

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1991** Session of  
2011

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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

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 13, 2012

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## 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 423-  
29 432.23 of the Public Welfare Code that the Department of  
30 Community and Economic Development or the Department of



1 Public Welfare was unable to obtain or access and a  
2 description of its 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 or contractor.--If an employee or  
6 contractor of an energy conservation and assistance program has  
7 reason to believe a recipient of or applicant for weatherization  
8 services or energy assistance is committing fraud or providing  
9 false information in order to receive weatherization services or  
10 energy assistance, the employee or contractor shall make a fraud  
11 report directly to the Office of Inspector General.

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

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

21 Section 5.3. Conflict of interest policy.

22 The Department of Community and Economic Development shall  
23 implement a conflict of interest policy that prohibits an  
24 employee of a subgrantee from approving an application for  
25 weatherization services for a property in which THE SUBGRANTEE, ←  
26 the employee or a member of the employee's family has an  
27 ownership interest.

28 Section 5. Section 6 of the act is amended to read:

29 Section 6. Weatherization and energy conservation.

30 (a) Establishment of Statewide Weatherization and Energy

1 Conservation Policy Council.--A Statewide Weatherization and  
2 Energy Conservation Policy Council is hereby created and shall  
3 have the responsibility of advising the Department of Community  
4 [Affairs] and Economic Development on matters of policy related  
5 to the development and implementation of this program. The  
6 council shall establish bylaws governing its activities and  
7 shall assume all responsibilities associated with the existing  
8 Policy Advisory Council required by the Department of Energy.  
9 Members of the council shall be appointed by the Secretary of  
10 the Department of Community [Affairs] and Economic Development.

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

19 (c) Members of council.--The council shall include  
20 representatives of gas and electric utilities, rural electric  
21 cooperatives, municipal electric systems, heating oil dealers,  
22 eligible participants in the program, weatherization providers,  
23 energy advocacy groups, social service agencies and senior  
24 citizen organizations. Representatives serving on the council  
25 shall constitute a reasonable and fair geographic distribution  
26 of utility, service agency and other members.

27 (d) Annual report to General Assembly.--The Statewide  
28 Weatherization and Energy Conservation Policy Council shall  
29 submit an annual report to the General Assembly on or before  
30 September 30 of each year summarizing and evaluating the

1 expenditure of funds under this section during the previous  
2 State fiscal year. Such a report shall include, but not be  
3 limited to, a summary of program and administrative  
4 expenditures, the number of households served, the average  
5 investment per home, an estimate of energy savings, the number  
6 of applicants and any other relevant information the council  
7 deems appropriate. All such information shall be by county,  
8 where appropriate. In addition, the report shall contain  
9 recommendations to the General Assembly for improvements in the  
10 weatherization program.

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

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

25 (g) Energy education.--[Up to 5%] A portion of the  
26 allocation to each [grantee] subgrantee may be utilized for  
27 energy education, which shall include the instruction and  
28 demonstration in the home, at the time the work is performed, of  
29 behavior and skills necessary to effectively utilize and  
30 preserve the energy conservation measures involved and adopt



1 sound conservation practices in daily lifestyle, as well as the  
2 provision of written educational materials and the development  
3 of instructional aids and followup.

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

15 (i) Advance payment.--[An advance payment of one-sixth of  
16 the total contract shall be provided on the effective date of  
17 each contract. This amount shall be reduced by deducting one-  
18 twelfth of the advanced amount from each monthly invoice.] All  
19 funds shall be disbursed to [grantees] subgrantees and their  
20 subcontractors in a timely fashion so as to promote continuity  
21 and productivity of program and staff.

22 [(j) Inventory.--Each local program operator shall be  
23 allowed funds to enable the maintenance of an inventory equal to  
24 5% of the total contract throughout the period of the contract.]

25 (k) Reallocation of funds.--In order to ensure the maximum  
26 utilization of all funds, the Department of Community [Affairs]  
27 and Economic Development shall [conduct and complete an  
28 evaluation of all grantee spending by December 1 of each year.  
29 Grantees which are spending at a level of at least 10% less than  
30 projected shall have such underexpenditures in excess of 10%

1 deducted from the annual contract. Such funds] evaluate  
2 subgrantee spending using performance metrics. Such funds which  
3 may be more effectively used by other subgrantees, as determined  
4 by performance metrics, shall be reallocated, forthwith, to  
5 other [grantees] subgrantees able to utilize the funds during  
6 the contract period.

