

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 673 Session of  
2007

INTRODUCED BY FERLO, PIPPY, MELLOW, FONTANA, RAFFERTY, COSTA,  
WAUGH, WASHINGTON, ERICKSON, LOGAN, O'PAKE, STOUT, BOSCOLA,  
McILHINNEY, KITCHEN, C. WILLIAMS, BROWNE, GORDNER AND ORIE,  
MARCH 22, 2007

REFERRED TO FINANCE, MARCH 22, 2007

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for the High-Performance Buildings Tax  
11 Credit.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
15 the Tax Reform Code of 1971, is amended by adding an article to  
16 read:

ARTICLE XIX-B

HIGH-PERFORMANCE BUILDINGS TAX CREDIT

19 Section 1901-B. Scope.

20 This article authorizes the High-Performance Buildings Tax  
21 Credit.

1 Section 1902-B. Purpose.

2 The General Assembly declares the purposes of this article as  
3 follows:

4 (1) To promote better energy and environmental standards  
5 for construction, rehabilitation and maintenance of buildings  
6 in this Commonwealth.

7 (2) To optimize the energy performance of buildings  
8 throughout this Commonwealth.

9 (3) To increase the demand for environmentally  
10 preferable building materials, finishes and furnishings.

11 (4) To improve environmental quality in this  
12 Commonwealth by decreasing the discharge of pollutants from  
13 buildings and their manufacture.

14 (5) To create public awareness of new technologies that  
15 can improve the health and productivity of building occupants  
16 by meeting advanced criteria for indoor air quality.

17 (6) To improve working conditions and reduce related  
18 health problems.

19 (7) To reduce this Commonwealth's dependence on imported  
20 sources of energy through buildings that conserve energy and  
21 utilize local and renewable energy sources.

22 (8) To protect and restore this Commonwealth's natural  
23 resources by avoiding development of inappropriate building  
24 sites.

25 (9) To reduce the burden on municipal water supply and  
26 treatment by reducing potable water consumption.

27 (10) To reduce waste generation and to manage waste  
28 through recycling and diversion from landfill disposal.

29 (11) To improve this Commonwealth's capacity to design,  
30 build and operate higher performance buildings, and in doing

1     so, to create new jobs and contribute to economic growth.

2     Section 1903-B. Definitions.

3     The following words and phrases when used in this article  
4     shall have the meanings given to them in this section unless the  
5     context clearly indicates otherwise:

6     "Achievement." Achievement and award of certification by a  
7     high-performance green building standard as set forth in section  
8     1904-B and adopted by regulation.

9     "Building project." The design, construction and renovation  
10    of an inhabited physical structure and project building site.

11    "Commercial interior fit-out." Interior design and  
12    installation by owners or tenants of new or existing space,  
13    excluding structural components and core and shell elements.

14    "Credit allowance year." The later of:

15        (1) The taxable year during which the property,  
16        construction, completion or rehabilitation referred to in  
17        section 1905-B(a) has been placed in service or has received  
18        a final certificate of occupancy.

19        (2) The first taxable year with respect to which the tax  
20        credit may be claimed pursuant to the initial tax credit  
21        component certificate issued pursuant to section 1908-B(a).

22    "Department." The Department of Revenue of the Commonwealth.

23    "Eligible building." A building located in this Commonwealth  
24    that is any of the following:

25        (1) A residential multifamily building with at least  
26        four habitable stories that contains at least 10,000 square  
27        feet of interior space.

28        (2) One or more residential multifamily buildings with  
29        at least four habitable stories that are part of a single or  
30        phased construction project that contains, in the aggregate,

1 at least 20,000 square feet of interior space, provided that  
2 in any single phase of such project at least 10,000 square  
3 feet of interior space is under construction or  
4 rehabilitation.

5 (3) A building used for commercial or industrial  
6 purposes of at least 10,000 gross square feet.

7 (4) Any combination of buildings described in paragraph  
8 (1), (2) or (3) with at least 30,000 square feet of interior  
9 space and a minimum of 10,000 square feet of interior space  
10 per building.

