

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2890**

4 (By Delegates Ashley and Manchin)

5  
6 (Originating in the House Committee on Finance)

7  
8 [February 25, 2011]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §11-13BB-1,  
12 §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6,  
13 §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11,  
14 §11-13BB-12, and §11-13BB-13, all relating to authorizing a  
15 tax credit against business franchise tax, corporate net  
16 income tax or personal income tax for eligible expenditures  
17 incurred in placing in service a residential or nonresidential  
18 energy-efficient building; defining terms; establishing the  
19 amount of tax credit permitted; authorizing rulemaking; and  
20 requiring reports to be made.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new article, designated §11-13BB-1, §11-13BB-2,  
24 §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7,

1 §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12, and  
2 §11-13BB-13, all to read as follows:

3 **ARTICLE 13BB. ENERGY EFFICIENT BUILDING PROPERTY TAX CREDIT.**

4 **§11-13BB-1. Short title.**

5 This article may be cited as the "Energy Efficient Building  
6 Act."

7 **§11-13BB-2. Legislative finding and purpose.**

8 The Legislature finds that encouraging the construction and  
9 rehabilitation of energy efficient buildings is in the public  
10 interest and promotes the general welfare of the people of this  
11 state. It contributes to economic growth and, in time, will  
12 improve environmental quality in the state by decreasing discharge  
13 of pollutants from buildings, improving energy efficiency and  
14 reducing greenhouse gas emissions. To accomplish these ends, there  
15 is hereby enacted the energy efficient building tax credit.

16 **§11-13BB-3. Definitions.**

17 (a) General. -- When used in this article, or in the  
18 administration of this article, terms defined in subsection (b)  
19 have the meanings ascribed to them by this section, unless a  
20 different meaning is clearly required by the context in which the  
21 term is used.

22 (b) Terms defined. --

23 (1) "EPA" means the United States Environmental Protection

1 Agency.

2 (2) "Designed to Earn the Energy Star®" means a designation  
3 given by the EPA as part of the Energy Star® program to identify  
4 plans for the construction of residential or nonresidential  
5 buildings that incorporate energy-efficient details and  
6 specifications typically found in Energy Star® qualified buildings.

7 (3) "Eligible buildings" means energy efficient residential or  
8 nonresidential building property to which the EPA has awarded an  
9 Energy Star® label.

10 (4) "Eligible expenditures" means expenses incurred on or  
11 after July 1, 2011, for the planning, construction or  
12 rehabilitation of energy efficient residential or nonresidential  
13 building property. Eligible expenditures do not include:

14 (A) Legal fees related to construction or remodeling;

15 (B) Site purchase or preparation costs;

16 (C) Interest related to construction or remodeling;

17 (D) Architectural, engineering and other professional fees  
18 related to construction or remodeling;

19 (E) Closing costs related to construction or remodeling; and

20 (F) Costs related to issuance, or procurement of loans, bond  
21 issuances or costs of capital or related administrative expenses.

22 (5) "Eligible building plans" means plans for the construction  
23 of residential or nonresidential buildings that incorporate  
24 energy-efficient details and specifications typically found in

1 Energy Star® qualified buildings that have earned the Designed to  
2 Earn the Energy Star® label under the Energy Star® program.

3 (6) "Eligible taxpayer" means the owner of a residential or  
4 commercial building property to which the EPA has awarded an Energy  
5 Star® label, or the owner of building plans which have earned the  
6 Designed to Earn the Energy Star® label by the Energy Star®  
7 program.

8 (7) "Energy efficient residential or nonresidential building"  
9 means a residential or nonresidential building constructed using  
10 building materials:

11 (A) Which are installed on or in the building which is:

12 (i) Located in West Virginia; and

13 (ii) Within the scope of the Energy Star® performance ratings  
14 system utilized in the Energy Star® program established by 42  
15 U.S.C. §6294a.

16 (B) Which are installed as part of:

17 (i) The interior lighting systems;

18 (ii) The heating, cooling, ventilation, and hot water systems;

19 or

20 (iii) The building envelope.

21 (C) To which the Administrator of the EPA has awarded an  
22 Energy Star® label for energy efficient buildings and manufacturing  
23 plants in accordance with the requirements and procedures  
24 established by the EPA under the Energy Star® program.

1 (8) "Energy Star® label" means, in the context of buildings,  
2 a designation given by the EPA as part of the Energy Star® program  
3 to identify residential and nonresidential buildings that meet EPA  
4 strict energy efficiency guidelines.

5 (9) "Energy Star® program" means a joint voluntary program  
6 established within the United States Department of Energy and the  
7 EPA to identify and promote energy-efficient products and buildings  
8 in order to reduce energy consumption, improve energy security, and  
9 reduce pollution through voluntary labeling of, or other forms of  
10 communication about, products and buildings that meet the highest  
11 energy conservation standards.

