

# ASSEMBLY, No. 3087

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**SYNOPSIS**

The “Green Building Tax Credit Act.”

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/5/2020)

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.