11 "High-performance building." A building that is designed to  
12 achieve integrated systems design and construction so as to  
13 significantly reduce or eliminate the negative impact of the  
14 built environment.

15 "Tax credit." The High-Performance Buildings Tax Credit  
16 authorized under this article.

17 "Taxpayer." A business entity subject to tax under Article  
18 III, IV, VI, VII, VIII, IX or XV. The term shall include the  
19 shareholder of a Pennsylvania S corporation that receives a tax  
20 credit under this article.

21 "Tiers." The level of achievement that must occur to  
22 calculate the eligible amount of tax credit available. During  
23 the first year of implementation of this article, the term means  
24 three such levels as follows:

25 (1) Tier I: Achievement of the minimum level required  
26 for certification plus one additional level. Tier I shall  
27 also require the achievement of Environmental Protection  
28 Agency Energy Star rating of at least 85 following the second  
29 year of facility operation.

30 (2) Tier II: Achievement of the minimum level required

1 for certification plus two additional levels. Tier II shall  
2 also require achievement of Environmental Protection Agency  
3 Energy Star rating of at least 90 following the second year  
4 of facility operation.

5 (3) Tier III: Achievement of the minimum level required  
6 for certification plus three additional levels. Tier III  
7 shall also require achievement of Environmental Protection  
8 Agency Energy Star rating of at least 95 following the second  
9 year of facility operation.

10 The three tier levels shall remain in effect unless and until  
11 modifications are made by the department, in consultation with  
12 the Department of Environmental Protection, and necessitated by  
13 the emergence of new or changes to existing high-performance  
14 building standards as defined under sections 1904-B and 1905-B.  
15 Section 1904-B. Standards.

16 The high-performance building standards applicable to this  
17 article shall meet all of the following minimum criteria:

18 (1) Be consensus-based, as defined by the Office of  
19 Management and Budget, Circular No. A-119, dated February 10,  
20 1998.

21 (2) At a minimum, include performance-based categories  
22 or tax credits that will foster achievement of items under  
23 section 1902-B(2), (3), (4), (6), (7), (8), (9) and (10).

24 (3) Require documentation, verifiable calculations or  
25 the equivalent procedure to substantiate and support any  
26 claims made relative to section 1904(2).

27 (4) Employ third-party, postconstruction review and  
28 verification for achievement of certification.

29 (5) Have a track record of certified green buildings in  
30 the United States.

1 Section 1905-B. Eligibility.

2 (a) Projects.--All projects shall meet or exceed a  
3 prescribed level of achievement under the adopted high-  
4 performance building standard as defined under section 1904-B.

5 (b) Level of achievement.--The level of achievement to be  
6 met under subsection (a) shall be the tier levels.

7 Section 1906-B. High-Performance Building Tax Credit.

8 (a) Eligible taxpayers and buildings.--The High-Performance  
9 Building Tax Credit shall be available to a taxpayer, whether  
10 owner or tenant, for either the construction of a high-  
11 performance building or the rehabilitation of a building which  
12 is not a high-performance building into a high-performance  
13 building.

14 (b) Application.--A taxpayer may apply for a tax credit  
15 against any tax imposed under Article III, IV, VI, VII, VIII, IX  
16 or XV. The amount of the credit shall be as specified in section  
17 1907-B. The amount of each credit shall not exceed the limit set  
18 forth in the initial credit certificate obtained pursuant to  
19 section 1908-B(a). In the determination of the tax credit, no  
20 cost paid or incurred by the taxpayer shall be the basis for  
21 more than one tax credit.

22 (c) Requirements.--The tax credit may not be allowed for any  
23 taxable year unless all of the following are met:

24 (1) The taxpayer has obtained and filed both an initial  
25 credit certificate and high-performance documentation issued  
26 pursuant to section 1908-B.

27 (2) A certificate of occupancy for the building has been  
28 issued.

