

No. 2008-1SS

AN ACT

HB 1

Providing for alternative sources of energy; establishing the Alternative Energy Development Program, the Consumer Energy Program, the Home Energy Efficiency Loan Program, the Home Energy Efficiency Loan Fund and the Alternative Energy Production Tax Credit Program; and providing for the powers and duties of the Department of Environmental Protection.

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

CHAPTER 1  
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Alternative Energy Investment Act.

Section 102. 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:

“Alternative energy production project.” The development or construction of the following:

- (1) A facility that utilizes waste coal, alternative fuels, biomass, solar energy, wind energy, geothermal technologies, clean coal technologies, waste energy technologies or other alternative energy sources as defined in the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, to produce or distribute alternative energy.
- (2) A facility that manufactures or produces products, including component parts, that provide alternative energy or alternative fuels, improve energy efficiency or conserve energy.
- (3) A facility used for the research and development of technology to provide alternative energy sources or alternative fuels.
- (4) A project for the development or enhancement of rail transportation systems that deliver alternative fuels or high-efficiency locomotives.

“Alternative energy system.” Energy generated from alternative energy sources as defined under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. The term shall not include a system that is defined as a demand-side management system consisting of the management of customer consumption of electricity or the demand for electricity.

“Authority.” The Commonwealth Financing Authority established under 64 Pa.C.S. Ch. 15 (relating to Commonwealth Financing Authority).

“Business.” A corporation, partnership, sole proprietorship, limited liability company, business trust or other commercial entity approved by the authority. The term shall include not-for-profit entities.

“Clean energy project.” A project which does any of the following:

(1) Replaces or supplements an existing energy system that utilizes nonrenewable energy with an energy system that utilizes alternative energy.

(2) Facilitates the installation of an alternative energy system in an existing building or in new construction or a major renovation of a building.

(3) Facilitates the construction of a new high performance building, the retrofit of an existing building to meet high performance building standards or the preparation of a site for high performance building development, including equipment acquisition, construction, infrastructure and site preparation.

(4) Installs equipment to facilitate or improve energy conservation or energy efficiency, including heating and cooling equipment and solar thermal equipment.

(5) An energy service project.

“Consumer energy conservation project.” The purchase or installation of any of the following:

(1) Energy efficient windows and doors, including windows and doors with low-emissivity glass, coatings and glazings.

(2) Geothermal heat pumps.

(3) Insulation, air-sealing and other energy-saving projects approved by the department.

(4) Energy efficient or alternative energy heating and cooling equipment or systems.

(5) Energy efficient solid fuel residential furnaces, as approved by the Department of Environmental Protection, to include furnaces that burn coal or wood pellets.

(6) Energy efficient lighting systems for small businesses.

“Data center.” A facility used to house computer systems and associated components, such as telecommunications and storage systems.

“Data center consolidation project.” A project, as determined by the authority, that utilizes server virtualization technology to consolidate and reduce the required number of servers at a data center for the purpose of increased energy efficiency and reduced energy demand.

“Department.” The Department of Environmental Protection of the Commonwealth.

“Energy efficient equipment.” Equipment purchased for manufacturing or processing which is designed to utilize significantly less energy than the

industry standard at the time of purchase as determined by the Department of Environmental Protection.

“Energy efficient heating and cooling equipment.” Heating and cooling equipment designed to utilize significantly less energy than the industry standard at the time of purchase as determined by the Department of Environmental Protection.

“Energy service project.” A project undertaken by a political subdivision pursuant to an energy savings contract with a qualified provider under 62 Pa.C.S. Ch. 37 Subch. E (relating to guaranteed energy savings contracts) and the act of May 10, 1996 (P.L.153, No.29), known as the Guaranteed Energy Savings Act.

“High performance building.” A building that adheres to standards adopted by the Department of General Services, in consultation with the Department of Environmental Protection, that optimize the energy performance of buildings.

“Pollution control technology project.” The acquisition, construction or installation of pollution control technology and equipment that enables an electric generating unit or cogeneration unit to meet any of the following requirements:

(1) Mercury emission reductions under 25 Pa. Code Ch. 123 (relating to standards for contaminants).

(2) The regulations adopted by the United States Environmental Protection Agency known as the Clean Air Mercury Rule codified at 40 CFR Pts. 60 (relating to standards of performance for new stationary sources), 72 (relating to permits regulation) and 75 (relating to continuous emission monitoring).

(3) Nitrogen oxides and sulfur dioxide emission reduction under 25 Pa. Code Chs. 121 (relating to general provisions), 129 (relating to standards for sources) and 145 (relating to interstate pollution transport reduction).

(4) The Clean Air Interstate Rule in 40 C.F.R. (relating to protection of environment).

“Server.” A device on a computer network that manages network resources, including devices to manage network traffic, store files or process database queries.

“Server virtualization technology.” The practice of hosting a software operating system within a virtual machine.

“Site preparation project.” The construction of water and sewer lines, storm water systems, excavation, construction of access roads, parking facilities, pipelines, transformers and utility transmission lines and traffic control devices.

“Small business.” A person that is engaged in a for-profit enterprise and that employs 100 or fewer individuals. The term includes an agricultural producer of a farm commodity.

“Tax Reform Code of 1971.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Virtual machine.” A self-contained software operating environment that operates within a server and simulates a hardware device, such as a computer or a server.

