SENATE, No. 1899

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)
Senator JAMES BEACH
District 6 (Burlington and Camden)

SYNOPSIS

"Green Building Tax Credit Act."

CURRENT VERSION OF TEXT

As introduced.

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

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

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

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

2. As used in this act:

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

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

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

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

“Green building” means a building meeting the standards prescribed and adopted pursuant to section 7 of this act.

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

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

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

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

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

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

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

“Tax year” means the accounting or privilege period of the relevant business entity.

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

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

(1) 4.0 percent of allowable costs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. This act shall take effect immediately.

STATEMENT

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

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

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

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