

**ENERGY CONSERVATION AND ASSISTANCE ACT - VERIFICATION OF  
ELIGIBILITY, FRAUD REPORTING TO INSPECTOR GENERAL, CONFLICT OF  
INTEREST POLICY, WEATHERIZATION AND ENERGY CONSERVATION AND  
PERFORMANCE AUDITS BY THE AUDITOR GENERAL**

**Act of Oct. 24, 2012, P.L. 1308, No. 164**

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No. 2012-164

HB 1991

AN ACT

Amending the act of July 10, 1986 (P.L.1398, No.122), entitled "An act establishing a special fund for moneys received by the Commonwealth from resolution of oil overcharge matters; designating certain low-income energy conservation and assistance programs for funding from this special fund; and making appropriations," further providing for legislative findings and for definitions; providing for verification of eligibility, for fraud reporting to Office of Inspector General and for conflict of interest policy; further providing for weatherization and energy conservation; providing for powers and duties of Auditor General; and making editorial changes.

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

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.

(3) The programs established under the National Energy Extension Service Act (Public Law 95-39, 42 U.S.C. § 7001

et seq.), providing for, inter alia, energy conservation outreach programs to small businesses and individual consumers.

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

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

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

\* \* \*

**"Subgrantee." As defined in 10 CFR § 440.3 (relating to definitions).**

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

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

\* \* \*

(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 4. The act is amended by adding sections to read:  
**Section 5.1. Verification of eligibility .**

(a) **Energy assistance.--The Department of Public Welfare shall verify the income eligibility of recipients receiving energy assistance through the programs set forth in paragraph (4) of the definition of "energy conservation and assistance programs" in section 3 and the program established in section**

5(a)(2) in accordance with the verification procedures in sections 432.19 and 432.23 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, unless otherwise prohibited by Federal law.

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

(c) Report.--No later than six months after the effective date of this section and every six months thereafter until this section is fully implemented, the Department of Community and Economic Development and the Department of Public Welfare shall jointly provide a written report to the Governor, the 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 432.23 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) Reporting by employee, subgrantee or contractor.--If an employee, subgrantee 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, subgrantee or contractor shall make a fraud report directly to the Office of Inspector General.

(b) Reporting by applicant or recipient.--If a recipient of or applicant for energy assistance or weatherization services has reason to believe an employee, subgrantee or contractor of an energy conservation and assistance program is committing fraud, the applicant or recipient may make a fraud report directly to the Office of Inspector General.

(c) Sanctions.--The employee, subgrantee, contractor, applicant or recipient shall not be subject to any sanctions for making a fraud report in good faith.

#### Section 5.3. Conflict of interest policy.

The Department of Community and Economic Development and the Department of Public Welfare shall each develop conflict of interest policies pertaining to employees and subgrantees authorizing services through the energy conservation and assistance programs and supplemental low-income energy conservation and assistance programs.

Section 5. Section 6 of the act is amended to read:  
Section 6. Weatherization and energy conservation.

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

(b) Approval of Statewide plan.--[The council must approve the Statewide plan each year prior to the expenditure of any funds under this section] **In accordance with 10 CFR § 440.14 (relating to State plans), the council shall review the Statewide plan each year and shall advise the Department of Community and Economic Development on suggested changes to the Statewide plan prior to the expenditure of any funds under this section.**

(c) Members of council.--[The council shall include representatives of gas and electric utilities, rural electric cooperatives, municipal electric systems, heating oil dealers, eligible participants in the program, weatherization providers, energy advocacy groups, social service agencies and senior citizen organizations. Representatives serving on the council shall constitute a reasonable and fair geographic distribution of utility, service agency and other members.] **Council membership shall be in accordance with 10 CFR § 440.17 (relating to policy advisory council).**

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

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

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

(g) Energy education.--[Up to 5%] **A portion** of the allocation to each [grantee] **subgrantee** may be utilized for energy education, which shall include the instruction and demonstration in the home, at the time the work is performed, of behavior and skills necessary to effectively utilize and

preserve the energy conservation measures involved and adopt sound conservation practices in daily lifestyle, as well as the provision of written educational materials and the development of instructional aids and followup.

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

(i) Advance payment.--[An advance payment of one-sixth of the total contract shall be provided on the effective date of 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 of each year. 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 performance . Such funds which may be more effectively used by other subgrantees, as determined by the Department of Community and Economic Development** , 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] **Department of Community and Economic Development** 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.

(3) To evaluate, with the cooperation of utilities and fuel vendors, and with the consent of the recipient household, [fuel consumption] **energy usage** before and after treatment in a minimum of 5% of the buildings weatherized with major measures [by each contractor. In addition to fuel savings, the household shall be evaluated with respect to any enhanced ability to pay or increased comfort. Local grantees shall be required to conduct an independent review of any household which does not show reduced usage or increased comfort and provide an explanation to the department]. Any evaluations conducted pursuant to this paragraph shall be performed by a qualified independent organization which shall be chosen [by the Statewide

Weatherization and Energy Conservation Policy Council] in accordance with bidding and selection criteria developed by the Department of Community [Affairs] **and Economic Development**. [Any evaluation shall also include the effectiveness of any energy education component associated with the weatherization activity.]

(4) To ensure that an independent audit is performed annually for each [grantee organization] **subgrantee**.

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

(m) **Audit**.--The Legislative Budget and Finance Committee shall conduct a performance audit of the Pennsylvania Weatherization Program as administered prior to the effective date of this act by the Department of Community Affairs. The committee shall conduct such inquiries as it deems necessary, including, but not limited to, obtaining interviews with provider agencies and program recipients, with administrators within the Department of Public Welfare, the Department of Community Affairs, the Pennsylvania Public Utility Commission and the Weatherization Policy Advisory Council of the Department of Community Affairs, and with such other persons and entities as it deems necessary. The committee shall present to the General Assembly findings and recommendations for programmatic improvements within one year of the effective date of this act.

Section 6. The act is amended by adding a section to read:  
**Section 6.1. Powers and duties of Auditor General.**

(a) **Conduct of performance audit**.--The Auditor General shall conduct a thorough performance audit of the programs set forth in paragraphs (4) and (5) of the definition of "energy conservation and assistance programs" in section 3 and the programs created in section 5(a)(1) and (2) which shall be completed within five years after the effective date of this section. Thereafter, the Auditor General shall conduct such performance audits at intervals of not greater than five years from the date of completing the immediately preceding performance audit required under this subsection. The departments and individuals administering the programs being audited under this section shall make all records, documents and other information available for the inspection of the Auditor General that reasonably relate to the conduct of the performance audit prescribed in this section.

(b) **Content of audit**.--The audit shall address in detail the adequacy of the performance with respect to each of the administrative and regulatory activities and shall make detailed recommendations to the Department of Community and Economic Development, the Department of Public Welfare, the Governor and the General Assembly for remedial and regulatory changes in the programs 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, the Attorney General and the Office of Inspector General.

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

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

Section 8.1. Limited grants for resource recovery projects.

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

(1) Costs associated with feasibility studies.

(2) Costs associated with project development activity. No grant funds shall be used to cover in any manner any construction costs incurred for resource recovery projects.

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

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

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

Section 9. This act shall take effect immediately.

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT