

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1991 Session of 2011

INTRODUCED BY CUTLER, WATERS, AUMENT, BAKER, BOBACK, CLYMER, CREIGHTON, DALEY, FARRY, FLECK, GABLER, GEIST, GINGRICH, GROVE, HARHAI, HELM, HESS, HICKERNELL, KAUFFMAN, KILLION, MAJOR, MILLARD, MILLER, MULLERY, PICKETT, PYLE, REED, REICHLEY, SAYLOR, SONNEY, STERN, SWANGER, TOEPEL, VULAKOVICH, WATSON AND MALONEY, NOVEMBER 16, 2011

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES,
AS AMENDED, JUNE 6, 2012

AN ACT

1 Amending the act of July 10, 1986 (P.L.1398, No.122), entitled
2 "An act establishing a special fund for moneys received by
3 the Commonwealth from resolution of oil overcharge matters;
4 designating certain low-income energy conservation and
5 assistance programs for funding from this special fund; and
6 making appropriations," further providing FOR LEGISLATIVE
7 FINDINGS AND for definitions; providing for verification and
8 ~~assistance amounts~~ OF ELIGIBILITY and, for fraud reporting to
9 Inspector General AND FOR CONFLICT OF INTEREST POLICY;
10 further providing for weatherization and energy conservation;
11 providing for performance audits by the Auditor General; and
12 making editorial changes.



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

15 ~~Section 1. The definition of "energy conservation and~~
16 ~~assistance programs" in section 3 of the act of July 10, 1986~~
17 ~~(P.L.1398, No.122), known as the Energy Conservation and~~
18 ~~Assistance Act, amended July 9, 1987 (P.L.235, No.42), is~~
19 ~~amended to read:~~



20 SECTION 1. SECTION 2 OF THE ACT OF JULY 10, 1986 (P.L.1398,



NO.122), KNOWN AS THE ENERGY CONSERVATION AND ASSISTANCE ACT, IS
AMENDED BY ADDING PARAGRAPHS TO READ:

SECTION 2. LEGISLATIVE FINDINGS.

THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

* * *

(5) EVEN AS THE OIL OVERCHARGE FUNDS NEAR EXHAUSTION,
THE NEED FOR THE CONTINUED OPERATION OF ENERGY CONSERVATION
AND ASSISTANCE PROGRAMS IN THIS COMMONWEALTH REMAINS.

(6) IMPROVED OVERSIGHT, FRAUD CONTROL MEASURES AND
INCOME ELIGIBILITY VERIFICATION PROCEDURES ARE NECESSARY TO
ENSURE THAT THIS COMMONWEALTH'S LOW-INCOME RESIDENTS CONTINUE
TO BE SERVED BY ENERGY CONSERVATION AND ASSISTANCE PROGRAMS
IN THE MOST EFFICIENT MANNER POSSIBLE.

SECTION 2. THE DEFINITION OF "ENERGY CONSERVATION AND
ASSISTANCE PROGRAMS" IN SECTION 3 OF THE ACT, AMENDED JULY 9,
1987 (P.L.235, NO.42), IS AMENDED AND THE SECTION IS AMENDED BY
ADDING A DEFINITION TO READ:

Section 3. Definitions.

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

"Energy conservation and assistance programs." Includes any
of the following:

(1) The programs established under Part D of Title III
of the Energy Policy and Conservation Act (Public Law 94-163,
42 U.S.C. § 6321 et seq.), providing for state energy
conservation programs.

(2) The programs established under Part G of Title III
of the Energy Policy and Conservation Act, providing for
energy conservation investments in schools and hospitals.

1 (3) The programs established under the National Energy
2 Extension Service Act (Public Law 95-39, 42 U.S.C. § 7001 et
3 seq.), providing for, inter alia, energy conservation
4 outreach programs to small businesses and individual
5 consumers.

6 (4) The programs established under the Low-Income Home
7 Energy Assistance Act of 1981 (Public Law 97-35, 42 U.S.C. §
8 8621 et seq.), providing for energy assistance and
9 weatherization assistance to low-income households.

10 (5) The programs established under Part A of the Energy
11 Conservation in Existing Buildings Act of 1976 (Public Law
12 94-385, 42 U.S.C. § 6851 et seq.), establishing the Low
13 Income Weatherization Program.

14 (6) The programs established by the Governor's Energy
15 Council [which] and now administered by the Department of
16 Environmental Protection to promote energy conservation and
17 energy development, in compliance with the terms and
18 conditions of oil overcharge settlement agreements, oil
19 overcharge orders issued by the courts or the Department of
20 Energy or fund distribution requirements of the Department of
21 Energy.

