

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1983 and 1985

STATE OF NEW JERSEY
220th LEGISLATURE

ADOPTED MAY 16, 2022

Sponsored by:

Senator NILSA I. CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

Co-Sponsored by:

Senator B.Smith

SYNOPSIS

“Green Building Tax Credit Act.”

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



(Sponsorship Updated As Of: 10/13/2022)

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 percent on each of up to two occasions in the seven-year
31 period next 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 newly
30 constructed or retrofitted green building, to be computed as
31 provided in this section, against any tax imposed under the
32 "Corporation Business Tax Act (1945)," pursuant to P.L.1945,
33 c.162 (C.54:10A-1 et seq.), the "New Jersey Gross Income Tax
34 Act," pursuant to N.J.S.54A:1-1 et seq., the tax on sewerage and
35 water corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.),
36 the tax on marine insurance companies pursuant to R.S.54:16-1 et
37 seq., and the general tax on insurers pursuant to P.L.1945, c.132
38 (C.54:18A-1 et seq.). The credit shall be an amount equal to the
39 sum of the following, provided, however, that the amount shall not
40 exceed the amount set forth in the credit reservation certificate
41 obtained pursuant to section 4 of this act:

42 (1) 4.0 percent of allowable costs; and

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

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

14 c. On or before six years after the effective date of this act, the
15 Commissioner of Community Affairs, in consultation with the
16 Commissioner of Environmental Protection and the Director of the
17 Division of Taxation, shall prepare and submit a written report
18 regarding the number of certificates and taxpayers applying the
19 credit provided for under this act, the amount of the credits granted,
20 the geographical distribution of the credits granted, and any other
21 information that the Department of Community Affairs, the
22 Department of Environmental Protection, or the Division of
23 Taxation may deem useful or appropriate. An initial draft of the
24 report shall be so issued within the first four years following the
25 effective date of this act. The report shall be submitted to the
26 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
27 19.1), to the Legislature.

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

46 b. The Department of Community Affairs shall not issue a
47 credit reservation certificate pursuant to subsection a. of this section
48 for any building that received the required permit authorizing the

1 construction or retrofitting of the building, as appropriate, prior to
2 the effective date of this act.

3

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

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

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

14 (b) the criteria required for Certified, Silver, Gold, or Platinum
15 status under the LEED Green Building Rating System or LEED
16 Residential Green Building Rating System;

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

19 (3) a certificate of occupancy, for the building or buildings that
20 are the subject of the credit;

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

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

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

33 The Department of Community Affairs shall not issue an
34 eligibility certificate pursuant to this section to a taxpayer for any
35 building that received the required permit authorizing the
36 construction or retrofitting of the building, as appropriate, prior to
37 the effective date of this act.

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

45

46 6. a. When filing a return that includes a claim for a credit
47 pursuant to this act, the taxpayer shall include a copy of the
48 eligibility certificate obtained pursuant to section 5 of this act. For

1 each taxpayer who is eligible for a credit under this act, the
2 Division of Taxation in the Department of the Treasury shall allow
3 a credit, provided that the credits, in the aggregate, shall not exceed
4 \$20 million for the first fiscal year of tax credit availability and, in
5 each of the subsequent six fiscal years, shall not exceed \$50
6 million; provided further that any unused allocable amounts shall
7 roll over to subsequent fiscal years. After the seventh fiscal year of
8 tax credit availability no credit shall be available.

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

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

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

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

42
43 7. a. For the purposes of this act, a building shall be
44 considered a green building if it meets the standards prescribed and
45 adopted pursuant to subsection b. of this section, provided that, with
46 respect to residential and tenant space, compliance with standards
47 set forth in paragraphs (1), (2), (3), (5) and (8) of subsection b. of
48 this section shall not be required if the taxpayer does not incur or

1 pay the cost of the equipment, appliances, fixtures, materials,
2 finishes, furnishings or other items relevant to compliance with the
3 standard.

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

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

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

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

43 (4) Heat Island Reduction. The standards shall require, at a
44 minimum, that (a) at least 50 percent, by square footage, of non-
45 roof impervious surfaces, including driveways, parking areas,
46 walkways and plazas, be light-colored or covered with specified
47 coatings that improve reflectance; and (b) roofs shall be composed

1 of Energy Star labeled roof products, except if solar panels or roof
2 gardens are installed;

3 (5) Water Efficiency. The standards shall require, at a
4 minimum, that (a) each showerhead shall not exceed 2.0 gallons per
5 minute; (b) each faucet shall not exceed 1.0 gallons per minute; (c)
6 toilet flush volume shall not exceed 1.6 gallons; and (d) for
7 commercial buildings, the drift rate of any cooling tower shall not
8 exceed 1 percent;

9 (6) Heating and Cooling. The standards shall require, at a
10 minimum, that central air conditioning refrigerant charge and air
11 flow shall be documented to be within 10 percent of manufacturer
12 recommendations;

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

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

- 1 (iv) the exterior of the below grade foundation shall be
2 waterproofed;
- 3 (9) Construction Waste. The standards shall require, at a
4 minimum, development of and adherence to a waste reduction plan
5 that provides for separation of materials which are reusable or
6 recyclable, such that a minimum of 30 percent of waste by volume
7 shall be diverted from the waste stream; and
- 8 (10) Stormwater Management. The standards shall require, at a
9 minimum, that developments on parcels of undeveloped land of
10 four acres or more shall employ stormwater management measures
11 in order to meet at least one of the following requirements: (a) post-
12 development runoff volume of the land area of the development
13 shall not exceed pre-development runoff volume, where runoff
14 volume is defined as the 1.5 year, 24-hour peak discharge rate; or
15 (b) the first inch of runoff or 80 percent of 100-year runoff
16 produced by the impervious surfaces of the development shall be
17 treated for total suspended solids, total phosphorous, and total
18 nitrogen.
- 19
- 20 8. This act shall take effect immediately.