

# PROPOSED REGULATION OF THE DIRECTOR OF THE OFFICE OF ENERGY

## LCB File No. R127-13

EXPLANATION- Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 701A.100 to 701A.110, as amended by sections 1 and 2 of Assembly Bill No. 33 and by section 1 of Assembly Bill No. 239, Statutes of Nevada 2013 chapter [TBD], Statutes of Nevada 2013, at page [TBD]

A REGULATION relating to energy; providing for the assessment and collection of certain fees; revising provisions governing the partial abatement of certain property taxes for buildings and structures which meet certain energy efficiency standards; and providing other matters properly relating thereto.

**Section 1.** Chapter 701A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. An applicant shall pay to the Director the following fees:*

*(a) For the review and approval of an application submitted pursuant to NRS 701A.110, Section 1, subsection (b)(1), \$875. An applicant shall pay the fee concurrently with the submission of his or her application. The Director will not approve an application for which the fee has not been timely paid pursuant to this paragraph.*

*(b) For the review and acceptance of the proof needed for a certificate of eligibility submitted pursuant to NRS 701A.110, Section 1, subsection (b)(2), \$875. An applicant shall pay the fee concurrently with the submission of his or her documentation providing such proof. The Director will not issue a certificate of eligibility for which the fee has not been timely paid pursuant to this paragraph.*

*2. The Director will review each fee prescribed by subsection 1 on or before December 31 of each even-numbered year to ensure that the amount of the fee reflects the actual cost to the Office of Energy in carrying out the duties described in subsection 1.*

*3. The fees collected pursuant to subsection 1 must be deposited by the Director into an interest-bearing account. The money deposited pursuant to this subsection and any interest earned on such money must be used only to pay the costs incurred by the Office of Energy in carrying out the duties described in subsection 1.*

**Sec. 2.** NAC 701A.200 is hereby amended to read as follows:

1. The LEED Green Building Rating System is adopted for use in this State with regard to certain buildings or other structures for the purposes of determining eligibility for partial tax abatements; *other rating systems deemed as equivalent by the Director may also be used for these purposes.*

2. Except as otherwise provided in this subsection and NAC 701A.210:

(a) The Director hereby adopts by reference all versions of the following LEED standards, *but not to the exclusion of versions of other standards which may be deemed as equivalent by the Director:*

(1) LEED-NC;

(2) LEED-EB; and

(3) LEED-CS.

(b) If the U.S. Green Building Council adopts a new or updated version of a LEED standard after December 4, 2007, the Director will determine whether the new or updated version is appropriate for use in this State and, if the Director determines that the new or updated version:

(1) Is appropriate for use in this State:

(I) The new or updated version becomes effective on such a date as may be determined by the Director; and

(II) The Director will post a notice of approval, a copy of the new or updated version and the effective date thereof at the State Library and Archives and the Office of Energy, and on the Internet website of the Office of Energy; or

(2) Is not appropriate for use in this State, the version of the LEED standard that was most recently adopted by the Director or determined to be appropriate for use in this State pursuant to this subsection continues to be effective.

3. The Director will review, evaluate and consider new and updated versions of LEED standards, *or equivalent standards*, at least once each year.

4. A copy of the LEED Green Building Rating System is available free of charge on the Internet website of the U.S. Green Building Council.

**Sec. 3.** NAC 701A.210 is hereby amended to read as follows:

1. In accordance with the provisions of NRS 701A.100, the LEED Green Building Rating System, *or equivalent rating system*, adopted by the Director pursuant to NAC 701A.200:

(a) Does not include any ~~LEED~~ standard:

(1) That has not been included in the LEED Green Building Rating System *or an equivalent rating system* for at least 2 years at the time the applicant provides proof to the Director pursuant to NAC 701A.240 and 701A.250 that the building or other structure meets the equivalent of the silver level or higher of the LEED Green Building Rating System *or an equivalent rating system* adopted by the Director; or

(2) For homes.

(b) Shall be deemed to require a building or other structure to obtain:

(1) At least ~~3~~ 5 points for energy conservation under the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or its equivalent*, to meet the equivalent of the silver level;

(2) At least ~~15~~ 7 points for energy conservation under the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or its equivalent*, to meet the equivalent of the gold level; and

(3) At least ~~18~~ 11 points for energy conservation under the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or its equivalent*, to meet the equivalent of the platinum level.