29 (3) The property for which the credit is claimed is in  
30 service during the taxable year.

1     (d) Timing.--The credit amount allowed for the high-  
2 performance building shall be claimed for the credit allowance  
3 year and for each of the three taxable years succeeding the  
4 credit allowance year. The total tax credit allowed in the  
5 aggregate may not exceed the maximum set forth in the initial  
6 tax credit certificate issued under section 1908-B.

7     (e) Credit to successor owner.--If a credit is allowed to a  
8 building owner pursuant to this article with respect to property  
9 and the property, or an interest therein, is sold, the tax  
10 credit for the period after the sale which would have been  
11 allowable to the prior owner had the property not been sold  
12 shall be allowable to the new owner. The tax credit for the year  
13 of sale shall be allocated between the parties on the basis of  
14 the number of days during such year that the property or  
15 interest was held by each.

16     (f) Credit to successor tenant.--If a tax credit is allowed  
17 to a tenant pursuant to this article with respect to property  
18 and if the tenancy is terminated but the property continues to  
19 be used in the building by a successor tenant, the tax credit  
20 for the period after termination which would have been allowable  
21 to the prior tenant had the tenancy not been terminated shall be  
22 allowable to the successor tenant. The tax credit for the year  
23 of termination shall be allocated between the parties on the  
24 basis of the number of days during such year that the property  
25 was used by each.

26 Section 1907-B. Tax credit amount.

27     (a) General rule.--The total tax credit that is available to  
28 a taxpayer for a single eligible project shall be distributed in  
29 four equal amounts over each of the four years specified in  
30 section 1906-B(d). This total amount shall be based on the

number of gross square feet of floor space in the eligible building, that building's achievement of an appropriate standard and the tier of achievement earned. In addition, no building may receive a tax credit unless it has earned achievement at or above the Tier I level. All such approved projects shall receive a base tax credit of \$35,000.

(b) Additional tax credit.--An additional tax credit shall be given cumulatively based on the following formula:

(1) For buildings achieving Tier I:

(i) For the first 10,000 gross square feet, \$1.50 of tax credit per square foot.

(ii) For up to the next 40,000 gross square feet, an additional 75¢ of tax credit per square foot.

(iii) For the next 50,000 gross square feet or greater, an additional 50¢ of tax credit per square foot.

(2) For achieving Tier II:

(i) For the first 10,000 gross square feet, \$2.50 of tax credit per square foot.

(ii) For up to the next 40,000 gross square feet, an additional \$1 of tax credit per square foot.

(iii) For the next 50,000 gross square feet or greater, an additional 75¢ of tax credit per square foot.

(3) For achieving Tier III:

(i) For the first 10,000 gross square feet, \$3.50 of tax credit per square foot.

(ii) For the next 40,000 gross square feet, an additional \$1.50 of tax credit per square foot.

(iii) For the next 50,000 gross square feet or greater, an additional \$1.25 of tax credit per square foot.



1 Section 1908-B. Certifications.

2 (a) Initial tax credit certificate.--

3 (1) The department shall issue an initial tax credit  
4 certificate to a taxpayer that has applied for one where the  
5 taxpayer has made a showing that the taxpayer will place in  
6 service within a reasonable period of time a property which  
7 would warrant the allowance of a tax credit under this  
8 article.

9 (2) The initial tax credit certificate shall state the  
10 first taxable year for which the tax credit may be claimed  
11 and its expiration date and shall apply only to property  
12 placed in service by the expiration date. The expiration date  
13 may be extended at the discretion of the department in order  
14 to avoid unwarranted hardship.

