of stormwater runoff and nonpoint
155 pollution.

156 (z) "Total cumulative rides available" means the sum
157 of:

158 (i) The number of rides available by bus within a
159 one-half (1/2) mile radius of the geographic center of the
160 development; and

161 (ii) The number of rides available by rail or
162 light-rail within a one-half (1/2) mile radius of the geographic

163 center of the development, multiplied by the average number of
164 cars on each train.

165 (aa) "Transit stop" means any stop for a bus or train
166 as the case may be, which may be along either intercity routes, or
167 intracity routes, or both. A transit stop serving more than one
168 (1) route, or serving routes in more than one (1) direction, shall
169 constitute a discrete stop for each directional route of service;
170 and, if a location has one (1) bus or train, as the case may be,
171 per hour heading in one (1) direction, and one (1) bus or train,
172 as the case may be, available in that same hour heading in the
173 other direction, this shall constitute one (1) bus or train per
174 hour at two (2) separate stops.

175 (bb) "Tropical hardwood" means hardwood scientifically
176 classified as angiosperm, which grows in tropical moist forest, as
177 determined by the Department of Environmental Quality. "Tropical
178 hardwood" shall include, but not be limited to, the following
179 species:

180	SCIENTIFIC NAME	COMMON NAME
181	Voracious americana	Acapu
182	Pericopsis elata	Afrormosis
183	Shorea almon	Almon
184	Peltogyne spp.	Amaranth
185	Guibourtia ehie	Amazaque
186	Aningeris spp.	Aningeria
187	Dipterocarpus grandiflorus	Apilong
188	Ochroma lagopus	Balsa
189	Virola spp.	Banak
190	Anisoptera thurifera	Bella Rose
191	Guibourtis arnoldiana	Benge
192	Deterium Senegalese	Boire
193	Priora copaifera	Cativo
194	Antiaris africana	Chenchen
195	Dalbergis retusa	Concobola

196	<i>Cordia</i> spp.	Cordia
197	<i>Diospyros</i> spp.	Ebony
198	<i>Aucoumes klaineana</i>	Gaboon
199	<i>Chlorophors excelsa</i>	Iroko
200	<i>Acacia koa</i>	Koa
201	<i>Pterygota macrocarpa</i>	Koto
202	<i>Shorea negrosensis</i>	Red Lauan
203	<i>Pentacme contorta</i>	White Lauan
204	<i>Shores ploysprma</i>	Tanguile
205	<i>Terminalia superba</i>	Limba
206	<i>Aniba duckei</i>	Louro
207	<i>Kyaya ivorensis</i>	Africa Mahogany
208	<i>Swletenia macrophylla</i>	Amer. Mahogany
209	<i>Tieghemella leckellii</i>	Makora
210	<i>Distemonanthus benthamianus</i>	Movingui
211	<i>Pterocarpus soyauxii</i>	African Padauk
212	<i>Pterocarpus angolensis</i>	Angola Padauk
213	<i>Aspidosperma</i> spp.	Peroba
214	<i>Peltogyne</i> spp.	Purpleheart
215	<i>Gonystylus</i> spp.	Ramin
216	<i>Dalbergia</i> spp.	Rosewood
217	<i>Entandrophragm a cylindricum</i>	Sapela
218	<i>Shores phillippinensis</i>	Sonora
219	<i>Tectona grandis</i>	Teak
220	<i>Lovoa trichilloides</i>	Tigerwood
221	<i>Millettia laurentii</i>	Wenge
222	<i>Microberlinia brazzavillensis</i>	Zebrawood

223 (cc) "Weekday peak period" means 5:30 a.m. to 10:30
224 a.m. and 3:30 p.m. to 8:30 p.m. on a weekday.

225 (dd) "Wetland" means:

226 (i) Land that has a predominance of hydric soils
227 and is inundated or saturated by surface or groundwater at a
228 frequency and duration sufficient to support a prevalence of

229 hydrophytic vegetation typically adapted for life in saturated
230 soil conditions; or

231 (ii) Any area so designated by the Department of
232 Environmental Quality.

