

[First Reprint]

ASSEMBLY, No. 1355

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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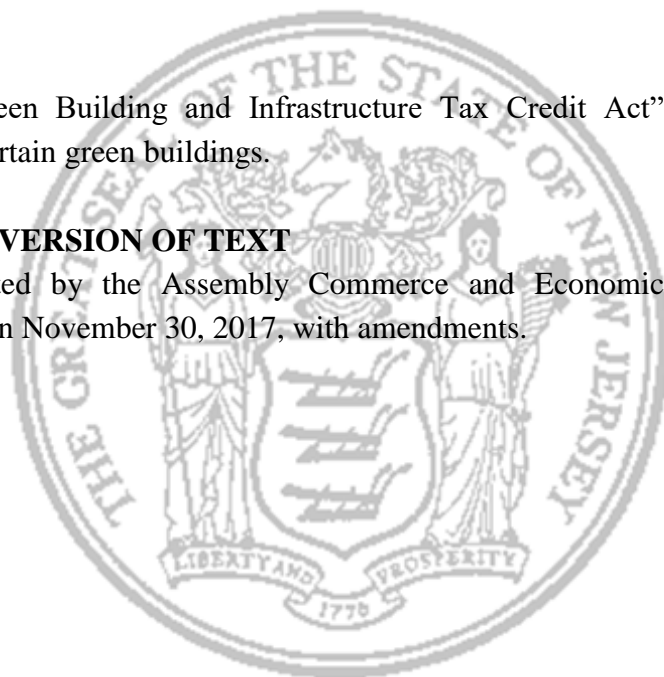
Assemblywomen B.DeCroce, Caride and Jimenez

SYNOPSIS

The “Green Building and Infrastructure Tax Credit Act”; provides tax credits for certain green buildings.

CURRENT VERSION OF TEXT

As reported by the Assembly Commerce and Economic Development Committee on November 30, 2017, with amendments.



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

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

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

10
11 2. As used in this act:

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted November 30, 2017.

1 “Green building” means a building meeting the standards
2 prescribed and adopted pursuant to section 7 of this act.
3 “Impervious surface” means a surface that has been compacted
4 or covered with a layer of material so that it is highly resistant to
5 infiltration by water.
6 “Improvement” means any constructed element which becomes
7 part of, is placed upon, or is affixed to real estate.
8 “LEED Green Building Rating System” means the Leadership in
9 Energy and Environmental Design green building rating system
10 developed by the United States Green Building Council.
11 “LEED for Homes Rating System” means the Leadership in
12 Energy and Environmental Design green building rating system for
13 residential buildings developed by the United States Green Building
14 Council.
15 “Old growth timber” means timber of a forest from the late
16 successional stage of forest development, as defined by the
17 Department of Environmental Protection.
18 “Site improvement” means any construction work on, or
19 improvement in connection with, a development limited to streets,
20 roads, parking facilities, sidewalks, drainage structures, and
21 utilities.
22 “Stormwater management measures” means structural and
23 nonstructural control of stormwater runoff and nonpoint pollution.
24 “Tax year” means the accounting or privilege period of the
25 relevant business entity.
26 “Tropical hardwood” means any hardwood scientifically
27 classified as an angiosperm which grows in a tropical moist forest,
28 as determined by the Department of Environmental Protection.
29
30 3. a. A taxpayer shall be granted a credit for allowable costs
31 paid or incurred by the taxpayer in connection with a green
32 building, to be computed as provided in this section, against any tax
33 imposed under the “Corporation Business Tax Act (1945),”
34 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the “New Jersey
35 Gross Income Tax Act,” pursuant to N.J.S.54A:1-1 et seq., the tax
36 on sewerage and water corporations pursuant to
37 P.L.1940, c.5 (C.54:30A-49 et seq.), the tax on marine insurance
38 companies pursuant to R.S.54:16-1 et seq., and the general tax on
39 insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.). The
40 amount of the credit granted under this section against the taxes
41 imposed, pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.),
42 N.J.S.54A:1-1 et seq., P.L.1940, c.5 (C.54:30A-49 et seq.),
43 R.S.54:16-1 et seq., and P.L.1945, c.132 (C.54:18A-1 et seq.), for
44 each tax year shall not, in combination with any other credits
45 applied, exceed 50 percent of the tax liability otherwise due and
46 shall not reduce the tax liability to an amount less than the statutory
47 minimum, if applicable. The credit shall be an amount equal to the
48 sum of the following, provided, however, that the amount of the

