

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 445 Session of 2009

INTRODUCED BY M. SMITH, BELFANTI, BOYD, BRENNAN, BRIGGS, BROWN, CALTAGIRONE, DEASY, DONATUCCI, EACHUS, FABRIZIO, FREEMAN, GEORGE, GIBBONS, GRUCELA, JOSEPHS, KORTZ, LONGIETTI, MANN, MARKOSEK, MCGEEHAN, MELIO, MUNDY, M. O'BRIEN, PALLONE, PASHINSKI, PETRI, PYLE, READSHAW, SAINATO, SCAVELLO, SIPTROTH, K. SMITH, STURLA, VULAKOVICH, WALKO, WHITE AND YOUNGBLOOD, FEBRUARY 13, 2009

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 13, 2009

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.

1 This article authorizes the High-Performance Buildings Tax
2 Credit.

3 Section 1902-B. Purpose.

4 The General Assembly declares the purposes of this article
5 are as follows:

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

9 (2) To optimize the energy performance of buildings
10 throughout this Commonwealth.

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

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

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

19 (6) To improve working conditions and reduce related
20 health problems.

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

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

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

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

1 (11) To improve this Commonwealth's capacity to design,
2 build and operate higher performance buildings, and in doing
3 so, to create new jobs and contribute to economic growth.

4 Section 1903-B. Definitions.

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

8 "Achievement." Achievement and award of certification by a
9 high-performance green building standard as set forth in section
10 1904-B and adopted by regulation.

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

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

16 "Credit allowance year." The later of:

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

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

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

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

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

30 (2) One or more residential multifamily buildings with

1 at least four habitable stories that are part of a single or
2 phased construction project that contains, in the aggregate,
3 at least 20,000 square feet of interior space, provided that
4 in any single phase of a project at least 10,000 square feet
5 of interior space is under construction or rehabilitation.

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

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

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

16 "LEED." The Leadership in Energy and Environmental Design
17 Green Building Rating System developed by the U.S. Green
18 Building Council.

19 "LEED-NC." LEED's rating system for New Construction and
20 Major Renovations.

21 "Tax credit." The High-Performance Buildings Tax Credit
22 authorized under this article.

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

27 "Tiers." The level of achievement that must occur to
28 calculate the eligible amount of tax credit available. During
29 the first year of implementation of this article, the term means
30 three levels as follows:

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

6 (2) Tier II: Achievement of the minimum level required
7 for certification plus two additional levels. Tier II shall
8 also require achievement of Environmental Protection Agency
9 Energy Star rating of at least 90 following the second year
10 of facility operation.

11 (3) Tier III: Achievement of the minimum level required
12 for certification plus three additional levels. Tier III
13 shall also require achievement of Environmental Protection
14 Agency Energy Star rating of at least 95 following the second
15 year of facility operation.

16 The three tier levels shall remain in effect unless and until
17 modifications are made by the department, in consultation with
18 the Department of Environmental Protection, and necessitated by
19 the emergence of new or changes to existing high-performance
20 building standards as defined under sections 1904-B and 1905-B.
21 Section 1904-B. Standards.

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

24 (1) Be consensus-based, as defined by the Office of
25 Management and Budget, Circular No. A-119, dated February 10,
26 1998.

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

30 (3) Require documentation, verifiable calculations or

1 the equivalent procedure to substantiate and support any
2 claims made under this article.

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

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

7 (6) Comply with LEED.--NC guidelines for green building
8 certification.

9 Section 1905-B. Eligibility.

10 (a) Projects.--All projects shall meet or exceed a
11 prescribed level of achievement under the adopted high-
12 performance building standard as set forth in section 1904-B.

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

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

16 (a) Eligible taxpayers and buildings.--The High-Performance
17 Building Tax Credit shall be available to a taxpayer, whether
18 owner or tenant, for either the construction of a high-
19 performance building or the rehabilitation of a building which
20 is not a high-performance building into a high-performance
21 building.

