

ASSEMBLY, No. 3191

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MARCH 7, 2022

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

The “Green Building Tax Credit Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing certain tax credits for the meeting of green
2 building standards, and supplementing Title 52 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the "Green
9 Building Tax Credit Act."

10
11 2. As used in this act:

12 "Allowable costs" means amounts properly chargeable to capital
13 account other than for purchase of land or any remediation costs,
14 which are: paid or incurred for construction or rehabilitation;
15 commissioning costs; interest paid during the construction or
16 rehabilitation period; legal, architectural, engineering, and other
17 professional fees allocable to construction or rehabilitation; closing
18 costs for construction or mortgage loans; recording taxes and filing
19 fees incurred with respect to construction or rehabilitation; site
20 costs, such as temporary electrical wiring, scaffolding, demolition
21 costs, and fencing and security facilities; and costs of carpeting,
22 partitions, walls and wall coverings, ceilings, lighting, plumbing,
23 electrical wiring, and ventilation; provided that such costs shall not
24 include the cost of telephone systems and computers other than
25 electrical wiring costs and shall not include the cost of fuel cells or
26 photovoltaic modules including installation. Allowable costs shall
27 not exceed \$280 per square foot of interior space, for both
28 commercial and residential space, except that the Department of
29 Community Affairs may raise the maximum allowable costs by up
30 to 10% on each of up to two occasions in the seven-year period next
31 following the effective date of this act.

32 "Carpet and Rug Institute Green Label Indoor Air Quality Test
33 Program" means the testing program developed by the Carpet and
34 Rug Institute, as recognized by the Department of Environmental
35 Protection, to aid in the selection of carpet, adhesives, and cushion
36 materials that minimize adverse impacts to indoor air quality.

37 "Energy Star" means the voluntary labeling program
38 administered by the United States Environmental Protection Agency
39 and the United States Department of Energy designed to identify
40 and promote energy-efficient products, equipment, and buildings.

41 "Forest Stewardship Council" means the international nonprofit
42 organization founded in 1993 to support environmentally
43 appropriate, socially beneficial, and economically viable
44 management of the world's forests.

45 "Green building" means a building meeting the standards
46 prescribed and adopted pursuant to section 7 of this act.

1 "Impervious surface" means a surface that has been compacted
2 or covered with a layer of material so that it is highly resistant to
3 infiltration by water.

4 "Improvement" means any constructed element which becomes
5 part of, is placed upon, or is affixed to real estate.

6 "LEED Green Building Rating System" means the Leadership in
7 Energy and Environmental Design green building rating system
8 developed by the United States Green Building Council.

9 "LEED Residential Green Building Rating System" means the
10 Leadership in Energy and Environmental Design green building
11 rating system for residential buildings, as may be developed by the
12 United States Green Building Council.

13 "Old growth timber" means timber of a forest from the late
14 successional stage of forest development, as defined by the
15 Department of Environmental Protection.

16 "Site improvement" means any construction work on, or
17 improvement in connection with, a development limited to streets,
18 roads, parking facilities, sidewalks, drainage structures, and
19 utilities.

20 "Stormwater management measures" means structural and
21 nonstructural control of stormwater runoff and nonpoint pollution.

22 "Tax year" means the accounting or privilege period of the
23 relevant business entity.

24 "Tropical hardwood" means any hardwood scientifically
25 classified as an angiosperm which grows in a tropical moist forest,
26 as determined by the Department of Environmental Protection.

