

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 568

Session of
1985

INTRODUCED BY ITKIN, J. L. WRIGHT, PETRARCA, GREENWOOD, SWEET,
McVERRY, RICHARDSON, GEIST, KUKOVICH, PRATT, DAWIDA, CARN AND
PISTELLA, MARCH 20, 1985

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,
MARCH 20, 1985

AN ACT

1 Amending the act of December 15, 1980 (P.L.1203, No.222),
2 entitled "An act providing for the regulation for energy
3 conservation purposes of the construction of buildings, the
4 establishment of a Building Energy Conservation Committee and
5 a Board on Variances, appeals and for penalties," changing
6 and adding certain definitions; providing for notice to
7 public utilities and utility providers; creating a special
8 account; and further providing for application of energy
9 standards, for certification, for notice to the department,
10 for penalties, for variances, for inspections and for civil
11 actions.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 102(b) of the act of December 15, 1980
15 (P.L.1203, No.222), known as the Building Energy Conservation
16 Act, is amended to read:

17 Section 102. Legislative findings and declaration of purpose.

18 * * *

19 (b) Purpose.--The purpose of this act is to grant to the
20 [Commonwealth of Pennsylvania] Department of Labor and Industry
21 and the Department of Community Affairs and direct [it] these

1 departments to exercise specific authority in building
2 construction to assure that such construction is performed using
3 materials and techniques that will provide for energy
4 conservation in the future operation and maintenance of said
5 buildings.

6 Section 2. The definitions of "building" and "renovation" in
7 section 103 of the act, amended July 10, 1981 (P.L.231, No.75),
8 are amended and the section is amended by adding definitions to
9 read:

10 Section 103. Definitions.

11 The following words and phrases when used in this act shall
12 have, unless the context clearly indicates otherwise, the
13 meanings given to them in this section:

14 "Addition." Any addition to an existing building. The
15 provisions of this act shall only apply to the portion of the
16 building which is being added and not to the entire building.

17 "Building." Any structure that provides facilities or
18 shelter for public assembly or for educational, business,
19 mercantile, institutional, warehouse or residential occupancy,
20 or industrial use including, but not limited to, those portions
21 of factory and industrial occupancy such as office space except
22 for:

23 (1) Buildings and structures or portions thereof whose
24 peak design rate of energy usage is less than one watt per
25 square foot or [3.4] 3.5 BTU/hr per square foot of floor area
26 for all purposes.

27 (2) Structures or those portions of structures used for
28 housing equipment or machinery, or in which manufacturing or
29 processing is done, where the operation of such equipment or
30 machinery, or the manufacturing or processing procedures

1 employed require the use of or generate substantial heat
2 producing energy or cooling within the structure. As used
3 herein, the generation of substantial heat shall mean
4 generation of more than 6 watts per square foot of floor
5 area.

6 (3) Buildings which are neither heated nor cooled.

7 (4) Historic buildings.

8 (5) Buildings owned by the Federal Government.

9 (6) All units subject to the act of May 11, 1972
10 (P.L.286, No.70), known as the "Industrialized Housing Act."

11 (7) All units subject to Title VI (Public Law 93-383),
12 referred to as the Federal Mobile Home Construction and
13 Safety Standards Act of 1974.

14 (8) Buildings which are constructed primarily of tree
15 logs and only incidentally of other materials.

16 * * *

17 "Public utility." A person or corporation in this
18 Commonwealth owning or operating equipment or facilities for
19 producing, generating, transmitting, distributing or furnishing
20 electricity to or for the public for compensation for any
21 purpose. The term includes such persons or corporations
22 regulated by the Pennsylvania Public Utility Commission under
23 Title 66 of the Pennsylvania Consolidated Statutes (relating to
24 public utilities), but does not include any of the following:

25 (1) A generator or producer of electricity not engaged
26 in distributing the electricity directly to the public for
27 compensation.

28 (2) A person not otherwise a public utility who
29 furnishes service only to himself.

30 (3) A bona fide cooperative association which furnishes

1 services only to its stockholders or members on a nonprofit
2 basis.

3 "Renovation."

4 [(1)] The rehabilitation of an existing building which
5 requires more than 25% of the gross floor area or volume of
6 the entire building to be rebuilt. Cosmetic work such as
7 painting, wall covering, wall paneling, floor covering and
8 suspended ceiling work shall not be included[; or

9 (2) any addition to an existing building]. The
10 provisions of this act shall only apply to such portion of
11 the building being renovated and not to the entire building.

