

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 291

3 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

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10 AN ACT

11 RELATING TO TAXATION; CLARIFYING PROVISIONS OF THE SUSTAINABLE
12 BUILDING TAX CREDITS; ALLOWING NONPROFIT ENTITIES TO RECEIVE
13 THE SUSTAINABLE BUILDING TAX CREDITS THROUGH TRANSFERABILITY;
14 PROVIDING GREATER FLEXIBILITY TO MULTIFAMILY RESIDENTIAL
15 BUILDINGS REGARDING OPPORTUNITIES TO BE QUALIFIED FOR
16 SUSTAINABLE BUILDING TAX CREDITS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 7-2-18.19 NMSA 1978 (being Laws 2007,
20 Chapter 204, Section 3) is amended to read:

21 "7-2-18.19. SUSTAINABLE BUILDING TAX CREDIT.--

22 A. The tax credit provided by this section may be
23 referred to as the "sustainable building tax credit". The
24 sustainable building tax credit shall be available for the
25 construction in New Mexico of a sustainable building, [or] the

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1 renovation of an existing building in New Mexico into a
2 sustainable building or the permanent installation of
3 manufactured housing, regardless of where the housing is
4 manufactured, that is a sustainable building. The tax credit
5 provided in this section may not be claimed with respect to the
6 same sustainable building for which the sustainable building
7 tax credit provided in the Corporate Income and Franchise Tax
8 Act has been claimed.

9 B. A taxpayer who files an income tax return is
10 eligible to ~~[apply for]~~ be granted a sustainable building tax
11 credit by the department if the taxpayer ~~[is:~~

12 ~~(1) the owner of the building at the time the~~
13 ~~certification level for the building in the LEED green building~~
14 ~~rating system or the build green New Mexico rating system is~~
15 ~~awarded; or~~

16 ~~(2) the subsequent purchaser of a sustainable~~
17 ~~building with respect to which no tax credit has been~~
18 ~~previously claimed, if the certification level for the building~~
19 ~~in the LEED green building rating system or the build green New~~
20 ~~Mexico rating system is awarded on or after January 1, 2007]~~
21 submits a document issued pursuant to Subsection I of this
22 section with the taxpayer's income tax return.

23 C. The amount of the sustainable building tax
24 credit that may be claimed with respect to a sustainable
25 commercial building shall be calculated based on the

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1 certification level the building has achieved in the LEED green
 2 building rating system and the amount of qualified occupied
 3 square footage in the building, as indicated on the following
 4 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	
LEED-NC Gold	up to 500,000	\$.70
	First 10,000	\$4.75
	Next 40,000	\$2.00
LEED-NC Platinum	Over 50,000	
	up to 500,000	\$1.00
	First 10,000	\$6.25
LEED-EB or CS Silver	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Gold	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$.50
	First 10,000	\$3.35
	Next 40,000	\$1.40

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SCORC/SB 291

1		Over 50,000	
2		up to 500,000	\$.70
3	LEED-EB or CS Platinum	First 10,000	\$4.40
4		Next 40,000	\$2.30
5		Over 50,000	
6		up to 500,000	\$1.40
7	LEED-CI Silver	First 10,000	\$1.40
8		Next 40,000	\$.70
9		Over 50,000	
10		up to 500,000	\$.30
11	LEED-CI Gold	First 10,000	\$1.90
12		Next 40,000	\$.80
13		Over 50,000	
14		up to 500,000	\$.40
15	LEED-CI Platinum	First 10,000	\$2.50
16		Next 40,000	\$1.30
17		Over 50,000	
18		up to 500,000	\$.80.