27
28 3. a. A taxpayer shall be granted a credit for allowable costs
29 paid or incurred by the taxpayer in connection with a green
30 building, to be computed as provided in this section, against any tax
31 imposed under the "Corporation Business Tax Act (1945),"
32 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the "New Jersey
33 Gross Income Tax Act," pursuant to N.J.S.54A:1-1 et seq., the tax
34 on sewerage and water corporations pursuant to P.L.1940, c.5
35 (C.54:30A-49 et seq.), the tax on marine insurance companies
36 pursuant to R.S.54:16-1 et seq., and the general tax on insurers
37 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.). The credit shall
38 be an amount equal to the sum of the following, provided, however,
39 that the amount shall not exceed the amount set forth in the credit
40 reservation certificate obtained pursuant to section 4 of this act:

41 (1) 4.0% of allowable costs; and

42 (2) 0.5%, 1.0%, 1.5%, or 2.0% of allowable costs, attributable to
43 buildings but not to other site improvements, qualifying as
44 Certified, Silver, Gold, or Platinum status, respectively, under the
45 LEED Green Building Rating System or the LEED Residential
46 Green Building Rating System.

47 b. The Department of Community Affairs, the Department of
48 Environmental Protection, and the Division of Taxation in the

1 Department of the Treasury shall jointly adopt, pursuant to the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.), such rules and regulations as may be necessary to implement
4 this act. These rules and regulations shall be designed to encourage
5 the implementation of green building principles and maintain high
6 but commercially reasonable standards for obtaining tax credits
7 under this act. The rules and regulations shall establish a
8 reasonable time for submission of applications and shall establish a
9 method of allocating credit reservation certificates pursuant to
10 section 4 of this act among eligible applicants, which shall
11 generally be on a first-come, first-served basis.

12 c. On or before six years after the effective date of this act, the
13 Commissioner of Community Affairs, in consultation with the
14 Commissioner of Environmental Protection and the Director of the
15 Division of Taxation, shall prepare and submit a written report
16 regarding the number of certificates and taxpayers applying the
17 credit provided for under this act, the amount of the credits granted,
18 the geographical distribution of the credits granted, and any other
19 information that the Department of Community Affairs, the
20 Department of Environmental Protection, or the Division of
21 Taxation may deem useful or appropriate. An initial draft of the
22 report shall be so issued within the first four years following the
23 effective date of this act. The report shall be submitted to the
24 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
25 19.1), to the Legislature.

26
27 4. a. To be eligible for a tax credit pursuant to section 3 of
28 this act, a taxpayer shall submit an application, in writing, to the
29 Department of Community Affairs for a credit reservation
30 certificate. The Department of Community Affairs shall issue a
31 credit reservation certificate if the taxpayer has made a showing that
32 the taxpayer is likely, within a reasonable time, to place in service
33 the building for which a credit is sought, and that the building
34 would qualify for the allowance of a credit pursuant to section 3 of
35 this act. The certificate shall state (1) the earliest tax year for which
36 the credit may be applied, (2) the maximum amount of the total
37 credit allowed and the maximum amount of credit allowed in any
38 single tax year, (3) an expiration date, and (4) such other
39 information as the Department of Community Affairs may
40 prescribe. The certificate shall apply only to the building placed in
41 service by the specified expiration date. The expiration date may be
42 extended at the discretion of the Commissioner of Community
43 Affairs in order to avoid undue hardship.

44 b. The Department of Community Affairs shall not issue a
45 credit reservation certificate pursuant to subsection a. of this section
46 for any building that received the required building permit prior to
47 the effective date of this act.

1 5. a. For the first year for which a taxpayer intends to apply a
2 credit under this act, the taxpayer shall obtain an eligibility
3 certificate from the Department of Community Affairs. The
4 Department of Community Affairs shall issue an eligibility
5 certificate to a taxpayer if the taxpayer has provided:

6 (1) a certification from an architect or professional engineer,
7 licensed to practice in New Jersey, that the building with respect to
8 which the credit is applied meets either:

9 (a) the green building standards prescribed and adopted
10 pursuant to section 7 of this act; or

11 (b) the criteria required for Certified, Silver, Gold, or Platinum
12 status under the LEED Green Building Rating System or LEED
13 Residential Green Building Rating System;

14 (2) a credit reservation certificate obtained pursuant to section 4
15 of this act;

16 (3) a certificate of occupancy, for the building or buildings that
17 is the subject of the credit;

18 (4) a statement that the building or buildings shall remain in
19 service during that year; and

20 (5) any other information the Department of Community Affairs
21 deems necessary to properly effectuate the intent of this act.