22 * * *

23 "SUBGRANTEE." AS DEFINED IN 10 CFR § 440.3 (RELATING TO
24 DEFINITIONS).

25 Section ~~2~~ 3. Section 5(c) of the act, amended July 9, 1987
26 (P.L.235, No.42), is amended to read:

27 Section 5. Supplemental low-income energy conservation and
28 assistance programs.

29 * * *

30 (c) Administration of programs.--The programs established in

subsection (a) shall be administered as follows:

(1) The Pennsylvania Supplemental Low-Income Weatherization Program established in subsection (a)(1) shall be administered by the Department of Community [Affairs] and Economic Development as a part of the programs authorized under the Low-Income Home Energy Assistance Act of 1981 (Public Law 97-35, 42 U.S.C. § 8621 et seq.) or the Energy Conservation in Existing Buildings Act of 1976 (Public Law 94-385, 42 U.S.C. § 6851 et seq.). Community action agencies, existing low-income weatherization providers or other county, municipal or nonprofit corporations may apply for a portion of these funds. The Department of Community [Affairs] and Economic Development shall establish regulations necessary for administering this program consistent with the requirements of section 6.

(2) (i) The Pennsylvania Supplemental Low-Income Energy Assistance Program established in subsection (a)(2) shall be administered by the Department of Public Welfare as part of the program authorized under the Low-Income Home Energy Assistance Act of 1981. The Department of Public Welfare shall establish regulations necessary for administering this program.

(ii) The Department of Public Welfare shall provide the General Assembly with an annual report, which shall include an independent audit, not later than September 30 of each year, covering all expenditures made in administering this program.

Section 3 4. The act is amended by adding sections to read:

Section 5.1. Verification and assistance amounts OF
ELIGIBILITY.

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1 (a) Energy assistance.--The Department of Public Welfare
2 shall verify the income eligibility of recipients receiving
3 energy assistance through the programs set forth in paragraph
4 (4) of the definition of "energy conservation and assistance
5 programs" in section 3 and the program established in section 5
6 (a)(2) in accordance with the verification procedures in
7 sections 432.19 and 432.23 of the act of June 13, 1967 (P.L.31,
8 No.21), known as the Public Welfare Code, unless otherwise
9 prohibited by Federal law.

10 (b) Weatherization services.--The Department of Community
11 and Economic Development shall verify the income eligibility of
12 recipients receiving weatherization services through the
13 programs set forth in paragraphs (4) and (5) of the definition
14 of "energy conservation and assistance programs" in section 3
15 and the program established in section 5(a)(1) in accordance
16 with the verification procedures in sections 432.19 and 432.23
17 of the Public Welfare Code, unless otherwise prohibited by
18 Federal law.

19 ~~(c) Offset.--The Department of Community and Economic~~ ←
20 ~~Development shall determine the increased efficiency gained from~~
21 ~~weatherization services provided to an individual eligible for~~
22 ~~energy assistance who has previously received weatherization~~
23 ~~services. The Department of Public Welfare shall reduce the~~
24 ~~individual's energy assistance amount accordingly.~~

25 (C) REPORT.--NO LATER THAN SIX MONTHS AFTER THE EFFECTIVE ←
26 DATE OF THIS SECTION AND EVERY SIX MONTHS THEREAFTER UNTIL THIS
27 SECTION IS FULLY IMPLEMENTED, THE DEPARTMENT OF COMMUNITY AND
28 ECONOMIC DEVELOPMENT AND THE DEPARTMENT OF PUBLIC WELFARE SHALL
29 JOINTLY PROVIDE A WRITTEN REPORT TO THE GOVERNOR, THE
30 CHAIRPERSON AND THE MINORITY CHAIRPERSON OF THE PUBLIC HEALTH

AND WELFARE COMMITTEE OF THE SENATE, THE CHAIRPERSON AND THE
MINORITY CHAIRPERSON OF THE HEALTH COMMITTEE OF THE HOUSE OF
REPRESENTATIVES AND THE INSPECTOR GENERAL DETAILING THE PROGRESS
OF THE IMPLEMENTATION OF THIS SECTION, INCLUDING, BUT NOT
LIMITED TO, THE FOLLOWING INFORMATION:

(1) THE CAUSE OF ANY DELAY IN THE FULL IMPLEMENTATION OF
THIS SECTION.

(2) ANY TECHNICAL IMPEDIMENTS TO THE FULL IMPLEMENTATION
OF THIS SECTION.

