

No. 1985-98

AN ACT

HB 568

Amending the act of December 15, 1980 (P.L.1203, No.222), entitled "An act providing for the regulation for energy conservation purposes of the construction of buildings, the establishment of a Building Energy Conservation Committee and a Board on Variances, appeals and for penalties," changing and adding certain definitions; providing for notice to public utilities and utility providers; creating a restricted account; and further providing for application of energy standards, for certification, for notice to the department, for penalties and for variances.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102(b) of the act of December 15, 1980 (P.L.1203, No.222), known as the Building Energy Conservation Act, is amended to read:

Section 102. Legislative findings and declaration of purpose.

* * *

(b) Purpose.—The purpose of this act is to grant to the [Commonwealth of Pennsylvania] *Department of Labor and Industry and the Department of Community Affairs* and direct [it] *these departments* to exercise specific authority in building construction to assure that such construction is performed using materials and techniques that will provide for energy conservation in the future operation and maintenance of said buildings.

Section 2. The definitions of "building" and "renovation" in section 103 of the act, amended July 10, 1981 (P.L.231, No.75), are amended and the section is amended by adding definitions to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Addition." *Any addition to an existing building. The provisions of this act shall only apply to the portion of the building which is being added and not to the entire building.*

"Building." Any structure that provides facilities or shelter for public assembly or for educational, business, mercantile, institutional, warehouse or residential occupancy, or industrial use including, but not limited to, those portions of factory and industrial occupancy such as office space except for:

(1) Buildings and structures or portions thereof whose peak design rate of energy usage is less than one watt per square foot or [3.4] 3.5 BTU/hr per square foot of floor area for all purposes.

(2) Structures or those portions of structures used for housing equipment or machinery, or in which manufacturing or processing is done,

where the operation of such equipment or machinery, or the manufacturing or processing procedures employed require the use of or generate substantial heat producing energy or cooling within the structure. As used herein, the generation of substantial heat shall mean generation of more than 6 watts per square foot of floor area.

(3) Buildings which are neither heated nor cooled.

(4) Historic buildings.

(5) Buildings owned by the Federal Government.

(6) All units subject to the act of May 11, 1972 (P.L.286, No.70), known as the "Industrialized Housing Act."

(7) All units subject to Title VI (Public Law 93-383), referred to as the Federal Mobile Home Construction and Safety Standards Act of 1974.

(8) Buildings which are constructed primarily of tree logs and only incidentally of other materials.

* * *

"Public utility." *A person or corporation in this Commonwealth owning or operating equipment or facilities for producing, generating, transmitting, distributing or furnishing electricity to or for the public for compensation for any purpose. The term includes such persons or corporations regulated by the Pennsylvania Public Utility Commission under Title 66 of the Pennsylvania Consolidated Statutes (relating to public utilities), but does not include any of the following:*

(1) *A generator or producer of electricity not engaged in distributing the electricity directly to the public for compensation.*

(2) *A person not otherwise a public utility who furnishes service only to himself.*

(3) *A bona fide cooperative association which furnishes services only to its stockholders or members on a nonprofit basis.*

"Renovation."

[(1)] *The rehabilitation of an existing building which requires more than 25% of the gross floor area or volume of the entire building to be rebuilt. Cosmetic work such as painting, wall covering, wall paneling, floor covering and suspended ceiling work shall not be included;* or

(2) *any addition to an existing building]. The provisions of this act shall only apply to such portion of the building being renovated and not to the entire building.*

"Utility provider." *A municipal corporation in this Commonwealth owning or operating equipment or facilities for producing, generating, transmitting, distributing or furnishing electricity to or for the public within its corporate limits for compensation for any purpose, or an electric cooperative corporation created under the provisions of the act of June 21, 1937 (P.L.1969, No.389), known as the "Electric Cooperative Corporation Act," and which provides retail electric service to its members on a nonprofit-basis. The term does not include:*

(1) *A public utility regulated by the Pennsylvania Public Utility Commission under Title 66 of the Pennsylvania Consolidated Statutes (relating to public utilities).*

(2) *A generator, producer or manufacturer of electricity, gas or steam not engaged in distributing such electricity, gas or steam directly to the public for compensation.*

(3) *A person or corporation not otherwise a public utility who or which furnishes service only to himself or itself.*

(4) *A generator, producer or manufacturer of gas or steam engaged in distributing such gas or steam to the public for compensation.*

Section 3. Sections 302, 305, 306, 313(b) and 504 of the act are amended to read:

Section 302. Application of energy conservation standards.

