

SENATE, No. 274

STATE OF NEW JERSEY
211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator BARBARA BUONO

District 18 (Middlesex)

SYNOPSIS

The "Smart Growth Tax Credit Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/24/2004)

1 AN ACT providing a corporation business tax credit and a gross
2 income tax credit for certain smart growth developments, and
3 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A
4 of the New Jersey Statutes.

5

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

8

9 1. This act shall be known and may be cited as the "Smart Growth
10 Tax Credit Act."

11

12 2. As used in sections 1 through 6 of this act:

13 "Adequate bus transit service" means at least one bus transit stop
14 within a one-quarter mile radius of the geographic center of the
15 development, with service of no less than one bus either (1) every 60
16 minutes, 18 hours per day, seven days per week, or (2) 30 times per
17 weekday and 15 times per weekend day, provided that there are no
18 physical impediments that prevent pedestrians from walking from the
19 development to the transit stop;

20 "Adequate ferry transit service" means at least one ferry transit stop
21 within a one-half mile radius of the geographic center of the
22 development, with service of no less than five ferries during weekday
23 peak periods, provided that there are no physical impediments that
24 prevent pedestrians from walking from the development to the transit
25 stop;

26 "Adequate rail transit service" means at least one rail or light rail
27 transit stop within a one-half mile radius of the geographic center of
28 the development, with service of no less than five trains during
29 weekday peak periods, provided that there are no physical
30 impediments that prevent pedestrians from walking from the
31 development to the transit stop;

32 "Allowable costs" means amounts properly chargeable to capital
33 account other than for purchase of land or any remediation costs,
34 which are paid or incurred for construction or rehabilitation;
35 commissioning costs; interest paid during the construction or
36 rehabilitation period; legal, architectural, engineering and other
37 professional fees allocable to construction or rehabilitation; closing
38 costs for construction or mortgage loans; recording taxes and filing
39 fees incurred with respect to construction or rehabilitation; site costs,
40 such as temporary electric wiring, scaffolding, demolition costs, and
41 fencing and security facilities; and costs of carpeting, partitions, walls
42 and wall coverings, ceilings, lighting, plumbing, electrical wiring and
43 ventilation; provided that such costs shall not include the cost of
44 telephone systems and computers other than electrical wiring costs and
45 shall not include the cost of fuel cells or photovoltaic modules
46 including installation. For commercial space, allowable costs shall not

1 exceed \$250 per square foot of interior space, except that the
2 Department of Community Affairs may raise the maximum allowable
3 costs by up to 10% on each of up to two occasions in the seven-year
4 period next following the date of enactment of this act. For residential
5 space, allowable costs shall not exceed 110% of the amount set by the
6 United States Department of Housing and Urban Development as per
7 unit limits, codified in 12 U.S.C. s.17151 (d) (3) (ii);

8 "ASHRAE" means the American Society of Heating, Refrigeration,
9 and Air-Conditioning Engineers;

10 "Brownfield site" means any former or current commercial or
11 industrial site that is currently vacant or underutilized and on which
12 there has been, or there is suspected to have been, a discharge of a
13 hazardous substance as defined pursuant to section 3 of P.L.1976,
14 c.141 (C.58:10-23.11b), a hazardous waste as defined pursuant to
15 section 1 of P.L.1976, c.99 (C.13:1E-38), or a pollutant as defined
16 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

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

22 "Critical habitat" means a biologically diverse area containing
23 habitats of endangered and threatened animal or plant species, as
24 determined by the Department of Environmental Protection;

25 "Critical slope area" means an area predominantly characterized by
26 either an average change in elevation greater than 15 percent of the
27 corresponding horizontal distance through the slope, otherwise also
28 referred to as a 15% slope, or by a very high erosion hazard as
29 indicated by an erodability factor "k" computed by the United States
30 Department of Agriculture, Natural Resources Conservation Service,
31 for soils of 0.40 or greater;

32 "Developer" means the legal or beneficial owner or owners of a lot
33 or of any land proposed to be included in a proposed development,
34 including the holder of an option or contract to purchase, or other
35 person having an enforceable proprietary interest in such land;

36 "Development" means the division of a parcel of land into two or
37 more parcels; the construction, reconstruction, conversion, structural
38 alteration, relocation, or enlargement of any building or other
39 structure, or of any mining excavation or landfill; or any use or change
40 in the use of any building or other structure, or land, or extension of
41 use of land, for which permission may be required pursuant to the
42 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

43 "Energy Star" means the voluntary labeling program administered
44 by the United States Environmental Protection Agency designed to
45 identify and promote energy-efficient products, equipment, and
46 buildings;

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

5 "Highly urbanized area" means (1) an area where 30% of the
6 ground within 1,000 feet of the perimeter of a development site
7 consists of impervious surface, or (2) an area located in a municipality
8 which the Commissioner of Community Affairs has determined,
9 according to guidelines established by the commissioner, to be built
10 out;

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

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

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

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

23 "Lot" means a designated parcel, tract, or area of land established
24 by a plat, or otherwise as permitted by law, and to be used, developed,
25 or built upon as a unit;

26 "Mixed use development" means a development that includes
27 residential use and no more than 75% by interior square footage of one
28 or more of the following uses: (1) commercial space; (2) office
29 space; (3) retail space; or (4) such other nonresidential uses that the
30 Department of Community Affairs has determined do not pose a public
31 health threat or nuisance to nearby residential areas;

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

35 "Pinelands Comprehensive Management Plan" means the
36 comprehensive management plan for the pinelands area prepared and
37 adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);

38 "Pinelands National Reserve" means the "Pinelands National
39 Reserve" as defined pursuant to section 3 of P.L.1979, c.111
40 (C.13:18A-3);

41 "Plat" means a map or maps of a subdivision or site plan;

42 "Potentially eligible development" means a residential or mixed use
43 development or redevelopment project located within the State of New
44 Jersey;

45 "Residential Site Improvement Standards" means the Statewide site
46 improvement standards for residential development adopted pursuant
47 to P.L.1993, c.32 (C.40:55D-40.1 et seq.);

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

4 "Smart growth development" means a potentially eligible
 5 development that meets the criteria set forth in section 6 of this act;

6 "State Plan" means the State Development and Redevelopment Plan
 7 adopted by the State Planning Commission pursuant to the "State
 8 Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.);

9 "Statewide Water Supply Plan" means the New Jersey Statewide
 10 Water Supply Plan adopted by the Department of Environmental
 11 Protection pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13)
 12 and any adopted revisions thereto;

13 "Stormwater management measures" means structural and
 14 nonstructural control of stormwater runoff and nonpoint pollution;

15 "Total cumulative rides available" means the sum of (1) the
 16 number of rides available by bus within a one-half mile radius of the
 17 geographic center of the development, (2) the number of rides
 18 available by rail or light rail within a one-half mile radius of the
 19 geographic center of the development, multiplied by the average
 20 number of cars on each train, and (3) the number of rides available
 21 by ferry within a one-half mile radius of the geographic center of the
 22 development, multiplied by three;

23 "Transit stop" means any stop for a bus, train, or ferry, as the case
 24 may be, which may be along either intercity routes, or intracity routes,
 25 or both. A transit stop serving more than one route, or serving routes
 26 in more than one direction, shall constitute a discrete stop for each
 27 directional route of service; and, if a location has one bus, train, or
 28 ferry, as the case may be, per hour heading in one direction, and one
 29 bus, train, or ferry, as the case may be, available in that same hour
 30 heading in the other direction, this shall constitute one bus, train, or
 31 ferry per hour at two separate stops;