(3) A LISTING OF THE DATA REQUIRED UNDER SECTION 423 OF
THE PUBLIC WELFARE CODE THAT THE DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT OR THE DEPARTMENT OF PUBLIC WELFARE WAS
UNABLE TO OBTAIN OR ACCESS AND A DESCRIPTION OF ITS EFFORTS
TO OBTAIN OR ACCESS THE DATA.

Section 5.2. Fraud reporting to the Office of Inspector
General.

~~(a) Duty of employee and contractor~~ REPORTING BY EMPLOYEE OR
CONTRACTOR.--If an employee or contractor of an energy
conservation and assistance program has reason to believe a
recipient of or applicant for weatherization services or energy
assistance is committing fraud or providing false information in
order to receive weatherization services or energy assistance,
the employee or contractor shall make a fraud report directly to
the Office of Inspector General.

~~(b) Duty of applicant and recipient~~ REPORTING BY APPLICANT
OR RECIPIENT.--If a recipient of or applicant for energy
assistance or weatherization services has reason to believe an
employee or contractor of an energy conservation and assistance
program is committing fraud, the applicant or recipient shall
MAY make a fraud report directly to the Office of Inspector

1 General.

2 (c) Sanctions.--The employee, contractor, applicant or
3 recipient shall not be subject to any sanctions for making a
4 fraud report.

5 SECTION 5.3. CONFLICT OF INTEREST POLICY. ←

6 THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT SHALL
7 IMPLEMENT A CONFLICT OF INTEREST POLICY THAT PROHIBITS AN
8 EMPLOYEE OF A SUBGRANTEE FROM APPROVING AN APPLICATION FOR
9 WEATHERIZATION SERVICES FOR A PROPERTY IN WHICH THE EMPLOYEE OR
10 A MEMBER OF THE EMPLOYEE'S FAMILY HAS AN OWNERSHIP INTEREST.

11 Section 4 5. Section 6 of the act is amended to read: ←

12 Section 6. Weatherization and energy conservation.

13 (a) Establishment of Statewide Weatherization and Energy
14 Conservation Policy Council.--A Statewide Weatherization and
15 Energy Conservation Policy Council is hereby created and shall
16 have the responsibility of advising the Department of Community
17 [Affairs] and Economic Development on matters of policy related
18 to the development and implementation of this program. The
19 council shall establish bylaws governing its activities and
20 shall assume all responsibilities associated with the existing
21 Policy Advisory Council required by the Department of Energy.
22 Members of the council shall be appointed by the Secretary of
23 the Department of Community [Affairs] and Economic Development.

24 (b) Approval of Statewide plan.--[The council must approve ←
25 the Statewide plan each year prior to the expenditure of any
26 funds under this section] IN ACCORDANCE WITH 10 CFR § 440.14 ←
27 (RELATING TO STATE PLANS), THE COUNCIL SHALL REVIEW THE
28 STATEWIDE PLAN EACH YEAR AND SHALL ADVISE THE DEPARTMENT OF
29 COMMUNITY AND ECONOMIC DEVELOPMENT ON SUGGESTED CHANGES TO THE
30 STATEWIDE PLAN PRIOR TO THE EXPENDITURE OF ANY FUNDS UNDER THIS

1 SECTION.

2 (c) Members of council.--The council shall include
3 representatives of gas and electric utilities, rural electric
4 cooperatives, municipal electric systems, heating oil dealers,
5 eligible participants in the program, weatherization providers,
6 energy advocacy groups, social service agencies and senior
7 citizen organizations. Representatives serving on the council
8 shall constitute a reasonable and fair geographic distribution
9 of utility, service agency and other members.

10 (d) Annual report to General Assembly.--The Statewide
11 Weatherization and Energy Conservation Policy Council shall
12 submit an annual report to the General Assembly on or before
13 September 30 of each year summarizing and evaluating the
14 expenditure of funds under this section during the previous
15 State fiscal year. Such a report shall include, but not be
16 limited to, a summary of program and administrative
17 expenditures, the number of households served, the average
18 investment per home, an estimate of energy savings, the number
19 of applicants and any other relevant information the council
20 deems appropriate. All such information shall be by county,
21 where appropriate. In addition, the report shall contain
22 recommendations to the General Assembly for improvements in the
23 weatherization program.

24 (e) Coordination of activities.--Activities supported under
25 this act shall be coordinated with other Federal, State, local
26 and privately funded programs in order to avoid duplication of
27 effort and promote integration with other conservation and
28 energy assistance programs. Such coordination shall include, but
29 not be limited to, the establishment, by interagency agreement
30 or otherwise, of a joint policy advisory council to ensure that

1 energy assistance and weatherization assistance benefits are
2 delivered in an effective manner.

