

Concerns With Utilizing LEED As The Primary Green Building Rating System In Virginia

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As interest develops to ensure new structures in the Commonwealth (*and particularly in the State system*) are designed and built to appropriate energy efficiency standards as well as incorporating environmentally preferable building materials, certain proponents of the Leadership in Energy and Environmental Design (*i.e.* "LEED") Green Building Rating System, administered by the U.S. Green Building Council (USGBC) feel this particular standard should be the sole criteria used to achieve this goal in Virginia.

While the forest community in Virginia, as well as nationwide, supports the use of energy efficient systems and environmentally preferable building materials and encourages the establishment of ambitious goals in this regard, we feel that the LEED Green Building Rating System, as it is currently implemented, is seriously flawed and provides a bias against certain classes of "green" building materials based on invalid criteria. In addition, there are other generic concerns with adopting any "single, non-competitive, proprietary" system, and particularly one that is developed by an outside group with none of the protections and safeguards for Virginia citizens to provide input and maintain appropriate oversight of the standards.

As there have been several pieces of legislation during the past several General Assembly sessions, and in particular the 2007 Session dealing with LEED, we felt the development and distribution of this paper would provide a good overview of our concerns. Our general concerns and additional points are as follows:

- **LEED Exhibits A General Discrimination Against Wood.** The LEED rating system clearly discriminates against the use of wood products. In several specific "credits," certain wood products are put at a significant disadvantage. This is a disservice to "green" builders, architects, government, and the citizens of the Commonwealth. Wood products are an integral part of the U.S. building landscape, are a vital component of sound architectural design, and are **among the most environmentally friendly of all building materials. Wood demonstrably has the environmental advantages of being made from a renewable and sustainable resource, which also sequesters carbon, and comes from land supporting an ecologically diverse environment.** These unique values of wood are not provided for in LEED.

One specific example of this deals with the "*renewability*" of building materials. LEED provides points for using renewable materials but, unfortunately, their definition of "*renewability*" only accrues to materials with a life cycle of 10 years or less, and wood for construction usually has a growing cycle 35 to 45 or more years, and wood for millwork and other design components may be even longer. So even though thousands of forest landowners have been growing timber in Virginia for hundreds of years on a renewed, sustainable basis LEED only recognizes materials such as bamboo and straw. It seems odd that a bamboo grower in Brazil has advantages for renewability points with LEED that a tree farmer in Buckingham County does not.

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- **LEED Specifically Discriminates Against ANY Wood Certification Program other than FSC.** LEED discriminates against the two largest sustainable forestry programs in the U.S. The LEED rating system provides a specific credit only for forest products that have been certified by the Forest Stewardship Council (FSC). No credits are given for wood products produced by companies independently third-party certified to the Sustainable Forestry Initiative® (SFI) Program standard or to small private landowners who certify to the rigorous standards of the very first forest certification program - the American Tree Farm System® (ATFS).

Many of these forest product companies not aligned with FSC participate in the Sustainable Forest Initiative certification system, *which produces the overwhelming majority of certified wood construction materials in the state.* Similarly, thousands of individuals in Virginia participate in the American Tree Farm System, first created in 1941. It is the oldest forestland certification system there is with *hundreds of thousands of acres in Virginia certified.* (We would like to add that both of these particular programs have received commendation by the General Assembly of Virginia for their efforts.) Yet neither of these certification systems, or any program other than FSC for that matter, can qualify through LEED.

- **LEED Development Has Basically Been Closed and Non-Inclusive.** The U.S. Green Building Council has not developed the current LEED system in a consensus process open to all interested parties. The process USGBC used to create the current LEED standards does not meet any generally accepted criteria for the development of a consensus standard. Specifically, the USGBC fails to meet most of the measures of a successful standards development process set out by the American National Standards Institute (ANSI) and by OMB Circular A-119. Only very recently was the USGBC granted status as an ANSI Standards Developing Organization (SDO). While ANSI grants SDO status to a wide variety of organizations, SDO status alone does not mean that an organization's documents (such as the USGBC's LEED-NC 2.2) are automatically considered an ANSI standard. The document first must complete the rigorous review process which is detailed in the sponsoring organization's ANSI-approved procedures.

