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Building green in Illinois: not just encouraged but law

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Most real estate developers, engineers, architects and investors today understand that implementing energy efficient and environmentally sound building practices has become more than a passing fad, an ethical obligation or even just good business.

Indeed, incorporating these “green” practices into real estate construction or renovation is the law. In the past 18 months, the Illinois legislature, and the governing bodies in the City of Chicago in particular, have recently passed a wave of new laws and created a whole host of new incentives designed to encourage and require the implementation of green building practices.

One example of the codification of Illinois legislature’s green agenda was the passage of the Green Buildings Act in July 2009 (GB Act). The GB Act requires that all “state-funded” building construction projects and major renovations of existing state-owned facilities of 10,000 square feet or more must not only meet or exceed LEED (Leadership in Energy and Environmental Design) standards or their equivalent (such as Green Globes), but achieve LEED Silver certification. Qualifying buildings of less than 10,000 square feet must still meet the highest standard of LEED rating system for new commercial construction and major renovation projects, but are not required to actually receive the LEED certification.

To obtain LEED Certification or to meet the requirements to obtain LEED certification, qualifying buildings must

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demonstrate adherence to a prescribed set of performance standards set forth by the U.S. Green Building Council designed to assist in the creation of highly efficient and environmentally sound buildings. While there are exceptions available in certain circumstances, the intent of the GB Act is clearly intended to have state funded or state owned buildings comply with a certain level of energy efficiency and to minimize their future environmental impact.

Despite its focus, however, the GB Act is not entirely clear as to its application. The term “state funded” is not defined, and the newness of the GB Act has left little time for additional rules to be adopted or the courts to interject. Even the commentary leading up to the passage of the GB Act does little to indicate whether “stated funded” means just “state owned” or if the term applies even to private sector projects that benefit from public funding, such as municipal bonds, or take advantage of state and city tax incentives. With further guidance, it could be argued that privately owned buildings that use some form of state funding could become subject to this act.

Another recent example of the codification of green building practices is the enactment of the Energy Efficient Building Act (EEB Act), which became effective in August 2009. This new law applies to residential and commercial buildings in the private sector. It is designed to reduce energy consumption by implementing stricter minimum standards for the design and construction of residential and commercial building projects. The EEB Act was originally only intended for commercial buildings, but the

Illinois legislature recently amended what was formerly known as the Energy Efficient Commercial Building Act to now also apply to residential buildings. The Energy Efficient Building Act adopts the 2009 International Energy Conservation Code (IECC) as the new minimum energy use standard. The IECC regulates the design and construction of buildings for the effective use of energy. Examples of such regulation include the minimum insulation R-values and fenestration U-factors for the building exterior envelope and minimum requirements for exterior envelope insulation, window and door U-factors and duct insulation, lighting and power efficiency, and water distribution insulation. The IECC has separate standards for residential buildings and commercial buildings, and, of course, there are several exceptions where the IECC does not apply, such as historic buildings.

In practice, the Energy Efficient Building Act also raises a few questions. First, it is unclear how the new standards will be policed. Second, it is unclear how these new, more stringent standards affect programs that were previously in place, such as the Chicago Green Permit Program. The Chicago Green Permit Program was instituted by the City of Chicago to encourage builders to build greener buildings by expediting the permit process for those projects that incorporate innovative green building strategies, and applicants that demonstrate an extraordinary level of green strategy in their building plans may have the consultant code review fees waved. Query whether the new, stricter codified standards mean that everyone seeking a building permit in Chicago will automatically qualify for expedited permitting or will the City of Chicago have to modify the process further to make it even more difficult to qualify a project for expedited permitting.

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existing incentives include:

— the Illinois Clean Energy Community Foundation, which provides funding to federally recognized 501(c)(3) nonprofit organizations and state and local government agencies that serve Illinois residents if certain green building practices are met;

— grants to private developers under the Green Neighborhood Grant Act; and

— the Illinois Energy Efficient Affordable Housing Construction Program awards energy grants to Illinois-based affordable housing developers to help offset the additional costs for including

energy efficient building practices in residential construction.

A few examples of pending legislation and incentives include:

— Senate Bill 3147 and House Bill 5380, which would authorize the Department of Commerce and Economic Opportunity to award income tax credits towards qualifying expenditures for energy efficient projects;

— Senate Bill 2505, which would allow local governments to establish “green energy special service areas” and permit homeowners located within those areas to arrange for low-interest financing (which

financing is then included in such homeowners’ property tax bill) for energy efficiency or renewable energy improvements; and

— House Bill 4784, which would provide a credit to taxpayers who install a geothermal, solar, wind, or fuel cell energy device on their Illinois property.

These new laws and incentives, as well as pending Illinois legislation, present challenges and great opportunities for knowledgeable industry participants to obtain a serious competitive advantage over those who are not current on green building practices.