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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 237 Session of  
2015

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INTRODUCED BY SMITH, TEPLITZ, BLAKE, FONTANA, HAYWOOD, YUDICHAK,  
BREWSTER, TARTAGLIONE, COSTA, FARNESE, HUGHES, BOSCOLA AND  
BROWNE, APRIL 7, 2015

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REFERRED TO FINANCE, APRIL 7, 2015

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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:

17 ARTICLE XIX-D

18 HIGH-PERFORMANCE BUILDINGS TAX CREDIT

19 Section 1901-D. Scope.

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

22 Section 1902-D. Purpose.

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

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

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

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

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

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

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

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

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

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

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

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

1 Section 1903-D. Definitions.

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

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

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

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

13 "Credit allowance year." The later of:

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

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

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

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

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

27 (2) One or more residential multifamily buildings with  
28 at least four habitable stories that are part of a single or  
29 phased construction project that contains, in the aggregate,  
30 at least 20,000 square feet of interior space, provided that

1 in any single phase of a project at least 10,000 square feet  
2 of interior space is under construction or rehabilitation.

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

5 (4) Any combination of buildings described in paragraph  
6 (1), (2) or (3) with at least 30,000 square feet of interior  
7 space and a minimum of 10,000 square feet of interior space  
8 per building.

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

13 "LEED." The Leadership in Energy and Environmental Design  
14 Green Building Rating System developed by the U.S. Green  
15 Building Council.

16 "LEED NC." LEED's rating system for New Construction and  
17 Major Renovations.

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

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

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

28 (1) Tier I: Achievement of the minimum level required  
29 for certification plus one additional level. Tier I shall  
30 also require the achievement of Environmental Protection

1 Agency Energy Star rating of at least 85 following the second  
2 year of facility operation.

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

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

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

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

21 (1) Be consensus-based, as defined by the Office of  
22 Management and Budget, Circular No. A-119, dated February 10,  
23 1998.

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

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

30 (4) Employ third-party, postconstruction review and

1 verification for achievement of certification.

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

4 (6) Comply with LEED NC guidelines for green building  
5 certification.

6 Section 1905-D. Eligibility.

7 (a) Projects.--A project shall meet or exceed a prescribed  
8 level of achievement under the adopted high-performance building  
9 standard as set forth in section 1904-D.

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

12 Section 1906-D. High-Performance Building Tax Credit.

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

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

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

29 (1) The taxpayer has obtained and filed both an initial  
30 credit certificate and high-performance documentation issued

1 pursuant to section 1908-D.

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

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

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

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

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

1 Section 1907-D. Tax credit amount.

2 (a) General rule.--The total tax credit that is available to  
3 a taxpayer for a single eligible project shall be distributed in  
4 four equal amounts over each of the four years specified in  
5 section 1906-D(d). This total amount shall be based on the  
6 number of gross square feet of floor space in the eligible  
7 building, that building's achievement of an appropriate standard  
8 and the tier of achievement earned. In addition, no building may  
9 receive a tax credit unless it has earned achievement at or  
10 above the Tier I level. All the approved projects shall receive  
11 a base tax credit of \$35,000.

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

14 (1) For buildings achieving Tier I:

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

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

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

22 (2) For achieving Tier II:

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

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

27 (iii) For the next 50,000 gross square feet or  
28 greater, an additional \$.75 of tax credit per square  
29 foot.

30 (3) For achieving Tier III:



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

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

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

8       (c) Availability of tax credits.--Each fiscal year,  
9 \$10,000,000 in tax credits shall be made available to the  
10 department and may be awarded by the department in accordance  
11 with this article.

12 Section 1908-D. Certifications.

13       (a) Initial tax credit certificate.--

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

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

26           (3) The initial tax credit certificate shall state the  
27 maximum amount of the total tax credit allowable. This total  
28 tax credit shall be distributed in four equal amounts over  
29 the four taxable years for which the tax credit is allowed  
30 under section 1906-D. Initial credit certificates shall not

1 be issued, in the aggregate, for more than \$32,000,000 of tax  
2 credits. In addition, the certificates shall be limited in  
3 their applicability, as follows:

4 <u>Total credits shall not</u>	5 <u>With respect to taxable</u>
6 <u>be allowed for more than:</u>	7 <u>years beginning in:</u>
8 <u>\$4,000,000</u>	9 <u>2015</u>
10 <u>\$6,000,000</u>	11 <u>2016</u>
12 <u>\$8,000,000</u>	13 <u>2017</u>
14 <u>\$6,000,000</u>	15 <u>2018</u>
16 <u>\$4,000,000</u>	17 <u>2019</u>
18 <u>\$2,000,000</u>	19 <u>2020</u>

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

25 (c) High-performance documentation.--For each taxable year  
26 subsequent to the first year for which a taxpayer claims a tax  
27 credit, the taxpayer shall provide annual performance  
28 documentation to the department and the Department of  
29 Environmental Protection resulting from the following required  
30 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.

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

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

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

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

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

21 Section 1909-D. Regulations.

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

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

29 (2) Procedures and methods for verifying compliance with  
30 the adopted standards in the design and construction of

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

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

- 12 (1) The total amount of tax credits provided.
- 13 (2) The amount of tax credits provided by building type.
- 14 (3) The levels of high-performance building  
15 certifications achieved.
- 16 (4) A description of any changes made to the levels of  
17 approved levels of achievement.
- 18 (5) Other information necessary to provide a complete  
19 understanding of the operation of and benefits from this  
20 article.

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

- 22 (1) The addition of sections 1901-D, 1902-D, 1903-D,  
23 1904-D and 1910-D of the act shall take effect in 30 days.
- 24 (2) This section shall take effect immediately.
- 25 (3) The remainder of this act shall take effect in 12  
26 months.