32 "Tropical hardwood" means any hardwood scientifically classified
 33 as an angiosperm which grows in a tropical moist forest, as determined
 34 by the Department of Environmental Protection. "Tropical hardwood"
 35 shall include, but need not be limited to, the following species:

37 <u>Scientific Name</u>	<u>Common Name</u>
38 Vouacapous americana	Acapu
39 Pericopsis elata	Afrormosis
40 Shorea almon	Almon
41 Peltogyne spp.	Amaranth
42 Guibourtia ehie	Amazaque
43 Aningeris spp.	Aningeria
44 Dipterocarpus grandiflorus	Apilong
45 Ochroma lagopus	Balsa
46 Virola spp.	Banak

1	Anisoptera thurifera	Bella Rose
2	Guibourtis arnoldiana	Benge
3	Deterium Senegalese	Boire
4	Priora copaifera	Cativo
5	Antiaris africana	Chenchen
6	Dalbergis retusa	Concobola
7	Cordia spp.	Cordia
8	Diospyros spp.	Ebony
9	Aucoumes klaineana	Gaboon
10	Chlorophors excelsa	Iroko
11	Acacia koa	Koa
12	Pterygota macrocarpa	Koto
13	Shorea negrosensis	Red Lauan
14	Pentacme contorta	White Lauan
15	Shores ploysprma	Tanguile
16	Terminalia superba	Limba
17	Aniba duckei	Louro
18	Kyaya ivorensis	Africa Mahogany
19	Swletenia macrophylla	Amer. Mahogany
20	Tieghemella leckellii	Makora
21	Distemonanthus benthamianus	Movingui
22	Pterocarpus soyauxii	African Padauk
23	Pterocarpus angolensis	Angola Padauk
24	Aspidosperma spp.	Peroba
25	Peltogyne spp.	Purpleheart
26	Gonystylus spp.	Ramin
27	Dalbergia spp.	Rosewood
28	Entandrophragm a cylindricum	Sapela
29	Shores phillippinensis	Sonora
30	Tectona grandis	Teak
31	Lovoa trichilloides	Tigerwood
32	Milletia laurentii	Wenge
33	Microberlinia brazzavillensis	Zebrawood

34

35 "Weekday peak period" means 5:30 a.m. to 10:30 a.m. and 3:30
 36 p.m. to 8:30 p.m. on a weekday; and

37 "Wetland" means (1) a coastal wetland as defined pursuant to
 38 section 2 of P.L.1970, c.272 (C.13:9A-2) and any rules and
 39 regulations adopted pursuant thereto, or (2) a freshwater wetland as
 40 defined pursuant to section 2 of P.L.1987, c.156 (C.13:9B-3) and any
 41 rules or regulations adopted pursuant thereto.

42

43 3. a. A taxpayer shall be granted a credit, to be computed as
 44 provided in this section, against the tax imposed pursuant to section
 45 5 of P.L.1945, c.162 (C.54:10A-5). The credit shall be an amount
 46 equal to the sum of the following, provided, however, that the amount

1 shall not exceed the amount set forth in the credit reservation
 2 certificate obtained pursuant to section 4 of this act:

- 3 (1) 4.0% of allowable costs;
- 4 (2) 0.5%, 1.0%, 1.5%, or 2.0% of allowable costs, attributable to
 5 buildings but not to other site improvements, qualifying as Certified,
 6 Silver, Gold, or Platinum status, respectively, under the LEED Green
 7 Building Rating System or the LEED Residential Green Building
 8 Rating System;
- 9 (3) 0.5% of allowable costs for mixed use developments;
- 10 (4) 0.5% of allowable costs for developments located on
 11 brownfield sites;
- 12 (5) 0.1% of allowable costs for developments in which less than
 13 10% of the land of the development, not including shared open spaces,
 14 is devoted to parking areas, garages, and driveways;
- 15 (6) 0.1% of allowable costs for developments with respect to
 16 which variances are secured from the relevant municipalities to permit
 17 50% or less parking than is required by applicable local zoning codes,
 18 and are built in accordance with such variances;
- 19 (7) up to 2.4% of allowable costs for developments with higher
 20 than required residential density, depending on the density level as set
 21 forth below; and

23 Dwelling Units Per 24 Residential Acre	Multiplier Value	Additional Credit, As Percentage of Allowable Costs
25		
26		
27 7-10	.05	0.2%
28 11-17	.10	0.4%
29 18-29	.30	1.2%
30 30-39	.50	2.0%
31 40 or higher	.60	2.4%

32
 33 (8) up to 1.4% of allowable costs for developments with higher
 34 than required transit service, depending on total cumulative rides
 35 available per weekday as set forth below:

37 Total Cumulative 38 Rides Available	Multiplier Value	Additional Credit, As Percentage of Allowable Costs
39		
40		
41 60-124	.05	0.2%
42 125-249	.10	0.4%
43 250-499	.15	0.6%
44 500-999	.20	0.8%
45 1,000 or more	.35	1.4%

1 b. A taxpayer may only apply for a credit under this section with
2 respect to allowable costs paid or incurred by the taxpayer in
3 connection with the construction or rehabilitation of a smart growth
4 development.

5 c. For any taxable year, a taxpayer may apply no more than 20%
6 of the total amount allowed under subsection a. of this section.

7 d. The amount of tax credit otherwise allowed under this section
8 which 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 e. If a credit is owed to a building owner under sections 1 through
12 6 of this act with respect to property, and the property, or an interest
13 therein, is sold, the credit for the period after the sale which would
14 have been allowed under sections 1 through 6 of this act to the prior
15 owner had the property not been sold shall be allowed to the successor
16 owner if that right is specified in the deed transferring the property.

17 f. For any taxable year, a taxpayer may apply a credit under this
18 section only if: (1) the taxpayer has, as described in section 4 of this
19 act, obtained and filed a location certificate, a credit reservation
20 certificate, and an eligibility certificate; and (2) a certificate of
21 occupancy, for the building or buildings that is the subject of the
22 credit, has been issued and the building or buildings remains in service
23 during that year.

24 g. For each taxpayer who is eligible for a credit under this section,
25 the Department of Community Affairs shall grant a credit, provided
26 that the credits, in the aggregate, shall not exceed \$20 million for the
27 first fiscal year of tax credit availability and, in each of the subsequent
28 six fiscal years, shall not exceed \$50 million; provided further that any
29 unused allocable amounts shall roll over to subsequent fiscal years.

30
31 4. a. Upon application by a taxpayer, the Department of
32 Environmental Protection, in consultation with the Department of
33 Community Affairs, shall issue a location certificate with respect to a
34 specific property, where the taxpayer has shown that the property
35 meets the location criteria set forth in subsection a. of section 6 of this
36 act; provided that, in the event that the Department of Environmental
37 Protection adopts a map designating areas within the State of New
38 Jersey to which development is best directed, the property shall be
39 located within those areas and shall not be required to meet the
40 location criteria set forth in paragraphs (1), (3), and (4) of subsection
41 a. of section 6 of this act, but shall continue to be required to meet the
42 location criteria set forth in paragraph (2) of subsection a. of section
43 6 of this act; and provided further that, in the event that the property
44 is located in an area designated as a water supply deficit area in the
45 Statewide Water Supply Plan, the certificate shall so indicate. A
46 taxpayer's application for a certificate shall include plats, and such

1 other information as the Department of Environmental Protection or
2 the Department of Community Affairs may require. The Department
3 of Environmental Protection may issue a location certificate without
4 presentation by the taxpayer of a deed for the proposed site.

