S T A T E O F N E W Y O R K

2444--B

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sens. KLEIN, AVELLA, BALL, ESPAILLAT, HOYLMAN, LATIMER, PARKER, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to pre-installation review and certification of green roof materials; and to amend the tax law, in relation to establishing a green roof installation credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The environmental conservation law is amended by adding a new section 3-0308 to read as follows:

S 3-0308. GREEN ROOF PROGRAM, INSPECTION AND CERTIFICATION.

1. THE COMMISSIONER SHALL DEVELOP STANDARDS FOR THE CONSTRUCTION, INSTALLATION AND CERTIFICATION OF GREEN ROOFS THAT CAN BE ELIGIBLE FOR THE GREEN ROOF INSTALLATION PERSONAL INCOME TAX CREDIT PURSUANT TO SUBSECTION (U) OF SECTION SIX HUNDRED SIX OF THE TAX LAW. SUCH STANDARDS SHALL INCLUDE CRITERIA FOR INSPECTION AND CERTIFICATION OF GREEN ROOF PLANS PRIOR TO INSTALLATION AND INSPECTION AFTER SUCH INSTALLATION. SUCH PRE-INSTALLATION CRITERIA FOR CERTIFICATION MAY INCLUDE, BUT NOT BE LIMITED TO: PLANT GROWTH RATE AND DROUGHT TOLERANCE, APPROPRIATE ROOT SYSTEMS FOR SUCH GREEN ROOFS, APPROPRIATE PLANT IRRIGATION, NUTRITIONAL AND MAINTENANCE REQUIREMENTS, POTENTIAL GENERATION OF ALLERGENS AND THE POSSIBLE NEED FOR REMEDIAL INDOOR AIR FILTRATION TO THE SUBJECT AND ADJACENT BUILDINGS. INSPECTION AND CERTIFICATION AFTER INSTALLATION MAY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD02640-04-4

INCLUDE, IN ADDITION TO PRE-INSTALLATION CRITERIA, THE TESTING OF RUNOFF WATER FOR ENVIRONMENTALLY UNACCEPTABLE LEVELS OF POLLUTANTS.

2. THE COMMISSIONER MAY DELEGATE TO MUNICIPAL BUILDING INSPECTORS THE DUTIES TO REVIEW AND APPROVE PLANS AND ISSUE THE CERTIFICATION REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

3. FOR PURPOSES OF THIS SECTION:

A. "GREEN ROOF" MEANS ROOFING ON AN ELIGIBLE BUILDING THAT COVERS AT LEAST FIFTY PERCENT OF SUCH BUILDING'S ELIGIBLE ROOFTOP SPACE AND INCLUDES (1) A WEATHERPROOF AND WATERPROOF ROOFING MEMBRANE LAYER, (2) A ROOT BARRIER LAYER, (3) IF APPROPRIATE, AN INSULATION LAYER THAT COMPLIES WITH THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, (4) A DRAINAGE LAYER THAT COMPLIES WITH THE STATE UNIFORM FIRE PREVENTION AND BUILDING CODE AND IS DESIGNED SO THE DRAINS CAN BE INSPECTED AND CLEANED, (5) A GROWTH MEDIUM, INCLUDING NATURAL OR SIMULATED SOIL, WITH A DEPTH OF AT LEAST TWO INCHES, (6) IF THE DEPTH OF THE GROWTH MEDIUM IS LESS THAN THREE INCHES, AN INDEPENDENT WATER HOLDING LAYER THAT IS DESIGNED TO PREVENT THE RAPID DRYING OUT OF SUCH MEDIUM MAY BE REQUIRED, UNLESS THE GREEN ROOF CONTAINS A SUFFICIENT PERCENTAGE OF DROUGHT RESISTANT PLANTS TO SURVIVE, AND (7) A VEGETATION LAYER COVERED BY LIVE PLANTS SUCH AS (I) SEDUM OR EQUALLY DROUGHT RESISTANT AND HARDY PLANT SPECIES, (II) NATIVE PLANT SPECIES, AND/OR (III) AGRICULTURAL PLANT SPECIES.

B. "ELIGIBLE BUILDING" MEANS A RESIDENTIAL BUILDING OR MIXED-USE BUILDING WITH RESIDENTIAL UNITS.

C. "ELIGIBLE ROOFTOP SPACE" MEANS THE TOTAL SPACE AVAILABLE ON AN ELIGIBLE BUILDING TO SUPPORT A GREEN ROOF.

S 2. Section 606 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) GREEN ROOF INSTALLATION CREDIT. (1) GENERAL. AN INDIVIDUAL TAXPAYER SHALL BE ALLOWED A CREDIT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE INSTALLATION OF A QUALIFIED GREEN ROOF AS CERTIFIED PURSUANT TO SECTION 3-0308 OF THE ENVIRONMENTAL CONSERVATION LAW. THE AMOUNT OF THE CREDIT SHALL BE FIFTY-FIVE PERCENT OF QUALIFIED GREEN ROOF INSTALLATION EXPENDITURES, BUT SHALL NOT EXCEED THE MAXIMUM CREDIT OF FIVE THOUSAND DOLLARS.