19 D. The amount of the sustainable building tax
20 credit that may be claimed with respect to a sustainable
21 residential building shall be calculated based on ~~[the~~
22 ~~certification level the building has achieved in the LEED~~
23 ~~green building rating system or the build green New Mexico~~
24 ~~rating system and]~~ the amount of qualified occupied square
25 footage, as indicated on the following chart:

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Rating System/Level	Qualified	Tax Credit
	Occupied	per Square
	Square Footage	Foot
[Build Green NM Gold	First 2,000	\$4.50
	Next 1,000	\$2.00]
LEED-H Silver <u>or Build</u>	First 2,000	\$5.00
<u>Green NM Silver</u>	Next 1,000	\$2.50
LEED-H Gold <u>or Build</u>	First 2,000	\$6.85
<u>Green NM Gold</u>	Next 1,000	\$3.40
LEED-H Platinum <u>or Build</u>	First 2,000	\$9.00
<u>Green NM Emerald</u>	Next 1,000	\$4.45
EPA ENERGY STAR		
Manufactured Housing	Up to 3,000	\$3.00.

E. A ~~[taxpayer]~~ building owner may apply for ~~[certification]~~ a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the ~~[taxpayer]~~ building owner meets the requirements ~~[of Subsection B]~~ of this ~~[section]~~ subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a

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1 sustainable commercial building, [~~it~~] the energy, minerals
2 and natural resources department may issue a certificate of
3 eligibility to the [~~taxpayer~~] building owner, subject to the
4 limitation in Subsection F of this section. The certificate
5 shall include the rating system certification level awarded
6 to the building, the amount of qualified occupied square
7 footage in the building and a calculation of the maximum
8 amount of sustainable building tax credit for which the
9 [~~taxpayer~~] building owner would be eligible. The energy,
10 minerals and natural resources department may issue rules
11 governing the procedure for administering the provisions of
12 this subsection. If the certification level for the
13 sustainable residential building is awarded on or after
14 January 1, 2007, the energy, minerals and natural resources
15 department may issue a certificate of eligibility to a
16 building owner who is:

- 17 (1) the owner of the sustainable residential
18 building at the time the certification level for the building
19 is awarded; or
20 (2) the subsequent purchaser of a
21 sustainable residential building with respect to which no tax
22 credit has been previously claimed.

23 F. The energy, minerals and natural resources
24 department may issue a certificate of eligibility only if the
25 total amount of sustainable building tax credits represented

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1 by certificates of eligibility issued by the energy, minerals
2 and natural resources department pursuant to this section and
3 pursuant to the Corporate Income and Franchise Tax Act shall
4 not exceed in any calendar year an aggregate amount of five
5 million dollars (\$5,000,000) with respect to sustainable
6 commercial buildings and an aggregate amount of five million
7 dollars (\$5,000,000) with respect to sustainable residential
8 buildings; provided that no more than one million two hundred
9 fifty thousand dollars (\$1,250,000) of the aggregate amount
10 with respect to sustainable residential buildings shall be
11 for manufactured housing. If for any taxable year, the
12 energy, minerals and natural resources department determines
13 that the applications for sustainable building tax credits
14 with respect to sustainable residential buildings for that
15 taxable year exceed the aggregate limit set in this section,
16 the energy, minerals and natural resources department may
17 issue certificates of eligibility under the aggregate annual
18 limit for sustainable commercial buildings to building owners
19 of multifamily dwelling units that meet the requirements of
20 the energy, minerals and natural resources department and of
21 this section; provided that applications for sustainable
22 building credits for other sustainable commercial buildings
23 total less than the full amount allocated for tax credits for
24 sustainable commercial buildings.

25 G. Installation of a solar thermal system or a

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1 photovoltaic system eligible for the solar market development
2 tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be
3 used as a component of qualification for the rating system
4 certification level used in determining eligibility for the
5 sustainable building tax credit, unless a solar market
6 development tax credit pursuant to Section 7-2-18.14 NMSA
7 1978 has not been claimed with respect to that system and the
8 building owner and the taxpayer [~~certifies~~] claiming the
9 sustainable building tax credit certify that such a tax
10 credit will not be claimed with respect to that system.

11 H. To be eligible for the sustainable building
12 tax credit, the [~~taxpayer must~~] building owner shall provide
13 to the taxation and revenue department a certificate of
14 eligibility issued by the energy, minerals and natural
15 resources department pursuant to the requirements of
16 Subsection E of this section and any other information the
17 taxation and revenue department may require to determine the
18 amount of the tax credit [~~due~~] for which the [~~taxpayer~~]
19 building owner is eligible.