5 b. Upon application by a taxpayer, the Department of Community
6 Affairs shall issue a credit reservation certificate, where the taxpayer
7 has filed a copy of a location certificate and has made a showing that
8 the taxpayer is likely, within a reasonable time, to place in service the
9 development with respect to which the location certificate was issued,
10 and that the development qualifies for the allowance of a credit under
11 sections 1 through 6 of this act. The certificate shall state (1) the
12 earliest taxable year for which the credit may be applied, (2) the
13 maximum amount of the total credit allowed and the maximum amount
14 of credit allowed in any single tax year, (3) an expiration date, and (4)
15 such other information as the Department of Community Affairs may
16 prescribe. The certificate shall apply only to the development placed
17 in service by the specified expiration date. The expiration date may be
18 extended at the discretion of the Commissioner of Community Affairs
19 in order to avoid undue hardship. Certificates may be issued in the
20 first fiscal year following the effective date of sections 1 through 6 of
21 this act, and in each of the six subsequent fiscal years.

22 c. For the first taxable year for which a taxpayer applies a credit
23 under sections 1 through 6 of this act, the taxpayer shall obtain an
24 eligibility certificate from an architect or professional engineer licensed
25 to practice in New Jersey. The certificate shall consist of a
26 certification, under the seal of the architect or engineer, that, except
27 for any provision for which the taxpayer has obtained a waiver from
28 the Department of Community Affairs pursuant to subsection d. of
29 section 6 of this act, the building or development with respect to
30 which the credit is applied: (1) meets the neighborhood design criteria
31 set forth in subsection b. of section 6 of this act; (2) meets either the
32 green building criteria set forth in subsection c. of section 6 of this act
33 or the criteria required for Certified, Silver, Gold or Platinum status
34 under the LEED Green Building Rating System or LEED Residential
35 Green Building Rating System; and (3) if the building or development
36 is located in an area designated as a water supply deficit area in the
37 Statewide Water Supply Plan, meets the criteria set forth in
38 subparagraph (h) of paragraph (3) of subsection a. of section 6 of this
39 act. The certification shall be made in accordance with the standards
40 and guidelines in effect at the time the credit reservation for the
41 development was issued. The certificate shall set forth the specific
42 findings upon which the certification was based. The certificate shall
43 include sufficient information to identify each building or development,
44 and such other information as the Department of Community Affairs
45 may prescribe. The taxpayer shall file with the Division of Taxation
46 the eligibility certificate, and the associated location certificate and

1 credit reservation certificate, with the application for credit and shall
2 file duplicate copies with the Department of Community Affairs.

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

10
11 5. a. Each taxpayer shall, for any taxable year for which a credit
12 is claimed under sections 1 through 6 of this act, maintain records of
13 such information as the Department of Community Affairs and the
14 Division of Taxation shall determine, and report that information to
15 the Department of Community Affairs and the Division of Taxation in
16 the form and at the time that the two departments shall determine.

17 b. The Department of Community Affairs, the Department of
18 Environmental Protection, and the Division of Taxation shall adopt,
19 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
20 (C.52:14B-1 et seq.), such rules and regulations as may be necessary
21 to implement sections 1 through 6 of this act. These rules and
22 regulations shall be designed to encourage the implementation of smart
23 growth principles and maintain high but commercially reasonable
24 standards for obtaining tax credits under sections 1 through 6 of this
25 act. The rules and regulations shall establish a reasonable time for
26 submission of applications and shall establish a method certifying
27 proposed locations and allocating credit reservation certificates among
28 eligible applicants, which shall generally be on a first-come, first-
29 served basis.

30 c. On or before six years after the effective date of sections 1
31 through 6 of this act, the Commissioner of Community Affairs, in
32 consultation with the Commissioner of Environmental Protection and
33 the Director of the Division of Taxation, shall prepare and submit a
34 written report regarding the number of certificates and taxpayers
35 applying the credit provided for under sections 1 through 6 of this act;
36 the amount of the credits granted, the geographical distribution of the
37 credits granted, and any other information that the Department of
38 Community Affairs, the Department of Environmental Protection, or
39 the Division of Taxation may deem useful or appropriate. A
40 preliminary draft of the report shall be so issued within the first four
41 years following the effective date of sections 1 through 6 of this act.
42 The report shall be submitted to the Governor, the President of the
43 Senate, and the Speaker of the General Assembly.

44
45 6. Except as set forth in subsection d. of this section, all buildings
46 and developments with respect to which a tax credit is applied

1 pursuant to sections 1 through 6 of this act shall be considered a smart
2 growth development if they meet the following standards; provided
3 that, with respect to residential and tenant space, compliance with
4 standards set forth in paragraphs (1), (2), (3), (5) and (8) of subsection
5 c. of this section shall not be required where the taxpayer does not
6 incur or pay the cost of the equipment, appliances, fixtures, materials,
7 finishes, furnishings or other items relevant to compliance with the
8 standard:

9 a. (1) All buildings and developments with respect to which a tax
10 credit is applied under sections 1 through 6 of this act shall be located
11 in one of the following areas: (a) Planning Areas 1, 2, or 5b of the
12 State Plan; (b) centers designated by the State Planning Commission;
13 or (c) municipalities or portions of municipalities that the New Jersey
14 Office of Smart Growth has declared as substantially conforming to
15 the State Plan or to smart growth principles;

16 (2) All buildings and developments with respect to which a tax
17 credit is applied under sections 1 through 6 of this act shall be served
18 either by adequate bus transit service, adequate rail transit service, or
19 adequate ferry transit service;

20 (3) No building or development with respect to which a tax credit
21 is applied under sections 1 through 6 of this act shall be located: (a) in
22 the Pinelands National Reserve, unless the site is within a Pinelands
23 Regional Growth Area or Pinelands Town as designated in the
24 Pinelands Comprehensive Management Plan; (b) in public parkland;
25 (c) within 1,000 feet of any critical habitat site within public parkland;
26 (d) in or within 300 feet of a wetland; (e) in or within 100 feet of a
27 critical slope area, unless the site is located on a brownfield site or
28 within a highly urbanized area; (f) within the 100-year floodplain,
29 unless the site is located on a brownfield site or within a highly
30 urbanized area; (g) within 1,000 feet of the mean high-water mark for
31 any saltwater body, unless the site is located on a brownfield site or
32 within a highly urbanized area; or (h) in an area designated as a water
33 supply deficit area in the Statewide Water Supply Plan unless the
34 Department of Environmental Protection has approved a water use
35 plan for the development or the development includes fewer than 20
36 residential units and any nonresidential units will cumulatively use
37 fewer than 10,000 gallons of water per day; and

38 (4) No building or development with respect to which a tax credit
39 is applied under sections 1 through 6 of this act shall require (a) a
40 sanitary sewer line extension of 1,000 feet or greater, unless sited in
41 an area that has been approved for sanitary sewer service prior to the
42 date of enactment of this act, or (b) a septic system.

