

# H.R.6 (ENR)

## Energy Policy Act of 2005 (Enrolled as Agreed to or Passed by Both House and Senate)

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Excerpt of sections relevant to energy-efficient construction (in Title XIII, Subtitle C):

Commercial: Sections 1331 & 179D

Residential: Sections 1332 & 45L

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### SEC. 1331. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) In General- Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179C the following new section:

### SEC. 179D. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) In General- There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum Amount of Deduction- The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of--

(1) the product of--

(A) \$1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions- For purposes of this section--

(1) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY- The term 'energy efficient commercial building property' means property--

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is--

(i) located in the United States, and

(ii) within the scope of Standard 90.1-2001,

(C) which is installed as part of--

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1-2001 using methods of calculation under subsection (d)(2).

(2) STANDARD 90.1-2001- The term 'Standard 90.1-2001' means Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

(d) Special Rules-

(1) PARTIAL ALLOWANCE-

(A) IN GENERAL- Except as provided in subsection (f), if--

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting '\$.60' for '\$1.80'.

- ` (B) REGULATIONS- The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) which, if such targets were met for all such systems, the building would meet the requirements of subsection (c)(1)(D).
- ` (2) METHODS OF CALCULATION- The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.
- ` (3) COMPUTER SOFTWARE-
  - ` (A) IN GENERAL- Any calculation under paragraph (2) shall be prepared by qualified computer software.
  - ` (B) QUALIFIED COMPUTER SOFTWARE- For purposes of this paragraph, the term `qualified computer software' means software--
    - ` (i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,
    - ` (ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and
    - ` (iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.
- ` (4) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY- In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.
- ` (5) NOTICE TO OWNER- Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).
- ` (6) CERTIFICATION-
  - ` (A) IN GENERAL- The Secretary shall prescribe the manner and method for the making of certifications under this section.
  - ` (B) PROCEDURES- The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.
  - ` (C) QUALIFIED INDIVIDUALS- Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.
- ` (e) Basis Reduction- For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.
- ` (f) Interim Rules for Lighting Systems- Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system--
  - ` (1) IN GENERAL- The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1-2001.
  - ` (2) REDUCTION IN DEDUCTION IF REDUCTION LESS THAN 40 PERCENT-
    - ` (A) IN GENERAL- If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.
    - ` (B) APPLICABLE PERCENTAGE- For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of--
      - ` (i) 50, and
      - ` (ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.
  - ` (C) EXCEPTIONS- This subsection shall not apply to any system--
    - ` (i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1-2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Regulations- The Secretary shall promulgate such regulations as necessary--

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) Termination- This section shall not apply with respect to property placed in service after December 31, 2007.

(b) Conforming Amendments-

(1) Section 1016(a) is amended by striking 'and' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ', and', and by adding at the end the following new paragraph:

(32) to the extent provided in section 179D(e).

(2) Section 1245(a), as amended by this Act, is amended by inserting '179D,' after '179C,' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence 'or by section 179D'.

(4) Section 263(a)(1), as amended by this Act, is amended by striking 'or' at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ', or', and by inserting after subparagraph (J) the following new subparagraph:

(K) expenditures for which a deduction is allowed under section 179D.

(5) Section 312(k)(3)(B), as amended by this Act, is amended by striking '179, 179A, 179B, or 179C' each place it appears in the heading and text and inserting '179, 179A, 179B, 179C, or 179D'.

(c) Clerical Amendment- The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after section 179C the following new item:

**Sec. 179D. Energy efficient commercial buildings deduction.**

(d) Effective Date- The amendments made by this section shall apply to property placed in service after December 31, 2005.

## SEC. 1332. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOMES.

(a) In General- Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

## SEC. 45L. NEW ENERGY EFFICIENT HOME CREDIT.

(a) Allowance of Credit-

(1) IN GENERAL- For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is--

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) APPLICABLE AMOUNT- For purposes of paragraph (1), the applicable amount is an amount equal to--

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), \$2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), \$1,000.

(b) Definitions- For purposes of this section--

(1) ELIGIBLE CONTRACTOR- The term 'eligible contractor' means--

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) QUALIFIED NEW ENERGY EFFICIENT HOME- The term 'qualified new energy efficient home' means a dwelling unit--

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) CONSTRUCTION- The term 'construction' includes substantial reconstruction and rehabilitation.

(4) ACQUIRE- The term 'acquire' includes purchase.

`(c) Energy Saving Requirements- A dwelling unit meets the energy saving requirements of this subsection if such unit is--

`(1) certified--

`(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit--

`(i) which is constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section, and

`(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

`(B) to have building envelope component improvements account for at least 1/5 of such 50 percent,

`(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

`(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations) and which--

`(A) meets the requirements of paragraph (1) applied by substituting `30 percent' for `50 percent' both places it appears therein and by substituting ` 1/3 ' for ` 1/5 ' in subparagraph (B) thereof, or

`(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

`(d) Certification-

`(1) METHOD OF CERTIFICATION- A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

`(2) FORM- Any certification described in subsection (c) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

`(e) Basis Adjustment- For purposes of this subtitle, if a credit is allowed under this section in connection with any expenditure for any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

`(f) Coordination With Investment Credit- For purposes of this section, expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

`(g) Termination- This section shall not apply to any qualified new energy efficient home acquired after December 31, 2007.'

(b) Credit Made Part of General Business Credit- Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking `plus' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting `, plus', and by adding at the end the following new paragraph:

`(23) the new energy efficient home credit determined under section 45L(a).'

(c) Basis Adjustment- Subsection (a) of section 1016, as amended by this Act, is amended by striking `and' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting `, and', and by adding at the end the following new paragraph:

`(33) to the extent provided in section 45L(e), in the case of amounts with respect to which a credit has been allowed under section 45L.'

(d) Deduction for Certain Unused Business Credits- Section 196(c) (defining qualified business credits) is amended by striking `and' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting `, and', and by adding after paragraph (12) the following new paragraph:

`(13) the new energy efficient home credit determined under section 45L(a).'

(e) Clerical Amendment- The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

**`Sec. 45L. New energy efficient home credit.'**

(f) Effective Date- The amendments made by this section shall apply to qualified new energy efficient homes acquired after December 31, 2005, in taxable years ending after such date.