12 "Utility provider." A municipal corporation in this
13 Commonwealth owning or operating equipment or facilities for
14 producing, generating, transmitting, distributing or furnishing
15 electricity to or for the public within its corporate limits for
16 compensation for any purpose, or an electric cooperative
17 corporation created under the provisions of the act of June 21,
18 1937 (P.L.1969, No.389), known as the "Electric Cooperative
19 Corporation Act," and which provides retail electric service to
20 its members on a nonprofit basis. The term does not include:

21 (1) A public utility regulated by the Pennsylvania
22 Public Utility Commission under Title 66 of the Pennsylvania
23 Consolidated Statutes (relating to public utilities).

24 (2) A generator, producer or manufacturer of
25 electricity, gas or steam not engaged in distributing such
26 electricity, gas or steam directly to the public for
27 compensation.

28 (3) A person or corporation not otherwise a public
29 utility who or which furnishes service only to himself or
30 itself.

1 (4) A generator, producer or manufacturer of gas or
2 steam engaged in distributing such gas or steam to the public
3 for compensation.

4 Section 3. Sections 302, 305, 306, 311, 313(b), 315(a) and
5 504 of the act are amended to read:

6 Section 302. Application of energy conservation standards.

7 The energy conservation standards contained herein or as
8 promulgated by the department with the approval of the Building
9 Energy Conservation Committee shall apply to new buildings or to
10 renovations on which actual construction and/or design has not
11 commenced prior to their effective dates. Except for the
12 authority of the Department of Community Affairs to promulgate
13 rules or regulations for all units subject to the act of May 11,
14 1972 (P.L.286, No.70), known as the "Industrialized Housing
15 Act," provided such standards invoked are equal to or more
16 stringent than those contained in this act, or as mandated by
17 Federal law, no utility, department, board, agency or commission
18 other than as provided herein, shall promulgate or adopt any
19 mandatory building energy conservation standards, rules or
20 regulations [which are inconsistent with] other than the
21 standards contained in Chapter 2, Subchapters D through J or
22 promulgated under Chapter 4 of this act except as mandated by
23 Federal law.

24 Section 305. Certification.

25 (a) Applicability.--The provisions of this section shall
26 apply to all buildings subject to this act except those
27 classified as Use Group R-3.

28 (b) Compliance with act.--It shall be the duty of the
29 licensed design professional retained in connection with the
30 design or construction of a building to certify that, in his

1 professional opinion and in accordance with the accepted
2 standards of his profession, the drawings, specifications and
3 other data will achieve compliance with the provisions of this
4 act[, except as provided in subsection (e)]. If no licensed
5 design professional is retained in connection with the design or
6 construction of a building, then this certification shall be
7 made by the builder or the owner, if he is the builder. All such
8 information required in this provision to be submitted to the
9 department must be accompanied by a filing fee of \$10. The
10 filing fee may be subject to change by the Building Energy
11 Conservation Committee upon the recommendation of the department
12 to the Building Energy Conservation Committee, provided,
13 however, that advance notice of such change has appeared in the
14 Pennsylvania Bulletin. If the building is subject to the
15 provisions of the act of April 27, 1927 (P.L.465, No.299),
16 referred to as the Fire and Panic Act, the certification
17 required hereunder shall be submitted on a form with the
18 application for plan approval under the said Fire and Panic Act.

19 (c) Inspection.--Each licensed design professional retained
20 by the owner or his designee, where any of such are retained
21 during the construction of a building, shall make periodic
22 inspections of the building progression to [insure] observe
23 compliance with this act[, except as provided in subsection
24 (e)]: Provided, That such inspection shall not be construed as a
25 guarantee of satisfactory performance by others or as an
26 assumption of financial liability for unknown defects or
27 deficiencies in the work of others.

28 (d) Final certification.--Each [licensed design
29 professional] builder retained by the owner or the owner, if he
30 is the builder, shall make a final certification of every

1 completed building stating that[, in his professional opinion
2 and in accordance with the accepted standards of his
3 profession,] such building has been constructed in compliance
4 with the approved drawings and specifications prepared by a
5 licensed design professional or with the provisions of this
6 act[, except as provided in subsection (e).

7 (e) Certification by builder.--If a licensed design
8 professional is not retained in connection with the design and
9 construction of a building, it shall be the responsibility of
10 the builder or owner, if he is the builder, to perform the
11 inspections and certification required by this section including
12 payment of the filing fee.]