22 The eligibility certificate shall include sufficient information to
23 identify each building, the amount of the credit for which the
24 taxpayer is eligible and any other information that the Department
25 of Community Affairs may prescribe. Upon certification, the
26 Commissioner of the Department of Community Affairs shall
27 submit a copy of the eligibility certificate to the taxpayer and the
28 Director of the Division of Taxation in the Department of the
29 Treasury.

30 The Department of Community Affairs shall not issue an
31 eligibility certificate pursuant to this section to a taxpayer for any
32 building that received the required building permit prior to the
33 effective date of this act.

34 b. If the Department of Community Affairs has reason to
35 believe that an architect or professional engineer, in making any
36 certification under this section, engaged in professional misconduct,
37 the department shall so inform the New Jersey State Board of
38 Architects, or the State Board of Professional Engineers and Land
39 Surveyors, as appropriate, in the Division of Consumer Affairs of
40 the Department of Law and Public Safety.

41
42 6. a. When filing a return that includes a claim for a credit
43 pursuant to this act, the taxpayer shall include a copy of the
44 eligibility certificate obtained pursuant to section 5 of this act. For
45 each taxpayer who is eligible for a credit under this act, the
46 Division of Taxation in the Department of the Treasury shall allow
47 a credit, provided that the credits, in the aggregate, shall not exceed
48 \$20 million for the first fiscal year of tax credit availability and, in

1 each of the subsequent six fiscal years, shall not exceed \$50
2 million; provided further that any unused allocable amounts shall
3 roll over to subsequent fiscal years. After the seventh fiscal year of
4 tax credit availability no credit shall be available.

5 b. For any tax year, a taxpayer may apply no more than 20% of
6 the total amount allowed under section 3 of this act. The amount of
7 tax credit otherwise allowed under section 3 of this act, which
8 cannot be applied during a tax year, may be carried over, if
9 necessary, to the 15 tax years following a credit's first eligible tax
10 year.

11 c. If a credit is owed to a building owner under this act with
12 respect to property, and the property, or an interest therein, is sold,
13 the credit for the period after the sale which would have been
14 allowed under this act to the prior owner had the property not been
15 sold shall be allowed to the successor owner if that right is specified
16 in the deed transferring the property and the Department of
17 Community Affairs and the Division of Taxation in the Department
18 of the Treasury are notified of the transaction and intended
19 distribution of the credit. If the credit is not transferred pursuant to
20 this subsection, then the remaining credit shall remain with the prior
21 building owner.

22 d. The amount of credit granted under this act to a New Jersey
23 S corporation or an entity classified as a partnership for federal tax
24 purposes shall be passed through to the partners, members,
25 shareholders, or owners respectively, either in proportion to their
26 ownership interest in the equity or as the partners, members,
27 shareholders, or owners mutually agree as provided in an executed
28 document detailing the alternate distribution method. The entity
29 shall notify the Department of Community Affairs and the Division
30 of Taxation of the relevant ownership interests and the intended
31 distribution method in the taxpayer's application for the tax credit.

32 e. Each taxpayer shall, for any tax year for which a credit is
33 claimed pursuant to this act, maintain records of such information
34 as the Department of Community Affairs and the Division of
35 Taxation shall determine, and report that information to the
36 Department of Community Affairs and the Division of Taxation in
37 the form and at the time that the two agencies shall determine.

38
39 7. a. For the purposes of this act, a building shall be
40 considered a green building if it meets the standards prescribed and
41 adopted pursuant to subsection b. of this section, provided that, with
42 respect to residential and tenant space, compliance with standards
43 set forth in paragraphs (1), (2), (3), (5) and (8) of subsection b. of
44 this section shall not be required if the taxpayer does not incur or
45 pay the cost of the equipment, appliances, fixtures, materials,
46 finishes, furnishings or other items relevant to compliance with the
47 standard.

