

1 SENATE BILL 543

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Dede Feldman

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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