The forest community continues to be willing to sit with the USGBC and others to fully discuss our concerns. Hopefully, through a true consensus process, we can work together to develop an effective program to encourage energy and environmental considerations in commercial building design and construction. **However, the way to ensure this happens is for individual states to continue to send a strong message for the USGBC to amend their current practices and create a more open, true consensus-driven process.** For the past several years, many states have rejected the implementation of LEED in one form or the other, including Virginia. We hope Virginia will remain on this list.

Recently, the USGBC has opened a dialogue with the forest community to discuss our concerns, particularly regarding the standards used for wood and bio-based materials. While we are encouraged by this step, we feel Virginia must still convey the message that the State wants the parties to negotiate in an effective manner, and the rejection of LEED in its current form is the only way to do that.

- **LEED is not a "good" standard to begin with.** The National Institute of Science and Technology (NIST) has concluded that the LEED system does not properly rate products based on environmental criteria. We reference a September 2002 study sponsored by the U.S. Department of Commerce's NIST that is **highly critical of certain methodologies employed in the LEED system** for calculating environmental credits. (You may wish to review the following document for more information on their study: "Evaluation of LEED TM Using Life Cycle Assessment Methods. NIST GCR 02-836".) The study examined in detail three

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specific credits in each of the Material and Resources and Energy and Atmosphere areas of the LEED system for new building construction. The NIST report is **specifically critical of the use of arbitrary thresholds, the emphasis on cost rather than environmental impact measures, the lack of appropriate baselines and measures of improvement, and the inability to compare buildings in different locations on equal terms.** Independent research findings through the CORRIM project (*Consortium for Research on Renewable Industrial Materials*) validate this claim.

- **Virginia Already Has Language in the Code Regarding Energy Standards and Building.** As was stated earlier, the forest community does not oppose energy efficient buildings. That is why we strongly supported the energy efficient building language that was included in SB262 (*The Virginia Energy Plan*) that was passed in the 2006 Session. Most of the promoters of LEED state a primary concern is developing appropriate energy efficiency standards for State buildings. We feel there is ample language already in the Code to provide this. The current code now states (*Note: The new language from 2006 is italicized and boldfaced*):

§ 2.2-1132. Administration of capital outlay construction; exception for certain educational institutions.

B. The Division (*of Engineering and Buildings*) may establish standards, as needed, for construction by the Commonwealth and may, with the advice of the Attorney General, establish standard contract provisions and procedures for the procurement and administration of construction and for the procurement and administration of architectural and engineering services relating to construction, which shall be used by all departments, agencies and institutions of the Commonwealth. ***All departments, agencies and institutions of the Commonwealth shall ensure that the design and construction of state-owned buildings comply with the standards governing energy use and efficiency established by the Division.*** The standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the Commonwealth when project costs are reduced by the contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining the cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

- **Concerns Regarding Development of Certain State Standards by a Non-Governmental Organization (NGO).** The U.S. Green Building Council is a non-governmental organization which is only required to answer to its membership, not the citizens of the Commonwealth. While the development of standards by a state agency usually requires embracing the ideal of "open government" with citizen participation through an open and transparent process, the development of standards within the USGBC offers no such protections. There is no Freedom of Information Act applicability here, so questions and concerns by citizens regarding the process and decision making will only be fulfilled as the organization wishes.

That is why we prefer the current Code language providing for standards developed by the Division of Engineering and Buildings, which insures adequate opportunity for input by Virginia citizens as well as oversight by the legislature in any standards developed.

