

HOUSE BILL 534

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; ENACTING NEW SECTIONS OF THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT TO PROVIDE A SUSTAINABLE BUILDING TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building or the renovation of an existing building in New Mexico into a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable

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1 building for which the sustainable building tax credit provided  
2 in the Corporate Income and Franchise Tax Act has been claimed.

3 B. A taxpayer who files an income tax return is  
4 eligible to apply for a sustainable building tax credit if the  
5 taxpayer is:

6 (1) the owner of the building at the time of  
7 its construction or renovation as a sustainable building; or

8 (2) the subsequent purchaser of a sustainable  
9 building with respect to which no tax credit has been  
10 previously claimed, if the construction as a sustainable  
11 building or renovation as a sustainable building began on or  
12 after January 1, 2007.

13 C. The amount of the sustainable building tax  
14 credit that may be claimed with respect to a sustainable  
15 commercial building shall be calculated based on the  
16 certification level the building has achieved in the LEED green  
17 building rating system and the amount of qualified occupied  
18 square footage in the building, as indicated on the following  
19 chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75
	Over 50,000	

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1		up to 500,000	\$ .70
2	LEED-NC Gold	First 10,000	\$4.75
3		Next 40,000	\$2.00
4		Over 50,000	
5		up to 500,000	\$1.00
6	LEED-NC Platinum	First 10,000	\$6.25
7		Next 40,000	\$3.25
8		Over 50,000	
9		up to 500,000	\$2.00
10	LEED-EB or CS Silver	First 10,000	\$2.50
11		Next 40,000	\$1.25
12		Over 50,000	
13		up to 500,000	\$ .50
14	LEED-EB or CS Gold	First 10,000	\$3.35
15		Next 40,000	\$1.40
16		Over 50,000	
17		up to 500,000	\$ .70
18	LEED-EB or CS		
19	Platinum	First 10,000	\$4.40
20		Next 40,000	\$2.30
21		Over 50,000	
22		up to 500,000	\$1.40
23	LEED-CI Silver	First 10,000	\$1.40
24		Next 40,000	\$ .70
25		Over 50,000	

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1		up to 500,000	\$.30
2	LEED-CI Gold	First 10,000	\$1.90
3		Next 40,000	\$.80
4		Over 50,000	
5		up to 500,000	\$.40
6	LEED-CI Platinum	First 10,000	\$2.50
7		Next 40,000	\$1.30
8		Over 50,000	
9		up to 500,000	\$.80.

10 D. The amount of the sustainable building tax  
11 credit that may be claimed with respect to a sustainable  
12 residential building shall be calculated based on the  
13 certification level the building has achieved in the LEED green  
14 building rating system or the build green New Mexico rating  
15 system and the amount of qualified occupied square footage, as  
16 indicated on the following chart:

17	Rating System/Level	Qualified	Tax Credit
18		Occupied	per Square
19		Square	Foot
20		Footage	
21	Build Green NM Gold	First 2,000	\$3.00
22		Next 1,000	\$1.00
23	LEED-H Silver	First 2,000	\$5.00
24		Next 1,000	\$2.50
25	LEED-H Gold	First 2,000	\$6.85

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1		Next 1,000	\$3.40
2	LEED-H Platinum	First 2,000	\$9.00
3		Next 1,000	\$4.45
4	EPA ENERGY STAR		
5	Manufactured Housing	Up to 3,000	\$5.00.

6           E. A taxpayer may apply for certification of  
7 eligibility for the sustainable building tax credit from the  
8 energy, minerals and natural resources department after the  
9 construction or renovation of the sustainable building is  
10 complete. Applications shall be considered in the order  
11 received. If the energy, minerals and natural resources  
12 department determines that the taxpayer meets the requirements  
13 of Subsection B of this section and that the building with  
14 respect to which the tax credit application is made meets the  
15 requirements of this section as a sustainable residential  
16 building or a sustainable commercial building, it may issue a  
17 certificate of eligibility to the taxpayer, subject to the  
18 limitation in Subsection F of this section. The certificate  
19 shall include the rating system certification level awarded to  
20 the building, the amount of qualified occupied square footage  
21 in the building and a calculation of the maximum amount of  
22 sustainable building tax credit for which the taxpayer would be  
23 eligible. The energy, minerals and natural resources  
24 department may issue rules governing the procedure for  
25 administering the provisions of this subsection.

