

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 46

Session of
2007

INTRODUCED BY RUBLEY, FRANKEL, MANN, STEIL, ADOLPH, BASTIAN,
BOYD, CALTAGIRONE, DePASQUALE, GEIST, HARHAI, HARPER,
HENNESSEY, HERSHEY, HESS, KILLION, LEACH, MARSHALL,
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STURLA, SURRA, TANGRETTI, VEREB, VITALI, WALKO, WATSON,
YOUNGBLOOD, MELIO AND CLYMER, JANUARY 30, 2007

REFERRED TO COMMITTEE ON FINANCE, JANUARY 30, 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

1 Credit.

2 Section 1902-B. Purpose.

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

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

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

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

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

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

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

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

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

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

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

30 (11) To improve this Commonwealth's capacity to design,

build and operate higher performance buildings, and in doing so, to create new jobs and contribute to economic growth.

Section 1903-B. Definitions.

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

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

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

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

"Credit allowance year." The later of:

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

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

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

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

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

(2) One or more residential multifamily buildings with at least four habitable stories that are part of a single or

phased construction project that contains, in the aggregate, at least 20,000 square feet of interior space, provided that in any single phase of such project at least 10,000 square feet of interior space is under construction or rehabilitation.

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

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

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

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

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

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

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

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

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

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

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

19 (1) Be consensus-based, as defined by the Office of
20 Management and Budget, Circular No. A-119, dated February 10,
21 1998.

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

25 (3) Require documentation, verifiable calculations or
26 the equivalent procedure to substantiate and support any
27 claims made under this article.

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

30 (5) Have a track record of certified green buildings in

1 the United States.

2 Section 1905-B. Eligibility.

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

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

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

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

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

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

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

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

30 (3) The property for which the credit is claimed is in

1 service during the taxable year.

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

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

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

27 Section 1907-B. Tax credit amount.

28 (a) General rule.--The total tax credit that is available to
29 a taxpayer for a single eligible project shall be distributed in
30 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 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.

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

<u>Total credits shall not</u>	<u>With respect to taxable</u>
<u>be allowed for more than:</u>	<u>years beginning in:</u>
<u>\$4,000,000</u>	<u>2007</u>
<u>\$6,000,000</u>	<u>2008</u>
<u>\$8,000,000</u>	<u>2009</u>

1	<u>\$6,000,000</u>	<u>2010</u>
2	<u>\$4,000,000</u>	<u>2011</u>
3	<u>\$2,000,000</u>	<u>2012</u>

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

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

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

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

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

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

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

13 Section 1909-B. Regulations.

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

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

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

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

29 Section 1910-B. Report.

30 The department shall annually make a report to the

Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives on the activities undertaken pursuant to this article, including, but not limited to:

(1) The total amount of tax credits provided.

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

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

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

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

Section 2. This act shall take effect as follows:

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

(2) This section shall take effect immediately.

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