1 credit 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; and

4 (2) (a) 0.5% of allowable costs, attributable to buildings but not
5 to other site improvements, qualifying as Certified status under the
6 LEED Green Building Rating System or the LEED for Homes
7 Rating System, a one Globe rating under the Green Globes Program
8 adopted by the Green Building Initiative, or a comparable rating
9 according to a nationally recognized, accepted, and appropriate
10 sustainable development rating system as designated by the
11 Commissioner of Community Affairs pursuant to section 7 of this
12 act;

13 (b) 1.0% of allowable costs, attributable to buildings but not to
14 other site improvements, qualifying as Silver status under the
15 appropriate LEED Green Building Rating System, a two Globe
16 status under the Green Globes Program adopted by the Green
17 Building Initiative, or a comparable rating according to a nationally
18 recognized, accepted, and appropriate sustainable development
19 rating system as designated by the Commissioner of Community
20 Affairs pursuant to section 7 of this act;

21 (c) 1.5% of allowable costs, attributable to buildings but not to
22 other site improvements, qualifying as Gold status under the
23 appropriate LEED Green Building Rating System, a three Globe
24 status under the Green Globes Program adopted by the Green
25 Building Initiative, or a comparable rating according to a nationally
26 recognized, accepted, and appropriate sustainable development
27 rating system as designated by the Commissioner of Community
28 Affairs pursuant to section 7 of this act; or

29 (d) 2.0% of allowable costs, attributable to buildings but not to
30 other site improvements, qualifying as Platinum status under the
31 appropriate LEED Green Building Rating System, a four Globe
32 status under the Green Globes Program adopted by the Green
33 Building Initiative, or a comparable rating according to a nationally
34 recognized, accepted, and appropriate sustainable development
35 rating system as designated by the Commissioner of Community
36 Affairs pursuant to section 7 of this act.

37 b. The Department of Community Affairs, the Department of
38 Environmental Protection, and the Division of Taxation in the
39 Department of the Treasury shall jointly adopt, pursuant to the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), such rules and regulations as may be necessary to implement
42 this act. These rules and regulations shall be designed to encourage
43 the implementation of green building principles and maintain high
44 but commercially reasonable standards for obtaining tax credits
45 under this act. The rules and regulations shall establish a
46 reasonable time for submission of applications and shall establish a
47 method of allocating credit reservation certificates pursuant to

1 section 4 of this act among eligible applicants, which shall
2 generally be on a first-come, first-served basis.

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

17
18 4. a. To be eligible for a tax credit pursuant to section 3 of this
19 act, a taxpayer shall submit an application, in writing, to the
20 Department of Community Affairs for a credit reservation
21 certificate. The Department of Community Affairs shall issue a
22 credit reservation certificate if the taxpayer has made a showing that
23 the taxpayer is likely, within a reasonable time, to place in service
24 the building for which a credit is sought, and that the building
25 would qualify for the allowance of a credit pursuant to section 3 of
26 this act. The certificate shall state (1) the earliest tax year for which
27 the credit may be applied, (2) the maximum amount of the total
28 credit allowed and the maximum amount of credit allowed in any
29 single tax year, (3) an expiration date, and (4) such other
30 information as the Department of Community Affairs may
31 prescribe. The certificate shall apply only to the building placed in
32 service by the specified expiration date. The expiration date may be
33 extended at the discretion of the Commissioner of Community
34 Affairs in order to avoid undue hardship.