2. An applicant for a partial tax abatement must utilize an independent third-party commissioning firm to facilitate the fundamental building systems commissioning or existing building commissioning, as applicable, required by the LEED Green Building Rating System Energy and Atmosphere Prerequisite 1, *or its equivalent*.

3. As used in this section, “home” has the meaning ascribed to it in NRS 701A.100.

**Sec. 4.** NAC 701A.220 is hereby amended to read as follows:

1. A person who, with respect to a construction project involving a building or other structure, wishes to apply to the Director pursuant to this chapter and NRS 701A.110 for a partial tax abatement must, if the certification of the building or other structure:

(a) Will be based on LEED-NC or LEED-CS, *or their equivalent*, submit an application to the Office of Energy on a form prescribed by the Director within 120 days after receiving local government approval of the construction project; or

(b) Will not be based on LEED-NC or LEED-CS, *or their equivalent*, submit an application to the Office of Energy on a form prescribed by the Director within 120 days after registering the project with the U.S. Green Building Council *or an equivalent organization*.

2. The application must include:

(a) The name, address and telephone number of the applicant;

(b) The name and address of the owner of the affected real property, if the applicant is not the owner;

(c) The address of the real property;

(d) The address of the board of county commissioners of the county in which the real property is located;

(e) If the real property is located in a city, the name and address of the city manager and the address of the city council, if any, of that city;

(f) Any project title associated with the development or modification of the real property;

(g) For each building or other structure included within the construction project:

(1) The estimated gross square footage and number of floors of the building or other structure;

(2) The proposed use of the building or other structure;

(3) The estimated cost of the design and construction or retrofit, and maintenance and operation, of the building or other structure;

(4) The actual or estimated date of the start of the construction or retrofit;

(5) The expected date of occupancy of the building or other structure;

~~{(6) If applicable, a copy of each executed preconstruction or construction contract the applicant is relying upon to qualify as a pre-2007 applicant;}~~

~~—(7)}~~ **(6)** Proof that the building or other structure has been registered with the U.S. Green Building Council *or an equivalent organization*;

~~{(8)}~~ **(7)** The applicable ~~{LEED}~~ standard on which the certification of the building or other structure will be based;

~~[(9)]~~ (8) A statement containing the level and number of points of the applicable ~~LEED~~ standard at which the applicant expects the building or other structure to be certified, in the form of a checklist identifying the specific ~~LEED~~ credits that the project team intends to achieve;

~~[(10)]~~ (9) A statement whether any funding for the acquisition, design or construction *or renovation* of the building or other structure, and associated land, is being provided by a governmental entity in this State;

~~[(11)]~~ (10) A list of all sources of funding for the acquisition, design or construction *or renovation* of the building or other structure, and associated land, provided by a governmental entity in this State; and

~~[(12)]~~ (11) A statement whether the building or other structure is receiving or is expected to receive any other abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS;

(h) The name and contact information of the LEED accredited professional, *or equivalent*, assigned to the design team for the project or other person designated as the contact person on the application;

(i) A statement whether the building or other structure, or any part thereof, is or is expected in the future to be exempt from the taxes imposed on real property by chapter 361 of NRS pursuant to any provision of law other than NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS;

(j) A list of any improvements in the project that are not expected to be considered for LEED, *or equivalent*, certification;

(k) If the project is registered with the U.S. Green Building Council, *or an equivalent organization*, in a campus or multibuilding setting, a list of the buildings or other structures on the affected real property and the construction phases of each building or other structure;

- (l) A copy of the local government approval of the construction project; and
- (m) Any other information requested by the Director.

3. Upon receipt of all information required by this section, the Director will:

- (a) Notify the applicant in writing acknowledging that the application has been received;

and

(b) In accordance with the provisions of NRS 701A.110, forward a copy of the application and the written notification provided to the applicant to the:

- (1) Chief of the Budget Division of the Department of Administration;
- (2) Department of Taxation;
- (3) County assessor;
- (4) County treasurer;
- (5) Board of county commissioners;
- (6) City manager and city council, if any; and
- (7) Commission on Economic Development.

4. The applicant must:

(a) Identify any information included in the application which the applicant considers to be confidential; and

(b) Promptly amend the application if there is a significant change in the scope of the project.

5. The Director will not accept an application pursuant to this section for a building or other structure that on the date the application is registered has been issued a certificate of occupancy and has been certified by the U.S. Green Building Council *or an equivalent organization*.

