



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 1111, 1112, and 1113 (as introduced 2-4-10)

Sponsor: Senator Jason E. Allen (S.B. 1111)
Senator Hansen Clarke (S.B. 1112)
Senator Patricia L. Birkholz (S.B. 1113)

Committee: Commerce and Tourism

Date Completed: 3-9-10

CONTENT

The bills would amend the Commercial Redevelopment Act to do all of the following:

- Include a "LEED certified facility" in the Act's definition of "facility".
- Allow a commercial facilities tax exemption to be issued for a LEED-certified facility in a city or village, or in a township with a population of at least 20,000.
- Require an application for an exemption certificate for a LEED-certified facility to be filed with the clerk of the local unit and, if an exclusion from State Education Tax (SET) mills were requested, with the State Tax Commission.
- Specify requirements regarding the application, approval, and issuance of a certificate for a LEED-certified facility.
- Exclude a LEED-certified facility from certain requirements for a local unit's approval of an exemption certificate application.
- Establish an alternative formula to calculate the commercial facilities tax for a LEED-certified facility.
- Allow the State Treasurer to exclude SET mills from the calculation of a LEED-certified facility's commercial facilities tax, for up to six years.
- Omit SET exclusions for LEED-certified facilities from the Act's limit on SET exclusions.
- Allow a local legislative body to revoke the exemption certificate for a LEED-certified facility only if the applicant submitted fraudulent evidence of LEED certification.
- Specify that a commercial facilities exemption certificate issued for a LEED-certified facility would remain in effect regardless of any lease or transfer of ownership of the facility.

The bills are described in detail below.

Senate Bill 1113

LEED-Certified Facility & Local Governmental Unit

The Commercial Redevelopment Act allows a local governmental unit to establish a commercial redevelopment district. A facility located in a district is exempt from the general property tax and is subject instead to the commercial facilities tax. The Act defines "facility" as a restored facility, a replacement facility, or a new facility. The bill would include a "LEED certified facility" in that definition.

"LEED certified facility" would mean land improvements classified by law for general ad valorem tax purposes as real property, including real property assessable as personal property under the General Property Tax Act, and that have received LEED certification or for which LEED certification will be sought, but not including land. A LEED-certified facility would not have to be dedicated to any primary purpose or use and could include, but would not be limited to, commercial, industrial, or residential uses or multiple uses.

"LEED certification" would mean a certification issued under the Leadership in Energy and Environmental Design green building rating system developed by the U.S. Green Building Council.

Under the Act, for local governmental units designating a commercial redevelopment district after June 30, 2008, "local governmental unit" means a city or village. (For those designating a district before that date, the term includes a township.) Under the bill, for purposes of LEED-certified facilities, "local governmental unit" would include a township with a population of 20,000 or more as well as a city or village.

Application for Certificate and SET Exclusion

The bill would allow an owner or lessee of a LEED-certified facility, or another person with the written approval of an owner or lessee, to file an application for a commercial facilities exemption certificate with the clerk of the local governmental unit where the LEED-certified facility was located.

If an exclusion of the State Education Tax were requested (as Senate Bill 1111 would allow), a copy of the application would have to be submitted to the State Tax Commission. An application could be for all or a portion, or multiple portions, of a LEED-certified facility. The application would have to be filed in the manner and form prescribed by the Commission.

Until the Commission prescribed the manner and form of application, the owner or lessee of a LEED-certified facility could apply by submitting the information specified in the bill. The application would have to contain or be accompanied by a general description of the facility and its use, and the general nature and extent of the LEED construction activities, including the activities that were or would be conducted for the purpose of achieving LEED certification. If the application were filed after LEED certification was obtained, the application would have to include evidence of LEED certification.

The local governmental unit would have to hold a public hearing on the application.

"LEED construction activities" would mean one or both of the following:

- Construction of a LEED-certified facility.
- Renovating or upgrading a LEED-certified facility for the purpose of achieving LEED certification or maintaining or increasing the level of an existing LEED certification.

Approval of Exemption Certificate

Under the Act, after the legislative body of a local governmental unit approves an application, the local clerk must issue the applicant a commercial facilities exemption certificate. In the case of a LEED-certified facility, the bill would require an exemption certificate to include the percentage of property tax applicable to the facility.

A certificate could not be issued for a LEED-certified facility until the applicant submitted evidence of LEED certification to the local unit, along with information sufficient to determine the starting date of LEED construction activities for purposes of calculating the

commercial facilities tax (as provided under Senate Bill 1112). The required information would have to be submitted to the local unit within five years after it approved the certificate application or a greater time authorized by the local unit's legislative body.

