
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 861 Session of
2021

INTRODUCED BY SIMS, SANCHEZ, HOHENSTEIN, GUENST, HILL-EVANS,
SCHWEYER, SCHLOSSBERG, LEE, KINKEAD, WEBSTER, FREEMAN, BRIGGS
AND MADDEN, MARCH 11, 2021

REFERRED TO COMMITTEE ON FINANCE, MARCH 11, 2021

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-H

18 HIGH-PERFORMANCE BUILDINGS TAX CREDIT

19 Section 1901-H. Scope of article.

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

22 Section 1902-H. 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-H. 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 provided under
7 section 1904-H 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 1906-H(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 under section 1908-H(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 following:

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

29 (i) Tier I: Achievement of the minimum level
30 required for certification plus one additional level.

1 Tier I shall also require the achievement of
2 Environmental Protection Agency Energy Star rating of at
3 least 85 following the second year of facility operation.

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

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

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

20 Section 1904-H. Standards.

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

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

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

29 (3) Require documentation, verifiable calculations or
30 the equivalent procedure to substantiate and support any

1 claims made under this article.

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

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

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

8 Section 1905-H. Eligibility.

9 (a) Projects.--All projects shall meet or exceed a
10 prescribed level of achievement under the adopted high-
11 performance building standard as provided under section 1904-H.

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

14 Section 1906-H. High-Performance Building Tax Credit.

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

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

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

1 (1) The taxpayer has obtained and filed both an initial
2 credit certificate and high-performance documentation issued
3 under section 1908-H(c).

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

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

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

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

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

1 was used by each.

2 Section 1907-H. Tax credit amount.

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

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

15 (1) For buildings achieving Tier I:

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

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

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

23 (2) For achieving Tier II:

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

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

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

1 (3) For achieving Tier III:

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

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

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

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

13 Section 1908-H. Certifications.

14 (a) Initial tax credit certificate.--The following shall
15 apply:

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

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

28 (3) The initial tax credit certificate shall state the
29 maximum amount of the total tax credit allowable. This total
30 tax credit shall be distributed in four equal amounts over

1 the four taxable years for which the tax credit is allowed
2 under section 1906-H(d). Initial credit certificates shall
3 not be issued, in the aggregate, for more than \$32,000,000 of
4 tax credits. In addition, the certificates shall be limited
5 in their applicability, as follows:

6 <u>Total credits shall not</u>	7 <u>be allowed for more than:</u>	8 <u>With respect to taxable</u>	9 <u>years beginning in:</u>
8	<u>\$4,000,000</u>		<u>2020</u>
9	<u>\$8,000,000</u>		<u>2021</u>
10	<u>\$8,000,000</u>		<u>2022</u>
11	<u>\$6,000,000</u>		<u>2023</u>
12	<u>\$4,000,000</u>		<u>2024</u>
13	<u>\$2,000,000</u>		<u>2025</u>

14 (b) Program extension.--If in the aggregate the total amount
15 of tax credits to be issued is not exceeded, the department may
16 extend the program beyond the initial schedule listed in
17 subsection (a) and shall transmit the extension to the
18 Legislative Reference Bureau as a notice for publication in the
19 Pennsylvania Bulletin.

20 (c) High-performance documentation.--For each taxable year
21 subsequent to the first year for which a taxpayer claims a tax
22 credit, the taxpayer shall provide annual performance
23 documentation to the department and the Department of
24 Environmental Protection resulting from the following required
25 activities: development and implementation of a Measurement and
26 Verification Plan consistent with Option B: ECM Isolation, or
27 Option D: Whole Building Calibrated Simulation (Savings
28 Estimation Method 2), as specified in the International
29 Performance Measurement and Verification Protocol Volume III:
30 Concepts and Options for Determining Energy Savings in New

1 Construction, April 2003. This high-performance documentation
2 shall provide the specific findings upon which the certificate
3 is based.

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

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

12 (1) Annual energy consumption for the building in terms
13 of British Thermal Units per square foot per year as well as
14 costs per square foot per year for energy consumption by fuel
15 type, performed in accordance with the standards provided
16 under sections 1904-H and 1905-H.

17 (2) Annual results of indoor air monitoring, if any,
18 performed in accordance with the standards provided under
19 sections 1904-H and 1905-H.

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

24 Section 1909-H. Regulations.

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

29 (1) The adoption of high-performance building standards
30 selected by the department from among accepted industry

1 standards meeting the criteria prescribed in section 1906-H.

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

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

10 The department shall annually make a report to the
11 Environmental Resources and Energy Committee of the Senate and
12 the Environmental Resources and Energy Committee of the House of
13 Representatives on the activities undertaken under this article,
14 including, but not limited to:

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

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

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

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

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

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

25 (1) The addition of sections 1901-H, 1902-H, 1903-H,
26 1904-H and 1910-H of the act shall take effect in 30 days.

27 (2) This section shall take effect immediately.

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