

COMMITTEE SUBSTITUTE

FOR

**H. B. 2890**

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(BY DELEGATES ASHLEY AND MANCHIN)

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(Originating in the House Committee on Finance)  
[February 25, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12, and §11-13BB-13, all relating to authorizing a tax credit against business franchise tax, corporate net income tax or personal income tax

for eligible expenditures incurred in placing in service a residential or nonresidential energy-efficient building; defining terms; establishing the amount of tax credit permitted; authorizing rulemaking; and requiring reports to be made.

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

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

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

**§11-13BB-1. Short title.**

- 1 This article may be cited as the “Energy Efficient
- 2 Building Act.”

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

- 1 The Legislature finds that encouraging the construction
- 2 and rehabilitation of energy efficient buildings is in the

3 public interest and promotes the general welfare of the  
4 people of this state. It contributes to economic growth and,  
5 in time, will improve environmental quality in the state by  
6 decreasing discharge of pollutants from buildings, improving  
7 energy efficiency and reducing greenhouse gas emissions.  
8 To accomplish these ends, there is hereby enacted the energy  
9 efficient building tax credit

**§11-13BB-3. Definitions.**

1 (a) *General.* -- When used in this article, or in the  
2 administration of this article, terms defined in subsection (b)  
3 have the meanings ascribed to them by this section, unless a  
4 different meaning is clearly required by the context in which  
5 the term is used.

6 (b) *Terms defined.* --

7 (1) "EPA" means the United States Environmental  
8 Protection Agency.

9 (2) "Designed to Earn the Energy Star®" means a  
10 designation given by the EPA as part of the Energy Star®  
11 program to identify plans for the construction of residential

12 or nonresidential buildings that incorporate energy-efficient  
13 details and specifications typically found in Energy Star®  
14 qualified buildings.

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

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

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

23 (B) Site purchase or preparation costs;

24 (C) Interest related to construction or remodeling;

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

27 (E) Closing costs related to construction or remodeling;

28 and

29 (F) Costs related to issuance, or procurement of loans,  
30 bond issuances or costs of capital or related administrative  
31 expenses.

32 (5) "Eligible building plans" means plans for the  
33 construction of residential or nonresidential buildings that  
34 incorporate energy-efficient details and specifications  
35 typically found in Energy Star® qualified buildings that have  
36 earned the Designed to Earn the Energy Star® label under  
37 the Energy Star® program.

38 (6) "Eligible taxpayer" means the owner of a residential  
39 or commercial building property to which the EPA has  
40 awarded an Energy Star® label, or the owner of building  
41 plans which have earned the Designed to Earn the Energy  
42 Star® label by the Energy Star® program.

43 (7) "Energy efficient residential or nonresidential  
44 building" means a residential or nonresidential building  
45 constructed using building materials:

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

47 (i) Located in West Virginia; and

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

51 (B) Which are installed as part of:

52 (i) The interior lighting systems;

53 (ii) The heating, cooling, ventilation, and hot water  
54 systems; or

55 (iii) The building envelope.

56 (C) To which the Administrator of the EPA has awarded  
57 an Energy Star® label for energy efficient buildings and  
58 manufacturing plants in accordance with the requirements  
59 and procedures established by the EPA under the Energy  
60 Star® program.

61 (8) "Energy Star® label" means, in the context of  
62 buildings, a designation given by the EPA as part of the  
63 Energy Star® program to identify residential and  
64 nonresidential buildings that meet EPA strict energy  
65 efficiency guidelines.

66 (9) "Energy Star® program" means a joint voluntary  
67 program established within the United States Department of  
68 Energy and the EPA to identify and promote energy-efficient  
69 products and buildings in order to reduce energy

70 consumption, improve energy security, and reduce pollution  
71 through voluntary labeling of, or other forms of  
72 communication about, products and buildings that meet the  
73 highest energy conservation standards.

74 (10) "Energy Star® performance ratings system" means  
75 the ratings system used by the EPA in the Energy Star®  
76 program for buildings and manufacturing plants to award the  
77 Energy Star® label.

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

81 (12) "Tax Commissioner" means the appointed official,  
82 or his or her designee, charged with administering the West  
83 Virginia State Tax Department.

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

1 (a) Credit allowed. --

2 (1) Eligible taxpayers are allowed a credit against the  
3 taxes imposed by articles twenty-three, twenty-four and  
4 twenty-one of this chapter, in that order, for owning a

5 residential or commercial building to which the EPA has  
6 awarded an Energy Star® label, or owning building plans  
7 which have earned the Designed to Earn the Energy Star®  
8 label: *Provided*, That if a tax credit is allowed and the  
9 structure is sold, the remaining tax credit would be available  
10 to the subsequent purchaser.