43 b. Notwithstanding any provision of the Residential Site
44 Improvement Standards, within one year after the date of enactment
45 of this act, the Department of Community Affairs, in consultation with
46 the Department of Environmental Protection, shall adopt, pursuant to

1 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), standards for the purpose of sections 1 through 6 of this act with
3 respect to:

4 (1) Land Use. The standards shall require, at a minimum, that
5 average residential density shall be six or more residential dwelling
6 units per residential acre. Residential acreage shall be calculated net
7 of any land on the lot that is used for public open space, public
8 sidewalks, or public roads. For lots occupied by residential buildings,
9 residential acres used in the density calculation shall be the footprint
10 area of buildings, plus any associated driveways, yards, and parking
11 areas except for on-street parallel parking. For lots occupied by mixed
12 use buildings, residential acres used in the density calculation shall be
13 a percentage of the footprint area of building that equals the
14 percentage of interior space devoted to residential use, plus any
15 associated driveways, yards, and the percentage of associated parking
16 areas used by residents;

17 (2) Streets and Sidewalks. The standards shall require, at a
18 minimum, that if new streets are constructed as part of a development
19 with respect to which a credit is applied under sections 1 through 6 of
20 this act, they shall meet the following standards: (a) no more than one
21 new cul-de-sac shall be constructed for every four new intersections
22 within the development; (b) at least 50% of any new intersections and
23 crossings within the development shall be equipped with traffic
24 controls or such traffic calming measures that the Department of
25 Community Affairs shall approve, including but not limited to speed
26 bumps, stop signs and vegetative barriers; (c) the width of pavement
27 of new streets shall not exceed 42 feet, consisting of a maximum of 10
28 feet per lane of motor vehicle traffic, four feet per bicycle lane, and
29 seven feet per lane designated for on-street parallel parking. New
30 streets shall not consist of more than two lanes devoted to motor
31 vehicle traffic, two lanes devoted to bicycle traffic, and two lanes
32 devoted to on-street parallel parking; and (d) sidewalks of no less than
33 four feet in width shall be provided along frontage of all buildings and
34 along all streets that connect buildings within the development; and

35 (3) Parking. The standards shall require, at a minimum, that the
36 number of parking spaces associated with the development shall not
37 exceed the number required by parking ratios specified in applicable
38 local zoning codes.

39 c. Within one year after the date of enactment of this act, the
40 Department of Community Affairs, in consultation with the
41 Department of Environmental Protection, shall adopt, pursuant to the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.), standards for the purpose of sections 1 through 6 of this act, and
44 shall review and update those standards at least every two years from
45 the date on which they are adopted, with respect to:

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

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

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

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

38 (5) Water Efficiency. The standards shall require, at a minimum,
39 that (a) each showerhead shall not exceed 2.0 gallons per minute; (b)
40 each faucet shall not exceed 1.0 gallons per minute; (c) toilet flush
41 volume shall not exceed 1.6 gallons; and (d) for commercial buildings,
42 the drift rate of any cooling tower shall not exceed 1%;

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

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

7 (8) Indoor Air Quality. The standards shall require, at a minimum,
8 that (a) interior paints shall contain no more than 100 grams per liter
9 of volatile organic compounds; (b) sealants and adhesives used for
10 interior applications shall contain no more than 250 grams per liter of
11 volatile organic compounds; (c) carpets, carpet cushions and any
12 necessary adhesives shall meet the standards set forth in the Carpet
13 and Rug Institute Green Label Indoor Air Quality Test Program; (d)
14 carpets shall not be installed in basements, bathrooms, kitchens, or
15 within a four foot radius of the center of any doorway which leads
16 outdoors; (e) only direct-vent, closed-combustion, or power vented
17 space heating and water heating equipment shall be used, and vent-free
18 space heating or water heating equipment shall not be used; (f) any
19 wood stoves shall have ducted combustion air; (g) carbon monoxide
20 detectors shall be installed consistent with Consumer Product Safety
21 Commission recommendations, and with at least one detector per 500
22 square feet of interior space; (h) enclosed parking shall be completely
23 air-sealed from attached indoor spaces; (i) every building shall be
24 furnished with a ventilation system and for commercial buildings the
25 sizing of the system shall conform with the ASHRAE standard known
26 as ASHRAE G2-2001; and (j) foundations of residential units shall be
27 constructed according to the following requirements, unless the
28 Department of Community Affairs approves alternative plans to ensure
29 dry basements: the foundation shall have a continuous footing drain
30 that is covered with stone, which in turn shall be covered with filter
31 fabric, and which shall drain either to daylight or to an interior, sealed
32 sump pump system; the foundation shall have porous backfill material;
33 the vapor retarder shall be directly under slab; and the exterior of the
34 below grade foundation shall be waterproofed;

35 (9) Construction Waste. The standards shall require, at a
36 minimum, development of and adherence to a waste reduction plan
37 that provides for separation of materials which are reusable or
38 recyclable, such that a minimum of 30% of waste by volume shall be
39 diverted from the waste stream; and

40 (10) Stormwater Management. The standards shall require, at a
41 minimum, that developments on parcels of undeveloped land of four
42 acres or more shall employ stormwater management measures in order
43 to meet at least one of the following requirements: (a) post-
44 development runoff volume of the land area of the development shall
45 not exceed pre-development runoff volume; where runoff volume is
46 defined as the 1.5 year, 24-hour peak discharge rate; or (b) the first

1 inch of runoff or 80% of 100-year runoff produced by the impervious
2 surfaces of the development shall be treated for total suspended solids,
3 total phosphorous, and total nitrogen.

4 d. Upon application by a taxpayer, the Department of Community
5 Affairs, in consultation with the Department of Environmental
6 Protection, may issue a waiver of any regulatory provision adopted
7 pursuant to subsection a. of this section, where the taxpayer has made
8 a showing that the development was in compliance with the provision
9 at the time of the issuance to the taxpayer of a location certificate, and
10 that the development is no longer in compliance because of
11 circumstances out of the taxpayer's control; or of any regulatory
12 provision adopted pursuant to subsections b. or c. of this section,
13 where the taxpayer has made a showing that compliance with the
14 provision is impracticable due to unique characteristics of the site, or
15 that deviation from the provision produces no net negative
16 environmental impact.