20 I. If the requirements of this section have been
21 complied with, the department shall issue to the [~~applicant~~]
22 building owner a document granting a sustainable building tax
23 credit. The document shall be numbered for identification
24 and declare its date of issuance and the amount of the tax
25 credit allowed pursuant to this section. The document may be

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underscoring material = new
[bracketed material] = delete

1 submitted by the building owner with that taxpayer's income
2 tax return or may be sold, exchanged or otherwise transferred
3 to another taxpayer. The parties to such a transaction shall
4 notify the department of the sale, exchange or transfer
5 within ten days of the sale, exchange or transfer.

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

17 K. If the total amount of a sustainable building
18 tax credit approved by the department is less than twenty-
19 five thousand dollars (\$25,000), the entire amount of the
20 credit may be applied against the taxpayer's income tax
21 liability for the taxable year [~~in~~] for which the credit is
22 approved. If the amount of the credit exceeds the taxpayer's
23 income tax liability for that taxable year, the excess may be
24 carried forward for up to seven years.

25 L. A taxpayer who otherwise qualifies and claims

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1 a sustainable building tax credit with respect to a
2 sustainable building owned by a partnership or other business
3 association of which the taxpayer is a member may claim a
4 credit only in proportion to that taxpayer's interest in the
5 partnership or association. The total credit claimed in the
6 aggregate by all members of the partnership or association
7 with respect to the sustainable building shall not exceed the
8 amount of the credit that could have been claimed by a sole
9 owner of the property.

10 M. A husband and wife who file separate returns
11 for a taxable year in which they could have filed a joint
12 return may each claim only one-half of the sustainable
13 building tax credit that would have been allowed on a joint
14 return.

15 N. For the purposes of this section:

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

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

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

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

25 (5) "LEED gold" means the rating in

1 compliance with, or exceeding, the second-highest rating
 2 awarded by the LEED certification process;

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

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

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

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

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

17 (11) "manufactured housing" means a
 18 multisectioned home that is:

19 (a) a manufactured home or modular
 20 home;

21 (b) a single-family dwelling with a
 22 heated area of at least thirty-six feet by twenty-four feet
 23 and a total area of at least eight hundred sixty-four square
 24 feet;

25 (c) constructed in a factory to the

1 standards of the United States department of housing and
2 urban development, the National Manufactured Housing
3 Construction and Safety Standards Act of 1974 and the Housing
4 and Urban Development Zone Code 2 or New Mexico construction
5 codes up to the date of the unit's construction; and

6 (d) installed consistent with the
7 Manufactured Housing Act and rules adopted pursuant to that
8 act relating to permanent foundations;

9 ~~(11)~~ (12) "qualified occupied square
10 footage" means the occupied spaces of the building as
11 determined by:

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

14 (b) the administrators of the build
15 green New Mexico rating system for those homes obtaining
16 build green New Mexico certification; and

17 (c) the United States environmental
18 protection agency for ENERGY STAR-certified manufactured
19 homes;

20 (13) "nonprofit organization" means a
21 nonprofit corporation or trust that is exempt from payment of
22 income tax pursuant to Section 7-2-4 NMSA 1978, but does not
23 include state, local government or tribal agencies;

24 ~~(12)~~ (14) "sustainable building" means
25 either a sustainable commercial building or a sustainable

1 residential building;

2 ~~(13)~~ (15) "sustainable commercial
 3 building" means a building that has been registered and
 4 certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI
 5 rating system and that:

6 (a) is certified by the United States
 7 green building council at LEED silver or higher;

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

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

23 ~~(14)~~ (16) "sustainable residential
 24 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
2 New Mexico or LEED-H rating [~~systems~~] system that: 1) is
3 certified by the United States green building council as
4 LEED-H silver or higher or by build green New Mexico as
5 [~~gold~~] silver or higher; and 2) has achieved a home energy
6 rating system index of sixty or lower as developed by the
7 residential energy services network;

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

16 (c) manufactured housing [~~as defined~~
17 ~~by the United States department of housing and urban~~
18 ~~development~~] that is ENERGY STAR-qualified by the United
19 States environmental protection agency; and

20 (17) "tribal" means of, belonging to or
21 created by a federally recognized Indian nation, tribe or
22 pueblo."