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- **Concerns Regarding A "Non-Competitive" and Exclusive Arrangement with a Non-Governmental Organization.** There are other Green Building Rating Systems in current use in addition to LEED, including Green Globes, administered by the Green Building Initiative. The Green Building Initiative (GBI) was the first green building organization accredited as a Standards Developing Organization (SDO) by the American National Standards Institute (ANSI) in September of 2005. Following this recognition, GBI began the process of developing Green Globes™ as an American National Standard. Recently the U.S. Green Building Council (USGBC) was also named a Standards Developing Organization (SDO) by ANSI. However, as mentioned earlier, SDO status alone does not mean that an organization's documents (*such as the USGBC's LEED-NC 2.2*) are automatically considered an ANSI standard. The document first must complete the rigorous review process which is detailed in the sponsoring organization's ANSI-approved procedures.

Generally speaking, we believe that the rapidly developing green building industry is well-served by fostering a marketplace that embraces a variety of approaches to creating a much greener built environment. Only through encouraging debate, technological advancement, and the continued evolution of best practices will we come closer to meeting environmental building goals.

Indeed, if we want the green building movement to mature and grow, *we need the power of competition to drive the improvements that will take us to the next level.* In fact, in addition to GBI and the USGBC, there are a number of organizations that have announced plans to develop minimum high performance building standards, including the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the American Society for Testing and Materials (ASTM), the National Home Builders Association (NHBA), and the National Institute of Building Sciences (NIBS).

With an estimated 100 million buildings in operation by 2010, it is imperative that organizations like the GBI, USGBC, ASHRAE, ASTM, NIBS, and others provide multiple solutions based on sound building science to help improve our built environment.

- **The Cost of Implementing LEED.** LEED can add considerable cost to a project. This is based on a number of factors, including the level of standard desired, whether full "certification" is required, and phase in periods. In terms of Virginia's limited budget and ever expanding needs, the Commonwealth should be cognizant of controlling costs whenever possible. Each of the bills requiring construction according to LEED standards has a fiscal impact statement provided by the Department of Planning and Budget that should be closely reviewed.

As an example, in the 2007 General Assembly session, for SB1273 (Green Buildings Act – Whipple, et al.) DPB estimates project costs could increase by \$500,000-\$2 million in FY 2007-FY 2008, \$1.5-\$6 million in FY 2008-FY 2010, and \$2.5-\$10 million thereafter. (*This is in addition to more State personnel that would be needed to implement the program*).

For HB 2555 (Green Buildings Act – Ebbin, et al.), DPB estimates project costs could increase by \$1-\$3 million in FY 2007-FY 2008, \$3-\$9 million in FY 2008-FY 2010, and \$5-\$15 million thereafter. (*This is in addition to more State personnel that would be needed to implement the program*).

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For HB 2656 (LEED Silver Standard – Marsden, et al.) DPB estimates project costs could increase by \$10-\$35 million beginning in FY 2007 and continuing thereafter. *(This is in addition to more State personnel that would be needed to implement the program).*

In other states' analyses, the increased costs associated with LEED have been similar. The 2006 Louisiana legislature considered HB 498, which would have required public buildings to be certified to the LEED rating system Silver level. The Legislative Fiscal Office produced a fiscal note for the bill detailing that the state would incur up to 10% construction cost increases from the legislation, and that any energy savings from the bill would not be commensurate with those costs.

The Maryland General Assembly considered HB 172 in 2003. The legislation would have required State-owned buildings over 7,500 gross square feet that are renovated or newly built to achieve the LEED Silver rating. The requirement also applied to leased buildings over 5,000 net square feet. The Department of Legislative Services stated that the additional costs incurred for meeting the legislation would be between 3% and 8%.

The federal General Services Administration (GSA) commissioned a study to provide a detailed review of the costs associated with building federal projects to a LEED Certified or higher rating. The study used a case study approach to analyze the costs of complying with each LEED rating level for both a new construction and modernization building. The study concludes that achieving a LEED rating could increase first-time construction costs by as much as 8%. For the office building modernization project case, LEED construction cost impacts ranged from 1.4% to 7.8%, depending on the extent of modernization and the rating level to be achieved. For the building project case, a LEED Certified or Silver rating could have a cost impact of 4.4%, depending on the approach taken to achieve the rating. For achieving a Gold rating for the new building project, the cost impact of ranged from 1.4% to 8.1%.