17

18 7. As used in sections 7 through 11 of this act:

19 "Adequate bus transit service" means at least one bus transit stop
20 within a one-quarter mile radius of the geographic center of the
21 development, with service of no less than one bus either (1) every 60
22 minutes, 18 hours per day, seven days per week, or (2) 30 times per
23 weekday and 15 times per weekend day, provided that there are no
24 physical impediments that prevent pedestrians from walking from the
25 development to the transit stop;

26 "Adequate ferry transit service" means at least one ferry transit stop
27 within a one-half mile radius of the geographic center of the
28 development, with service of no less than five ferries during weekday
29 peak periods, provided that there are no physical impediments that
30 prevent pedestrians from walking from the development to the transit
31 stop;

32 "Adequate rail transit service" means at least one rail or light rail
33 transit stop within a one-half mile radius of the geographic center of
34 the development, with service of no less than five trains during
35 weekday peak periods, provided that there are no physical
36 impediments that prevent pedestrians from walking from the
37 development to the transit stop;

38 "Allowable costs" means amounts properly chargeable to capital
39 account other than for purchase of land or any remediation costs,
40 which are paid or incurred for construction or rehabilitation;
41 commissioning costs; interest paid during the construction or
42 rehabilitation period; legal, architectural, engineering and other
43 professional fees allocable to construction or rehabilitation; closing
44 costs for construction or mortgage loans; recording taxes and filing
45 fees incurred with respect to construction or rehabilitation; site costs,
46 such as temporary electric wiring, scaffolding, demolition costs, and

1 fencing and security facilities; and costs of carpeting, partitions, walls
2 and wall coverings, ceilings, lighting, plumbing, electrical wiring and
3 ventilation; provided that such costs shall not include the cost of
4 telephone systems and computers other than electrical wiring costs and
5 shall not include the cost of fuel cells or photovoltaic modules
6 including installation. For commercial space, allowable costs shall not
7 exceed \$250 per square foot of interior space, except that the
8 Department of Community Affairs may raise the maximum allowable
9 costs by up to 10% on each of up to two occasions in the seven-year
10 period next following the date of enactment of this act. For residential
11 space, allowable costs shall not exceed 110% of the amount set by the
12 United States Department of Housing and Urban Development as per
13 unit limits, codified in 12 U.S.C. s.17151 (d) (3) (ii);

14 "ASHRAE" means the American Society of Heating, Refrigeration,
15 and Air-Conditioning Engineers;

16 "Brownfield site" means any former or current commercial or
17 industrial site that is currently vacant or underutilized and on which
18 there has been, or there is suspected to have been, a discharge of a
19 hazardous substance as defined pursuant to section 3 of P.L.1976,
20 c.141 (C.58:10-23.11b), a hazardous waste as defined pursuant to
21 section 1 of P.L.1976, c.99 (C.13:1E-38), or a pollutant as defined
22 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

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

28 "Critical habitat" means a biologically diverse area containing
29 habitats of endangered and threatened animal or plant species, as
30 determined by the Department of Environmental Protection;

31 "Critical slope area" means an area predominantly characterized by
32 either an average change in elevation greater than 15 percent of the
33 corresponding horizontal distance through the slope, otherwise also
34 referred to as a 15% slope, or by a very high erosion hazard as
35 indicated by an erodability factor "k" computed by the United States
36 Department of Agriculture, Natural Resources Conservation Service,
37 for soils of 0.40 or greater;

38 "Developer" means the legal or beneficial owner or owners of a lot
39 or of any land proposed to be included in a proposed development,
40 including the holder of an option or contract to purchase, or other
41 person having an enforceable proprietary interest in such land;

42 "Development" means the division of a parcel of land into two or
43 more parcels; the construction, reconstruction, conversion, structural
44 alteration, relocation, or enlargement of any building or other
45 structure, or of any mining excavation or landfill; or any use or change
46 in the use of any building or other structure, or land, or extension of

1 use of land, for which permission may be required pursuant to the
2 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);
3 "Energy Star" means the voluntary labeling program administered
4 by the United States Environmental Protection Agency designed to
5 identify and promote energy-efficient products, equipment, and
6 buildings;
7 "Forest Stewardship Council" means the international nonprofit
8 organization founded in 1993 to support environmentally appropriate,
9 socially beneficial, and economically viable management of the world's
10 forests;
11 "Highly urbanized area" means (1) an area where 30% of the
12 ground within 1,000 feet of the perimeter of a development site
13 consists of impervious surface, or (2) an area located in a municipality
14 which the Commissioner of Community Affairs has determined,
15 according to guidelines established by the commissioner, to be built
16 out;
17 "Impervious surface" means a surface that has been compacted or
18 covered with a layer of material so that it is highly resistant to
19 infiltration by water;
20 "Improvement" means any constructed element which becomes part
21 of, is placed upon, or is affixed to real estate;
22 "LEED Green Building Rating System" means the Leadership in
23 Energy and Environmental Design green building rating system
24 developed by the United States Green Building Council;
25 "LEED Residential Green Building Rating System" means the
26 Leadership in Energy and Environmental Design green building rating
27 system for residential buildings, as may be developed by the United
28 States Green Building Council;
29 "Lot" means a designated parcel, tract, or area of land established
30 by a plat, or otherwise as permitted by law, and to be used, developed,
31 or built upon as a unit;
32 "Mixed use development" means a development that includes
33 residential use and no more than 75% by interior square footage of one
34 or more of the following uses: (1) commercial space; (2) office space;
35 (3) retail space; or (4) such other nonresidential uses that the
36 Department of Community Affairs has determined do not pose a public
37 health threat or nuisance to nearby residential areas;
38 "Old growth timber" means timber of a forest from the late
39 successional stage of forest development, as defined by the
40 Department of Environmental Protection;
41 "Pinelands Comprehensive Management Plan" means the
42 comprehensive management plan for the pinelands area prepared and
43 adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);
44 "Pinelands National Reserve" means the "Pinelands National
45 Reserve" as defined pursuant to section 3 of P.L.1979, c.111
46 (C.13:18A-3);

1 "Plat" means a map or maps of a subdivision or site plan;

2 "Potentially eligible development" means a residential or mixed use
3 development or redevelopment project located within the State of New
4 Jersey;

5 "Residential Site Improvement Standards" means the Statewide site
6 improvement standards for residential development adopted pursuant
7 to P.L.1993, c.32 (C.40:55D-40.1 et seq.);

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

11 "Smart growth development" means a potentially eligible
12 development that meets the criteria set forth in section 11 of this act;

13 "State Plan" means the State Development and Redevelopment Plan
14 adopted by the State Planning Commission pursuant to the "State
15 Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.);

16 "Statewide Water Supply Plan" means the New Jersey Statewide
17 Water Supply Plan adopted by the Department of Environmental
18 Protection pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13)
19 and any adopted revisions thereto;

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

22 "Total cumulative rides available" means the sum of (1) the number
23 of rides available by bus within a one-half mile radius of the
24 geographic center of the development, (2) the number of rides
25 available by rail or light rail within a one-half mile radius of the
26 geographic center of the development, multiplied by the average
27 number of cars on each train, and (3) the number of rides available by
28 ferry within a one-half mile radius of the geographic center of the
29 development, multiplied by three;

30 "Transit stop" means any stop for a bus, train, or ferry, as the case
31 may be, which may be along either intercity routes, or intracity routes,
32 or both. A transit stop serving more than one route, or serving routes
33 in more than one direction, shall constitute a discrete stop for each
34 directional route of service; and, if a location has one bus, train, or
35 ferry, as the case may be, per hour heading in one direction, and one
36 bus, train, or ferry, as the case may be, available in that same hour
37 heading in the other direction, this shall constitute one bus, train, or
38 ferry per hour at two separate stops;

39 "Tropical hardwood" means any hardwood scientifically classified
40 as an angiosperm which grows in a tropical moist forest, as determined
41 by the Department of Environmental Protection. "Tropical hardwood"
42 shall include, but need not be limited to, the following species:

43

44 <u>Scientific Name</u>	<u>Common Name</u>
45 Vouacapous americana	Acapu
46 Pericopsis elata	Afrormosis