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1           F. The energy, minerals and natural resources  
2 department may issue a certificate of eligibility only if the  
3 total amount of sustainable building tax credits represented by  
4 certificates of eligibility issued by the energy, minerals and  
5 natural resources department pursuant to this section and  
6 pursuant to the Corporate Income and Franchise Tax Act shall  
7 not exceed in any calendar year an aggregate amount of five  
8 million dollars (\$5,000,000) with respect to sustainable  
9 commercial buildings and an aggregate amount of five million  
10 dollars (\$5,000,000) with respect to sustainable residential  
11 buildings.

12           G. Installation of a solar thermal system or a  
13 photovoltaic system eligible for the solar market development  
14 tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be  
15 used as a component of qualification for the rating system  
16 certification level used in determining eligibility for the  
17 sustainable building tax credit, unless a solar market  
18 development tax credit pursuant to Section 7-2-18.14 NMSA 1978  
19 has not been claimed with respect to that system and the  
20 taxpayer certifies that such a tax credit will not be claimed  
21 with respect to that system.

22           H. To be eligible for the sustainable building tax  
23 credit, the taxpayer must provide to the taxation and revenue  
24 department a certificate of eligibility issued by the energy,  
25 minerals and natural resources department pursuant to the

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1 requirements of Subsection E of this section and any other  
2 information the taxation and revenue department may require to  
3 determine the amount of the tax credit due the taxpayer.

4 I. If the requirements of this section have been  
5 complied with, the department shall issue to the applicant a  
6 document granting a sustainable building tax credit. The  
7 document shall be numbered for identification and declare its  
8 date of issuance and the amount of the tax credit allowed  
9 pursuant to this section. The document may be sold, exchanged  
10 or otherwise transferred. The parties to such a transaction  
11 shall notify the department of the sale, exchange or transfer  
12 within ten days of the sale, exchange or transfer.

13 J. Except as provided in Subsection K of this  
14 section, the sustainable building tax credit represented by the  
15 document issued pursuant to Subsection I of this section shall  
16 be applied against the taxpayer's income tax liability for the  
17 taxable year in which the credit is approved and the three  
18 subsequent taxable years, in increments of twenty-five percent  
19 of the total credit amount in each of the four taxable years.  
20 If the amount of the credit available in a taxable year exceeds  
21 the taxpayer's income tax liability for that taxable year, the  
22 excess may be carried forward for up to seven years.

23 K. If the total amount of a sustainable building  
24 tax credit approved by the department is less than twenty-five  
25 thousand dollars (\$25,000), the entire amount of the credit may

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1 be applied against the taxpayer's income tax liability for the  
2 taxable year in which the credit is approved. If the amount of  
3 the credit exceeds the taxpayer's income tax liability for that  
4 taxable year, the excess may be carried forward for up to seven  
5 years.

6 L. A taxpayer who otherwise qualifies and claims a  
7 sustainable building tax credit with respect to a sustainable  
8 building owned by a partnership or other business association  
9 of which the taxpayer is a member may claim a credit only in  
10 proportion to that taxpayer's interest in the partnership or  
11 association. The total credit claimed in the aggregate by all  
12 members of the partnership or association with respect to the  
13 sustainable building shall not exceed the amount of the credit  
14 that could have been claimed by a sole owner of the property.

15 M. A husband and wife who file separate returns for  
16 a taxable year in which they could have filed a joint return  
17 may each claim only one-half of the credit that would have been  
18 allowed on a joint return.

19 N. For the purposes of this section:

20 (1) "build green New Mexico rating system"  
21 means the certification standards adopted by the homebuilders  
22 association of central New Mexico;

23 (2) "LEED-CI" means the LEED rating system for  
24 commercial interiors;

25 (3) "LEED-CS" means the LEED rating system for

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1 the core and shell of buildings;

2 (4) "LEED-EB" means the LEED rating system for  
3 existing buildings;

4 (5) "LEED gold" means the rating in compliance  
5 with, or exceeding, the second highest rating awarded by the  
6 LEED certification process;

7 (6) "LEED" means the most current leadership  
8 in energy and environmental design green building rating system  
9 guidelines developed and adopted by the United States green  
10 building council;

11 (7) "LEED-H" means the LEED rating system for  
12 homes;

13 (8) "LEED-NC" means the LEED rating system for  
14 new buildings and major renovations;

15 (9) "LEED platinum" means the rating in  
16 compliance with, or exceeding, the highest rating awarded by  
17 the LEED certification process;

18 (10) "LEED silver" means the rating in  
19 compliance with, or exceeding, the third highest rating awarded  
20 by the LEED certification process;