**Sec. 5.** NAC 701A.240 is hereby amended to read as follows:

1. Within 48 months after an application for a partial tax abatement is submitted to the Director pursuant to NAC 701A.220, or within such time as the Director, for good cause shown, extends the deadline, the applicant must submit to the Director:

(a) Proof that the building or other structure meets the equivalent of the silver level or higher of the LEED Green Building Rating System *or an equivalent rating system* adopted by the Director; or

(b) An application to extend the period for providing such proof.

2. If an applicant has not submitted the proof or an application for extension required by subsection 1, the Director will consider the application abandoned and notify the:

(a) Applicant;

(b) Chief of the Budget Division of the Department of Administration;

(c) Department of Taxation;

(d) County assessor;

(e) County treasurer;

(f) Board of county commissioners;

(g) City manager and city council, if any; and

(h) Commission on Economic Development.

3. If the Director, after reviewing the proof submitted by the applicant pursuant to subsection 1, concludes that the building or other structure is eligible for a partial tax abatement, the Director will, not later than 120 days after receiving that proof, issue a certificate of eligibility for the abatement and provide a copy to the:

(a) Applicant;

(b) Chief of the Budget Division of the Department of Administration;

(c) Department of Taxation;



- (d) County assessor;
- (e) County treasurer;
- (f) Board of county commissioners;
- (g) City manager and city council, if any; and
- (h) Commission on Economic Development.

4. The certificate of eligibility will include the duration and annual percentage of the partial tax abatement as provided in NAC 701A.280 and subsection 4 of NRS 701A.110, and identify each building or other structure to which the abatement should be applied. The Director may indicate that the abatement should be applied to an ancillary structure if the ancillary structure was specified in the application. The Director will include as part of the certificate of eligibility his findings of fact, conclusions of law and order explaining the reasons for issuing the certificate.

5. If the Director, after reviewing the proof submitted by the applicant pursuant to subsection 1, concludes that the building or other structure is not eligible for a partial tax abatement, the Director will, not later than 120 days after receiving that proof, issue a certificate of ineligibility for the abatement and provide a copy to the:

- (a) Applicant;
- (b) Chief of the Budget Division of the Department of Administration;
- (c) Department of Taxation;
- (d) County assessor;
- (e) County treasurer;
- (f) Board of county commissioners;
- (g) City manager and city council, if any; and
- (h) Commission on Economic Development.

Ê The Director will include as part of the certificate of ineligibility his findings of fact, conclusions of law and order explaining the reasons for issuing the certificate of ineligibility.

6. If a certificate of eligibility is issued:

(a) On or after July 1 and on or before March 31 of a fiscal year, the abatement becomes effective on July 1 of the immediately following fiscal year. The Director will not issue a certificate of eligibility on or before March 31 of a fiscal year with respect to an application that is not submitted to the Director on or before February 1 of that fiscal year.

(b) On or after April 1 and on or before June 30 of a fiscal year, the abatement becomes effective on July 1 of the fiscal year next following the immediately following fiscal year.

7. A certificate of eligibility or a certificate of ineligibility issued pursuant to this section is a final order of the Director for purposes of judicial review.

**Sec. 6.** NAC 701A.250 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, the Director will accept as proof that a building or other structure for which a partial tax abatement is sought meets the equivalent of the silver level or higher of the LEED Green Building Rating System, *or an equivalent rating system*, adopted by the Director:

(a) An original or certified copy of a letter from the U.S. Green Building Council, *or an equivalent organization*, informing the applicant that the building or other structure meets the LEED silver level, *or equivalent*, or higher;

(b) Official documentation issued by the U.S. Green Building Council, *or an equivalent organization*, setting forth the number of LEED points, *or their equivalent*, obtained by the building or other structure; or

(c) Any other information acceptable to the Director that, in the judgment of the Director, evidences compliance with the requirements of the LEED Green Building Rating System, *or an equivalent rating system*, adopted by the Director.