23 Section 2. Section 7-2A-21 NMSA 1978 (being Laws 2007,
24 Chapter 204, Section 4) is amended to read:

25 "7-2A-21. SUSTAINABLE BUILDING TAX CREDIT.--

1 A. The tax credit provided by this section may be
2 referred to as the "sustainable building tax credit". The
3 sustainable building tax credit shall be available for the
4 construction in New Mexico of a sustainable building, ~~[or]~~
5 the renovation of an existing building in New Mexico into a
6 sustainable building or the permanent installation of
7 manufactured housing, regardless of where the housing is
8 manufactured, that is a sustainable building. The tax credit
9 provided in this section may not be claimed with respect to
10 the same sustainable building for which the sustainable
11 building tax credit provided in the Income Tax Act has been
12 claimed.

13 B. A taxpayer that files a corporate income tax
14 return is eligible to ~~[apply for]~~ be granted a sustainable
15 building tax credit by the department if the taxpayer ~~[is:~~

16 ~~(1) the owner of the building at the time~~
17 ~~the certification level for the building in the LEED green~~
18 ~~building rating system or the build green New Mexico rating~~
19 ~~system is awarded; or~~

20 ~~(2) the subsequent purchaser of a~~
21 ~~sustainable building with respect to which no tax credit has~~
22 ~~been previously claimed, if the certification level for the~~
23 ~~building in the LEED green building rating system or the~~
24 ~~build green New Mexico rating system is awarded on or after~~
25 ~~January 1, 2007]~~ submits a document issued pursuant to

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1 Subsection I of this section with the taxpayer's corporate
 2 income tax return.

3 C. The amount of the sustainable building tax
 4 credit that may be claimed with respect to a sustainable
 5 commercial building shall be calculated based on the
 6 certification level the building has achieved in the LEED
 7 green building rating system and the amount of qualified
 8 occupied square footage in the building, as indicated on the
 9 following chart:

10 LEED Rating Level	11 Qualified Occupied	12 Tax Credit per Square Foot
13 LEED-NC Silver	14 First 10,000	15 \$3.50
	16 Next 40,000	17 \$1.75
	18 Over 50,000	
	19 up to 500,000	20 \$.70
21 LEED-NC Gold	22 First 10,000	23 \$4.75
	24 Next 40,000	25 \$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50

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1		Next 40,000	\$1.25
2		Over 50,000	
3		up to 500,000	\$.50
4	LEED-EB or CS Gold	First 10,000	\$3.35
5		Next 40,000	\$1.40
6		Over 50,000	
7		up to 500,000	\$.70
8	LEED-EB or CS		
9	Platinum	First 10,000	\$4.40
10		Next 40,000	\$2.30
11		Over 50,000	
12		up to 500,000	\$1.40
13	LEED-CI Silver	First 10,000	\$1.40
14		Next 40,000	\$.70
15		Over 50,000	
16		up to 500,000	\$.30
17	LEED-CI Gold	First 10,000	\$1.90
18		Next 40,000	\$.80
19		Over 50,000	
20		up to 500,000	\$.40
21	LEED-CI Platinum	First 10,000	\$2.50
22		Next 40,000	\$1.30
23		Over 50,000	
24		up to 500,000	\$.80.

25 D. The amount of the sustainable building tax

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1 credit that may be claimed with respect to a sustainable
 2 residential building shall be calculated based on [the
 3 ~~certification level the building has achieved in the LEED~~
 4 ~~green building rating system or the build green New Mexico~~
 5 ~~rating system and] the amount of qualified occupied square
 6 footage, as indicated on the following chart:~~

7 Rating System/Level	8 Qualified 9 Occupied 10 Square Footage	11 Tax Credit 12 per Square 13 Foot
14 [Build Green NM Gold	15 First 2,000	16 \$4.50
	17 Next 1,000	18 \$2.00]
19 LEED-H Silver <u>or Build</u>	20 First 2,000	21 \$5.00
22 <u>Green NM Silver</u>	23 Next 1,000	24 \$2.50
25 LEED-H Gold <u>or Build</u>	First 2,000	\$6.85
<u>Green NM Gold</u>	Next 1,000	\$3.40
LEED-H Platinum <u>or Build</u>	First 2,000	\$9.00
<u>Green NM Emerald</u>	Next 1,000	\$4.45
EPA ENERGY STAR		
Manufactured Housing	Up to 3,000	\$3.00.

