

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

SENATOR VANCE, PUBLIC HEALTH AND WELFARE, IN SENATE, AS AMENDED, OCTOBER 3, 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 of
8 eligibility, for fraud reporting to Inspector General and for
9 conflict of interest policy; further providing for
10 weatherization and energy conservation; providing for
11 performance audits by the Auditor General; and making
12 editorial changes.

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

15 Section 1. Section 2 of the act of July 10, 1986 (P.L.1398,
16 No.122), known as the Energy Conservation and Assistance Act, is
17 amended by adding paragraphs to read:

18 Section 2. Legislative findings.

19 The General Assembly hereby finds and declares that:

20 * * *

1 (5) Even as the oil overcharge funds near exhaustion,
2 the need for the continued operation of energy conservation
3 and assistance programs in this Commonwealth remains.

4 (6) Improved oversight, fraud control measures and
5 income eligibility verification procedures are necessary to
6 ensure that this Commonwealth's low-income residents continue
7 to be served by energy conservation and assistance programs
8 in the most efficient manner possible.

9 Section 2. The definition of "energy conservation and
10 assistance programs" in section 3 of the act, amended July 9,
11 1987 (P.L.235, No.42), is amended and the section is amended by
12 adding a definition to read:

13 Section 3. Definitions.

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

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

19 (1) The programs established under Part D of Title III
20 of the Energy Policy and Conservation Act (Public Law 94-163,
21 42 U.S.C. § 6321 et seq.), providing for state energy
22 conservation programs.

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

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

1 (4) The programs established under the Low-Income Home
2 Energy Assistance Act of 1981 (Public Law 97-35, 42 U.S.C. §
3 8621 et seq.), providing for energy assistance and
4 weatherization assistance to low-income households.

5 (5) The programs established under Part A of the Energy
6 Conservation in Existing Buildings Act of 1976 (Public Law
7 94-385, 42 U.S.C. § 6851 et seq.), establishing the Low
8 Income Weatherization Program.

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

17 * * *

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

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

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

24 * * *

25 (c) Administration of programs.--The programs established in
26 subsection (a) shall be administered as follows:

27 (1) The Pennsylvania Supplemental Low-Income
28 Weatherization Program established in subsection (a)(1) shall
29 be administered by the Department of Community [Affairs] and
30 Economic Development as a part of the programs authorized

1 under the Low-Income Home Energy Assistance Act of 1981
2 (Public Law 97-35, 42 U.S.C. § 8621 et seq.) or the Energy
3 Conservation in Existing Buildings Act of 1976 (Public Law
4 94-385, 42 U.S.C. § 6851 et seq.). Community action agencies,
5 existing low-income weatherization providers or other county,
6 municipal or nonprofit corporations may apply for a portion
7 of these funds. The Department of Community [Affairs] and
8 Economic Development shall establish regulations necessary
9 for administering this program consistent with the
10 requirements of section 6.

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

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

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

24 Section 5.1. Verification of eligibility.

25 (a) Energy assistance.--The Department of Public Welfare
26 shall verify the income eligibility of recipients receiving
27 energy assistance through the programs set forth in paragraph
28 (4) of the definition of "energy conservation and assistance
29 programs" in section 3 and the program established in section 5
30 (a)(2) in accordance with the verification procedures in

1 sections 432.19 and 432.23 of the act of June 13, 1967 (P.L.31,
2 No.21), known as the Public Welfare Code, unless otherwise
3 prohibited by Federal law.

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

13 (c) Report.--No later than six months after the effective
14 date of this section and every six months thereafter until this
15 section is fully implemented, the Department of Community and
16 Economic Development and the Department of Public Welfare shall
17 jointly provide a written report to the Governor, the
18 chairperson and the minority chairperson of the Public Health
19 and Welfare Committee of the Senate, the chairperson and the
20 minority chairperson of the Health Committee of the House of
21 Representatives and the Inspector General detailing the progress
22 of the implementation of this section, including, but not
23 limited to, the following information:

24 (1) The cause of any delay in the full implementation of
25 this section.

26 (2) Any technical impediments to the full implementation
27 of this section.

28 (3) A listing of the data required under section 432.23
29 of the Public Welfare Code that the Department of Community
30 and Economic Development or the Department of Public Welfare

1 was unable to obtain or access and a description of its
2 efforts to obtain or access the data.