21 (11) "qualified occupied square footage" means  
22 the occupied spaces of the building as determined by:

23 (a) the United States green building  
24 council for those buildings obtaining LEED certification;

25 (b) the administrators of the build

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1 green New Mexico rating system for those homes obtaining build  
2 green New Mexico certification; and

3 (c) the United States environmental  
4 protection agency for ENERGY STAR-certified manufactured homes;

5 (12) "sustainable building" means either a  
6 sustainable commercial building or a sustainable residential  
7 building;

8 (13) "sustainable commercial building" means a  
9 building that has been registered and certified under the LEED-  
10 NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

11 (a) is certified by the United States  
12 green building council at LEED-Silver or higher;

13 (b) achieves any prerequisite for and at  
14 least one point related to commissioning under LEED "energy and  
15 atmosphere", if included in the applicable rating system; and

16 (c) has reduced energy consumption, as  
17 follows: 1) through 2011, a fifty percent energy reduction  
18 will be required based on the national average for that  
19 building type as published by the United States department of  
20 energy; and beginning January 1, 2012, a sixty percent energy  
21 reduction will be required based on the national average for  
22 that building type as published by the United States department  
23 of energy; and 2) is substantiated by the United States  
24 environmental protection agency target finder energy  
25 performance results form, dated no sooner than the schematic

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1 design phase of development; and

2 (14) "sustainable residential building" means:

3 (a) a building used as a single-family  
4 residence as registered and certified under the build green New  
5 Mexico or LEED-H rating systems;

6 (b) a building used as multi-family  
7 dwelling units, as registered and certified under the LEED-H  
8 rating system that: 1) is certified by the United States green  
9 building council as LEED-H silver or higher or by build green  
10 New Mexico as gold or higher; and 2) has achieved a home energy  
11 rating system index of sixty or lower as developed by the  
12 residential energy services network; or

13 (c) manufactured housing as defined by  
14 the United States department of housing and urban development  
15 that is ENERGY STAR-qualified by the United States  
16 environmental protection agency."

17 Section 2. A new section of the Corporate Income and  
18 Franchise Tax Act is enacted to read:

19 "[NEW MATERIAL] SUSTAINABLE BUILDING TAX CREDIT.--

20 A. The tax credit provided by this section may be  
21 referred to as the "sustainable building tax credit". The  
22 sustainable building tax credit shall be available for the  
23 construction in New Mexico of a sustainable building or the  
24 renovation of an existing building in New Mexico into a  
25 sustainable building. The tax credit provided in this section

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1 may not be claimed with respect to the same sustainable  
2 building for which the sustainable building tax credit provided  
3 in the Income Tax Act has been claimed.

4 B. A taxpayer that files a corporate income tax  
5 return is eligible to apply for a sustainable building tax  
6 credit if the taxpayer is:

7 (1) the owner of the building at the time of  
8 its construction or renovation as a sustainable building; or

9 (2) the subsequent purchaser of a sustainable  
10 building with respect to which no tax credit has been  
11 previously claimed, if the construction as a sustainable  
12 building or renovation as a sustainable building began on or  
13 after January 1, 2007.

14 C. The amount of the sustainable building tax  
15 credit that may be claimed with respect to a sustainable  
16 commercial building shall be calculated based on the  
17 certification level the building has achieved in the LEED green  
18 building rating system and the amount of qualified occupied  
19 square footage in the building, as indicated on the following  
20 chart:

21 LEED Rating Level	22 Qualified 23 Occupied 24 Square Footage	25 Tax Credit per Square Foot
24 LEED-NC Silver	24 First 10,000	24 \$3.50
25	25 Next 40,000	25 \$1.75

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1		Over 50,000	
2		up to 500,000	\$.70
3	LEED-NC Gold	First 10,000	\$4.75
4		Next 40,000	\$2.00
5		Over 50,000	
6		up to 500,000	\$1.00
7	LEED-NC Platinum	First 10,000	\$6.25
8		Next 40,000	\$3.25
9		Over 50,000	
10		up to 500,000	\$2.00
11	LEED-EB or CS Silver	First 10,000	\$2.50
12		Next 40,000	\$1.25
13		Over 50,000	
14		up to 500,000	\$.50
15	LEED-EB or CS Gold	First 10,000	\$3.35
16		Next 40,000	\$1.40
17		Over 50,000	
18		up to 500,000	\$.70
19	LEED-EB or CS		
20	Platinum	First 10,000	\$4.40
21		Next 40,000	\$2.30
22		Over 50,000	
23		up to 500,000	\$1.40
24	LEED-CI Silver	First 10,000	\$1.40
25		Next 40,000	\$.70

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1		Over 50,000	
2		up to 500,000	\$.30
3	LEED-CI Gold	First 10,000	\$1.90
4		Next 40,000	\$.80
5		Over 50,000	
6		up to 500,000	\$.40
7	LEED-CI Platinum	First 10,000	\$2.50
8		Next 40,000	\$1.30
9		Over 50,000	
10		up to 500,000	\$.80.

