The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 130

SENATE FINANCE COMMITTEE SUBSTITUTE FOR

SENATE BILL 279

Introduced by
CHAPTER 130

AN ACT

RELATING TO TAXATION; CREATING A NEW SUSTAINABLE BUILDING TAX CREDIT WITH WATER CONSERVATION REQUIREMENTS PURSUANT TO THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT.

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 SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "new sustainable building tax credit". The new sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the new sustainable building tax credit provided in the Corporate Income and Franchise Tax Act has been claimed.

B. The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into..."
sustainable buildings.

C. A taxpayer who files an income tax return is eligible to be granted a new sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's income tax return.

D. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

<table>
<thead>
<tr>
<th>LEED Rating Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEED-NC Silver</td>
<td>First 10,000</td>
<td>$3.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.75</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td></td>
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<td></td>
<td>up to 500,000</td>
<td>$ .70</td>
</tr>
<tr>
<td>LEED-NC Gold</td>
<td>First 10,000</td>
<td>$4.75</td>
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<td>Next 40,000</td>
<td>$2.00</td>
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<td></td>
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<td>$1.00</td>
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<tr>
<td></td>
<td>LEED-NC Platinum</td>
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<td>LEED-CI Platinum</td>
<td>First 10,000</td>
</tr>
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Over 50,000
up to 500,000 $ .80.

E. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

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<tr>
<th>Rating System/Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
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<tr>
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</tr>
<tr>
<td>Manufactured Housing</td>
<td>Up to 2,000</td>
<td>$3.00.</td>
</tr>
</tbody>
</table>

F. A person that is a building owner may apply for a certificate of eligibility for the new 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 building owner meets the requirements of this 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 sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of new sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

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

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

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of new sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of:

1. one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

2. three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

3. three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable
year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the new sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the new sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for
which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a new sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a new sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars ($100,000), a maximum of twenty-five thousand dollars ($25,000) shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000) or more, increments of twenty-five percent of the total
credit amount in each of the four taxable years, including
the taxable year for which the credit is approved and the
three subsequent taxable years, shall be applied against the
taxpayer's income tax liability.

M. If the sum of all new sustainable building tax
credits that can be applied to a taxable year for a taxpayer,
calculated according to Paragraph (1) or (2) of Subsection L
of this section, exceeds the taxpayer's income tax liability
for that taxable year, the excess may be carried forward for
a period of up to seven years.

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

O. Married individuals who file separate returns
for a taxable year in which they could have filed a joint
return may each claim only one-half of the new sustainable
building tax credit that would have been allowed on a joint
return.
F. The department shall compile an annual report on the new sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

Q. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

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

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

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

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

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

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

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

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

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

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

(a) a manufactured home or modular
home;

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

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

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

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

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

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

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

(13) "person" does not include state, local
government, public school district or tribal agencies;

(14) "sustainable building" means either a
sustainable commercial building or a sustainable residential
building;

(15) "sustainable commercial building" means
a multifamily dwelling unit, as registered and certified
under the LEED-H or build green New Mexico rating system,
that is certified by the United States green building council
as LEED-H silver or higher or by build green New Mexico as
silver or higher and has achieved a home energy rating system
index of sixty or lower as developed by the residential
energy services network or a building that has been
registered and certified under the LEED-NC, LEED-EB, LEED-CS
or LEED-CI rating system and that:

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

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

(c) has reduced energy consumption
beginning January 1, 2012, by sixty percent based on the
national average for that building type as published by the
United States department of energy as substantiated by the
United States environmental protection agency target finder
energy performance results form, dated no sooner than the
schematic design phase of development;

(16) "sustainable residential building"
means:

(a) a building used as a single-family
residence as registered and certified under the build green
New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance."
SECTION 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"NEW SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "new sustainable building tax credit". The new sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the new sustainable building tax credit provided in the Income Tax Act has been claimed.