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

5 (a) Reporting by employee, SUBGRANTEE or contractor.--If an ←
6 employee, SUBGRANTEE or contractor of an energy conservation and ←
7 assistance program has reason to believe a recipient of or
8 applicant for weatherization services or energy assistance is
9 committing fraud or providing false information in order to
10 receive weatherization services or energy assistance, the
11 employee, SUBGRANTEE or contractor shall make a fraud report ←
12 directly to the Office of Inspector General.

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

19 (c) Sanctions.--The employee, SUBGRANTEE, contractor, ←
20 applicant or recipient shall not be subject to any sanctions for
21 making a fraud report IN GOOD FAITH. ←

22 Section 5.3. Conflict of interest policy.

23 The Department of Community and Economic Development shall ←
24 implement a conflict of interest policy that prohibits an
25 employee of a subgrantee from approving an application for
26 weatherization services for a property in which the subgrantee,
27 the employee or a member of the employee's family has an
28 ownership interest. AND THE DEPARTMENT OF PUBLIC WELFARE SHALL ←
29 EACH DEVELOP CONFLICT OF INTEREST POLICIES PERTAINING TO
30 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



1 of utility, service agency and other members.] COUNCIL
2 MEMBERSHIP SHALL BE IN ACCORDANCE WITH 10 CFR § 440.17 (RELATING
3 TO POLICY ADVISORY COUNCIL).

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

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

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

1 conservation work performed.

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

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

22 (i) Advance payment.--[An advance payment of one-sixth of
23 the total contract shall be provided on the effective date of
24 each contract. This amount shall be reduced by deducting one-
25 twelfth of the advanced amount from each monthly invoice.] All
26 funds shall be disbursed to [grantees] subgrantees and their
27 subcontractors in a timely fashion so as to promote continuity
28 and productivity of program and staff.

29 [(j) Inventory.--Each local program operator shall be
30 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 spending using performance metrics~~. Such funds which may be more effectively used by other subgrantees, as determined by performance metrics 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

1 savings, the household shall be evaluated with respect to any
2 enhanced ability to pay or increased comfort. †Local
3 grantees† ~~Subgrantees~~ shall be required to conduct an
4 independent review of any household which does not show
5 reduced usage or increased comfort and provide an explanation
6 to the department]. Any evaluations conducted pursuant to
7 this paragraph shall be performed by a qualified independent
8 organization which shall be chosen [by the Statewide
9 Weatherization and Energy Conservation Policy Council] in
10 accordance with bidding and selection criteria developed by
11 the Department of Community [Affairs] and Economic
12 Development. [Any evaluation shall also include the
13 effectiveness of any energy education component associated
14 with the weatherization activity.]

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

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

23 (m) Audit.--The Legislative Budget and Finance Committee
24 shall conduct a performance audit of the Pennsylvania
25 Weatherization Program as administered prior to the effective
26 date of this act by the Department of Community Affairs. The
27 committee shall conduct such inquiries as it deems necessary,
28 including, but not limited to, obtaining interviews with
29 provider agencies and program recipients, with administrators
30 within the Department of Public Welfare, the Department of

1 Community Affairs, the Pennsylvania Public Utility Commission
2 and the Weatherization Policy Advisory Council of the Department
3 of Community Affairs, and with such other persons and entities
4 as it deems necessary. The committee shall present to the
5 General Assembly findings and recommendations for programmatic
6 improvements within one year of the effective date of this act.

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

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

24 (b) Content of audit.--The audit shall address in detail the
25 adequacy of the performance with respect to each of the
26 administrative and regulatory activities and shall make detailed
27 recommendations to the department, each local office, ←
28 ~~contractors~~ DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, ←
29 THE DEPARTMENT OF PUBLIC WELFARE, the Governor and the General
30 Assembly for remedial and regulatory changes in the program ←

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, ~~each local office,~~ 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

1 [council] Department of Environmental Protection shall establish
2 regulations necessary for administering these programs.

3 * * *

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

6 Section 8.1. Limited grants for resource recovery projects.

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

16 (1) Costs associated with feasibility studies.

17 (2) Costs associated with project development activity.

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

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

22 (c) Duration.--This grant program shall continue until June
23 30, 1988, at which time the program shall expire, and any
24 unexpended funds shall lapse back to the Energy Conservation and
25 Assistance Fund.

26 (d) [Governor's Energy Council] Duties of Department of
27 Environmental Protection.--In administering this program, the
28 Department of Environmental [Resources] Protection shall comply
29 with such procedures and restrictions and submit such reports as
30 may be required [by the Governor's Energy Council] in order to

1 fulfill its federally mandated responsibilities regarding the
2 State Energy Conservation Plan.

3 Section 9. This act shall take effect immediately.