2. In addition to the documentation required by subsection 1, the proof submitted pursuant to this section must include:

(a) A statement whether any funding for the acquisition, design or construction of the building or other structure, and associated land, is being provided by a governmental entity in this State;

(b) A statement whether the building or other structure is receiving or is expected to receive any other abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS;

(c) A statement whether the building or other structure, or any part thereof, is or is expected in the future to be exempt from the taxes imposed on real property by chapter 361 of NRS pursuant to any provision of law other than NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS;

(d) An overall project narrative;

(e) The documentation submitted to the U.S. Green Building Council, *or an equivalent organization*, to obtain points for water efficiency under the LEED Green Building Rating System, *or an equivalent rating system*;

~~[(f) For pre-2007 applicants:~~

~~—(1) The documentation submitted to the U.S. Green Building Council to comply with the LEED Green Building Rating System Energy and Atmosphere Prerequisite 2 (Minimum Energy Performance); or~~

~~—(2) Any documentation that, in the judgment of the Director, demonstrates the energy efficiencies achieved through compliance with the LEED Green Building Rating System Energy and Atmosphere Prerequisite 2 (Minimum Energy Performance); and~~

~~—(g) For applicants other than pre-2007 applicants:~~

~~(1)~~ *(f)* The documentation submitted to the U.S. Green Building Council, *or an equivalent organization*, to obtain points under the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or equivalent*, including, without limitation, any pertinent information regarding general building energy model, energy performance, building energy performance baseline, baseline and proposed design input parameters, baseline performance, performance rating, percentage improvement and points achieved; or

~~(2)~~ *(g)* Any documentation that, in the judgment of the Director, demonstrates the energy efficiencies achieved through compliance with the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or equivalent*.

**Sec. 7.** NAC 701A.260 is hereby amended to read as follows:

1. The Director may require an applicant who has been issued a certificate of eligibility pursuant to NAC 701A.240 or the tax abatement coordinator for a building or other structure to which the certificate of eligibility relates to submit to the Director on an annual or other reasonable basis such information as the Director requires to determine whether the parcel on which the building or other structure is located is receiving another abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS.

2. After a certificate of eligibility has been issued pursuant to NAC 701A.240, the tax abatement coordinator for a building or other structure to which the certificate of eligibility relates:

(a) Shall:

(1) Notify the Director if the building or other structure is sold during the term of the partial tax abatement; and

(2) Provide the buyer of the building or other structure with written notice of the certificate of eligibility and a copy of the statutes and regulations regarding the owner's rights and responsibilities relating to the certificate of eligibility;

(b) Must submit to the Director as prescribed in subsection 3:

(1) Documentation of energy performance which indicates the pertinent ENERGY STAR rating or equivalent ENERGY STAR rating, annual energy reduction, annual summer peak demand reduction and ~~if the applicant for that certificate of eligibility:~~

~~—— (I) Qualified as a pre-2007 applicant, compliance with the requirements for the LEED-Green Building Rating System Energy and Atmosphere Prerequisite 2 (Minimum Energy Performance); or~~

~~—— (II) Did not qualify as a pre-2007 applicant, } compliance with the requirements for the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance) *or equivalent*;~~

(2) A summary of the annual utility bills, including the amount of cost and usage, for each type of energy used by the building or other structure;

(3) A summary of the annual water bills, including the amount of cost and usage, for the building or other structure; and

(4) Any documentation that, in the judgment of the Director, demonstrates compliance with the LEED Green Building Rating System *or an equivalent rating system*; and

(c) Must submit to the Director as prescribed in subsection 3 written recertification from a third-party commissioning firm stating that the energy systems of the building or other structure are still operating in general compliance with the original project requirements, with particular focus and emphasis on certifying that the energy conservation measures upon which the original certificate of eligibility was based are still being achieved. The third-party commissioning firm providing the recertification letter should typically be the same firm that provided the original fundamental building systems commissioning or existing building commissioning services on the project.

3. The documentation required by:

(a) Paragraph (b) of subsection 2 must be submitted on or before March 15 of the third and each subsequent year after the certificate of eligibility was issued.

(b) Paragraph (c) of subsection 2 must be submitted within 60 days after the end of the:

(1) Third year after the certificate of eligibility was issued if the duration of the partial tax abatement is 5 or 6 years;

(2) Third and fifth years after the certificate of eligibility was issued if the duration of the partial tax abatement is 7 or 8 years; and

(3) Third, fifth and seventh years after the certificate of eligibility was issued if the duration of the partial tax abatement is 9 or 10 years.

4. Upon determining that the parcel on which the building or other structure is located is receiving another abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS, the Director will notify the owner of the building or other structure and the Department of Taxation

in writing that the certificate of eligibility relating to the building or other structure has been suspended, and indicate the term of the suspension.