13 Section 306. Use Group R-3; notice; warranty.

14 (a) Notice to department.--Prior to construction of any
15 building classified as Use Group R-3, the builder shall notify
16 the department by [certified] first class mail of his intent to
17 begin construction. Such notice shall include a filing fee of
18 [\$5] \$10 and contain the name of the owner of the building and
19 its location. The filing fee may be subject to change by the
20 Building Energy Conservation Committee, upon the recommendation
21 of the department to the Building Energy Conservation Committee,
22 provided, however, that advance notice of such change has
23 appeared in the Pennsylvania Bulletin.

24 (a.1) Special account.--All filing fees shall be deposited
25 in a special account in the State Treasury to be known as the
26 Building Energy Conservation Account. All fees collected for the
27 purpose of this act shall be deposited in this account and the
28 department shall draw from the account sufficient funds to cover
29 the administrative and enforcement costs of operating the
30 program. The funds in the account are hereby appropriated to the

1 department to carry out this act and shall not lapse at the end
2 of any fiscal year. The balance of funds remaining in any
3 existing Building Energy Conservation Account and held by the
4 department on the effective date of this act is hereby
5 transferred to the special Building Energy Conservation Account
6 established pursuant to this subsection.

7 (a.2) Notice to public utilities and utility providers.--

8 (1) Prior to construction and except as provided in
9 paragraph (5), the builder shall also provide a copy of the
10 notice of intent to begin construction required by subsection
11 (a) and certified as received by the department to all public
12 utilities or utility providers which may be requested to
13 furnish any electric service to or for buildings classified
14 as Use Group R-3 which are constructed after the effective
15 date of this subsection.

16 (2) All public utilities and utility providers shall
17 rely on the certified copy of the required notice in
18 furnishing, rendering or supplying any electric service to or
19 for a building classified as Use Group R-3, except as
20 provided in paragraph (5), and no public utility or utility
21 provider shall conduct any audit, inspection or examination
22 of the building for the purpose of determining compliance
23 with this act. The furnishing, rendering or supplying of
24 electric service by a public utility or utility provider to
25 or for a building classified as Use Group R-3 shall not
26 constitute a certification or determination by the public
27 utility or utility provider that the building has been
28 constructed in compliance with this act.

29 (3) Except as provided in paragraph (5), no public
30 utility or utility provider shall furnish any electric

1 service to or for any building classified as Use Group R-3
2 which is constructed after the effective date of this
3 subsection unless it has first received the required copy of
4 the notice of intent to begin construction which has been
5 certified as received by the department.

6 (4) Each public utility or utility provider shall be
7 required to retain the certified copy of the notice of intent
8 to begin construction which is submitted to it for at least
9 two years.

10 (5) (i) Each public utility or utility provider shall
11 be exempt from the provisions of paragraphs (1) through
12 (4) when any electric service is requested for a building
13 classified as Use Group R-3 which is located in a
14 municipality which has elected to administer this act in
15 accordance with sections 501 and 502 and which requires
16 that a notice of intent to begin construction be filed
17 with the municipality prior to or at the time that
18 application is made for a building permit.

19 (ii) Each public utility or utility provider shall
20 be exempt from the provisions of paragraphs (1) through
21 (4) in situations where, in the public utility's or
22 utility provider's judgment, strict compliance may
23 jeopardize the public health or safety or impose an undue
24 hardship. In such event, the public utility or utility
25 provider shall notify the department or the administering
26 municipality, in writing, on forms prescribed by the
27 department, of the exemption.

28 (6) If a builder fails to file the required notice with
29 the department or the administering municipality within 30
30 days of receiving an exemption under paragraph (5), the

department or the administering municipality shall serve
written notice on the builder that he is in violation of this
act and subject to a penalty as provided for in subsection
(d).

(b) Warranty.--At the time a contract for the construction of any building classified as Use Group R-3 is entered into, the builder shall warrant to the owner in writing that the building shall be constructed in accordance with the provisions of this act. Such warranty shall be a document separate from the contract and shall be in the following form:

I, (Builder) , hereby warrant to (Owner) that the premises known as (Description) shall be constructed in accordance with the provisions of the Act of December 15, 1980 (No.222), known as the "Building Energy Conservation Act."