1	<i>Shorea almon</i>	Almon
2	<i>Peltogyne</i> spp.	Amaranth
3	<i>Guibourtia ehie</i>	Amazaque
4	<i>Aningeris</i> spp.	Aningeria
5	<i>Dipterocarpus grandiflorus</i>	Apilong
6	<i>Ochroma lagopus</i>	Balsa
7	<i>Virola</i> spp.	Banak
8	<i>Anisoptera thurifera</i>	Bella Rose
9	<i>Guibourtia arnoldiana</i>	Benge
10	<i>Deterium Senegalese</i>	Boire
11	<i>Priora copaifera</i>	Cativo
12	<i>Antiaris africana</i>	Chenchen
13	<i>Dalbergia retusa</i>	Concobola
14	<i>Cordia</i> spp.	Cordia
15	<i>Diospyros</i> spp.	Ebony
16	<i>Aucoumes klaineana</i>	Gaboon
17	<i>Chlorophors excelsa</i>	Iroko
18	<i>Acacia koa</i>	Koa
19	<i>Pterygota macrocarpa</i>	Koto
20	<i>Shorea negrosensis</i>	Red Lauan
21	<i>Pentacme contorta</i>	White Lauan
22	<i>Shores ploysprma</i>	Tanguile
23	<i>Terminalia superba</i>	Limba
24	<i>Aniba duckei</i>	Louro
25	<i>Kyaya ivorensis</i>	Africa Mahogany
26	<i>Swletenia macrophylla</i>	Amer. Mahogany
27	<i>Tieghemella leckellii</i>	Makora
28	<i>Distemonanthus benthamianus</i>	Movingui
29	<i>Pterocarpus soyauxii</i>	African Padauk
30	<i>Pterocarpus angolensis</i>	Angola Padauk
31	<i>Aspidosperma</i> spp.	Peroba
32	<i>Peltogyne</i> spp.	Purpleheart
33	<i>Gonystylus</i> spp.	Ramin
34	<i>Dalbergia</i> spp.	Rosewood
35	<i>Entandrophragm a cylindricum</i>	Sapela
36	<i>Shores phillippinensis</i>	Sonora
37	<i>Tectona grandis</i>	Teak
38	<i>Lovoa trichilloides</i>	Tigerwood
39	<i>Milletia laurentii</i>	Wenge
40	<i>Microberlinia brazzavillensis</i>	Zebrawood

41

42 "Weekday peak period" means 5:30 a.m. to 10:30 a.m. and 3:30
43 p.m. to 8:30 p.m. on a weekday; and

44 "Wetland" means (1) a coastal wetland as defined pursuant to
45 section 2 of P.L.1970, c.272 (C.13:9A-2) and any rules and
46 regulations adopted pursuant thereto, or (2) a freshwater wetland as

1 defined pursuant to section 2 of P.L.1987, c.156 (C.13:9B-3) and any
 2 rules or regulations adopted pursuant thereto.

3

4 8. a. A taxpayer shall be granted a credit, to be computed as
 5 provided in this section, against the tax imposed pursuant to section
 6 5 of P.L.1945, c.162 (C.54:10A-5). The credit shall be an amount
 7 equal to the sum of the following, provided, however, that the amount
 8 shall not exceed the amount set forth in the credit reservation
 9 certificate obtained pursuant to section 9 of this act:

- 10 (1) 4.0% of allowable costs;
- 11 (2) 0.5%, 1.0%, 1.5%, or 2.0% of allowable costs, attributable to
 12 buildings but not to other site improvements, qualifying as Certified,
 13 Silver, Gold, or Platinum status, respectively, under the LEED Green
 14 Building Rating System or the LEED Residential Green Building
 15 Rating System;
- 16 (3) 0.5% of allowable costs for mixed use developments;
- 17 (4) 0.5% of allowable costs for developments located on
 18 brownfield sites;
- 19 (5) 0.1% of allowable costs for developments in which less than
 20 10% of the land of the development, not including shared open spaces,
 21 is devoted to parking areas, garages, and driveways;
- 22 (6) 0.1% of allowable costs for developments with respect to
 23 which variances are secured from the relevant municipalities to permit
 24 50% or less parking than is required by applicable local zoning codes,
 25 and are built in accordance with such variances;
- 26 (7) up to 2.4% of allowable costs for developments with higher
 27 than required residential density, depending on the density level as set
 28 forth below; and

29

30 Dwelling Units Per	Multiplier Value	Additional Credit,
31 Residential Acre		As Percentage of
		32 Allowable Costs

33

34 7-10	.05	0.2%
35 11-17	.10	0.4%
36 18-29	.30	1.2%
37 30-39	.50	2.0%
38 40 or higher	.60	2.4%

39

40 (8) up to 1.4% of allowable costs for developments with higher
 41 than required transit service, depending on total cumulative rides
 42 available per weekday as set forth below:

	Total Cumulative Rides Available	Multiplier Value	Additional Credit, As Percentage of Allowable Costs
5	60-124	.05	0.2%
6	125-249	.10	0.4%
7	250-499	.15	0.6%
8	500-999	.20	0.8%
9	1,000 or more	.35	1.4%

10

11 b. A taxpayer may only apply for a credit under this section with
12 respect to allowable costs paid or incurred by the taxpayer in
13 connection with the construction or rehabilitation of a smart growth
14 development.

15 c. For any taxable year, a taxpayer may apply no more than 20%
16 of the total amount allowed under subsection a. of this section.

17 d. The amount of tax credit otherwise allowed under this section
18 which cannot be applied during a tax year may be carried over, if
19 necessary, to the 15 tax years following a credit's first eligible tax
20 year.

21 e. If a credit is owed to a building owner under sections 7 through
22 11 of this act with respect to property, and the property, or an interest
23 therein, is sold, the credit for the period after the sale which would
24 have been allowed under sections 7 through 11 of this act to the prior
25 owner had the property not been sold shall be allowed to the successor
26 owner if that right is specified in the deed transferring the property.

27 f. For any taxable year, a taxpayer may apply a credit under this
28 section only if: (1) the taxpayer has, as described in section 9 of this
29 act, obtained and filed a location certificate, a credit reservation
30 certificate, and an eligibility certificate; and (2) a certificate of
31 occupancy, for the building or buildings that is the subject of the
32 credit, has been issued and the building or buildings remains in service
33 during that year.

34 g. For each taxpayer who is eligible for a credit under this section,
35 the Department of Community Affairs shall grant a credit, provided
36 that the credits, in the aggregate, shall not exceed \$20 million for the
37 first fiscal year of tax credit availability and, in each of the subsequent
38 six fiscal years, shall not exceed \$50 million; provided further that any
39 unused allocable amounts shall roll over to subsequent fiscal years.

40

41 9. a. Upon application by a taxpayer, the Department of
42 Environmental Protection, in consultation with the Department of
43 Community Affairs, shall issue a location certificate with respect to a
44 specific property, where the taxpayer has shown that the property
45 meets the location criteria set forth in subsection a. of section 11 of
46 this act; provided that, in the event that the Department of

1 Environmental Protection adopts a map designating areas within the
2 State of New Jersey to which development is best directed, the
3 property shall be located within those areas and shall not be required
4 to meet the location criteria set forth in paragraphs (1), (3), and (4) of
5 subsection a. of section 11 of this act, but shall continue to be required
6 to meet the location criteria set forth in paragraph (2) of subsection a.
7 of section 11 of this act; and provided further that, in the event that
8 the property is located in an area designated as a water supply deficit
9 area in the Statewide Water Supply Plan, the certificate shall so
10 indicate. A taxpayer's application for a certificate shall include plats,
11 and such other information as the Department of Environmental
12 Protection or the Department of Community Affairs may require. The
13 Department of Environmental Protection may issue a location
14 certificate without presentation by the taxpayer of a deed for the
15 proposed site.