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

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

21 (1) *Application required.* -- Notwithstanding any  
22 provision of this article to the contrary, no credit is allowed  
23 or may be applied under this article for any Energy Star®



24 eligible building placed in service or use or for any Designed  
25 to Earn the Energy Star® building plans until the eligible  
26 taxpayer claiming the credit makes written application to the  
27 Tax Commissioner for allowance of credit as provided in this  
28 subsection. This application shall be in the form prescribed  
29 by the Tax Commissioner, and shall be filed with the Tax  
30 Commissioner no later than the last day for filing the annual  
31 return, determined by including any authorized extension of  
32 time for filing the return, required under article twenty-one  
33 or twenty-four of this chapter for the taxable year in which  
34 the property to which the credit relates is placed in service or  
35 use.

36 (2) Failure to file. -- The failure to timely file the  
37 application for credit under this section results in forfeiture  
38 of fifty percent of the annual credit otherwise allowable  
39 under this article. This penalty applies annually until the  
40 application is filed.

41 (c) Amount of credit allowed.--

42 The amount of credit allowed by subsection (a) is the  
43 greater of:

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

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

48 (d) Annual aggregate limit on total credits allowed under  
49 article.— The total amount of energy efficient building  
50 property tax credits for all taxpayers pursuant to this section  
51 may not exceed \$1,000,000 each calendar year. The credits  
52 will be allowed on a first come, first served basis.

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

1 (a) Application of credit over ten years. -- The amount of  
2 credit allowable must be taken over a ten-year period, at the  
3 rate of one tenth of the amount thereof per taxable year,  
4 beginning with the taxable year in which the taxpayer places  
5 the eligible building in service or use in this state: *Provided,*  
6 That the taxpayer may elect to delay the beginning of the  
7 ten-year period until the next succeeding taxable year after

8 the taxable year in which the taxpayer places the eligible  
9 building in service or use in this state or the building plan is  
10 approved to receive the Designed to Earn the Energy Star®  
11 label. This election shall be made in the annual income tax  
12 return filed under this chapter for the taxable year in which  
13 the eligible building is first placed into service or use by the  
14 taxpayer. Once made, the election cannot be revoked. In the  
15 event of a failure to make a timely election to delay the  
16 beginning of the credit application period, the credit shall be  
17 applied beginning in the taxable year in which the taxpayer  
18 places the eligible building in service or use in this state. No  
19 retroactive election to delay the beginning of the credit  
20 application period shall be allowed.

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

27 (c) Corporation net income taxes. -- After application of  
28 subsection (b) of this section, any unused credit is next  
29 applied to reduce the taxes imposed by article twenty-four of  
30 this chapter for the taxable year, determined before  
31 application of allowable credits against tax.

32 (d) Personal income tax. --

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

41 (2) Electing small business corporations, limited liability  
42 companies, partnerships and other unincorporated  
43 organizations shall allocate the credit allowed by this article  
44 among its members in the same manner as profits and losses  
45 are allocated for the taxable year.

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

1       (a) Withholding. -- No credit is allowed under this  
2       section against any employer withholding taxes imposed by  
3       article twenty-one of this chapter.

4       (b) No other tax credit authorized. -- The credit allowed  
5       or authorized under the provisions of this article shall not be  
6       allowed, authorized or applied against tax if any tax credit is  
7       authorized, applied for or used or applied against tax by the  
8       taxpayer, or by any other person, under article thirteen-d,  
9       article thirteen-e, article thirteen-q, article thirteen-r, or  
10       article thirteen-s of this chapter, or any combination thereof,  
11       for, or with relation to, investment in any building, or facility  
12       for which credit is, or may be allowed, authorized or applied  
13       against tax under this article.

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

1       (a) If the tax credit allowed under this article in any  
2       taxable year exceeds the sum of the taxes enumerated in  
3       section four of this article for that taxable year, the excess

4 may be applied against those taxes, in the order and manner  
5 stated in section four of this article, for succeeding taxable  
6 years until the earlier of the following:

7 (1) Five taxable years have elapsed; or

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

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

**§11-13BB-8. Credit recapture.**

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

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

11 be applicable pursuant to the provisions of article ten of this  
12 chapter.

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

1 Notwithstanding the provisions of article ten of this  
2 chapter, penalties and additions to tax imposed under article  
3 ten of this chapter may be waived at the discretion of the Tax  
4 Commissioner: *Provided*, That interest is not subject to  
5 waiver, except in accordance with the provisions of article  
6 ten of this chapter.

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

1 Notwithstanding the provisions of article ten of this  
2 chapter, the statute of limitations for the issuance of an  
3 assessment of tax by the Tax Commissioner shall be five  
4 years from the date of filing of any tax return on which this  
5 credit was taken or five years from the date of payment of  
6 any tax liability, calculated pursuant to the assertion of the  
7 credit allowed under this article, whichever is later.

**§11-13BB-11. Report on credit.**

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

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

**§11-13BB-12. Legislative rules.**

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



**§11-13BB-13. Effective date.**

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