The energy conservation standards contained herein or as promulgated by the department with the approval of the Building Energy Conservation Committee shall apply to new buildings or to renovations on which actual construction and/or design has not commenced prior to their effective dates. Except for the authority of the Department of Community Affairs to promulgate rules or regulations for all units subject to the act of May 11, 1972 (P.L.286, No.70), known as the "Industrialized Housing Act," provided such standards invoked are equal to or more stringent than those contained in this act, or as mandated by Federal law, no *public utility as defined in 66 Pa.C.S. § 102 (relating to definitions)*, department, board, agency or commission other than as provided herein, shall promulgate or adopt any *mandatory building energy conservation standards*, rules or regulations [which are inconsistent with] *other than* the standards contained in Chapter 2, Subchapters D through J or promulgated under Chapter 4 of this act except as mandated by Federal law.

Section 305. Certification.

(a) Applicability.—The provisions of this section shall apply to all buildings subject to this act except those classified as Use Group R-3.

(b) Compliance with act.—It shall be the duty of the licensed design professional retained in connection with the design or construction of a building to certify that, in his professional opinion and in accordance with the accepted standards of his profession, the drawings, specifications and other data will achieve compliance with the provisions of this act[, **except as provided in subsection (e)**]. *If no licensed design professional is retained in connection with the design or construction of a building, then this certification shall be made by the builder or the owner, if he is the builder.* All such information required in this provision to be submitted to the department must be accompanied by a filing fee of \$10. The filing fee may be subject to change by the Building Energy Conservation Committee upon the recommendation of the department to the Building Energy Conservation Committee, provided, however, that advance notice of such change has appeared in the Pennsylvania Bulletin. If the building is subject to the provisions of the act of April 27, 1927 (P.L.465, No.299), referred to as the Fire and Panic Act, the certification required hereunder shall be submitted on a form with the application for plan approval under the said Fire and Panic Act.

(c) Inspection.—Each licensed design professional retained by the owner or his designee, where any of such are retained during the construction of a

building, shall make periodic inspections of the building progression to [insure] *observe* compliance with this act[, except as provided in subsection (e)]: *Provided, That such inspection shall not be construed as a guarantee of satisfactory performance by others or as an assumption of financial liability for unknown defects or deficiencies in the work of others.*

(d) Final certification.—Each [licensed design professional] *builder* retained by the owner *or the owner, if he is the builder*, shall make a final certification of every completed building stating that[, in his professional opinion and in accordance with the accepted standards of his profession,] such building has been constructed in compliance *with the approved drawings and specifications prepared by a licensed design professional* *or* with the provisions of this act[, except as provided in subsection (e).

(e) Certification by builder.—If a licensed design professional is not retained in connection with the design and construction of a building, it shall be the responsibility of the builder or owner, if he is the builder, to perform the inspections and certification required by this section including payment of the filing fee].

Section 306. Use Group R-3; notice; warranty.

(a) Notice to department.—Prior to construction of any building classified as Use Group R-3, the builder shall notify the department by [certified] *first class* mail of his intent to begin construction. Such notice shall include a filing fee of [\$5] *\$10* and contain the name of the owner of the building and its location. The filing fee may be subject to change by the Building Energy Conservation Committee, upon the recommendation of the department to the Building Energy Conservation Committee, provided, however, that advance notice of such change has appeared in the Pennsylvania Bulletin.

(a.1) *Restricted account.*—*All filing fees shall be deposited in a restricted account in the State Treasury to be known as the Building Energy Conservation Account. All fees collected for the purpose of this act shall be deposited in this account and the department shall draw from the account sufficient funds to cover the administrative and enforcement costs of operating the program. The funds in the account are hereby appropriated to the department to carry out this act and shall not lapse at the end of any fiscal year. The balance of funds remaining in any existing Building Energy Conservation Account and held by the department on the effective date of this act is hereby transferred to the special Building Energy Conservation Account established pursuant to this subsection.*

(a.2) *Notice to public utilities and utility providers.*—

(1) *Prior to construction and except as provided in paragraph (5), the builder shall also provide a copy of the notice of intent to begin construction required by subsection (a) and certified as received by the department to all public utilities or utility providers which may be requested to furnish any electric service to or for buildings classified as Use Group R-3 which are constructed after the effective date of this subsection.*

(2) *All public utilities and utility providers shall rely on the certified copy of the required notice in furnishing, rendering or supplying any electric service to or for a building classified as Use Group R-3, except as pro-*

vided in paragraph (5), and no public utility or utility provider shall conduct any audit, inspection or examination of the building for the purpose of determining compliance with this act. The furnishing, rendering or supplying of electric service by a public utility or utility provider to or for a building classified as Use Group R-3 shall not constitute a certification or determination by the public utility or utility provider that the building has been constructed in compliance with this act.