15 (3) The initial tax credit certificate shall state the  
16 maximum amount of the total tax credit allowable. This total  
17 tax credit shall be distributed in four equal amounts over  
18 the four taxable years for which the tax credit is allowed  
19 under section 1906-B. Initial credit certificates shall not  
20 be issued, in the aggregate, for more than \$32,000,000 of tax  
21 credits. In addition, the certificates shall be limited in  
22 their applicability, as follows:

23 <u>Total credits shall not</u>	<u>With respect to taxable</u>
24 <u>be allowed for more than:</u>	<u>years beginning in:</u>

25 <u>\$2,000,000</u>	<u>2007</u>
26 <u>\$4,000,000</u>	<u>2008</u>
27 <u>\$6,000,000</u>	<u>2009</u>
28 <u>\$8,000,000</u>	<u>2010</u>
29 <u>\$6,000,000</u>	<u>2011</u>
30 <u>\$4,000,000</u>	<u>2012</u>

\$2,000,000

2013

(b) Program extension.--If in the aggregate the total amount of tax credits to be issued is not exceeded, the department may extend the program beyond the initial schedule listed in subsection (a) and shall publish the extension as a notice in the Pennsylvania Bulletin.

(c) High-performance documentation.--For each taxable year subsequent to the first year for which a taxpayer claims a tax credit, the taxpayer shall provide annual performance documentation to the department and the Department of Environmental Protection resulting from the following required activities: development and implementation of a Measurement and Verification Plan consistent with Option D: Calibrated Simulation (Savings Estimation Method 2), or Option B: Energy Conservation Measure Isolation, as specified in the International Performance Measurement and Verification Protocol Volume III: Concepts and Options for Determining Energy Savings in New Construction, April 2003. This high-performance documentation shall set forth the specific findings upon which the certificate is based.

(d) Filing.--The taxpayer shall file the high-performance documentation and the associated initial tax credit certificate with the application for the tax credit.

(e) Information.--The high-performance documentation shall include sufficient information to identify each building and such other information as the Department of Environmental Protection may require. Except for the first year for which the tax credit is sought, such information shall include:

(1) Annual energy consumption for the building in terms of British Thermal Units per square foot per year as well as

1 costs per square foot per year for energy consumption by fuel  
2 type, performed in accordance with the standards set forth in  
3 sections 1904-B and 1905-B.

4 (2) Annual results of indoor air monitoring, if any,  
5 performed in accordance with the standards set forth in  
6 sections 1904-B and 1905-B.

7 (3) Confirmation that the building continues to meet  
8 requirements regarding smoking areas, if provided, in  
9 accordance with the standards specified in sections 1904-B  
10 and 1905-B.

11 Section 1909-B. Regulations.

12 The department, in consultation with the Department of  
13 Environmental Protection, shall promulgate such regulations as  
14 may be necessary for the implementation and administration of  
15 this article. The regulations shall include, but not be limited  
16 to:

17 (1) The adoption of high-performance building standards  
18 selected by the department from among accepted industry  
19 standards meeting the criteria prescribed in section 1906-B.

20 (2) Procedures and methods for verifying compliance with  
21 the adopted standards in the design and construction of  
22 eligible building projects under this article.

23 These regulations will be promulgated in accordance with the act  
24 of June 25, 1982 (P.L.633, No.181), known as the Regulatory  
25 Review Act and section 1920-A of the act of April 9, 1929  
26 (P.L.177, No.175), known as The Administrative Code of 1929.

27 Section 1910-B. Report.

28 The department shall annually make a report to the  
29 Environmental Resources and Energy Committee of the Senate and  
30 the Environmental Resources and Energy Committee of the House of

1 Representatives on the activities undertaken pursuant to this  
2 article, including, but not limited to:

3       (1) The total amount of tax credits provided.

4       (2) The amount of tax credits provided by building type.

5       (3) The levels of high-performance building  
6 certifications achieved.

7       (4) A description of any changes made to the levels of  
8 approved levels of achievement.

9       (5) Other information necessary to provide a complete  
10 understanding of the operation of and benefits from this  
11 article.

12 Section 2. This act shall take effect as follows:

13       (1) The addition of sections 1901-B, 1902-B, 1903-B,  
14 1904-B and 1910-B of the act shall take effect in 30 days.

15       (2) This section shall take effect immediately.

16       (3) The remainder of this act shall take effect in 12  
17 months.