1 b. Within one year after the effective date of this act, the
2 Department of Community Affairs, in consultation with the
3 Department of Environmental Protection, shall adopt, pursuant to
4 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.), standards for the purposes of this act, and shall review and
6 update those standards at least every two years from the date on
7 which they are adopted, with respect to:

8 (1) Energy Efficiency. The standards shall require, at a
9 minimum, that (a) single family homes comply with the energy
10 standards of the New Jersey Energy Star Homes program, or, if that
11 program is not in effect at the time of application, the United States
12 Environmental Protection Agency Energy Star Homes program; (b)
13 energy use in all other buildings shall not exceed 65% of the energy
14 use permitted by the relevant New Jersey energy code; (c)
15 equipment and appliances, for which Energy Star standards exist,
16 including but not limited to refrigerators, dishwashers and washing
17 machines, shall meet those Energy Star standards; and (d) no less
18 than 40% of high-use lighting fixtures shall meet Energy Star
19 standards;

20 (2) Building Materials. The standards shall, at a minimum,
21 specify requirements regarding minimum percentages of recycled
22 content and renewable source material and maximum levels of
23 toxicity and volatile organic compounds. Standards shall be
24 developed for building materials, finishes, and furnishings,
25 including but not limited to: concrete and concrete masonry units;
26 millwork substrates; insulation; ceramic, ceramic glass and
27 cementitious tiles; ceiling tiles and panels; flooring and carpet;
28 paints, coatings, sealants, and adhesives; and furniture. The
29 development of the standards shall be informed by the LEED Green
30 Building Rating System and the LEED Residential Green Building
31 Rating System;

32 (3) Wood Use. The standards shall, at a minimum, (a) specify
33 requirements to minimize wood use in wood-framed houses; and (b)
34 require that old growth timber and tropical hardwood, except
35 recycled wood and tropical hardwood certified in accordance with
36 the protocol of the Forest Stewardship Council or, in lieu thereof, of
37 another organization deemed by the Department of Environmental
38 Protection to be authorized and capable of providing an equivalent
39 protocol, shall not be used;

40 (4) Heat Island Reduction. The standards shall require, at a
41 minimum, that (a) at least 50%, by square footage, of non-roof
42 impervious surfaces, including driveways, parking areas, walkways
43 and plazas, be light-colored or covered with specified coatings that
44 improve reflectance; and (b) roofs shall be composed of Energy Star
45 labeled roof products, except if solar panels or roof gardens are
46 installed;

47 (5) Water Efficiency. The standards shall require, at a
48 minimum, that (a) each showerhead shall not exceed 2.0 gallons per

1 minute; (b) each faucet shall not exceed 1.0 gallons per minute; (c)
2 toilet flush volume shall not exceed 1.6 gallons; and (d) for
3 commercial buildings, the drift rate of any cooling tower shall not
4 exceed 1%;

5 (6) Heating and Cooling. The standards shall require, at a
6 minimum, that central air conditioning refrigerant charge and air
7 flow shall be documented to be within 10% of manufacturer
8 recommendations;

9 (7) Durability. The standards shall require, at a minimum, that
10 (a) roofs shall have a warranty of no less than 40 years; (b)
11 insulated windows shall have a warranty of no less than 10 years;
12 (c) overhangs shall include at least 80% of full attic/roof-slope
13 insulation R-value; and (d) head casing flashing shall be installed
14 for all windows and exterior doors;