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

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

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

17 (3) To evaluate, with the cooperation of utilities and  
18 fuel vendors, and with the consent of the recipient  
19 household, fuel consumption before and after treatment in a  
20 minimum of 5% of the buildings weatherized with major  
21 measures by each contractor. In addition to fuel savings, the  
22 household shall be evaluated with respect to any enhanced  
23 ability to pay or increased comfort. [Local grantees]  
24 Subgrantees shall be required to conduct an independent  
25 review of any household which does not show reduced usage or  
26 increased comfort and provide an explanation to the  
27 department. Any evaluations conducted pursuant to this  
28 paragraph shall be performed by a qualified independent  
29 organization which shall be chosen by the Statewide  
30 Weatherization and Energy Conservation Policy Council in

1 accordance with bidding and selection criteria developed by  
2 the Department of Community [Affairs] and Economic  
3 Development. Any evaluation shall also include the  
4 effectiveness of any energy education component associated  
5 with the weatherization activity.

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

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

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

28 Section 6. The act is amended by adding a section to read:

29 Section 6.1. Powers and duties of Auditor General.

30 (a) Conduct of performance audit.--The Auditor General shall

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

15 (b) Content of audit.--The audit shall address in detail the  
16 adequacy of the performance with respect to each of the  
17 administrative and regulatory activities and shall make detailed  
18 recommendations to the department, each local office,  
19 contractors, the Governor and the General Assembly for remedial  
20 and regulatory changes in the program that will further the  
21 purposes of this act.

22 (c) Transmission of audit reports and public access.--A copy  
23 of each performance audit conducted pursuant to subsection (a)  
24 shall be transmitted to the Department of Public Welfare, the  
25 Department of Community and Economic Development, the Governor,  
26 the Office of Inspector General, the Attorney General, the  
27 chairman and minority chairman of the Appropriations Committee  
28 of the Senate, the chairman and minority chairman of the  
29 Appropriations Committee of the House of Representatives, the  
30 chairman and minority chairman of the Public Health and Welfare

1 Committee of the Senate and the chairman and minority chairman  
2 of the Health Committee of the House of Representatives. A copy  
3 of the performance audit shall be published as a notice in the  
4 Pennsylvania Bulletin.

5 (d) Transmission of information related to fraudulent  
6 activities.--The Auditor General shall transmit any information  
7 uncovered during the conduct of the performance audit relating  
8 to fraud to the Department of Public Welfare, the Department of  
9 Community and Economic Development, each local office, the  
10 Attorney General and the Office of Inspector General.

11 Section 7. Section 7(a) of the act, amended July 9, 1987  
12 (P.L.235, No.42), is amended to read:

13 Section 7. Administration of certain energy conservation and  
14 assistance programs.

15 (a) [Governor's Energy Council] Duties of Department of  
16 Environmental Protection.--The energy conservation and  
17 assistance programs set forth in paragraphs (1), (2), (3) and  
18 (6) of the definition of "energy conservation and assistance  
19 programs" in section 3 shall be administered by the [Governor's  
20 Energy Council] Department of Environmental Protection. The  
21 [council] Department of Environmental Protection shall establish  
22 regulations necessary for administering these programs.

23 \* \* \*

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

26 Section 8.1. Limited grants for resource recovery projects.

27 (a) General rule.--Pursuant to the programs set forth in  
28 section 3(1), there is hereby established within the Department  
29 of Environmental [Resources] Protection a limited grant program  
30 as part of the State Energy Conservation Plan to assist

1 municipalities in developing resource recovery projects.  
2 Consistent with Federal law and regulations, including those  
3 governing State energy conservation plans, and departmental  
4 regulations, the program shall provide grants which cover up to  
5 75% of the following:

- 6 (1) Costs associated with feasibility studies.
- 7 (2) Costs associated with project development activity.

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

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

12 (c) Duration.--This grant program shall continue until June  
13 30, 1988, at which time the program shall expire, and any  
14 unexpended funds shall lapse back to the Energy Conservation and  
15 Assistance Fund.

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

23 Section 9. This act shall take effect immediately.