11 D. The amount of the sustainable building tax  
12 credit that may be claimed with respect to a sustainable  
13 residential building shall be calculated based on the  
14 certification level the building has achieved in the LEED green  
15 building rating system or the build green New Mexico rating  
16 system and the amount of qualified occupied square footage, as  
17 indicated on the following chart:

18	Rating System/Level	Qualified	Tax Credit
19		Occupied	per Square
20		Square	Foot
21		Footage	
22	Build Green NM Gold	First 2,000	\$3.00
23		Next 1,000	\$1.00
24	LEED-H Silver	First 2,000	\$5.00
25		Next 1,000	\$2.50

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1	LEED-H Gold	First 2,000	\$6.85
2		Next 1,000	\$3.40
3	LEED-H Platinum	First 2,000	\$9.00
4		Next 1,000	\$4.45
5	EPA ENERGY STAR		
6	Manufactured Housing	Up to 3,000	\$5.00.

7           E. A taxpayer may apply for certification of  
8 eligibility for the sustainable building tax credit from the  
9 energy, minerals and natural resources department after the  
10 construction or renovation of the sustainable building is  
11 complete. Applications shall be considered in the order  
12 received. If the energy, minerals and natural resources  
13 department determines that the taxpayer meets the requirements  
14 of Subsection B of this section and that the building with  
15 respect to which the tax credit application is made meets the  
16 requirements of this section as a sustainable residential  
17 building or a sustainable commercial building, it may issue a  
18 certificate of eligibility to the taxpayer, subject to the  
19 limitation in Subsection F of this section. The certificate  
20 shall include the rating system certification level awarded to  
21 the building, the amount of qualified occupied square footage  
22 in the building and a calculation of the maximum amount of  
23 sustainable building tax credit for which the taxpayer would be  
24 eligible. The energy, minerals and natural resources  
25 department may issue rules governing the procedure for

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1 administering the provisions of this subsection.

2 F. The energy, minerals and natural resources  
3 department may issue a certificate of eligibility only if the  
4 total amount of sustainable building tax credits represented by  
5 certificates of eligibility issued by the energy, minerals and  
6 natural resources department pursuant to this section and  
7 pursuant to the Income Tax Act shall not exceed in any calendar  
8 year an aggregate amount of five million dollars (\$5,000,000)  
9 with respect to sustainable commercial buildings and an  
10 aggregate amount of five million dollars (\$5,000,000) with  
11 respect to sustainable residential buildings.

12 G. Installation of a solar thermal system or a  
13 photovoltaic system eligible for the solar market development  
14 tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be  
15 used as a component of qualification for the rating system  
16 certification level used in determining eligibility for the  
17 sustainable building tax credit, unless a solar market  
18 development tax credit pursuant to Section 7-2-18.14 NMSA 1978  
19 has not been claimed with respect to that system and the  
20 taxpayer certifies that such a tax credit will not be claimed  
21 with respect to that system.

22 H. To be eligible for the sustainable building tax  
23 credit, the taxpayer must provide to the taxation and revenue  
24 department a certificate of eligibility issued by the energy,  
25 minerals and natural resources department pursuant to the

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1 requirements of Subsection E of this section and any other  
2 information the taxation and revenue department may require to  
3 determine the amount of the tax credit due the taxpayer.

4 I. If the requirements of this section have been  
5 complied with, the department shall issue to the applicant a  
6 document granting a sustainable building tax credit. The  
7 document shall be numbered for identification and declare its  
8 date of issuance and the amount of the tax credit allowed  
9 pursuant to this section. The document may be sold, exchanged  
10 or otherwise transferred. The parties to such a transaction  
11 shall notify the department of the sale, exchange or transfer  
12 within ten days of the sale, exchange or transfer.

13 J. Except as provided in Subsection K of this  
14 section, the sustainable building tax credit represented by the  
15 document issued pursuant to Subsection I of this section shall  
16 be applied against the taxpayer's corporate income tax  
17 liability for the taxable year in which the credit is approved  
18 and the three subsequent taxable years, in increments of  
19 twenty-five percent of the total credit amount in each of the  
20 four taxable years. If the amount of the credit available in a  
21 taxable year exceeds the taxpayer's corporate income tax  
22 liability for that taxable year, the excess may be carried  
23 forward for up to seven years.