(3) Except as provided in paragraph (5), no public utility or utility provider shall furnish any electric service to or for any building classified as Use Group R-3 which is constructed after the effective date of this subsection unless it has first received the required copy of the notice of intent to begin construction which has been certified as received by the department.

(4) Each public utility or utility provider shall be required to retain the certified copy of the notice of intent to begin construction which is submitted to it for at least two years: Provided, however, That if a utility or utility provider uses data processing equipment to record and maintain information derived from the certified copy of the notice of intent to begin construction, such utility or utility provider shall not be required to retain the certified copy of the notice or a photocopy thereof.

(5) (i) Each public utility or utility provider shall be exempt from the provisions of paragraphs (1) through (4) when any electric service is requested for a building classified as Use Group R-3 which is located in a municipality which has elected to administer this act in accordance with sections 501 and 502 and which requires that a notice of intent to begin construction be filed with the municipality prior to or at the time that application is made for a building permit.

(ii) Each public utility or utility provider shall be exempt from the provisions of paragraphs (1) through (4) in situations where, in the public utility's or utility provider's judgment, strict compliance may jeopardize the public health or safety or impose an undue hardship. In such event, the public utility or utility provider shall notify the department or the administering municipality, in writing, on forms prescribed by the department, of the exemption.

(6) If a builder fails to file the required notice with the department or the administering municipality within 30 days of receiving an exemption under paragraph (5), the department or the administering municipality shall serve written notice on the builder that he is in violation of this act and subject to a penalty as provided for in subsection (d).

(b) Warranty.—At the time a contract for the construction of any building classified as Use Group R-3 is entered into, the builder shall warrant to the owner in writing that the building shall be constructed in accordance with the provisions of this act. Such warranty shall be a document separate from the contract and shall be in the following form:

I, (Builder), hereby warrant to (Owner) that the premises known as (Description) shall be constructed in accordance with the provisions of the Act of December 15, 1980 (No.222), known as the "Building Energy Conservation Act."

This law provides building standards to make your home energy efficient and also provides you with legal remedies if your home is not built according to the State standards. If you would like the State to do an energy audit of your home to determine if it conforms to State standards, you may call the Pennsylvania Department of Community Affairs at (Telephone), and they will perform an inspection of your home for a fee of \$35.

Indicate if alternate building system or equipment design is being employed.

(c) If the builder is also the owner of the building at the time of construction, he shall provide the warranty required by subsection (b) at the time of its initial sale to a new owner. Such warranty shall be in substantially the same form as provided in subsection (b).

(d) Failure to provide notice.—The Department of Community Affairs, after hearing, may assess a civil penalty payable to the Commonwealth of Pennsylvania not to exceed \$100 *for a first offense* upon any builder who fails to give the notice required by subsection (a). In determining the amount of the civil penalty *for a first offense*, the [Department of Community Affairs] *department* shall consider the willfulness of the violation and the cost incurred by the department in discovering the violation. *In the event a builder fails to give the notice required by subsection (a) on a second or subsequent occasion, the department shall assess upon the builder a civil penalty payable to the Commonwealth of Pennsylvania of \$200.*

(e) Failure to provide warranty.—Whenever a builder fails to provide the warranty required by subsection (b) or (c) such required warranty shall constitute an implied warranty and the owner's right to proceed under section 315(a) shall not be affected. If it is established by a preponderance of the evidence that the builder's failure to provide the warranty was willful, then damages in twice the amount provided in section 315 may be awarded.

Section 313. Penalties.

* * *

(b) Violations of act.—Any person who shall willfully or negligently violate any of the provisions of this act, or the rules and regulations or the orders for the enforcement of the said provisions or rules and regulations issued by duly authorized officers of the department or who shall hinder, delay or interfere with any officer charged with the enforcement of this act in the performance of his duty, shall, upon conviction thereof, be punished by a fine of [not more than] \$300 and costs. In the event of violation of more than one provision of this act, the violation of each provision shall be deemed a separate and distinct offense for the purposes of this section.

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Section 504. Variances.

Any municipality electing to administer the provisions of this act under section 501 or 502 shall establish a Board on Variances to make determinations on request for variance from the energy conservation standards contained herein or as promulgated by the department with the approval of the Building Energy Conservation Committee, and is authorized exclusive jurisdiction to grant such variances, section 307(a) notwithstanding. *A municipi-*

pality, however, need not establish a Board on Variances if it has established a zoning hearing board pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code." If the municipality does not establish a Board on Variances, the powers and duties established by this section shall be exercised by such zoning hearing board. A variance shall only be granted if the criteria of section 307(b) have been satisfied.

Section 4. This act shall take effect in 90 days.

APPROVED—The 19th day of December, A. D. 1985.

DICK THORNBURGH