20 E. A ~~[taxpayer]~~ building owner may apply for
 21 ~~[certification]~~ a certificate of eligibility for the
 22 sustainable building tax credit from the energy, minerals and
 23 natural resources department after the construction,
 24 installation or renovation of the sustainable building is
 25 complete. Applications shall be considered in the order

underscored material = new
 [bracketed material] = delete

1 received. If the energy, minerals and natural resources
 2 department determines that the [~~taxpayer~~] building owner
 3 meets the requirements of [~~Subsection B of~~] this [~~section~~]
 4 subsection and that the building with respect to which the
 5 tax credit application is made meets the requirements of this
 6 section as a sustainable residential building or a
 7 sustainable commercial building, [~~it~~] the energy, minerals
 8 and natural resources department may issue a certificate of
 9 eligibility to the [~~taxpayer~~] building owner, subject to the
 10 limitation in Subsection F of this section. The certificate
 11 shall include the rating system certification level awarded
 12 to the building, the amount of qualified occupied square
 13 footage in the building and a calculation of the maximum
 14 amount of sustainable building tax credit for which the
 15 [~~taxpayer~~] building owner would be eligible. The energy,
 16 minerals and natural resources department may issue rules
 17 governing the procedure for administering the provisions of
 18 this subsection. If the certification level for the
 19 sustainable residential building is awarded on or after
 20 January 1, 2007, the energy, minerals and natural resources
 21 department may issue a certificate of eligibility to a
 22 building owner who is:

23 (1) the owner of the sustainable residential
 24 building at the time the certification level for the building
 25 is awarded; or

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1 (2) the subsequent purchaser of a
2 sustainable residential building with respect to which no tax
3 credit has been previously claimed.

4 F. The energy, minerals and natural resources
5 department may issue a certificate of eligibility only if the
6 total amount of sustainable building tax credits represented
7 by certificates of eligibility issued by the energy, minerals
8 and natural resources department pursuant to this section and
9 pursuant to the Income Tax Act shall not exceed in any
10 calendar year an aggregate amount of five million dollars
11 (\$5,000,000) with respect to sustainable commercial buildings
12 and an aggregate amount of five million dollars (\$5,000,000)
13 with respect to sustainable residential buildings; provided
14 that no more than one million two hundred fifty thousand
15 dollars (\$1,250,000) of the aggregate amount with respect to
16 sustainable residential buildings shall be for manufactured
17 housing. If for any taxable year, the energy, minerals and
18 natural resources department determines that the applications
19 for sustainable building tax credits with respect to
20 sustainable residential buildings for that taxable year
21 exceed the aggregate limit set in this section, the energy,
22 minerals and natural resources department may issue
23 certificates of eligibility under the aggregate annual limit
24 for sustainable commercial buildings to building owners of
25 multifamily dwelling units that meet the requirements of the

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1 energy, minerals and natural resources department and of this
 2 section; provided that applications for sustainable building
 3 credits for other sustainable commercial buildings total less
 4 than the full amount allocated for tax credits for
 5 sustainable commercial buildings.

6 G. Installation of a solar thermal system or a
 7 photovoltaic system eligible for the solar market development
 8 tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be
 9 used as a component of qualification for the rating system
 10 certification level used in determining eligibility for the
 11 sustainable building tax credit, unless a solar market
 12 development tax credit pursuant to Section 7-2-18.14 NMSA
 13 1978 has not been claimed with respect to that system and the
 14 building owner and the taxpayer [~~certifies~~] claiming the
 15 sustainable building tax credit certify that such a tax
 16 credit will not be claimed with respect to that system.

