

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 201**

4 (By Senators McCabe, Browning, Foster, Wells, Stollings, Klempa  
5 and Kessler (Acting President))

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7 [Originating in the Committee on Economic Development;  
8 reported February 15, 2011.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §11-13BB-1, §11-13BB-  
14 2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7,  
15 §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12,  
16 §11-13BB-13 and §11-13BB-14, all relating to authorizing a tax  
17 credit against business franchise tax, corporate net income  
18 tax or personal income tax for eligible expenditures incurred  
19 in placing in service a residential or nonresidential energy-  
20 efficient building; defining terms; establishing the amount of  
21 tax credit permitted; requiring an application prior to taking  
22 the credit; providing the credit will be taken over a ten-year  
23 period; allowing the credit to be carried forward; providing  
24 that the tax credit is transferrable; providing for the  
25 forfeiture of the credit in certain instances; prohibiting the  
26 carryback of the credit; authorizing the recapture of the

1 credit; providing a statute of limitations; authorizing  
2 rulemaking; and requiring reports to be made.

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

4 That the Code of West Virginia, 1931, as amended, be amended  
5 by adding thereto a new article, designated §11-13BB-1, §11-13BB-2,  
6 §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-  
7 13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12, §11-  
8 13BB-13 and §11-13BB-14, all to read as follows:

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

10 **§11-13BB-1. Short title.**

11 This article may be cited as the "Energy Efficient Building  
12 Act."

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

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

22 **§11-13BB-3. Definitions.**

23 (a) *General.* -- When used in this article, or in the  
24 administration of this article, terms defined in subsection (b)  
25 have the meanings ascribed to them by this section, unless a

1 different meaning is clearly required by the context in which the  
2 term is used.

3 (b) *Terms defined.* --

4 (1) "EPA" means the United States Environmental Protection  
5 Agency.

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

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

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

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

19 (B) Site purchase or preparation costs;

20 (C) Interest related to construction or remodeling;

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

23 (E) Closing costs related to construction or remodeling

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

26 (5) "Eligible building plans" means plans for the construction

1 of residential or nonresidential buildings that incorporate energy-  
2 efficient details and specifications typically found in Energy  
3 Star® qualified buildings that have earned the Designed to Earn the  
4 Energy Star® label under the Energy Star® program.

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

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

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

14 (i) Located in West Virginia; and

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

18 (B) Which are installed as part of:

19 (i) The interior lighting systems;

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

21 or

22 (iii) The building envelope.

23 (C) To which the Administrator of the EPA has awarded an  
24 Energy Star® label for energy efficient buildings and manufacturing  
25 plants in accordance with the requirements and procedures  
26 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  
25 this chapter, in that order, for owning a residential or commercial  
26 building to which the EPA has awarded an Energy Star® label, or

1 owning building plans which have earned the Designed to Earn the  
2 Energy Star® label.

3 (2) Taxpayers who have taken the credit based on ownership of  
4 eligible building plans must complete construction of the eligible  
5 building and obtain Energy Star® certification for the completed  
6 building within three years from the time the credit was initially  
7 taken.

8 (A) If the building fails to obtain Energy Star® certification  
9 by the end of year three, the credit allowed under this article  
10 shall be redetermined and amended returns filed for the first and  
11 second taxable years.

12 (B) In applying the amount of redetermined credit allowable  
13 for the two preceding taxable years, the redetermined credit shall  
14 first be applied to the extent it was originally applied in such  
15 prior two years to business franchise taxes, then to corporation  
16 net income taxes, then to personal income taxes. Any additional  
17 taxes due under this chapter shall be remitted with the amended  
18 returns filed with the Tax Commission, along with interest, as  
19 provided in section seventeen, article ten of this chapter, and a  
20 ten percent penalty.

21 (b) *Application for credit required.* --

22 (1) *Application required.* -- Notwithstanding any provision of  
23 this article to the contrary, no credit is allowed or may be  
24 applied under this article for any Energy Star® eligible building  
25 placed in service or use or for any Designed to Earn the Energy  
26 Star® building plans until the eligible taxpayer claiming the

1 credit makes written application to the Tax Commissioner for  
2 allowance of credit as provided in this subsection. This  
3 application shall be in the form prescribed by the Tax  
4 Commissioner, and shall be filed with the Tax Commissioner no later  
5 than the last day for filing the annual return, determined by  
6 including any authorized extension of time for filing the return,  
7 required under article twenty-one or twenty-four of this chapter  
8 for the taxable year in which the property to which the credit  
9 relates is placed in service or use.

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

15 (c) *Amount of credit allowed.*--

16 The amount of credit allowed by subsection (a) is the greater  
17 of:

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

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

21 **§11-13BB-5. Application of credit.**

22 (a) *Application of credit over ten years.* -- The amount of  
23 credit allowable must be taken over a ten-year period, at the rate  
24 of one tenth of the amount thereof per taxable year, beginning with  
25 the taxable year in which the taxpayer places the eligible building

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

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

21 (c) *Corporation net income taxes.* -- After application of  
22 subsection (b) of this section, any unused credit is next applied  
23 to reduce the taxes imposed by article twenty-four of this chapter  
24 for the taxable year, determined before application of allowable  
25 credits against tax.