B. The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a new sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before
December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

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<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
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<tbody>
<tr>
<td>LEED-NC Silver</td>
<td>First 10,000</td>
<td>$3.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.75</td>
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<tr>
<td></td>
<td>Over 50,000</td>
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<tr>
<td></td>
<td>up to 500,000</td>
<td>$.70</td>
</tr>
<tr>
<td>LEED-NC Gold</td>
<td>First 10,000</td>
<td>$4.75</td>
</tr>
<tr>
<td></td>
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<tr>
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<td>$1.00</td>
</tr>
<tr>
<td>LEED-NC Platinum</td>
<td>First 10,000</td>
<td>$6.25</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$3.25</td>
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F. A person that is a building owner may apply for a certificate of eligibility for the new 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 building owner meets the requirements of this 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 sustainable commercial building, the energy, minerals and natural resources department may
issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of new sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

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

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

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of new sustainable building tax credits represented by certificates of eligibility issued by the
energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.
I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the new sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the new sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a new sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be...
submitted by the building owner with that taxpayer's income
tax return, if applicable, or may be sold, exchanged or
otherwise transferred to another taxpayer. The parties to
such a transaction shall notify the department of the sale,
exchange or transfer within ten days of the sale, exchange or
transfer.

L. If the approved amount of a new sustainable
building tax credit for a taxpayer in a taxable year
represented by a document issued pursuant to Subsection K of
this section is:

(1) less than one hundred thousand dollars
($100,000), a maximum of twenty-five thousand dollars
($25,000) shall be applied against the taxpayer's corporate
income tax liability for the taxable year for which the
credit is approved and the next three subsequent taxable
years as needed depending on the amount of credit; or

(2) one hundred thousand dollars ($100,000)
or more, increments of twenty-five percent of the total
credit amount in each of the four taxable years, including
the taxable year for which the credit is approved and the
three subsequent taxable years, shall be applied against the
taxpayer's corporate income tax liability.

M. If the sum of all new sustainable building tax
credits that can be applied to a taxable year for a taxpayer,
calculated according to Paragraph (1) or (2) of Subsection L
of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

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

O. The department shall compile an annual report on the new sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is
performing the purpose for which it was created.

F. For the purposes of this section:

(1) "build green New Mexico rating system"
means the certification standards adopted by build green
New Mexico in November 2014, which include water conservation
standards;

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

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

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

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

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

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

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

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

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

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

(a) a manufactured home or modular home;

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

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

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

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

(a) the United States green building council for those buildings obtaining LEED certification;
(b) the administrators of the build
green New Mexico rating system for those homes obtaining
build green New Mexico certification; and

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

(13) "person" does not include state, local
government, public school district or tribal agencies;

(14) "sustainable building" means either a
sustainable commercial building or a sustainable residential
building;

(15) "sustainable commercial building" means
a multifamily dwelling unit, as registered and certified
under the LEED-H or build green New Mexico rating system,
that is certified by the United States green building council
as LEED-H silver or higher or by build green New Mexico as
silver or higher and has achieved a home energy rating system
index of sixty or lower as developed by the residential
energy services network or a building that has been
registered and certified under the LEED-NC, LEED-EB, LEED-CS
or LEED-CI rating system and that:

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

(b) achieves any prerequisite for and

at least one point related to commissioning under LEED
"energy and atmosphere", if included in the applicable rating
system; and

(c) has reduced energy consumption
beginning January 1, 2012, by sixty percent based on the
national average for that building type as published by the
United States department of energy as substantiated by the
United States environmental protection agency target finder
energy performance results form, dated no sooner than the
schematic design phase of development;

(16) "sustainable residential building"
means:

(a) a building used as a single-family
residence as registered and certified under the build green
New Mexico or LEED-H rating systems that: 1) is certified by
the United States green building council as LEED-H silver or
higher or by build green New Mexico as silver or higher; 2)
has achieved a home energy rating system index of sixty or
lower as developed by the residential energy services
network; 3) has indoor plumbing fixtures and water-using
appliances that, on average, have flow rates equal to or
lower than the flow rates required for certification by
WaterSense; 4) if landscape area is available at the front of
the property, has at least one water line outside the
building below the frost line that may be connected to a drip
irrigation system; and 5) if landscape area is available at
the rear of the property, has at least one water line outside
the building below the frost line that may be connected to a
drip irrigation system; or

(b) manufactured housing that is
ENERGY STAR-qualified by the United States environmental
protection agency;

(17) "tribal" means of, belonging to or
created by a federally recognized Indian nation, tribe or
pueblo; and

(18) "WaterSense" means a program created by
the federal environmental protection agency that certifies
water-using products that meet the environmental protection
agency's criteria for efficiency and performance."

SECTION 3. APPLICABILITY.--The provisions of this act
apply to taxable years beginning on or after
January 1, 2017.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 10th day of April, 2015

Governor Susana Martinez
State of New Mexico