- Even compared to other green building rating systems, LEED's costs are considerably higher. The University of Minnesota completed a study in September 2006 comparing the LEED and Green Globes rating systems in the United States. The study found while the systems are "quite comparable" in contributing to a building's green performance, the costs for certifying and constructing a building to LEED were higher than those for Green Globes:

"Green Globes' simpler methodology, employing a user-friendly interactive guide for assessing and integrating green design principles for building, continues to be a point of differentiation to LEED's more complex paper-based system...In contrast, LEED tends to be more rigid, complex, and expensive to administer. Between registration, certification and documentation expenses a project can accrue significant costs. For instance, LEED's maximum fee for the certification process of a large commercial building (more than 500,000 sq. ft.) is \$ 20,000 for non-members (members: \$ 17,500), plus a fixed registration fee of \$ 600 (members: \$ 450). This compares to the flat registration fee of \$500 for Green Globes with certification costs estimated to range between \$ 4,000 and \$ 6,000." (Timothy M. Smith, et al., "Green Building Rating Systems; A Comparison of the LEED and Green Globes Systems in the U.S.", Sept. 2006)

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- **Many Groups Have Concerns With LEED:** The following statement was approved by the members of the Forest Council of Virginia, a coalition of organizations supporting a unified effort in promoting the wise use of Virginia's forest resources.

Opposition to the State's Endorsement of the LEED Green Building Rating System - The Council opposes the exclusive endorsement of the LEED (Leadership in Energy and Environmental Design) Green Building Rating System in its current form because of its proven bias against wood in general and Virginia wood products specifically, plus general concerns regarding the development of state mandated standards by non-governmental organizations (NGO's) that restrict public involvement and limit appropriate oversight.

The participating organizations in the Forest Council of Virginia appear below, and include companies and associations representing forest landowners, forest industry (*from family-owned businesses to Fortune 500 companies*), rank and file employees, and forestry professionals from all corners of the Commonwealth.

Statewide Associations:

Association of Consulting Foresters
Pulp and Paper Resource Council
Society of American Foresters
Virginia Agribusiness Council
Virginia Christmas Tree Grower's Assoc.
Virginia Farm Bureau Federation
Virginia Forest Products Association
Virginia Forestry Association
Virginia Loggers Association

Individual participating companies:

Georgia-Pacific Corporation
International Paper
MeadWestvaco Corporation
Smurfit-Stone Container Corporation

We appreciate the time you have given to review this document. Virginia's forests and forest products industry provide billions of dollars annually to Commonwealth and provides economic impact to every locality in Virginia. In fact, according to the recently released economic study, "Virginia's Forests - Our Common Wealth - 2006", the harvesting, processing and marketing of forest products generates more than \$25.2 billion annually. The forest products industry ranks 1st in manufacturing jobs (*accounting for one in every six manufacturing jobs*) and 1st in salaries and wages (*\$1 of every \$7 paid*). In addition, the market for wood products that is provided for landowners encourages their decision to continue keeping their lands forested and thus providing the many intrinsic benefits that forestlands provide, include water quality, wildlife habitat, and aesthetics.

We hope you will agree that any endorsement of LEED as the sole criteria for Green Building Standards in the Commonwealth will send the wrong message to thousands of forest products workers and hundreds of thousands of Virginia forestland owners.

If we can provide any additional information, please don't hesitate to contact us.



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The Council of State Governments is the premier multibranch organization forecasting policy trends for the community of states, commonwealths and territories on a national and regional basis.

CSG alerts state elected and appointed officials to emerging social, economic and political trends; offers innovative state policy responses to rapidly changing conditions; and advocates multistate problem-solving to maximize resources and competitiveness.

CSG promotes excellence in decision-making and leadership skills and champions state sovereignty.

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Foreword

The Council of State Governments (CSG) is pleased to bring you the **2007 print edition of *Suggested State Legislation***, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this part represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

The entries in this book were selected from hundreds of submissions. Most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

The Council of State Governments
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Introduction

“A single state’s experience in a new field frequently leads to the adoption of similar action in other states, if the problem is general, the approach is well conceived, and other states can be made aware of the action.”