17 H. To be eligible for the sustainable building
 18 tax credit, the [~~taxpayer must~~] building owner shall provide
 19 to the taxation and revenue department a certificate of
 20 eligibility issued by the energy, minerals and natural
 21 resources department pursuant to the requirements of
 22 Subsection E of this section and any other information the
 23 taxation and revenue department may require to determine the
 24 amount of the tax credit [~~due~~] for which the [~~taxpayer~~]
 25 building owner is eligible.

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1 I. If the requirements of this section have been
2 complied with, the department shall issue to the [~~applicant~~]
3 building owner a document granting a sustainable building tax
4 credit. The document shall be numbered for identification
5 and declare its date of issuance and the amount of the tax
6 credit allowed pursuant to this section. The document may be
7 submitted by the building owner with that taxpayer's income
8 tax return or may be sold, exchanged or otherwise transferred
9 to another taxpayer. The parties to such a transaction shall
10 notify the department of the sale, exchange or transfer
11 within ten days of the sale, exchange or transfer.

12 J. Except as provided in Subsection K of this
13 section, the sustainable building tax credit represented by
14 the document issued pursuant to Subsection I of this section
15 shall be applied against the taxpayer's corporate income tax
16 liability for the taxable year [~~in~~] for which the credit is
17 approved and the three subsequent taxable years, in
18 increments of twenty-five percent of the total credit amount
19 in each of the four taxable years. If the amount of the
20 credit available in a taxable year exceeds the taxpayer's
21 corporate 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-
25 five thousand dollars (\$25,000), the entire amount of the

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

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

17 M. For the purposes of this section:

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

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

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

25 (4) "LEED-EB" means the LEED rating system

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1 for existing buildings;

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

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

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

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

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

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

19 (11) "manufactured housing" means a
20 multisectioned home that is:

21 (a) a manufactured home or modular
22 home;

23 (b) a single-family dwelling with a
24 heated area of at least thirty-six feet by twenty-four feet
25 and a total area of at least eight hundred sixty-four square

1 feet;

2 (c) constructed in a factory to the
 3 standards of the United States department of housing and
 4 urban development, the National Manufactured Housing
 5 Construction and Safety Standards Act of 1974 and the Housing
 6 and Urban Development Zone Code 2 or New Mexico construction
 7 codes up to the date of the unit's construction; and

8 (d) installed consistent with the
 9 Manufactured Housing Act and rules adopted pursuant to that
 10 act relating to permanent foundations;

11 ~~[(11)]~~ (12) "qualified occupied square
 12 footage" means the occupied spaces of the building as
 13 determined by:

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

16 (b) the administrators of the build
 17 green New Mexico rating system for those homes obtaining
 18 build green New Mexico certification; and

19 (c) the United States environmental
 20 protection agency for ENERGY STAR-certified manufactured
 21 homes;

22 (13) "nonprofit organization" means a
 23 nonprofit corporation, trust or insurance company that is
 24 exempt from payment of income tax pursuant to Section 7-2A-4
 25 NMSA 1978, but does not include state, local government or

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underscored material = new
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1 tribal agencies;

2 [~~(12)~~] (14) "sustainable building" means
3 either a sustainable commercial building or a sustainable
4 residential building;

5 [~~(13)~~] (15) "sustainable commercial
6 building" means a building that has been registered and
7 certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI
8 rating system and that:

9 (a) is certified by the United States
10 green building council at LEED silver or higher;

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

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

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1 ~~(14)~~ (16) "sustainable residential
 2 building" means:

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

11 (b) a ~~[building used as]~~ multifamily
 12 dwelling ~~[units]~~ unit, as registered and certified under the
 13 LEED-H or build green New Mexico rating system that: 1) is
 14 certified by the United States green building council as
 15 LEED-H silver or higher or by build green New Mexico as
 16 ~~[gold]~~ silver or higher; and 2) has achieved a home energy
 17 rating system index of sixty or lower as developed by the
 18 residential energy services network; or

19 (c) manufactured housing ~~[as defined~~
 20 ~~by the United States department of housing and urban~~
 21 ~~development]~~ that is ENERGY STAR-qualified by the United
 22 States environmental protection agency; and

23 (17) "tribal" means of, belonging to or
 24 created by a federally recognized Indian nation, tribe or
 25 pueblo."

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underscored material = new
 [bracketed material] = delete