24 K. If the total amount of a sustainable building  
25 tax credit approved by the department is less than twenty-five

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1 thousand dollars (\$25,000), the entire amount of the credit may  
2 be applied against the taxpayer's corporate income tax  
3 liability for the taxable year in which the credit is approved.  
4 If the amount of the credit exceeds the taxpayer's corporate  
5 income tax liability for that taxable year, the excess may be  
6 carried forward for up to seven years.

7 L. A taxpayer that otherwise qualifies and claims a  
8 sustainable building tax credit with respect to a sustainable  
9 building owned by a partnership or other business association  
10 of which the taxpayer is a member may claim a credit only in  
11 proportion to that taxpayer's interest in the partnership or  
12 association. The total credit claimed in the aggregate by all  
13 members of the partnership or association with respect to the  
14 sustainable building shall not exceed the amount of the credit  
15 that could have been claimed by a sole owner of the property.

16 M. For the purposes of this section:

17 (1) "build green New Mexico rating system"  
18 means the certification standards adopted by the homebuilders  
19 association of central New Mexico;

20 (2) "LEED-CI" means the LEED rating system for  
21 commercial interiors;

22 (3) "LEED-CS" means the LEED rating system for  
23 the core and shell of buildings;

24 (4) "LEED-EB" means the LEED rating system for  
25 existing buildings;

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1 (5) "LEED gold" means the rating in compliance  
2 with, or exceeding, the second highest rating awarded by the  
3 LEED certification process;

4 (6) "LEED" means the most current leadership  
5 in energy and environmental design green building rating system  
6 guidelines developed and adopted by the United States green  
7 building council;

8 (7) "LEED-H" means the LEED rating system for  
9 homes;

10 (8) "LEED-NC" means the LEED rating system for  
11 new buildings and major renovations;

12 (9) "LEED platinum" means the rating in  
13 compliance with, or exceeding, the highest rating awarded by  
14 the LEED certification process;

15 (10) "LEED silver" means the rating in  
16 compliance with, or exceeding, the third highest rating awarded  
17 by the LEED certification process;

18 (11) "qualified occupied square footage" means  
19 the occupied spaces of the building as determined by:

20 (a) the United States green building  
21 council for those buildings obtaining LEED certification;

22 (b) the administrators of the build  
23 green New Mexico rating system for those homes obtaining build  
24 green New Mexico certification; and

25 (c) the United States environmental

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1 protection agency for ENERGY STAR-certified manufactured homes;

2 (12) "sustainable building" means either a  
3 sustainable commercial building or a sustainable residential  
4 building;

5 (13) "sustainable commercial building" means a  
6 building that has been registered and certified under the LEED-  
7 NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

8 (a) is certified by the United States  
9 green building council at LEED-Silver or higher;

10 (b) achieves any prerequisite for and at  
11 least one point related to commissioning under LEED "energy and  
12 atmosphere", if included in the applicable rating system; and

13 (c) has reduced energy consumption, as  
14 follows: 1) through 2011, a fifty percent energy reduction  
15 will be required based on the national average for that  
16 building type as published by the United States department of  
17 energy; and beginning January 1, 2012, a sixty percent energy  
18 reduction will be required based on the national average for  
19 that building type as published by the United States department  
20 of energy; and 2) is substantiated by the United States  
21 environmental protection agency target finder energy  
22 performance results form, dated no sooner than the schematic  
23 design phase of development; and

24 (14) "sustainable residential building" means:

25 (a) a building used as a single-family

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1 residence as registered and certified under the build green New  
2 Mexico or LEED-H rating systems;

3 (b) a building used as multi-family  
4 dwelling units, as registered and certified under the LEED-H  
5 rating system that: 1) is certified by the United States green  
6 building council as LEED-H silver or higher or by build green  
7 New Mexico as gold or higher; and 2) has achieved a home energy  
8 rating system index of sixty or lower as developed by the  
9 residential energy services network; or

10 (c) manufactured housing as defined by  
11 the United States department of housing and urban development  
12 that is ENERGY STAR-qualified by the United States  
13 environmental protection agency."

14 Section 3. APPLICABILITY.--The provisions of this act  
15 apply to taxable years beginning on or after January 1, 2007  
16 through December 31, 2013.