233 **SECTION 3.** (1) A taxpayer shall be granted a credit, to be
234 computed as provided in this Section, against the tax imposed
235 pursuant to Chapter 7, Title 27, Mississippi Code of 1972. The
236 credit shall be an amount equal to the sum of the following;
237 however, that amount shall not exceed the amount set forth in the
238 credit reservation certificate obtained pursuant to Section 4 of
239 this act:

240 (a) Four percent (4%) of allowable costs;

241 (b) One-half percent (0.5%), one percent (1%), one and
242 one-half percent (1.5%), or two percent (2%) of allowable costs,
243 attributable to buildings, but not to other site improvements, for
244 developments qualifying as Certified, Silver, Gold, or Platinum
245 status, respectively, under the LEED™ Green Building Rating System
246 or the LEED™ Residential Green Building Rating System;

247 (c) One-half percent (0.5%) of allowable costs for
248 mixed-use developments;

249 (d) One-half percent (0.5%) of allowable costs for
250 developments located on brownfield sites;

251 (e) One-tenth percent (0.1%) of allowable costs for
252 developments in which less than ten percent (10%) of the land of
253 the development, not including shared open spaces, is devoted to
254 parking areas, garages and driveways;

255 (f) One-tenth percent (0.1%) of allowable costs for
256 developments with respect to which variances are secured from the
257 relevant municipalities to permit fifty percent (50%) or less
258 parking than is required by applicable local zoning codes, and are
259 built in accordance with such variances;

260 (g) Up to two and four-tenths percent (2.4%) of
261 allowable costs for developments with higher than required

262 residential density, depending on the density level as set forth
263 below; and

264	DWELLING UNITS	MULTIPLIER	ADDITIONAL CREDIT, As
265	PER RESIDENTIAL ACRE	VALUE	PERCENTAGE OF ALLOWABLE COSTS
266	7-10	.05	0.2%
267	11-17	.10	0.4%
268	18-29	.30	1.2%
269	30-39	.50	2.0%
270	40 or higher	.60	2.4%

271 (h) Up to one and four-tenths percent (1.4%) of
272 allowable costs for developments with higher than required transit
273 service, depending on total cumulative rides available per weekday
274 as set forth below:

275	TOTAL CUMULATIVE	MULTIPLIER	ADDITIONAL CREDIT, As
276	RIDES AVAILABLE	VALUE	PERCENTAGE OF ALLOWABLE COSTS
277	60-124	.05	0.2%
278	125-249	.10	0.4%
279	250-499	.15	0.6%
280	500-999	.20	0.8%
281	1000 or more	.35	1.4%

282 (2) A taxpayer may only apply for a credit under this
283 section with respect to allowable costs paid or incurred by the
284 taxpayer in connection with the construction or rehabilitation of
285 a smart growth development.

286 (3) For any taxable year, a taxpayer may apply no more than
287 twenty percent (20%) of the total amount allowable under
288 subsection (1) of this section.

289 (4) The amount of tax credit otherwise allowable under this
290 section, which cannot be applied during a tax year, may be carried
291 forward to the fifteen (15) tax years following a credit's first
292 eligible tax year.

293 (5) If a credit is owed to a building owner under this act
294 with respect to property, and such property, or an interest

295 therein, is sold, the credit for the period after the sale, which
296 would have been allowed under this act to the prior owner had the
297 property not been sold, shall be allowed to the successor owner if
298 such right is specified in the deed transferring the property.

299 (6) For any taxable year, a taxpayer may apply for a credit
300 under this section only if:

301 (a) The taxpayer has, as described in Section 4 of this
302 act, obtained and filed a location certificate, a credit
303 reservation certificate, and an eligibility certificate; and

304 (b) A certificate of occupancy, for the building or
305 buildings that as the subject of the credit, has been issued and
306 the building or buildings remains in service during such year.

307 (7) For each taxpayer who is eligible for a credit under
308 this section, the State Tax Commission shall grant a credit,
309 provided that the credits, in the aggregate, shall not exceed
310 Twenty Million Dollars (\$20,000,000.00) for the first fiscal year
311 of tax credit availability and, in each of the subsequent six (6)
312 fiscal years, shall not exceed Fifty Million Dollars
313 (\$50,000,000.00). Any unused allocable amounts shall roll over to
314 subsequent fiscal years.

