

## **Pennsylvania House Passes New Environmental and Energy Building Standards Act**

**September 16, 2009**

The Pennsylvania House of Representatives is steering Pennsylvania toward achieving “green” standards, visible in the recent passing of a bill that will require certain state-funded “major facility projects” to comply with energy and environmental building standards. House Bill 444, the “High Performance State-Funded Building Standards Act,” was passed by a vote of 180-17 on July 13. The bill has been referred to the Pennsylvania Senate’s Environmental Resources and Energy Committee, and the Senate will likely consider it during the upcoming session.

The declared purposes of the bill include, among others, “to promote effective energy and environmental standards for construction, rehabilitation and maintenance of buildings,” “to reduce this Commonwealth’s [Pennsylvania’s] dependence upon imported sources of energy through buildings that conserve energy and utilize local and renewable energy sources,” and “to improve this Commonwealth’s capacity to design, build and operate high-performance buildings and, in doing so, to create new jobs and contribute to economic growth.”

Under the terms of the bill, as currently written, “major facility projects” will be subject to high-performance building standards and related reporting requirements. “Major facility projects” are state-funded new construction projects of over 20,000 gross square feet, state-funded building renovation projects where the state-funding exceeds \$1,000,000 of the construction cost, or new construction projects over 10,000 gross square feet in which a Commonwealth agency<sup>1</sup> has agreed to lease at least 90% of the gross square feet.

In addition to meeting the requirements of the high performance building standards, all new building projects involving buildings owned or leased by a Commonwealth agency, including state-funded major facility projects, will be required to achieve an Environmental Protection Agency Energy Star rating of 85 or above.<sup>2</sup> The bill does not provide specifics about the high-performance building standards, required levels of achievement, reporting requirements, or methods for monitoring compliance—most of

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<sup>1</sup> “Commonwealth agency” is defined as “an executive agency, an independent agency, a state-affiliated entity or state-related institution as defined by 62 PA.C.S. §103 (relating to definitions). The term also includes the General Assembly, its officers and agencies and the Unified Judicial System and its officers and agencies.”

<sup>2</sup> The bill does not specify what the Energy Star rating of a new project’s design must be. Generally, to achieve a rating of 75 or higher (the rating required to achieve an Energy Star label), the recommended rating of the design is 85, as actual performance will be less than design.

the details are left for the Commonwealth's Department of General Services, in consultation with the Commonwealth's Department of Environmental Protection, to hash out in regulations after the bill becomes law. If passed, the bill's provisions will not be enforced until the Secretary of General Services and Secretary of the Budget determine that "there is adequate funding available to cover additional costs resulting from compliance with the requirements of this act."

If the High Performance State-Funded Building Standards Act becomes law in its present form, a number of questions remain. How far will the regulations go? How much will this impact the upfront costs of state-funded projects, and will those costs be recovered through energy savings in the long run? Will Pennsylvania become a leader in "green" design and building? When will Pennsylvania attempt to extend this to non-state-funded projects?<sup>3</sup> While some of the questions may be answered in the next session, others may take some time.

The State of New York may provide some clues as to what the answers may be. New York's State Green Building Construction Act, which goes into effect on August 27, 2010<sup>4</sup>, is similar in nature and scope to Pennsylvania's High Performance State-Funded Building Standards Act. The State Green Building Construction Act requires the construction and substantial renovation of state buildings to comply with "green" building standards established by New York's Office of General Services<sup>5</sup>. New York is a leader in encouraging "green" development and construction, being one of the first states in the nation to offer a tax incentive program for the development of environmentally friendly buildings. All eyes will now be on New York to see how the Office of General Services, in developing regulations under the State Green Building Construction Act, grapples with and answers similar questions for the State of New York.

As more information about Pennsylvania's High Performance State-Funded Building Standards Act and New York's State Green Building Construction Act becomes available, we will continue to provide you with updates and be available to assist you with any emerging issues. Morgan Lewis Real Estate attorneys work with the firm's national Energy practice to advise owners, investors, and management companies on real estate and energy issues, including green building technologies and improvements to real property.

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<sup>3</sup> House Bill 43, the "High-Performance Buildings Tax Credit" attempts to incentivize business entities to build "high-performance buildings" that meet certain green standards, but does not mandate non-state-funded projects to meet green standards, as an extension of HB 444 would.

<sup>4</sup> New York's State Green Building Construction Act (A. 7246-B/S.5779) was originally signed by Governor David A. Paterson in 2008. The law was amended this year to transfer the authority to develop green building standards from the Department of Environmental Conservation to the Office of General Services. The amended bill passed unanimously in the state Assembly (139-0) on June 10, 2009 and passed in the state Senate (55-2) on July 10th. Governor Paterson signed the amended version on September 5, 2009.

<sup>5</sup> The New York version, written quite broadly, leaves more open items to be resolved through regulations than the Pennsylvania version.

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