(2) QUALIFIED GREEN ROOF INSTALLATION EXPENDITURES. (A) THE TERM "QUALIFIED GREEN ROOF INSTALLATION EXPENDITURES" MEANS EXPENDITURES FOR THE PURCHASE, CONSTRUCTION AND INSTALLATION OF A CERTIFIED GREEN ROOF, AS PROVIDED IN SECTION 3-0308 OF THE ENVIRONMENTAL CONSERVATION LAW, WHICH IS INSTALLED IN CONNECTION WITH RESIDENTIAL PROPERTY OR MIXED-USE PROPERTY, WHICH IS (I) LOCATED IN THIS STATE; (II) WHICH IS OWNED BY THE TAXPAYER; AND (III) WHICH IS USED BY THE TAXPAYER AS HIS OR HER PRINCIPAL RESIDENCE.

(B) SUCH QUALIFIED EXPENDITURES SHALL INCLUDE EXPENDITURES FOR PLANT MATERIAL, NATURAL OR SIMULATED SOIL IRRIGATION AND DRAINAGE SYSTEMS, ESTABLISHMENT OF ROOT SYSTEMS AND THE LABOR COSTS PROPERLY ALLOCABLE TO ON-SITE PREPARATION, ASSEMBLY AND ORIGINAL INSTALLATION, ARCHITECTURAL AND ENGINEERING SERVICES, PRE-INSTALLATION CRITERIA FOR INSTALLATION AND DESIGNS AND PLANS DIRECTLY RELATED TO THE CONSTRUCTION OR INSTALLATION OF THE QUALIFIED GREEN ROOF.

(C) SUCH QUALIFIED EXPENDITURES SHALL NOT INCLUDE INTEREST OR OTHER FINANCE CHARGES.

(3) GREEN ROOF PRE-INSTALLATION CRITERIA. THE TERM "GREEN ROOF PRE-INSTALLATION CRITERIA" MAY INCLUDE, BUT NOT BE LIMITED TO, CRITERIA SUCH AS GROWTH RATE AND DROUGHT TOLERANCE OF SELECTED PLANTS, APPROPRI-

ATE PLANT IRRIGATION, NUTRITIONAL AND MAINTENANCE REQUIREMENTS, GENERATION OF ALLERGENS AND THE POSSIBLE NEED FOR REMEDIAL AIR FILTRATION TO THE SUBJECT AND ADJACENT BUILDINGS AS PRESCRIBED IN ACCORDANCE WITH SECTION 3-0308 OF THE ENVIRONMENTAL CONSERVATION LAW.

(4) CONDOMINIUM/COOPERATIVE HOUSING. WHERE A QUALIFIED GREEN ROOF IS INSTALLED BY A CONDOMINIUM MANAGEMENT ASSOCIATION OR A COOPERATIVE HOUSING CORPORATION, A TAXPAYER WHO IS A MEMBER OF SUCH ASSOCIATION OR IS A TENANT-STOCKHOLDER MAY FOR THE PURPOSE OF THIS SUBSECTION CLAIM A PROPORTIONATE SHARE OF THE TOTAL EXPENSES AS EXPENDITURE FOR THE PURPOSES OF THE CREDIT ATTRIBUTABLE TO HIS OR HER PRINCIPAL RESIDENCE.

(5) MULTIPLE TAXPAYERS. WHERE A QUALIFIED GREEN ROOF IS PURCHASED AND INSTALLED IN A PRINCIPAL RESIDENCE SHARED BY TWO OR MORE TAXPAYERS, THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR EACH SUCH TAXPAYER SHALL BE PRORATED ACCORDING TO THE PERCENTAGE OF THE TOTAL EXPENDITURE FOR SUCH ROOF CONTRIBUTED BY EACH TAXPAYER.

(6) GRANTS. FOR PURPOSES OF DETERMINING THE AMOUNT OF THE EXPENDITURE INCURRED IN PURCHASING AND INSTALLING THE GREEN ROOF, THE AMOUNT OF ANY FEDERAL, STATE OR LOCAL GRANT RECEIVED BY THE TAXPAYER, WHICH WAS USED FOR THE PURCHASE AND/OR INSTALLATION OF SUCH ROOF AND WHICH WAS NOT INCLUDED IN THE FEDERAL GROSS INCOME OF THE TAXPAYER, SHALL NOT BE INCLUDED IN THE AMOUNT OF SUCH EXPENDITURES.

(7) WHEN CREDIT ALLOWED. THE CREDIT PROVIDED FOR IN THIS SUBSECTION SHALL BE ALLOWED WITH RESPECT TO THE TAXABLE YEAR, COMMENCING AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, IN WHICH THE GREEN ROOF IS INSTALLED.

(8) CARRYOVER OF CREDIT. IF THE AMOUNT OF THE CREDIT, AND CARRYOVERS OF SUCH CREDIT, ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, SUCH EXCESS AMOUNT MAY BE CARRIED OVER TO THE FIVE TAXABLE YEARS NEXT FOLLOWING THE TAXABLE YEAR WITH RESPECT TO WHICH THE CREDIT IS ALLOWED AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 3. This act shall take effect immediately provided that section one of this act shall take effect on the one hundred eightieth day after it shall have become a law and that section two of this act shall apply to taxable years commencing on or after January 1, 2016; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.