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



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

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

16 **§11-13BB-6. Limitation on use of credit.**

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

20 (b) *No other tax credit authorized.* -- The credit allowed or  
21 authorized under the provisions of this article shall not be  
22 allowed, authorized or applied against tax if any tax credit is  
23 authorized, applied for or used or applied against tax by the  
24 taxpayer, or by any other person, under article thirteen-d, article  
25 thirteen-e, article thirteen-q, article thirteen-r, or article  
26 thirteen-s of this chapter, or any combination thereof, for, or

1 with relation to, investment in any building, or facility for which  
2 credit is, or may be, allowed, authorized or applied against tax  
3 under this article.

4 **§11-13BB-7. Excess credit; carryforward; carryback prohibited.**

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

11 (1) Five taxable years have elapsed; or

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

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

15 (c) The transfer or sale of this credit does not extend the  
16 time in which the credit can be used. The carry forward period for  
17 the credit that is transferred or sold begins on the date on which  
18 the credit was originally allowed to be used by the original  
19 taxpayer for which credit entitlement was initially authorized.

20 **§11-13BB-8. Transfer or sale of credit.**

21 (a) Any tax credit issued in accordance with this article,  
22 which has been issued to an eligible taxpayer, and to the extent  
23 not previously claimed against the tax of the eligible taxpayer or  
24 the owner of the credit, may be transferred or sold by such  
25 eligible taxpayer to another West Virginia taxpayer, subject to the  
26 following conditions:

1 (1) A single transfer or sale may involve one or more  
2 transferees, assignees or purchasers. A transfer of sale of the  
3 credits may involve multiple transfers to one or more transferees,  
4 assignees or purchasers.

5 (2) Transferors and sellers shall apply to the tax department  
6 for approval of any transfer, sale or assignment of the tax credit.  
7 Any amount of the tax credit that has been transferred or assigned  
8 shall be subject to the same limitations and conditions that apply  
9 to the eligible transferor taxpayer's or seller's entitlement, use  
10 and application of the credit. The application for sale, transfer  
11 or assignment of the credit shall include the transferor's tax  
12 credit balance prior to transfer, the credit certificate number,  
13 the name of the seller, the transferor's remaining tax credit  
14 balance after transfer, if any, all tax identification numbers for  
15 both transferor and transferee, the date of transfer, the amount  
16 transferred, a copy of the credit certificate and any other  
17 information required by the Tax Commissioner.

18 (3) The Tax Commissioner shall not approve the transfer or  
19 assignment of a tax credit to a taxpayer if the seller or  
20 transferor has an outstanding tax obligation with the State of West  
21 Virginia.

22 (b) The transferee, assignee or purchaser shall apply such  
23 credits as required by this article, and subject to all conditions  
24 and limitations of this article.

25 (c) For purposes of this chapter, any proceeds received by the  
26 eligible company or transferor for its assignment or sale of the

1 tax credits allowed pursuant to this section are exempt from the  
2 West Virginia consumers sales and service tax and use tax and from  
3 the corporate net income tax and personal income tax.

4 **§11-13BB-9. Credit recapture.**

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

9 (b) Amended returns shall be filed for any tax year for which  
10 the credit was improperly taken. Any additional taxes due under  
11 this chapter shall be remitted with the amended return or returns  
12 filed with the Tax Commissioner, along with interest, as provided  
13 in section seventeen, article ten of this chapter and such other  
14 penalties and additions to tax as may be applicable pursuant to the  
15 provisions of article ten of this chapter.

16 **§11-13BB-10. Interest; penalties; additions to tax.**

17 Notwithstanding the provisions of article ten of this chapter,  
18 penalties and additions to tax imposed under article ten of this  
19 chapter may be waived at the discretion of the Tax Commissioner:  
20 *Provided*, That interest is not subject to waiver, except in  
21 accordance with the provisions of article ten of this chapter.

22 **§11-13BB-11. Statute of limitations.**

23 Notwithstanding the provisions of article ten of this chapter,  
24 the statute of limitations for the issuance of an assessment of tax  
25 by the Tax Commissioner shall be five years from the date of filing

1 of any tax return on which this credit was taken or five years from  
2 the date of payment of any tax liability, calculated pursuant to  
3 the assertion of the credit allowed under this article, whichever  
4 is later.

5 **§11-13BB-12. Report on credit.**

6 (a) The Tax Commissioner shall provide to the Joint Committee  
7 on Government and Finance by July 1, 2013, and on July 1 of each  
8 year thereafter, a report detailing the amount of credit claimed  
9 pursuant to this article. The report is to include the amount of  
10 credit claimed against the business franchise tax, the amount of  
11 credit claimed against the corporate net income tax and the amount  
12 of credit claimed against the personal income tax.

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

18 **§11-13BB-13. Legislative rules.**

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

23 **§11-13BB-14. Effective date.**

24 This article shall be effective for business franchise tax  
25 years, corporate net income tax years and personal income tax years

beginning on or after January 1, 2012.

This article is new; therefore, strike-throughs and underscoring have been omitted.