22 (b) Application.--A taxpayer may apply for a tax credit
23 against any tax imposed under Article III, IV, VI, VII, VIII, IX
24 or XV. The amount of the credit shall be as specified in section
25 1907-B. The amount of each credit shall not exceed the limit set
26 forth in the initial credit certificate obtained pursuant to
27 section 1908-B(a). In the determination of the tax credit, no
28 cost paid or incurred by the taxpayer shall be the basis for
29 more than one tax credit.

30 (c) Requirements.--The tax credit may not be allowed for any

1 taxable year unless all of the following are met:

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

5 (2) A certificate of occupancy for the building has been
6 issued.

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

9 (d) Timing.--The credit amount allowed for the high-
10 performance building shall be claimed for the credit allowance
11 year and for each of the three taxable years succeeding the
12 credit allowance year. The total tax credit allowed in the
13 aggregate may not exceed the maximum set forth in the initial
14 tax credit certificate issued under section 1908-B(a).

15 (e) Credit to successor owner.--If a credit is allowed to a
16 building owner pursuant to this article with respect to property
17 and the property, or an interest therein, is sold, the tax
18 credit for the period after the sale which would have been
19 allowable to the prior owner had the property not been sold
20 shall be allowable to the new owner. The tax credit for the year
21 of sale shall be allocated between the parties on the basis of
22 the number of days during the year that the property or interest
23 was held by each.

24 (f) Credit to successor tenant.--If a tax credit is allowed
25 to a tenant pursuant to this article with respect to property
26 and if the tenancy is terminated but the property continues to
27 be used in the building by a successor tenant, the tax credit
28 for the period after termination which would have been allowable
29 to the prior tenant had the tenancy not been terminated shall be
30 allowable to the successor tenant. The tax credit for the year

of termination shall be allocated between the parties on the basis of the number of days during the year that the property was used by each.

Section 1907-B. Tax credit amount.

(a) General rule.--The total tax credit that is available to a taxpayer for a single eligible project shall be distributed in four equal amounts over each of the four years specified in 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 the 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.

Section 1908-B. Certifications.

(a) Initial tax credit certificate.--

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

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

(3) The initial tax credit certificate shall state the maximum amount of the total tax credit allowable. This total tax credit shall be distributed in four equal amounts over the four taxable years for which the tax credit is allowed under section 1906-B. Initial credit certificates shall not be issued, in the aggregate, for more than \$32,000,000 of tax

1 credits. In addition, the certificates shall be limited in
2 their applicability, as follows:

3 Total credits shall notWith respect to taxable
4 be allowed for more than: years beginning in:

5	<u>\$4,000,000</u>	<u>2010</u>
6	<u>\$6,000,000</u>	<u>2011</u>
7	<u>\$8,000,000</u>	<u>2012</u>
8	<u>\$6,000,000</u>	<u>2013</u>
9	<u>\$4,000,000</u>	<u>2014</u>
10	<u>\$2,000,000</u>	<u>2015</u>

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

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

30 (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 other information as the Department of Environmental Protection may require. Except for the first year for which the tax credit is sought, the information shall include:

(1) Annual energy consumption for the building in terms of British Thermal Units per square foot per year as well as costs per square foot per year for energy consumption by fuel type, performed in accordance with the standards set forth in sections 1904-B and 1905-B.

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

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

Section 1909-B. Regulations.

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

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

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

1 These regulations will be promulgated in accordance with the act
2 of June 25, 1982 (P.L.633, No.181), known as the Regulatory
3 Review Act and section 1920-A of the act of April 9, 1929 (P.L.
4 177, No.175), known as The Administrative Code of 1929.
5 Section 1910-B. Report.

6 The department shall annually make a report to the
7 Environmental Resources and Energy Committee of the Senate and
8 the Environmental Resources and Energy Committee of the House of
9 Representatives on the activities undertaken pursuant to this
10 article, including, but not limited to:

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

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

13 (3) The levels of high-performance building
14 certifications achieved.

15 (4) A description of any changes made to the levels of
16 approved levels of achievement.

17 (5) Other information necessary to provide a complete
18 understanding of the operation of and benefits from this
19 article.

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

21 (1) The addition of sections 1901-B, 1902-B, 1903-B,
22 1904-B and 1910-B of the act shall take effect in 30 days.

23 (2) This section shall take effect immediately.

24 (3) The remainder of this act shall take effect in 12
25 months.