3 (f) Administrative and program efficiency.--All
4 administrative and programmatic requirements shall be
5 streamlined to the greatest extent possible and shall be
6 structured so as to reinforce the quality and productivity of
7 conservation work performed.

8 (g) Energy education.--[Up to 5%] A PORTION of the ←
9 allocation to each [grantee] SUBGRANTEE may be utilized for ←
10 energy education, which shall include the instruction and
11 demonstration in the home, at the time the work is performed, of
12 behavior and skills necessary to effectively utilize and
13 preserve the energy conservation measures involved and adopt
14 sound conservation practices in daily lifestyle, as well as the
15 provision of written educational materials and the development
16 of instructional aids and followup.

17 [(h) Program support cost.--No more than 150% of the ←
18 Statewide average in any fiscal year of the cost of materials
19 shall be provided for program support costs, including, but not
20 limited to, labor, tools, insurance, supervision, eligibility
21 determinations, recordkeeping, audit, rent and utilities.
22 Grantees may request waivers of this subsection from the
23 Statewide Weatherization and Energy Conservation Policy Council
24 in appropriate circumstances, including, but not limited to,
25 programmatic and administrative expenditures attributed to cost-
26 effective and innovative weatherization and conservation
27 technologies.] ←

28 (i) Advance payment.--[An advance payment of one-sixth of ←
29 the total contract shall be provided on the effective date of
30 each contract. This amount shall be reduced by deducting one-

twelfth of the advanced amount from each monthly invoice.] All funds shall be disbursed to [grantees] SUBGRANTEES and their subcontractors in a timely fashion so as to promote continuity and productivity of program and staff.

[(j) Inventory.--Each local program operator shall be allowed funds to enable the maintenance of an inventory equal to 5% of the total contract throughout the period of the contract.]

(k) Reallocation of funds.--In order to ensure the maximum utilization of all funds, the Department of Community [Affairs] and Economic Development shall [conduct and complete an evaluation of all grantee spending by {December 1} ~~May 15~~ of each year ~~and submit its evaluation to the Auditor General~~.

Grantees which are spending at a level of at least 10% less than projected shall have such underexpenditures in excess of 10% deducted from the annual contract. Such funds] EVALUATE SUBGRANTEE SPENDING USING PERFORMANCE METRICS. SUCH FUNDS WHICH MAY BE MORE EFFECTIVELY USED BY OTHER SUBGRANTEES, AS DETERMINED BY PERFORMANCE METRICS, shall be reallocated, forthwith, to other [grantees] SUBGRANTEES able to utilize the funds during the contract period.

(l) Quality control monitoring and evaluation.--The department shall institute regulations, procedures and studies to the following ends:

(1) To ensure that only measures of high cost effectiveness consistent with priorities established by an energy audit have been installed.

(2) To ensure that the material quality and labor associated with the installation of all measures equals or exceeds, where applicable, prevailing industry standards and is sufficiently high to make the measures fully effective.

1 (3) To evaluate, with the cooperation of utilities and
2 fuel vendors, and with the consent of the recipient
3 household, fuel consumption before and after treatment in a
4 minimum of 5% of the buildings weatherized with major
5 measures by each contractor. In addition to fuel savings, the
6 household shall be evaluated with respect to any enhanced
7 ability to pay or increased comfort. [Local grantees] ←
8 SUBGRANTEES shall be required to conduct an independent
9 review of any household which does not show reduced usage or
10 increased comfort and provide an explanation to the
11 department. Any evaluations conducted pursuant to this
12 paragraph shall be performed by a qualified independent
13 organization which shall be chosen by the Statewide
14 Weatherization and Energy Conservation Policy Council in
15 accordance with bidding and selection criteria developed by
16 the Department of Community [Affairs] and Economic
17 Development. Any evaluation shall also include the
18 effectiveness of any energy education component associated
19 with the weatherization activity.

20 (4) To ensure that an independent audit is performed
21 annually for each [grantee organization] SUBGRANTEE. ←

22 (5) To ensure that sufficient funds for research and
23 development shall be available to review and evaluate
24 specific technologies, installation procedures or other
25 aspects of the program, including training and technical
26 assistance, as may be necessary to ensure maximum energy
27 savings and to improve the cost-effectiveness of the program.