Senate Bill 1112

Issuance & Duration of Exemption Certificate

Unless revoked as allowed under the Act, a commercial facilities exemption certificate remains in force and effect for a period determined by the legislative body of the local governmental unit. The certificate may be issued for a period of at least one year, but not more than 12 years. The date of issuance of a certificate of occupancy, if required, is the date of completion of the facility. Under the bill, for a LEED-certified facility, the date of issuance of LEED certification would be the date of completion of the facility.

Under the Act, the legislative body of the local unit may not approve an application for an exemption certificate unless the following requirements are met:

- The restoration, replacement, or construction of the facility does not begin before the establishment of a commercial redevelopment district.
- The application relates to a construction, restoration, or replacement program that, when completed, constitutes a new, replacement, or restored facility situated within a commercial redevelopment district established in an eligible local unit.
- At the time the certificate is issued, it is reasonably likely that completion of the facility will include commercial activity, create employment, retain employment, or prevent a loss of employment in the community in which the facility is situated.

Under the bill, those requirements would not apply to a LEED-certified facility.

Commercial Facilities Tax

The Act includes a formula for calculating the amount of the commercial facilities tax, which is a specific tax levied on every owner of a facility to which a commercial facilities exemption certificate is issued.

The bill includes a separate calculation for the amount of the commercial facilities tax, in each year, for a LEED-certified facility. The higher the level of LEED certification (basic, silver, gold, or platinum), the lower the tax would be under the bill's formula.

Senate Bill 1111

SET Exclusion

Under the Act, within 60 days after a new commercial facilities exemption certificate is granted for a new or replacement facility, the State Treasurer may exclude up to one-half of the number of mills levied under the State Education Tax Act from the commercial facilities tax calculation, for up to six years. The Treasurer may do so if he or she determines that reducing the number of mills is necessary to reduce unemployment, promote economic growth, and increase capital investment in qualified local governmental units.

Under the bill, within 60 days after the Tax Commission received a commercial facilities exemption certificate application for a LEED-certified facility, the State Treasurer could exclude the mills levied under the SET Act for up to six years. The State Treasurer would have to submit written notice of the decision to the applicant and the local assessor. The State Treasurer's approval of an exclusion for a LEED-certified facility would become effective only if a commercial facilities exemption certificate were issued.

The Commercial Redevelopment Act prohibits the State Treasurer from granting more than 25 SET exclusions. Under the bill, exclusions for LEED-certified facilities would not be included in that limit.

Revocation of Exemption

Under the Act, the legislative body of the local governmental unit may revoke a commercial facilities exemption if it finds that the facility has not been completed within two years after the exemption certificate's effective date, or a greater time authorized by the legislative body for good cause. The legislative body also may revoke an exemption if it finds that the holder of the exemption has not proceeded in good faith with the replacement, restoration, or construction and operation of the facility in a manner consistent with the purposes of the Act, and in the absence of circumstances that are beyond the control of the certificate holder.

The bill specifies that the legislative body of the local unit could not revoke the exemption for a LEED-certified facility unless it found that the applicant submitted fraudulent evidence of LEED certification.

Transfer of Exemption

The Act allows the holder of a commercial facilities exemption certificate to transfer and assign it to a new owner or lessee of the facility, but only with the approval of the local unit after application by the new owner or lessee. Notice and hearing requirements for a certificate application also apply to a transfer.

The bill specifies that a commercial facilities exemption certificate issued for a LEED-certified facility would remain in force for all of the property as legally described in the certificate, notwithstanding any lease or transfer of ownership of all, any portion, or multiple portions of the LEED-certified facility. A transfer or assignment of the certificate would not be required to maintain the effectiveness of the certificate in the event of any lease or transfer of ownership.

MCL 207.662a et al. (S.B. 1111)
207.659-207.662 (S.B. 1112)
207. 653 et al. (S.B. 1113)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would likely have a small but indeterminate impact on State and local revenue. Expanding the definition of "facility" to include LEED-certified facilities likely would encourage facility owners to apply for a commercial facility tax exemption for an unknown amount of new activity. The impact would depend on the number of facilities that used this new exemption as well as the categories of the new LEED facilities certified and the total economic value of the various projects.

The bills could reduce revenue to the State School Aid Fund and local units and could increase State expenditures from the General Fund. State taxes could be reduced and the State would be liable through the School Aid Fund to reimburse school districts for lost revenue. Most other local property taxes abated due to the LEED-based commercial facility tax exemptions would not be reimbursed by the State, reducing local unit revenue.

Fiscal Analyst: Eric Scorsone

s0910s1111sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.