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

39
40 5. a. For the first year for which a taxpayer intends to apply a
41 credit under this act, the taxpayer shall obtain an eligibility
42 certificate from the Department of Community Affairs. The
43 Department of Community Affairs shall issue an eligibility
44 certificate to a taxpayer if the taxpayer has provided:

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

- 1 (a) the green building standards prescribed and adopted
2 pursuant to section 7 of this act;
- 3 (b) the criteria required for Certified, Silver, Gold, or Platinum
4 status under the LEED Green Building Rating System or LEED for
5 Homes Rating System;
- 6 (c) the criteria required for one, two, three, or four Globes status
7 under the Green Globes Program adopted by the Green Building
8 Initiative; or
- 9 (d) a comparable rating according to a nationally recognized,
10 accepted, and appropriate sustainable development rating system as
11 designated by the Commissioner of Community Affairs;
- 12 (2) a credit reservation certificate issued pursuant to section 4 of
13 this act;
- 14 (3) a certificate of occupancy, for the building or buildings that
15 is the subject of the credit;
- 16 (4) a statement that the building or buildings shall remain in
17 service during the first year; and
- 18 (5) any other information the Department of Community Affairs
19 deems necessary to properly effectuate the intent of this act.

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

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

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

39
40 6. a. When filing a return that includes a claim for a credit
41 pursuant to section 3 of this act, the taxpayer shall include a copy of
42 the eligibility certificate issued pursuant to section 5 of this act. For
43 each taxpayer who meets the criteria established for a credit under
44 this act, the Division of Taxation in the Department of the Treasury
45 shall allow a credit, provided that the credits, in the aggregate, shall
46 not exceed \$20 million for the first fiscal year of tax credit
47 availability and, in each of the subsequent six fiscal years, shall not
48 exceed \$50 million; provided further that any unused allocable

1 amounts shall roll over to subsequent fiscal years. After the seventh
2 fiscal year of tax credit availability no credit shall be available.

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

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

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

30 e. (1) Each taxpayer shall, for any tax year for which a credit is
31 claimed pursuant to section 3 of this act, maintain records of such
32 information as the Department of Community Affairs and the
33 Division of Taxation shall determine, and report that information to
34 the Department of Community Affairs and the Division of Taxation
35 in the form and at the time that the two agencies shall determine.

36 (2) Each taxpayer shall, for any tax year for which a credit is
37 claimed pursuant to section 8 of this act, maintain records of such
38 information as the Division of Taxation shall determine, and report
39 that information to the Division of Taxation in the form and at the
40 time that the division shall determine.

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

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

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

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

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

35 (3) Wood Use. The standards shall require, at a minimum, that
36 old growth timber and tropical hardwood, except recycled wood and
37 tropical hardwood certified in accordance with the protocol of the
38 Forest Stewardship Council, shall not be used;

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

46 (5) Water Efficiency. The standards shall require, at a
47 minimum, that: (a) each showerhead shall not exceed 2.0 gallons
48 per minute; (b) each faucet shall not exceed 1.0 gallons per minute;