28 (m) Audit.--The Legislative Budget and Finance Committee
29 shall conduct a performance audit of the Pennsylvania
30 Weatherization Program as administered prior to the effective

1 date of this act by the Department of Community Affairs. The
2 committee shall conduct such inquiries as it deems necessary,
3 including, but not limited to, obtaining interviews with
4 provider agencies and program recipients, with administrators
5 within the Department of Public Welfare, the Department of
6 Community Affairs, the Pennsylvania Public Utility Commission
7 and the Weatherization Policy Advisory Council of the Department
8 of Community Affairs, and with such other persons and entities
9 as it deems necessary. The committee shall present to the
10 General Assembly findings and recommendations for programmatic
11 improvements within one year of the effective date of this act.

12 Section 5 6. The act is amended by adding a section to read: ←

13 Section 6.1. Powers and duties of Auditor General.

14 (a) Conduct of performance audit.--The Auditor General shall
15 conduct a thorough performance audit of the programs set forth
16 in paragraphs (4) and (5) of the definition of "energy
17 conservation and assistance programs" in section 3 and the
18 programs created in section 5(a)(1) and (2) which shall be
19 completed within ~~one year~~ FIVE YEARS after the effective date of ←
20 this section. Thereafter, the Auditor General shall conduct such
21 performance audits at intervals of not greater than five years
22 from the date of completing the immediately preceding
23 performance audit required under this subsection. The
24 departments and individuals administering the programs being
25 audited under this section shall make all records, documents and
26 other information available for the inspection of the Auditor
27 General that reasonably relate to the conduct of the performance
28 audit prescribed in this section.

29 (b) Content of audit.--The audit shall address in detail the
30 adequacy of the performance with respect to each of the

administrative and regulatory activities and shall make detailed recommendations to the department, each local office, contractors, the Governor and the General Assembly for remedial and regulatory changes in the program that will further the purposes of this act.

(c) Transmission of audit reports and public access.--A copy of each performance audit conducted pursuant to subsection (a) shall be transmitted to the Department of Public Welfare, the Department of Community and Economic Development, the Governor, the Office of Inspector General, the Attorney General, the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives, the chairman and minority chairman of the Public Health and Welfare Committee of the Senate and the chairman and minority chairman of the Health Committee of the House of Representatives. A copy of the performance audit shall be published as a notice in the Pennsylvania Bulletin.

(d) Transmission of information related to fraudulent activities.--The Auditor General shall transmit any information uncovered during the conduct of the performance audit relating to fraud to the Department of Public Welfare, THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, each local office, the Attorney General and the Office of Inspector General.

Section ~~6~~ 7. Section 7(a) of the act, amended July 9, 1987 (P.L.235, No.42), is amended to read:
Section 7. Administration of certain energy conservation and assistance programs.

(a) [Governor's Energy Council] Duties of Department of Environmental Protection.--The energy conservation and

1 assistance programs set forth in paragraphs (1), (2), (3) and
2 (6) of the definition of "energy conservation and assistance
3 programs" in section 3 shall be administered by the [Governor's
4 Energy Council] Department of Environmental Protection. The
5 [council] Department of Environmental Protection shall establish
6 regulations necessary for administering these programs.

7 * * *

8 Section 7 8. Section 8.1 of the act, added December 12, 1986
9 (P.L.1583, No.173), is amended to read:



10 Section 8.1. Limited grants for resource recovery projects.

11 (a) General rule.--Pursuant to the programs set forth in
12 section 3(1), there is hereby established within the Department
13 of Environmental [Resources] Protection a limited grant program
14 as part of the State Energy Conservation Plan to assist
15 municipalities in developing resource recovery projects.
16 Consistent with Federal law and regulations, including those
17 governing State energy conservation plans, and departmental
18 regulations, the program shall provide grants which cover up to
19 75% of the following:

20 (1) Costs associated with feasibility studies.

21 (2) Costs associated with project development activity.

22 No grant funds shall be used to cover in any manner any
23 construction costs incurred for resource recovery projects.

24 (b) Funding.--Money for the grant program shall be derived
25 from the appropriation in section 9(c.1).

26 (c) Duration.--This grant program shall continue until June
27 30, 1988, at which time the program shall expire, and any
28 unexpended funds shall lapse back to the Energy Conservation and
29 Assistance Fund.

30 (d) [Governor's Energy Council] Duties of Department of

1 Environmental Protection.--In administering this program, the
2 Department of Environmental [Resources] Protection shall comply
3 with such procedures and restrictions and submit such reports as
4 may be required [by the Governor's Energy Council] in order to
5 fulfill its federally mandated responsibilities regarding the
6 State Energy Conservation Plan.

7 Section 8 9. This act shall take effect immediately.