315 **SECTION 4.** (1) **Location certificate.** Upon application by a
316 taxpayer, the Department of Environmental Quality, in consultation
317 with the State Tax Commission, shall issue a location certificate
318 with respect to a specific property, where the taxpayer has shown
319 that the property meets the location criteria set forth in Section
320 6(2) of this act. A taxpayer's application for a location
321 certificate shall include plats, and such other information that
322 the State Tax Commission and/or the Department of Environmental
323 Quality may require. The State Tax Commission and/or the
324 Department of Environmental Quality may issue a location
325 certificate without presentation by the taxpayer of a deed for the
326 proposed site.

327 (2) **Credit reservation certificate.** Upon application by a
328 taxpayer, the State Tax Commission shall issue a credit
329 reservation certificate, where the taxpayer has filed a copy of a
330 location certificate and made a showing that the taxpayer is
331 likely, within a reasonable time, to place in service the
332 development with respect to which the location certificate was
333 issued, and that the development is likely to qualify for the
334 allowance of a credit under this act. The certificate shall
335 state:

336 (a) The earliest taxable year for which the credit may
337 be applied;

338 (b) The maximum amount of the total credit allowed and
339 the maximum amount of credit allowed in any single tax year;

340 (c) An expiration date; and

341 (d) Such other information as the State Tax Commission
342 may prescribe. The certificate shall apply only to the
343 development placed in service by the specified expiration date.
344 The expiration date may be extended at the discretion of the
345 Chairman of the State Tax Commission, in order to avoid undue
346 hardship. Certificates may be issued in the first fiscal year
347 following the effective date of this act, and in each of the six
348 (6) subsequent fiscal years.

349 (3) **Eligibility certificate.** For the first taxable year for
350 which a taxpayer applies a credit under this act, the taxpayer
351 shall obtain an eligibility certificate from an architect or
352 professional engineer licensed to practice in Mississippi. The
353 certificate shall consist of a certification, under the seal of
354 such architect or engineer, that, except for any provision for
355 which the taxpayer has obtained a waiver from the State Tax
356 Commission pursuant to Section 6(5) of this act, the building or
357 development with respect to which the credit is applied:

358 (a) Meets the neighborhood design criteria set forth in
359 Section 6(3) of this act; and

360 (b) Meets either the green building criteria set forth
361 in Section 6(4) of this act or the criteria required for
362 Certified, Silver, Gold or Platinum status under the LEED™ Green
363 Building Rating System or the LEED™ Residential Green Building
364 Rating System. The certification shall be made in accordance with
365 the standards and guidelines in effect at the time the credit
366 reservation for the development was issued. The certificate shall
367 set forth the specific findings upon which the certification was
368 based. The certificate shall include sufficient information to
369 identify each building or development, and such other information
370 as the State Tax Commission may prescribe. The taxpayer shall
371 file with the State Tax Commission the eligibility certificate,
372 and the associated location certificate and credit reservation
373 certificate, with the application for credit.

374 (4) **Wrongful certification.** If the State Tax Commission has
375 reason to believe that an architect or professional engineer, in
376 making any certification under this section, engaged in
377 professional misconduct, the State Tax Commission shall inform the
378 appropriate state licensure board and the Attorney General.

379 **SECTION 5.** (1) Each taxpayer shall, for any taxable year
380 for which a credit is claimed under this act, maintain records of
381 such information as the State Tax Commission shall determine
382 necessary, and report that information to the State Tax Commission
383 in the form and at the time that the commission shall determine.

384 (2) The State Tax Commission and/or the Department of
385 Environmental Quality shall adopt such rules and regulations as
386 may be necessary to implement this act. These rules and
387 regulations shall be designed to encourage the implementation of
388 smart growth principles and maintain high but commercially
389 reasonable standards for obtaining tax credits under this act.
390 The rules and regulations shall establish a reasonable time for
391 submission of applications and shall establish a method certifying
392 proposed locations and allocating credit reservation certificates

393 among eligible applicants, which shall generally be on a
394 first-come, first-serve basis.

395 (3) On or before six (6) years after the effective date of
396 this act, the Chairman of the State Tax Commission, in
397 consultation with the Executive Director of the Department of
398 Environmental Quality shall prepare and submit a written report
399 regarding the number of certificates and taxpayers applying the
400 credit provided for under this act; the amount of the credits
401 granted; the geographical distribution of the credits granted; and
402 any other information that the commission and/or the Department of
403 Environmental Quality may deem useful or appropriate. A
404 preliminary draft of the report shall be so issued within the
405 first four (4) years following of the effective date of this act.
406 The report shall be submitted to the Governor, the Lieutenant
407 Governor and the Speaker of the House of Representatives.