- 1 (c) toilet flush volume shall not exceed 1.6 gallons; and (d) for
2 commercial buildings, the drift rate of any cooling tower shall not
3 exceed 1%;
- 4 (6) Heating and Cooling. The standards shall require, at a
5 minimum, that central air conditioning refrigerant charge and air
6 flow shall be documented to be within 10% of manufacturer
7 recommendations;
- 8 (7) Durability. The standards shall require, at a minimum, that:
9 (a) roofs shall have a warranty of no less than 40 years; (b)
10 insulated windows shall have a warranty of no less than 10 years;
11 (c) overhangs shall include at least 80% of full attic/roof-slope
12 insulation R-value; and (d) head casing flashing shall be installed
13 for all windows and exterior doors;
- 14 (8) Indoor Air Quality. The standards shall require, at a
15 minimum, that: (a) interior paints shall contain no more than 100
16 grams per liter of volatile organic compounds; (b) sealants and
17 adhesives used for interior applications shall contain no more than
18 250 grams per liter of volatile organic compounds; (c) carpets,
19 carpet cushions, and any necessary adhesives shall meet the
20 standards set forth in the Carpet and Rug Institute Green Label
21 Indoor Air Quality Test Program; (d) carpets shall not be installed
22 in basements, bathrooms, kitchens, or within a four foot radius of
23 the center of any doorway which leads outdoors; (e) only direct-
24 vent, closed-combustion, or power vented space heating and water
25 heating equipment shall be used, and vent-free space heating or
26 water heating equipment shall not be used; (f) any wood stoves
27 shall have ducted combustion air; (g) carbon monoxide detectors
28 shall be installed consistent with the United States Consumer
29 Product Safety Commission recommendations, and with at least one
30 detector per 500 square feet of interior space; (h) enclosed parking
31 shall be completely air-sealed from attached indoor spaces; (i) every
32 building shall be furnished with a ventilation system and for
33 commercial buildings the sizing of the system shall conform with
34 the applicable standard set forth by the American Society of
35 Heating, Refrigerating and Air-Conditioning Engineers; and (j)
36 foundations of residential units shall be constructed according to the
37 following requirements, unless the Department of Community
38 Affairs approves alternative plans to ensure dry basement – (i) the
39 foundation shall have a continuous footing drain that is covered
40 with stone, which in turn shall be covered with filter fabric, and
41 which shall drain either to daylight or to an interior, sealed sump
42 pump system, (ii) the foundation shall have porous backfill
43 material, (iii) the vapor retarder shall be directly under slab, and
44 (iv) the exterior of the below grade foundation shall be
45 waterproofed;
- 46 (9) Construction Waste. The standards shall require, at a
47 minimum, development of and adherence to a waste reduction plan
48 that provides for separation of materials which are reusable or

1 recyclable, such that a minimum of 30% of waste by volume shall
2 be diverted from the waste stream; and
3 (10) Stormwater Management. The standards shall require, at a
4 minimum, that developments on parcels of undeveloped land of
5 four acres or more shall employ stormwater management measures
6 in order to meet at least one of the following requirements: (a) post-
7 development runoff volume of the land area of the development
8 shall not exceed pre-development runoff volume, where runoff
9 volume is defined as the 1.5 year, 24-hour peak discharge rate; or
10 (b) the first inch of runoff or 80% of 100-year runoff produced by
11 the impervious surfaces of the development shall be treated for total
12 suspended solids, total phosphorous, and total nitrogen.

13
14 ¹8. a. A taxpayer shall be allowed a credit against the tax
15 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for
16 the taxpayer's expense during the privilege period for the purchase
17 of new wood utility poles.

18 b. The Director of the Division of Taxation in the Department
19 of the Treasury shall determine the priority in which a taxpayer
20 shall take credits allowed pursuant to this section and any other
21 credits against the tax imposed pursuant to section 5 of
22 P.L.1945, c.162. The taxpayer shall apply credits allowable
23 pursuant to this section in the order of the credits' privilege periods.
24 The amount of the credits applied under this section against the tax
25 imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
26 period shall not, in combination with any other credits applied,
27 exceed 50 percent of the tax liability otherwise due and shall not
28 reduce the tax liability to an amount less than the statutory
29 minimum provided in subsection (e) of section 5 of
30 P.L.1945, c.162.

31 c. The amount of any credit otherwise allowable under this
32 section that cannot be applied for the privilege period due to the
33 limitations of subsection b. of this section may be carried over to
34 the five privilege periods following the period for which the amount
35 was allowed. ¹

36
37 ¹9. 8.¹ This act shall take effect immediately, and section 8
38 shall apply to privilege periods commencing after the date of
39 enactment.