5. Upon determining that the building or other structure may have ceased to qualify for the level of certification for which the partial tax abatement was issued, or that the owner of the building or other structure may have failed to comply with any conditions imposed by the Director in issuing the partial tax abatement, the Director will notify the owner of the building or other structure of the findings of the Director and provide the owner a reasonable opportunity to cure any noncompliance issues included in the findings. If the owner fails to cure the noncompliance issues within the time or in accordance with the terms provided by the Director, the Director will issue a certificate of termination or reduction of eligibility, including his findings of fact, conclusions of law and order, which declares that the building or other structure has ceased to meet the standard upon which the certificate of eligibility was based, specifies the areas of noncompliance, and terminates the partial tax abatement or reduces the partial tax abatement to the level of certification for which the building or other structure qualifies. The Director will provide a copy of the certificate of termination or reduction of eligibility to the:

- (a) Owner of the building or other structure;
- (b) Chief of the Budget Division of the Department of Administration;
- (c) Department of Taxation;
- (d) County assessor;
- (e) County treasurer;
- (f) Board of county commissioners;
- (g) City manager and city council, if any; and
- (h) Commission on Economic Development.

6. A certificate of termination or reduction of eligibility issued pursuant to this section is a final order of the Director for purposes of judicial review.

7. For the purposes of this section:

(a) On or before the date of submission to the Director of proof that a building or other structure meets the equivalent of the silver level or higher of the LEED Green Building Rating System, *or an equivalent rating system*, adopted by the Director, the applicant for a partial tax abatement shall designate a tax abatement coordinator for the building or other structure, and submit the name and address of the tax abatement coordinator to the Director; and

(b) Within 60 days after:

(1) The sale or other transfer of ownership of the building or other structure during the term of the partial tax abatement, the purchaser or other transferee shall designate a tax abatement coordinator for the building or other structure, and submit the name and address of the tax abatement coordinator to the Director; and

(2) The designation of any successor tax abatement coordinator for the building or other structure during the term of the partial tax abatement, the successor shall submit his name and address to the Director.

**Sec. 8.** NAC 701A.280 is hereby amended to read as follows:

1. If the Director issues a certificate of eligibility pursuant to NAC 701A.240 for a building or other structure that meets the equivalent of the silver level or higher of the LEED Green Building Rating System, *or an equivalent rating system*, adopted by the Director, the Director will set the duration of the partial tax abatement for the building or other structure, based upon the number of points awarded by the U.S. Green Building Council, *or equivalent organization*, for energy conservation under the LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), *or its equivalent*, as provided in the



following table (*applicable to structures registered under the LEED-NC or LEED-CS, or equivalent, standards; structures registered under the LEED-EB, or equivalent, standard are eligible for a maximum 5 year abatement, but otherwise qualify as provided in the following table*):

LEED Certification Level, or equivalent	<del>{1-2 points for Energy Conservation from U.S.G.B.C.}</del>	<del>{3 points for Energy Conservation from U.S.G.B.C.}</del> <i>5-6 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>	<del>{4 points for Energy Conservation from U.S.G.B.C.}</del> <i>7-10 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>	<del>{5 points for Energy Conservation from U.S.G.B.C.}</del> <i>11-12 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>	<del>{6 points for Energy Conservation from U.S.G.B.C.}</del> <i>13-14 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>	<del>{7 points for Energy Conservation from U.S.G.B.C.}</del> <i>15-16 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>	<del>{8-10 points for Energy Conservation from U.S.G.B.C.}</del> <i>17-21 points for Optimize Energy Performance from U.S.G.B.C., or equivalent</i>
Silver	<del>{No abatement}</del>	25 percent abatement for 5 years	25 percent abatement for 6 years	25 percent abatement for 7 years	25 percent abatement for 8 years	25 percent abatement for 9 years	25 percent abatement for 10 years
Gold	<del>{No abatement}</del>	25 percent abatement for 5 years	<del>{25}</del> 30 percent abatement for 6 years	30 percent abatement for 7 years	30 percent abatement for 8 years	30 percent abatement for 9 years	30 percent abatement for 10 years
Platinum	<del>{No abatement}</del>	25 percent abatement for 5 years	<del>{25}</del> 30 percent abatement for 5 years	<del>{30}</del> 35 percent abatement for 7 years	<del>{30}</del> 35 percent abatement for 8 years	<del>{30}</del> 35 percent abatement for 9 years	<del>{30}</del> 35 percent abatement for 10 years