408 **SECTION 6.** (1) Except as set forth in subsection (5) of
409 this section, all buildings and developments with respect to which
410 a tax credit is applied pursuant to this act shall be considered a
411 smart growth development if they meet the standards set forth in
412 this section; however, with respect to residential and tenant
413 space, compliance with standards set forth in paragraphs (a), (b),
414 (c), (d) and (h) of subsection 4 of this section shall not be
415 required where the taxpayer does not incur or pay the cost of the
416 equipment, appliances, fixtures, materials, finishes, furnishings,
417 or other items relevant to compliance with the standard.

418 (2) **Location.**

419 (a) All buildings and developments with respect to
420 which a tax credit is applied under this act shall be located in
421 urban or suburban areas or centers designated by guidelines
422 established by the State Tax Commission;

423 (b) All buildings and developments with respect to
424 which a tax credit is applied under this act shall be served

425 either by adequate bus transit service or adequate rail transit
426 service;

427 (c) No building or development with respect to which a
428 tax credit is claimed under this act shall be located:

429 (i) Within areas designated as reserves by the
430 federal or state government;

431 (ii) In public parkland;

432 (iii) Within one thousand (1,000) feet of any
433 critical habitat site within public parkland;

434 (iv) In or within three hundred (300) feet of a
435 wetland;

436 (v) In or within one hundred (100) feet of a
437 critical slope area, unless the site is located on a brownfield
438 site or within a highly urbanized area;

439 (vi) Within the one hundred-year floodplain,
440 unless the site is located on a brownfield site or within a highly
441 urbanized area; or

442 (vii) Within one thousand (1,000) feet of the mean
443 high-water mark for any saltwater body, unless the site is located
444 on a brownfield site or within a highly urbanized area; and

445 (d) No building or development with respect to which a
446 tax credit is applied under this act shall require:

447 (i) A water and sanitary sewer line extension of
448 one thousand (1,000) feet or greater, unless sited in an area that
449 has been approved for water and sanitary sewer service prior to
450 the date of enactment of this act; or

451 (ii) A septic system.

452 (3) **Neighborhood design.** Within six (6) months after the
453 date of enactment of this act, the State Tax Commission, in
454 consultation with the Department of Environmental Quality, shall
455 adopt standards for the purposes of this act with respect to:

456 (a) **Land use.** The standards shall require, at a
457 minimum, that average residential density shall be six (6) or more

458 dwelling units per residential acre. Residential acreage shall be
459 the calculated net of any land on the lot that is used for public
460 green space, public sidewalks, or public roads. For lots occupied
461 by residential buildings, residential acres used in the density
462 calculation shall be the footprint area of buildings, plus any
463 associated driveways, yards, and parking areas except for
464 on-street parallel parking. For sites occupied by mixed-use
465 buildings, residential acres used in the density calculation shall
466 be a percentage of the footprint area of building that equals the
467 percentage of interior space devoted to residential use, plus any
468 associated driveways, yards, and the percentage of associated
469 parking areas used by residents;

470 (b) **Streets and sidewalks.** The standards shall
471 require, at a minimum, that, if new streets are constructed as
472 part of a development with respect to which a credit is applied
473 under this act, the new streets shall meet the following
474 standards:

475 (i) No more than one cul-de-sac shall be
476 constructed for every four (4) new intersections within the
477 development;

478 (ii) At least fifty percent (50%) of any new
479 intersections and crossings within the development shall be
480 equipped with traffic controls or such traffic-calming measures
481 that the State Tax Commission shall approve, including, but not
482 limited to, speed bumps, stop signs and vegetative barriers;

483 (iii) The width of pavement of new streets shall
484 not exceed forty-two (42) feet, consisting of a maximum of ten
485 (10) feet per lane of motor vehicle traffic, four (4) feet per
486 bicycle lane, and seven (7) feet per lane designated for on-street
487 parallel parking. New streets shall not consist of more than two
488 (2) lanes devoted to motor vehicle traffic, two (2) lanes devoted
489 to bicycle traffic, and two (2) lanes devoted to on-street
490 parallel parking; and

491 (iv) Sidewalks of no less than four (4) feet in
492 width shall be provided along frontage of all buildings and along
493 all streets that connect buildings within the development; and

494 (c) **Parking.** The standards shall require, at a
495 minimum, that the number of parking spaces associated with the
496 development shall not exceed the number required by parking ratios
497 specified in applicable local zoning codes.