16 b. Upon application by a taxpayer, the Department of Community
17 Affairs shall issue a credit reservation certificate, where the taxpayer
18 has filed a copy of a location certificate and has made a showing that
19 the taxpayer is likely, within a reasonable time, to place in service the
20 development with respect to which the location certificate was issued,
21 and that the development qualifies for the allowance of a credit under
22 sections 7 through 11 of this act. The certificate shall state (1) the
23 earliest taxable year for which the credit may be applied, (2) the
24 maximum amount of the total credit allowed and the maximum amount
25 of credit allowed in any single tax year, (3) an expiration date, and (4)
26 such other information as the Department of Community Affairs may
27 prescribe. The certificate shall apply only to the development placed
28 in service by the specified expiration date. The expiration date may be
29 extended at the discretion of the Commissioner of Community Affairs
30 in order to avoid undue hardship. Certificates may be issued in the
31 first fiscal year following the effective date of sections 7 through 11 of
32 this act, and in each of the six subsequent fiscal years.

33 c. For the first taxable year for which a taxpayer applies a credit
34 under sections 7 through 11 of this act, the taxpayer shall obtain an
35 eligibility certificate from an architect or professional engineer licensed
36 to practice in New Jersey. The certificate shall consist of a
37 certification, under the seal of the architect or engineer, that, except
38 for any provision for which the taxpayer has obtained a waiver from
39 the Department of Community Affairs pursuant to subsection d. of
40 section 11 of this act, the building or development with respect to
41 which the credit is applied: (1) meets the neighborhood design criteria
42 set forth in subsection b. of section 11 of this act; (2) meets either the
43 green building criteria set forth in subsection c. of section 11 of this
44 act or the criteria required for Certified, Silver, Gold or Platinum
45 status under the LEED Green Building Rating System or LEED
46 Residential Green Building Rating System; and (3) if the building or

1 development is located in an area designated as a water supply deficit
2 area in the Statewide Water Supply Plan, meets the criteria set forth
3 in subparagraph (h) of paragraph (3) of subsection a. of section 11 of
4 this act. The certification shall be made in accordance with the
5 standards and guidelines in effect at the time the credit reservation for
6 the development was issued. The certificate shall set forth the specific
7 findings upon which the certification was based. The certificate shall
8 include sufficient information to identify each building or development,
9 and such other information as the Department of Community Affairs
10 may prescribe. The taxpayer shall file with the Division of Taxation
11 the eligibility certificate, and the associated location certificate and
12 credit reservation certificate, with the application for credit and shall
13 file duplicate copies with the Department of Community Affairs.

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

21
22 10. a. Each taxpayer shall, for any taxable year for which a credit
23 is claimed under sections 7 through 11 of this act, maintain records of
24 such information as the Department of Community Affairs and the
25 Division of Taxation shall determine, and report that information to
26 the Department of Community Affairs and the Division of Taxation in
27 the form and at the time that the two departments shall determine.

28 b. The Department of Community Affairs, the Department of
29 Environmental Protection, and the Division of Taxation shall adopt,
30 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
31 (C.52:14B-1 et seq.), such rules and regulations as may be necessary
32 to implement sections 7 through 11 of this act. These rules and
33 regulations shall be designed to encourage the implementation of smart
34 growth principles and maintain high but commercially reasonable
35 standards for obtaining tax credits under sections 7 through 11 of this
36 act. The rules and regulations shall establish a reasonable time for
37 submission of applications and shall establish a method certifying
38 proposed locations and allocating credit reservation certificates among
39 eligible applicants, which shall generally be on a first-come, first-
40 served basis.

41 c. On or before six years after the effective date of sections 7
42 through 11 of this act, the Commissioner of Community Affairs, in
43 consultation with the Commissioner of Environmental Protection and
44 the Director of the Division of Taxation, shall prepare and submit a
45 written report regarding the number of certificates and taxpayers
46 applying the credit provided for under sections 7 through 11 of this

1 act; the amount of the credits granted, the geographical distribution of
2 the credits granted, and any other information that the Department of
3 Community Affairs, the Department of Environmental Protection, or
4 the Division of Taxation may deem useful or appropriate. A
5 preliminary draft of the report shall be so issued within the first four
6 years following the effective date of sections 7 through 11 of this act.
7 The report shall be submitted to the Governor, the President of the
8 Senate, and the Speaker of the General Assembly.

9
10 11. Except as set forth in subsection d. of this section, all buildings
11 and developments with respect to which a tax credit is applied
12 pursuant to sections 7 through 11 of this act shall be considered a
13 smart growth development if they meet the following standards;
14 provided that, with respect to residential and tenant space, compliance
15 with standards set forth in paragraphs (1), (2), (3), (5) and (8) of
16 subsection c. of this section shall not be required where the taxpayer
17 does not incur or pay the cost of the equipment, appliances, fixtures,
18 materials, finishes, furnishings or other items relevant to compliance
19 with the standard:

20 a. (1) All buildings and developments with respect to which a tax
21 credit is applied under sections 7 through 11 of this act shall be
22 located in one of the following areas: (a) Planning Areas 1, 2, or 5b of
23 the State Plan; (b) centers designated by the State Planning
24 Commission; or (c) municipalities or portions of municipalities that
25 the New Jersey Office of Smart Growth has declared as substantially
26 conforming to the State Plan or to smart growth principles;

27 (2) All buildings and developments with respect to which a tax
28 credit is applied under sections 7 through 11 of this act shall be served
29 either by adequate bus transit service, adequate rail transit service, or
30 adequate ferry transit service;

31 (3) No building or development with respect to which a tax credit
32 is applied under sections 7 through 11 of this act shall be located: (a)
33 in the Pinelands National Reserve, unless the site is within a Pinelands
34 Regional Growth Area or Pinelands Town as designated in the
35 Pinelands Comprehensive Management Plan; (b) in public parkland; (c)
36 within 1,000 feet of any critical habitat site within public parkland; (d)
37 in or within 300 feet of a wetland; (e) in or within 100 feet of a critical
38 slope area, unless the site is located on a brownfield site or within a
39 highly urbanized area; (f) within the 100-year floodplain, unless the
40 site is located on a brownfield site or within a highly urbanized area;
41 (g) within 1,000 feet of the mean high-water mark for any saltwater
42 body, unless the site is located on a brownfield site or within a highly
43 urbanized area; or (h) in an area designated as a water supply deficit
44 area in the Statewide Water Supply Plan unless the Department of
45 Environmental Protection has approved a water use plan for the
46 development or the development includes fewer than 20 residential

1 units and any nonresidential units will cumulatively use fewer than
2 10,000 gallons of water per day; and

3 (4) No building or development with respect to which a tax credit
4 is applied under sections 7 through 11 of this act shall require (a) a
5 sanitary sewer line extension of 1,000 feet or greater, unless sited in
6 an area that has been approved for sanitary sewer service prior to the
7 date of enactment of this act, or (b) a septic system.