This law provides building standards to make your home energy efficient and also provides you with legal remedies if your home is not built according to the State standards. If you would like the State to do an energy audit of your home to determine if it conforms to State standards, you may call the Pennsylvania Department of Community Affairs at (Telephone) , and they will perform an inspection of your home for a fee of [\$35] \$65.

Indicate if alternate building system or equipment design is being employed.

(c) If the builder is also the owner of the building at the time of construction, he shall provide the warranty required by subsection (b) at the time of its initial sale to a new owner. Such warranty shall be in substantially the same form as provided in subsection (b).

(d) Failure to provide notice.--The Department of Community

1 Affairs, after hearing, may assess a civil penalty payable to
2 the Commonwealth of Pennsylvania not to exceed \$100 for a first
3 offense upon any builder who fails to give the notice required
4 by subsection (a). In determining the amount of the civil
5 penalty for a first offense, the [Department of Community
6 Affairs] department shall consider the willfulness of the
7 violation and the cost incurred by the department in discovering
8 the violation. In the event a builder fails to give the notice
9 required by subsection (a) on a second or subsequent occasion,
10 the department shall assess upon the builder a civil penalty
11 payable to the Commonwealth of Pennsylvania of \$200.

12 (e) Failure to provide warranty.--Whenever a builder fails
13 to provide the warranty required by subsection (b) or (c) such
14 required warranty shall constitute an implied warranty and the
15 owner's right to proceed under section 315(a) shall not be
16 affected. If it is established by a preponderance of the
17 evidence that the builder's failure to provide the warranty was
18 willful, then damages in twice the amount provided in section
19 315 may be awarded.

20 Section 311. Inspections.

21 The department may perform a nondestructive inspection within
22 two years of the date of completion of construction of any
23 building constructed after the effective date of this act to
24 determine compliance with the provisions of this act, provided
25 at least 30 days notice has been given to the owner. The costs
26 of any such inspection initiated by the department shall not be
27 assessed on the owner. The department may also cause such an
28 inspection to be performed at the request of the owner of any
29 building subject to this act. The fee for such an inspection
30 upon request under section 306(b) for R-3 buildings is [\$35]

1 \$65. The fee for inspections performed upon request for all
2 other buildings subject to this act shall be determined by the
3 department at such an amount as to cover the necessary costs of
4 the inspection.

5 Section 313. Penalties.

6 * * *

7 (b) Violations of act.--Any person who shall willfully or
8 negligently violate any of the provisions of this act, or the
9 rules and regulations or the orders for the enforcement of the
10 said provisions or rules and regulations issued by duly
11 authorized officers of the department or who shall hinder, delay
12 or interfere with any officer charged with the enforcement of
13 this act in the performance of his duty, shall, upon conviction
14 thereof, be punished by a fine of [not more than] \$300 and
15 costs. In the event of violation of more than one provision of
16 this act, the violation of each provision shall be deemed a
17 separate and distinct offense for the purposes of this section.

18 * * *

19 Section 315. Civil action.

20 (a) Use Group R-3.--The owner of any building subject to the
21 requirements of section 306 who is aggrieved as the result of
22 such building not being properly designed or constructed in
23 conformance with this act shall have a right of action for
24 breach of warranty. Remedies may include specific performance or
25 an award of damages in an amount not less than \$300. Attorney's
26 fees shall be recoverable in any action in which the owner
27 prevails. Any such award shall further provide for payment of
28 the actual costs in excess of [\$35] \$65 incurred by the
29 department if it inspected the building for the owner and the
30 owner shall remit such amount to the department.

1 * * *

2 Section 504. Variances.

3 Any municipality electing to administer the provisions of
4 this act under section 501 or 502 shall establish a Board on
5 Variances to make determinations on request for variance from
6 the energy conservation standards contained herein or as
7 promulgated by the department with the approval of the Building
8 Energy Conservation Committee, and is authorized exclusive
9 jurisdiction to grant such variances, section 307(a)
10 notwithstanding. A municipality, however, need not establish a
11 Board on Variances if it has established a zoning hearing board
12 pursuant to the act of July 31, 1968 (P.L.805, No.247), known as
13 the "Pennsylvania Municipalities Planning Code." If the
14 municipality does not establish a Board on Variances, the powers
15 and duties established by this section shall be exercised by
16 such zoning hearing board. A variance shall only be granted if
17 the criteria of section 307(b) have been satisfied.

18 Section 4. This act shall take effect in 90 days.