498 (4) **Green buildings.** Within six (6) months of the date of
499 enactment of this act, the State Tax Commission, in consultation
500 with the Department of Environmental Quality, shall adopt
501 standards for the purposes of this act, and shall review and
502 update such standards at least every two (2) years from the date
503 on which they are adopted with respect to:

504 (a) **Energy efficiency.** The standards shall require, at
505 a minimum, that:

506 (i) Single-family homes comply with the energy
507 standards of the United States Environmental Protection Agency
508 Energy Star Homes program;

509 (ii) Energy use in all other buildings shall not
510 exceed sixty-five percent (65%) of the energy use permitted by the
511 relevant state energy code;

512 (iii) Equipment and appliances, for which Energy
513 Star® standards exist, including, but not limited to,
514 refrigerators, dishwashers, and washing machines, shall meet those
515 Energy Star® standards; and

516 (iv) No less than forty percent (40%) of high-use
517 lighting fixtures shall meet Energy Star® standards;

518 (b) **Building materials.** The standards shall, at a
519 minimum, specify requirements regarding minimum percentages of
520 recycled content and renewable source material and maximum levels
521 of toxicity and volatile organic compounds. Standards shall be
522 developed for building materials, finishes and furnishings,
523 including, but not limited to, concrete and concrete masonry

524 units; millwork substrates; insulation; ceramic, ceramic or glass
525 and cementitious tiles; ceiling tiles and panels; flooring and
526 carpet; paints, coatings, sealants and adhesives and furniture.
527 The LEED™ Green Building Rating System and the LEED™ Residential
528 Green Building Rating System shall inform the development of the
529 standards;

530 (c) **Wood use.** The standards shall, at a minimum:

531 (i) Specify requirements to minimize wood use in
532 wood-framed houses; and

533 (ii) Require that old-growth timber and tropical
534 hardwood, except recycled wood and tropical hardwood certified in
535 accordance with the protocol of the Forest Stewardship Council or,
536 in lieu thereof, of another organization deemed by the Department
537 of Environmental Quality to be authorized and capable of providing
538 an equivalent protocol, shall not be used;

539 (d) **Heat island reduction.** The standards shall
540 require, at a minimum, that:

541 (i) At least fifty percent (50%), by square
542 footage, of nonroof impervious surfaces, including driveways,
543 parking areas, walkways and plazas, be light-colored or covered
544 with specified coatings that improve reflectance; and

545 (ii) Roofs shall be composed of Energy
546 Star®-labeled roof products, except where solar panels or roof
547 gardens are installed;

548 (e) **Water efficiency.** The standards shall require, at
549 a minimum, that:

550 (i) Each showerhead shall not exceed two (2)
551 gallons per minute;

552 (ii) Each faucet shall not exceed one (1) gallon
553 per minute;

554 (iii) Toilet flush volume shall not exceed one and
555 six-tenths (1.6) gallons; and

556 (iv) For commercial buildings, the drift rate of
557 any cooling tower shall not exceed one percent (1%);

558 (f) **Heating and cooling.** The standards shall require,
559 at a minimum, that central air conditioning refrigerant charge and
560 air flow shall be documented to be within ten percent (10%) of
561 manufacturer recommendations;

562 (g) **Durability.** The standards shall require, at a
563 minimum, that:

564 (i) Roofs shall have a warranty of no less than
565 forty (40) years;

566 (ii) Insulated windows shall have a warranty of no
567 less than ten (10) years;

568 (iii) Overhangs shall include at least eighty
569 percent (80%) of full attic or roof-slope insulation R-value; and

570 (iv) Head-casing flashing shall be installed for
571 all windows and exterior doors;

572 (h) **Indoor air quality.** The standards shall require,
573 at a minimum, that:

