

By: Senator(s) Dawkins, Tollison, Williamson To: Finance

SENATE BILL NO. 3105

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 U.S. Department of Housing and Urban Development
57 (HUD) as per unit limits, codified in 12 USCA 17151(d)(3)(ii).

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

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

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

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

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

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

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

95 (k) "Energy Star®" means the voluntary labeling program
96 administered by the U.S. Environmental Protection Agency (EPA)

97 designed to identify and promote energy-efficient products,
98 equipment, and buildings.

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

103 (m) "Highly urbanized area" means:

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

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

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

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

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

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

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

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

129 (75%) by interior square footage of one or more of the following
130 uses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

224 (dd) "Wetland" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

325 (2) **Credit reservation certificate.** Upon application by a
326 taxpayer, the State Tax Commission shall issue a credit

327 reservation certificate, where the taxpayer has filed a copy of a
328 location certificate and made a showing that the taxpayer is
329 likely, within a reasonable time, to place in service the
330 development with respect to which the location certificate was
331 issued, and that the development is likely to qualify for the
332 allowance of a credit under this act. The certificate shall
333 state:

334 (a) The earliest taxable year for which the credit may
335 be applied;

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

338 (c) An expiration date; and

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

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

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

358 (b) Meets either the green building criteria set forth
359 in Section 6(4) of this act or the criteria required for

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

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

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

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

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

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

416 (2) **Location.**

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

421 (b) All buildings and developments with respect to
422 which a tax credit is applied under this act shall be served
423 either by adequate bus transit service or adequate rail transit
424 service;

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

427 (i) Within areas designated as reserves by the
428 federal or state government;

429 (ii) In public parkland;

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

432 (iv) In or within three hundred (300) feet of a
433 wetland;

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

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

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

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

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

449 (ii) A septic system.

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

454 (a) **Land use.** The standards shall require, at a
455 minimum, that average residential density shall be six (6) or more
456 dwelling units per residential acre. Residential acreage shall be
457 the calculated net of any land on the lot that is used for public

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

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

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

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

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

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

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

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

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

504 (i) Single-family homes comply with the energy
505 standards of the U.S. Environmental Protection Agency Energy Star
506 Homes program;

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

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

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

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

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

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

529 (i) Specify requirements to minimize wood use in
530 wood-framed houses; and

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

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

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

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

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

548 (i) Each showerhead shall not exceed two (2)
549 gallons per minute;

550 (ii) Each faucet shall not exceed one (1) gallon
551 per minute;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

587 (vi) Any wood stoves shall have ducted combustion
588 air;

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

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

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

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

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

607 2. The foundation shall have porous backfill
608 material;

609 3. The vapor retarder shall be directly under
610 slab; and

611 4. The exterior of the below-grade foundation
612 shall be waterproofed;

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

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

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

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

627 (ii) The first inch of runoff or eighty percent
628 (80%) of one hundred-year runoff produced by the impervious
629 surfaces of the development shall be treated for total suspended
630 solids, total phosphorous and total nitrogen.

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

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

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

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