12 (10) "Energy Star® performance ratings system" means the  
13 ratings system used by the EPA in the Energy Star® program for  
14 buildings and manufacturing plants to award the Energy Star® label.

15 (11) "Placed in service" means the eligible building is placed  
16 in a condition or state of readiness and availability for use as a  
17 residential or nonresidential building.

18 (12) "Tax Commissioner" means the appointed official, or his  
19 or her designee, charged with administering the West Virginia State  
20 Tax Department.

21 **§11-13BB-4. Amount of credit allowed.**

22 (a) Credit allowed. --

23 (1) Eligible taxpayers are allowed a credit against the taxes  
24 imposed by articles twenty-three, twenty-four and twenty-one of

1 this chapter, in that order, for owning a residential or commercial  
2 building to which the EPA has awarded an Energy Star® label, or  
3 owning building plans which have earned the Designed to Earn the  
4 Energy Star® label: Provided, That if a tax credit is allowed and  
5 the structure is sold, the remaining tax credit would be available  
6 to the subsequent purchaser.

7 (2) Taxpayers who have taken the credit based on ownership of  
8 eligible building plans must complete construction of the eligible  
9 building and obtain Energy Star® certification for the completed  
10 building within four years from the time the credit was initially  
11 taken. If the building fails to obtain Energy Star® certification  
12 by the end of year four, the credit allowed under this article  
13 shall be disallowed and amended returns filed for the first, second  
14 and third taxable years.

15 (b) Application for credit required. --

16 (1) Application required. -- Notwithstanding any provision of  
17 this article to the contrary, no credit is allowed or may be  
18 applied under this article for any Energy Star® eligible building  
19 placed in service or use or for any Designed to Earn the Energy  
20 Star® building plans until the eligible taxpayer claiming the  
21 credit makes written application to the Tax Commissioner for  
22 allowance of credit as provided in this subsection. This  
23 application shall be in the form prescribed by the Tax  
24 Commissioner, and shall be filed with the Tax Commissioner no later

1 than the last day for filing the annual return, determined by  
2 including any authorized extension of time for filing the return,  
3 required under article twenty-one or twenty-four of this chapter  
4 for the taxable year in which the property to which the credit  
5 relates is placed in service or use.

6 (2) Failure to file. -- The failure to timely file the  
7 application for credit under this section results in forfeiture of  
8 fifty percent of the annual credit otherwise allowable under this  
9 article. This penalty applies annually until the application is  
10 filed.

11 (c) Amount of credit allowed.--

12 The amount of credit allowed by subsection (a) is the greater  
13 of:

14 (1) One and one-half percent of eligible expenditures; or

15 (2) One dollar per square foot of the eligible building as  
16 constructed or as designed and portrayed on the building plan.

17 (d) Annual aggregate limit on total credits allowed under  
18 article.-- The total amount of energy efficient building property  
19 tax credits for all taxpayers pursuant to this section may not  
20 exceed \$1,000,000 each calendar year. The credits will be allowed  
21 on a first come, first served basis.

22 **§11-13BB-5. Application of credit.**

23 (a) Application of credit over ten years. -- The amount of  
24 credit allowable must be taken over a ten-year period, at the rate

1 of one tenth of the amount thereof per taxable year, beginning with  
2 the taxable year in which the taxpayer places the eligible building  
3 in service or use in this state: *Provided*, That the taxpayer may  
4 elect to delay the beginning of the ten-year period until the next  
5 succeeding taxable year after the taxable year in which the  
6 taxpayer places the eligible building in service or use in this  
7 state or the building plan is approved to receive the Designed to  
8 Earn the Energy Star® label. This election shall be made in the  
9 annual income tax return filed under this chapter for the taxable  
10 year in which the eligible building is first placed into service or  
11 use by the taxpayer. Once made, the election cannot be revoked. In  
12 the event of a failure to make a timely election to delay the  
13 beginning of the credit application period, the credit shall be  
14 applied beginning in the taxable year in which the taxpayer places  
15 the eligible building in service or use in this state. No  
16 retroactive election to delay the beginning of the credit  
17 application period shall be allowed.

18 (b) *Business franchise tax.* -- The credit is first applied to  
19 reduce the taxes imposed by article twenty-three of this chapter  
20 for the taxable year, determined after application of the credits  
21 against tax provided in section seventeen of said article, but  
22 before application of any other allowable credits against tax.

23 (c) *Corporation net income taxes.* -- After application of  
24 subsection (b) of this section, any unused credit is next applied



1 to reduce the taxes imposed by article twenty-four of this chapter  
2 for the taxable year, determined before application of allowable  
3 credits against tax.