15 (8) Indoor Air Quality. The standards shall require, at a
16 minimum, that (a) interior paints shall contain no more than 100
17 grams per liter of volatile organic compounds; (b) sealants and
18 adhesives used for interior applications shall contain no more than
19 250 grams per liter of volatile organic compounds; (c) carpets,
20 carpet cushions, and any necessary adhesives shall meet the
21 standards set forth in the Carpet and Rug Institute Green Label
22 Indoor Air Quality Test Program; (d) carpets shall not be installed
23 in basements, bathrooms, kitchens, or within a four foot radius of
24 the center of any doorway which leads outdoors; (e) only direct-
25 vent, closed-combustion, or power vented space heating and water
26 heating equipment shall be used, and vent-free space heating or
27 water heating equipment shall not be used; (f) any wood stoves
28 shall have ducted combustion air; (g) carbon monoxide detectors
29 shall be installed consistent with the United States Consumer
30 Product Safety Commission recommendations, and with at least one
31 detector per 500 square feet of interior space; (h) enclosed parking
32 shall be completely air-sealed from attached indoor spaces; (i) every
33 building shall be furnished with a ventilation system and for
34 commercial buildings the sizing of the system shall conform with
35 the applicable standard set forth by the American Society of
36 Heating, Refrigerating and Air-Conditioning Engineers; and (j)
37 foundations of residential units shall be constructed according to the
38 following requirements, unless the Department of Community
39 Affairs approves alternative plans to ensure dry basement – (i) the
40 foundation shall have a continuous footing drain that is covered
41 with stone, which in turn shall be covered with filter fabric, and
42 which shall drain either to daylight or to an interior, sealed sump
43 pump system, (ii) the foundation shall have porous backfill
44 material, (iii) the vapor retarder shall be directly under slab, and
45 (iv) the exterior of the below grade foundation shall be
46 waterproofed;

47 (9) Construction Waste. The standards shall require, at a
48 minimum, development of and adherence to a waste reduction plan

1 that provides for separation of materials which are reusable or
2 recyclable, such that a minimum of 30% of waste by volume shall
3 be diverted from the waste stream; and

4 (10) Stormwater Management. The standards shall require, at a
5 minimum, that developments on parcels of undeveloped land of
6 four acres or more shall employ stormwater management measures
7 in order to meet at least one of the following requirements: (a) post-
8 development runoff volume of the land area of the development
9 shall not exceed pre-development runoff volume, where runoff
10 volume is defined as the 1.5 year, 24-hour peak discharge rate; or
11 (b) the first inch of runoff or 80% of 100-year runoff produced by
12 the impervious surfaces of the development shall be treated for total
13 suspended solids, total phosphorous, and total nitrogen.

14
15 8. This act shall take effect immediately.
16
17

18 STATEMENT

19
20 This bill, entitled the "Green Building Tax Credit Act," provides
21 tax credits toward the corporation business tax, gross income tax,
22 and certain other specified taxes for developers and owners who
23 design and construct buildings that meet certain "green building"
24 criteria.

25 The bill provides that a building would qualify for the tax credits
26 if it meets the green building standards set forth in section 7 of the
27 bill to be adopted by the Department of Community Affairs (DCA)
28 in consultation with the Department of Environmental Protection
29 (DEP), or if it meets the criteria required for Certified, Silver, Gold,
30 or Platinum status under the LEED Green Building Rating System
31 or LEED Residential Green Building Rating System.

32 The "Green Building Tax Credit Act" would be administered by
33 the DCA in consultation with the DEP and the Division of Taxation
34 in the Department of the Treasury. The bill directs the DCA, in
35 consultation with the DEP, within one year after the date of
36 enactment of the bill into law, to adopt standards for the "green
37 building" criteria set forth in section 7 of the bill, and requires the
38 standards to be reviewed and updated at least every two years from
39 the date on which they are adopted.

40 The tax credits provided by the bill would be available for seven
41 years. The total of all credits which could be allocated in the first
42 fiscal year after enactment would be no more than \$20 million. In
43 each of the subsequent six fiscal years, up to \$50 million of credit
44 allocations may be authorized per year, and any unused allocable
45 amounts may roll over to subsequent fiscal years. An eligible
46 taxpayer may apply no more than 20% of their total tax credit in
47 any tax year.-