574 (i) Interior paints shall contain no more than one
575 hundred (100) grams per liter of volatile organic compounds;

576 (ii) Sealants and adhesives used for interior
577 applications shall contain no more than two hundred fifty (250)
578 grams per liter of volatile organic compounds;

579 (iii) Carpets, carpet cushions, and any necessary
580 adhesives shall meet the standards set forth in the Carpet and Rug
581 Institute Green Label Indoor Air Quality Test Program;

582 (iv) Carpets shall not be installed in basements,
583 bathrooms, kitchens, or within a four-foot radius of the center of
584 any doorway which leads outdoors;

585 (v) Only direct-vent, closed-combustion, or
586 power-vented space heating and water heating equipment shall be
587 used, and vent-free space heating or water heating equipment shall
588 not be used;

589 (vi) Any wood stoves shall have ducted combustion
590 air;

591 (vii) Carbon monoxide detectors shall be installed
592 consistent with Consumer Product Safety Commission
593 recommendations, and with at least one (1) detector per five
594 hundred (500) square feet of interior space;

595 (viii) Enclosed parking shall be completely
596 air-sealed from attached indoor spaces;

597 (ix) Every building shall be furnished with a
598 ventilation system and for commercial buildings the sizing of the
599 system shall conform with the ASHRAE standard known as ASHRAE
600 G2-2001; and

601 (x) Foundations of residential units shall be
602 constructed according to the following requirements, unless the
603 State Tax Commission approves alternative plans to ensure dry
604 basements:

605 1. The foundation shall have a continuous
606 footing drain that is covered with stone, which, in turn, shall be
607 covered with filter fabric, and which shall drain either to
608 daylight or to an interior, sealed sump pump system;

609 2. The foundation shall have porous backfill
610 material;

611 3. The vapor retarder shall be directly under
612 slab; and

613 4. The exterior of the below-grade foundation
614 shall be waterproofed;

615 (j) **Construction waste.** The standards shall require,
616 at a minimum, development of and adherence to a waste reduction
617 plan that provides for separation of materials which are reusable
618 or recyclable, such that a minimum of thirty percent (30%) of
619 waste by volume shall be diverted from the waste stream; and

620 (k) **Stormwater management.** The standards shall
621 require, at a minimum, that developments on parcels of undeveloped

622 land of four (4) acres or more shall employ stormwater management
623 measures in order to meet at least one (1) of the following
624 requirements:

625 (i) Post-development runoff volume of the land
626 area of the development shall not exceed predevelopment runoff
627 volume; where runoff volume is defined as the one and one-half
628 (1.5) year, twenty-four-hour peak discharge rate; or

629 (ii) The first inch of runoff or eighty percent
630 (80%) of one hundred-year runoff produced by the impervious
631 surfaces of the development shall be treated for total suspended
632 solids, total phosphorous and total nitrogen.

633 (5) **Waiver.** Upon application by a taxpayer, the State Tax
634 Commission, in consultation with the Department of Environmental
635 Quality, may issue a waiver of any regulatory provision adopted
636 pursuant to subsection (2) of this section, where the taxpayer has
637 made a showing that the development was in compliance with the
638 provision at the time of the issuance to the taxpayer of a
639 location certificate, and that the development is no longer in
640 compliance because of circumstances out of the taxpayer's control;
641 or of any regulatory provision adopted pursuant to subsection (3)
642 or (4) of this section, where the taxpayer has made a showing that
643 compliance with the provision is impracticable due to unique
644 characteristics of the site, or that deviation from the provision
645 produces no net negative environmental impact.

646 **SECTION 7.** The income tax credit authorized pursuant to this
647 act shall be administered by the State Tax Commission, and will be
648 available for seven (7) years. The total of all credits that
649 could be allocated in the first fiscal year after enactment would
650 be no more than Twenty Million Dollars (\$20,000,000.00) and, in
651 subsequent years, the Chairman of the State Tax Commission, in
652 consultation with the State Treasurer, may authorize up to Fifty
653 Million Dollars (\$50,000,000.00) of credit allocations per year.
654 Developers and owners will collect one-fifth (1/5) of the credit

655 due each year for the five (5) years following the smart growth
656 development's certification of eligibility.

657 **SECTION 8.** This act shall take effect and be in force from
658 and after July 1, 2005.