4 (d) *Personal income tax.* --

5 (1) If the eligible taxpayer is an electing small business  
6 corporation (as defined in section 1361 of the United States  
7 Internal Revenue Code of 1986, as amended), a partnership, a  
8 limited liability company that is treated as a partnership for  
9 federal income tax purposes or a sole proprietorship, then any  
10 unused credit, after application of subsections (b) and (c) of this  
11 section, as applicable, is allowed as a credit against the taxes  
12 imposed by article twenty-one of this chapter.

13 (2) Electing small business corporations, limited liability  
14 companies, partnerships and other unincorporated organizations  
15 shall allocate the credit allowed by this article among its members  
16 in the same manner as profits and losses are allocated for the  
17 taxable year.

18 **§11-13BB-6. Limitation on use of credit.**

19 (a) *Withholding.* -- No credit is allowed under this section  
20 against any employer withholding taxes imposed by article  
21 twenty-one of this chapter.

22 (b) *No other tax credit authorized.* -- The credit allowed or  
23 authorized under the provisions of this article shall not be  
24 allowed, authorized or applied against tax if any tax credit is

1 authorized, applied for or used or applied against tax by the  
2 taxpayer, or by any other person, under article thirteen-d, article  
3 thirteen-e, article thirteen-g, article thirteen-r, or article  
4 thirteen-s of this chapter, or any combination thereof, for, or  
5 with relation to, investment in any building, or facility for which  
6 credit is, or may be allowed, authorized or applied against tax  
7 under this article.

8 **§11-13BB-7. Excess credit; carryforward; carryback prohibited.**

9 (a) If the tax credit allowed under this article in any  
10 taxable year exceeds the sum of the taxes enumerated in section  
11 four of this article for that taxable year, the excess may be  
12 applied against those taxes, in the order and manner stated in  
13 section four of this article, for succeeding taxable years until  
14 the earlier of the following:

15 (1) Five taxable years have elapsed; or

16 (2) The full amount of the excess tax credit is used.

17 (b) No carryback to a prior taxable year is allowed for the  
18 amount of any unused portion of any annual credit allowance.

19 **§11-13BB-8. Credit recapture.**

20 (a) If it appears upon audit or otherwise that any taxpayer  
21 has taken the credit against tax allowed under this article and was  
22 not entitled to take the credit, then the credit improperly taken  
23 under this article shall be recaptured.

24 (b) Amended returns shall be filed for any tax year for which

1 the credit was improperly taken. Any additional taxes due under  
2 this chapter shall be remitted with the amended return or returns  
3 filed with the Tax Commissioner, along with interest, as provided  
4 in section seventeen, article ten of this chapter and such other  
5 penalties and additions to tax as may be applicable pursuant to the  
6 provisions of article ten of this chapter.

7 **§11-13BB-9. Interest; penalties; additions to tax.**

8 Notwithstanding the provisions of article ten of this chapter,  
9 penalties and additions to tax imposed under article ten of this  
10 chapter may be waived at the discretion of the Tax Commissioner:  
11 Provided, That interest is not subject to waiver, except in  
12 accordance with the provisions of article ten of this chapter.

13 **§11-13BB-10. Statute of limitations.**

14 Notwithstanding the provisions of article ten of this chapter,  
15 the statute of limitations for the issuance of an assessment of tax  
16 by the Tax Commissioner shall be five years from the date of filing  
17 of any tax return on which this credit was taken or five years from  
18 the date of payment of any tax liability, calculated pursuant to  
19 the assertion of the credit allowed under this article, whichever  
20 is later.

21 **§11-13BB-11. Report on credit.**

22 (a) The Tax Commissioner shall provide to the Joint Committee  
23 on Government and Finance by July 1, 2013, and on July 1 of each  
24 year thereafter, a report detailing the amount of credit claimed

1 pursuant to this article. The report is to include the amount of  
2 credit claimed against the business franchise tax, the amount of  
3 credit claimed against the corporate net income tax and the amount  
4 of credit claimed against the personal income tax.

5 (b) Taxpayers claiming the credit shall provide the  
6 information as the Tax Commissioner may require to prepare the  
7 report: *Provided*, That the information is subject to the  
8 confidentiality and disclosure provisions of sections five-d and  
9 five-s, article ten of this chapter.

10 **§11-13BB-12. Legislative rules.**

11 The Tax Commissioner shall propose for legislative approval  
12 rules pursuant to the provisions of article three, chapter  
13 twenty-nine-a of this code, as may be necessary to carry out the  
14 purposes of this article.

15 **§11-13BB-13. Effective date.**

16 This article shall be effective for business franchise tax  
17 years, corporate net income tax years and personal income tax years  
18 beginning on or after January 1, 2012.

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