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For more than 60 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype on interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as *A Legislative Program for Defense*. The Committee reconvened following the nation’s entry into World War II in order to develop a general program of state war legislation. By 1946, the volume of *Suggested State War Legislation* gave way to a volume simply titled *Suggested State Legislation*, an annual volume of draft legislation on topics of major governmental interest. Today SSL Committee members represent all regions of the country. They are generally legislators, legislative staff and other state governmental officials who contribute their time and efforts to assisting the states in the identification of timely and innovative state legislation.

Traditionally, SSL volumes were the culmination of a yearlong process in which legislation was received and reviewed by members of the SSL Committee in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. More recently, the SSL volumes were released concurrently online at CSG’s STARS database. However, even under this system, in some cases, the items that the committee voted to include in a volume had to be held for an as long as 11 months before they could be distributed to the states.

Beginning with the 2003 SSL Cycle, the SSL Committee produces SSL volumes electronically in segments, one segment after every committee meeting. Each segment will be published online approximately one month after a meeting. The electronic parts will be combined into a book that CSG will continue to publish at the end of the SSL Cycle, at least for the immediate future.

The SSL Committee considers legislation submitted by state officials and staff, CSG Associates and CSG staff. It will consider legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

Throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill or act represent a practical approach to the problem?
- Does the bill or act represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill or act logically consistent?
- Are the language of and style of the bill or act clear and unambiguous?

All items selected for publication in SSL are presented in a general format as shown in the following *Suggested State Legislation* Style Manual and Sample Act. However, beginning with the 1997 volume, items presented in *Suggested State Legislation* volumes more closely reflect the style and form as they were submitted to the program. Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.

Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions. Thus, readers should note that *Suggested State Legislation* drafts typically do not duplicate actual state legislation.

A "Statement," in lieu of a draft act, may appear in a volume when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. "Notes" also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area.

State officials and staff, CSG Associates and CSG staff are encouraged to submit – at any time – legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, P.O. Box 11910, Lexington, Kentucky 40578-1910, (859) 244-8000 or fax (859) 244-8001.

Readers should keep in mind that neither The Council of State Governments nor the SSL Committee are in the position of advocating the enactment of items that are presented in SSL Volumes. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

Interested readers can find out more about the SSL program by visiting the SSL pages at CSG's Internet Web site at www.csg.org.

Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. *Suggested State Legislation* drafts generally follow the same style. However, beginning with the 1997 volume, items presented in *Suggested State Legislation* more closely reflect the style and form as they were submitted to the program. The word "Act" refers to proposed and enacted bills. Attempts are made to ensure that items presented to committee members are the most recent versions. Interested parties should contact the originating state for the ultimate disposition in the state of any item in question, including substitute Acts and amendments.

Introductory Matter

The first component in a *Suggested State Legislation* draft is an abstract. Abstracts provide a brief description of the Act, highlight unique features, and provide background about other states, if applicable. SSL abstracts are typically compiled from the bill summaries in legislation that is submitted and approved for inclusion in SSL volumes, or from the originating state's legislative staff analysis. Copies of other state bills or laws referenced in abstracts or in SSL Notes can be obtained by contacting the states directly.

Submitted As

This component indicates the state, title, bill number or legal citation and adoption date of the original bill or law as submitted to the Suggested State Legislation Program. Readers should be aware that although legislation presented in *Suggested State Legislation* is based on state bills and laws, the Committee on Suggested State Legislation does not guarantee that items presented on its dockets or in *Suggested State Legislation* volumes represent the exact versions of those items as enacted by a state.

Standardized Sections and Form

Items presented in this and future *Suggested State Legislation* volumes will retain, to the extent possible, the same enumeration as the bill or Act as submitted by a state. This includes sections, subsections and paragraphs. However, modifications such as adding: "Severability," "Repealer," and "Effective Date," will be made to the draft as necessary.

Often it also is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.

Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.