8 b. Notwithstanding any provision of the Residential Site
9 Improvement Standards, within one year after the date of enactment
10 of this act, the Department of Community Affairs, in consultation with
11 the Department of Environmental Protection, shall adopt, pursuant to
12 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.), standards for the purpose of sections 7 through 11 of this act
14 with respect to:

15 (1) Land Use. The standards shall require, at a minimum, that
16 average residential density shall be six or more residential dwelling
17 units per residential acre. Residential acreage shall be calculated net
18 of any land on the lot that is used for public open space, public
19 sidewalks, or public roads. For lots occupied by residential buildings,
20 residential acres used in the density calculation shall be the footprint
21 area of buildings, plus any associated driveways, yards, and parking
22 areas except for on-street parallel parking. For lots occupied by mixed
23 use buildings, residential acres used in the density calculation shall be
24 a percentage of the footprint area of building that equals the
25 percentage of interior space devoted to residential use, plus any
26 associated driveways, yards, and the percentage of associated parking
27 areas used by residents;

28 (2) Streets and Sidewalks. The standards shall require, at a
29 minimum, that if new streets are constructed as part of a development
30 with respect to which a credit is applied under sections 7 through 11
31 of this act, they shall meet the following standards: (a) no more than
32 one new cul-de-sac shall be constructed for every four new
33 intersections within the development; (b) at least 50% of any new
34 intersections and crossings within the development shall be equipped
35 with traffic controls or such traffic calming measures that the
36 Department of Community Affairs shall approve, including but not
37 limited to speed bumps, stop signs and vegetative barriers; (c) the
38 width of pavement of new streets shall not exceed 42 feet, consisting
39 of a maximum of 10 feet per lane of motor vehicle traffic, four feet per
40 bicycle lane, and seven feet per lane designated for on-street parallel
41 parking. New streets shall not consist of more than two lanes devoted
42 to motor vehicle traffic, two lanes devoted to bicycle traffic, and two
43 lanes devoted to on-street parallel parking; and (d) sidewalks of no
44 less than four feet in width shall be provided along frontage of all
45 buildings and along all streets that connect buildings within the
46 development; and

1 (3) Parking. The standards shall require, at a minimum, that the
2 number of parking spaces associated with the development shall not
3 exceed the number required by parking ratios specified in applicable
4 local zoning codes.

5 c. Within one year after the date of enactment of this act, the
6 Department of Community Affairs, in consultation with the
7 Department of Environmental Protection, shall adopt, pursuant to the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
9 seq.), standards for the purpose of sections 7 through 11 of this act,
10 and shall review and update those standards at least every two years
11 from the date on which they are adopted, with respect to:

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

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

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

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

1 labeled roof products, except where solar panels or roof gardens are
2 installed;

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

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

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

18 (8) Indoor Air Quality. The standards shall require, at a minimum,
19 that (a) interior paints shall contain no more than 100 grams per liter
20 of volatile organic compounds; (b) sealants and adhesives used for
21 interior applications shall contain no more than 250 grams per liter of
22 volatile organic compounds; (c) carpets, carpet cushions and any
23 necessary adhesives shall meet the standards set forth in the Carpet
24 and Rug Institute Green Label Indoor Air Quality Test Program; (d)
25 carpets shall not be installed in basements, bathrooms, kitchens, or
26 within a four foot radius of the center of any doorway which leads
27 outdoors; (e) only direct-vent, closed-combustion, or power vented
28 space heating and water heating equipment shall be used, and vent-free
29 space heating or water heating equipment shall not be used; (f) any
30 wood stoves shall have ducted combustion air; (g) carbon monoxide
31 detectors shall be installed consistent with Consumer Product Safety
32 Commission recommendations, and with at least one detector per 500
33 square feet of interior space; (h) enclosed parking shall be completely
34 air-sealed from attached indoor spaces; (i) every building shall be
35 furnished with a ventilation system and for commercial buildings the
36 sizing of the system shall conform with the ASHRAE standard known
37 as ASHRAE G2-2001; and (j) foundations of residential units shall be
38 constructed according to the following requirements, unless the
39 Department of Community Affairs approves alternative plans to ensure
40 dry basements: the foundation shall have a continuous footing drain
41 that is covered with stone, which in turn shall be covered with filter
42 fabric, and which shall drain either to daylight or to an interior, sealed
43 sump pump system; the foundation shall have porous backfill material;
44 the vapor retarder shall be directly under slab; and the exterior of the
45 below grade foundation shall be waterproofed;

1 (9) Construction Waste. The standards shall require, at a
2 minimum, development of and adherence to a waste reduction plan
3 that provides for separation of materials which are reusable or
4 recyclable, such that a minimum of 30% of waste by volume shall be
5 diverted from the waste stream; and

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

16 d. Upon application by a taxpayer, the Department of Community
17 Affairs, in consultation with the Department of Environmental
18 Protection, may issue a waiver of any regulatory provision adopted
19 pursuant to subsection a. of this section, where the taxpayer has made
20 a showing that the development was in compliance with the provision
21 at the time of the issuance to the taxpayer of a location certificate, and
22 that the development is no longer in compliance because of
23 circumstances out of the taxpayer's control; or of any regulatory
24 provision adopted pursuant to subsections b. or c. of this section,
25 where the taxpayer has made a showing that compliance with the
26 provision is impracticable due to unique characteristics of the site, or
27 that deviation from the provision produces no net negative
28 environmental impact.

29
30 12. This act shall take effect immediately.
31
32

33 STATEMENT
34

35 This bill, entitled the "Smart Growth Tax Credit Act," provides tax
36 incentives against the corporation business tax and gross income tax
37 for developers and owners who design and build residential and mixed
38 use developments which meet specific "smart growth" and "green
39 building" criteria. These criteria ensure that participating
40 developments are appropriately located, resource efficient, pedestrian
41 friendly, adequately serviced by mass transit, and built using materials
42 and technologies that minimize environmental impacts and provide a
43 healthier built environment. This bill also provides additional
44 incentives for designing and building developments which exceed the
45 required smart growth and green building standards.

1 The incentives provided by this bill are necessary in order to reduce
2 New Jersey's incidence of sprawl development and the adverse
3 impacts of such sprawl development, which include the rapid
4 consumption of open space and farmland, and the pollution and traffic
5 congestion produced by automobile dependence. Intended to bolster
6 the production of smarter, more sustainable development, this bill will
7 help conserve undeveloped land, reduce air and water pollution,
8 improve public health, reduce traffic congestion, ensure more efficient
9 water usage that will help prevent future drought emergencies, and
10 reduce energy bills and transportation costs for New Jerseyans. It will
11 also help the State's building and development professionals overcome
12 market barriers and develop the capacity to create superior buildings
13 and neighborhoods at minimal additional cost. The increased stock of
14 these buildings and neighborhoods will then increase consumer
15 demand for walkable and transit-oriented development and cleaner,
16 safer buildings.

17 The "Smart Growth Tax Credit Act" will be administered by the
18 Department of Community Affairs in consultation with the Department
19 of Environmental Protection. It will be available for seven years, and
20 the total of all credits which could be allocated in the first fiscal year
21 after enactment would be no more than \$20 million. In subsequent
22 years, the Commissioner of Community Affairs, in consultation with
23 the State Treasurer, may authorize up to \$50 million of credit
24 allocations per year. Developers and owners will collect one-fifth of
25 the credit due each year for the five years following the smart growth
26 development's certification of eligibility.