

SENATE, No. 1896

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

“Retrofitted Green Building Tax Credit Act.”

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

10
11 2. As used in this act:

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

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

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

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

45 "Green building" means a building meeting the standards
46 prescribed and adopted pursuant to section 7 of this act.

47 "Impervious surface" means a surface that has been compacted

1 or covered with a layer of material so that it is highly resistant to
2 infiltration by water.

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

5 "LEED Green Building Rating System" means the Leadership in
6 Energy and Environmental Design green building rating system
7 developed by the U.S. Green Building Council.

8 "LEED Residential Green Building Rating System" means the
9 Leadership in Energy and Environmental Design green building
10 rating system for residential buildings, as may be developed by the
11 U.S. Green Building Council.

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

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

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

21 "Tax year" means the accounting or privilege period of the
22 relevant business entity.

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

26

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

40 (1) 4.0 percent of allowable costs; and

41 (2) 0.5 percent, 1.0 percent, 1.5 percent, or 2.0 percent of
42 allowable costs, attributable to buildings but not to other site
43 improvements, qualifying as Certified, Silver, Gold, or Platinum
44 status, respectively, under the LEED Green Building Rating System
45 or the LEED Residential Green Building Rating System.

46 b. The Department of Community Affairs, the Department of
47 Environmental Protection, and the Division of Taxation in the
48 Department of the Treasury shall jointly adopt, pursuant to the

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

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

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

44
45 5. a. For the first year for which a taxpayer intends to apply a
46 credit under this act, the taxpayer shall obtain an eligibility
47 certificate from the Department of Community Affairs. The

1 Department of Community Affairs shall issue an eligibility
2 certificate to a taxpayer if the taxpayer has provided:

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

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

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

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

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

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

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

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

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

34

35 6. a. When filing a return that includes a claim for a credit
36 pursuant to this act, the taxpayer shall include a copy of the
37 eligibility certificate obtained pursuant to section 5 of this act. For
38 each taxpayer who is eligible for a credit under this act, the
39 Division of Taxation in the Department of the Treasury shall allow
40 a credit, provided that the credits, in the aggregate, shall not exceed
41 \$20 million for the first fiscal year of tax credit availability and, in
42 each of the subsequent six fiscal years, shall not exceed \$50
43 million; provided further that any unused allocable amounts shall
44 roll over to subsequent fiscal years. After the seventh fiscal year of
45 tax credit availability no credit shall be available.

46 b. For any tax year, a taxpayer may apply no more than 20
47 percent of the total amount allowed under section 3 of this act. The
48 amount of tax credit otherwise allowed under section 3 of this act,

1 which cannot be applied during a tax year, may be carried over, if
2 necessary, to the 15 tax years following a credit's first eligible tax
3 year.

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

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

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

31

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

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

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

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

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

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

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

46 (6) Heating and Cooling. The standards shall require, at a
47 minimum, that central air conditioning refrigerant charge and air

1 flow shall be documented to be within 10 percent of manufacturer
2 recommendations;

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

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

41 (9) Construction Waste. The standards shall require, at a
42 minimum, development of and adherence to a waste reduction plan
43 that provides for separation of materials which are reusable or
44 recyclable, such that a minimum of 30 percent of waste by volume
45 shall be diverted from the waste stream; and

46 (10) Stormwater Management. The standards shall require, at a
47 minimum, that developments on parcels of undeveloped land of
48 four acres or more shall employ stormwater management measures

1 in order to meet at least one of the following requirements: (a) post-
2 development runoff volume of the land area of the development
3 shall not exceed pre-development runoff volume, where runoff
4 volume is defined as the 1.5 year, 24-hour peak discharge rate; or
5 (b) the first inch of runoff or 80 percent of 100-year runoff
6 produced by the impervious surfaces of the development shall be
7 treated for total suspended solids, total phosphorous, and total
8 nitrogen.

9
10 8. This act shall take effect immediately.
11
12

13 **STATEMENT**
14

15 This bill, entitled the "Retrofitted Green Building Tax Credit
16 Act," provides tax credits toward the corporation business tax, gross
17 income tax, and certain other specified taxes for owners who
18 retrofit buildings to meet certain "green building" standards.

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

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

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