### CHAPTER 3

#### ALTERNATIVE ENERGY DEVELOPMENT PROGRAM

##### Section 301. Program.

The Alternative Energy Development Program is established. The purpose of the program is to fund projects under this chapter.

##### Section 302. Appropriation.

Following the expiration of one or more generation rate caps established in an electric utility restructuring proceeding under 66 Pa.C.S. § 2804(4) (relating to standards for restructuring of electric industry), an amount not to exceed \$40,000,000 shall be annually appropriated from the General Fund to the authority. The authority shall use the funds to incur indebtedness under this section in an amount up to \$500,000,000 plus the payment of all reasonable costs and expenses related to the issuance of indebtedness in accordance with 64 Pa.C.S. Ch. 15 (relating to Commonwealth Financing Authority) for up to 30 years. For fiscal years 2008-2009 through 2037-2038, the \$40,000,000 appropriated under this section, or as much thereof as may be necessary, shall be used by the authority for payment of debt service. Proceeds from any debt incurred under this section shall be allocated in accordance with this chapter.

##### Section 303. Ben Franklin Technology Development Authority.

(a) Allocation.—The sum of \$40,000,000 shall be transferred by the authority to the Ben Franklin Technology Development Authority. Funds under this subsection shall be transferred to the Ben Franklin Technology Partners for energy-related investments to support early-stage activities, including incubator support services, management support, translational research, company investment, early-stage research of other programs or administrative activities to develop and implement alternative energy technologies and energy efficiency technologies. Funds allocated under this paragraph shall be distributed equally among the Ben Franklin Technology Partners.

(b) Guidelines.—Funds allocated under this section shall be used in accordance with guidelines of the Ben Franklin Technology Development Authority Board. The guidelines shall seek to ensure that minority-owned, women-owned and other disadvantaged businesses have the opportunity to substantially participate in funding activities undertaken pursuant to this section. The guidelines shall be posted on its official Internet website.

(c) Application.—An applicant for funds under this section shall submit an application including any supporting information as required by the Ben Franklin Technology Development Authority.

(d) Administrative costs.—No more than 1% of funds allocated to the Ben Franklin Technology Development Authority shall be used for administrative costs.

(e) Reporting.—By April 1 of each year, the Ben Franklin Technology Development Authority shall provide an annual report to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives. The report shall be posted and maintained on its official Internet website. The report shall include a list of all funds distributed under subsection (a), the recipients of the funds, the technology to be developed, a description of how the investments of the partners through this program will achieve the goals of this act, including saving energy, in this Commonwealth and other details relating to the project.

Section 304. Pollution control technology projects.

(a) Allocation.—The sum of \$25,000,000 shall be transferred by the authority to the department for pollution control technology projects. The funds shall be utilized for grants to electric generating units or cogeneration units, as defined under 25 Pa. Code § 123.202 (relating to definitions), that utilize coal, as defined under 25 Pa. Code § 123.202, as their primary fuel source, and that have an installed capacity of less than 500 megawatts, located in this Commonwealth.

(b) Distribution.—Each electric generating unit or cogeneration unit shall be eligible to receive a pro rata share of moneys allocated for pollution control technology projects based on criteria developed by the department. The department shall publish the criteria to be used in the Pennsylvania Bulletin and on its Internet website and shall submit the criteria to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives for comment and review 60 days prior to accepting a grant application under this section.

Section 305. Emergency Energy Assistance Fund.

(a) Deposit.—For fiscal years 2008-2009 through 2011-2012, the sum of \$10,000,000 shall be annually transferred by the authority to the Department of Public Welfare for deposit into the Emergency Energy Assistance Fund.

(b) Administration.—Funds deposited under this section shall be administered by the Department of Public Welfare for State-funded emergency energy assistance when all of the following occur:

(1) The Governor issues a declaration that either weather conditions, natural or man-made disasters, high energy prices or a combination thereof are a threat to public health within this Commonwealth and available Federal home energy assistance funds are not sufficient to meet this need.

(2) The Governor has the emergency declaration issued under paragraph (1) published in the Pennsylvania Bulletin along with the criteria and emergency regulations for the emergency energy assistance

program and transmits copies of the declaration to the chair and minority chair of the Appropriations Committee of the Senate and the chair and minority chair of the Appropriations Committee of the House of Representatives.

Section 306. Consumer and small business solar energy projects.

(a) Allocation.—The sum of \$100,000,000 shall be transferred by the authority to the department to provide a loan, grant, reimbursement or rebate to individuals residing in an owner-occupied dwelling or to small businesses for solar energy projects within this Commonwealth.

(b) Amounts.—The amount of the loan, grant, reimbursement or rebate shall not exceed 35% of the purchase and installation price of the solar or solar-photovoltaic energy system. The department shall adopt guidelines establishing the number of kilowatts of installed capacity necessary for an individual or a small business to qualify to receive a loan, grant, reimbursement or rebate.

Section 307. Commonwealth Financing Authority.

(a) Projects.—

(1) The sum of \$165,000,000 from funds available to the authority under section 302(a) shall be allocated by the authority for grants or loans for the following programs:

(i) Loans to businesses or nonprofit economic development organizations for clean energy projects.

(ii) Loans or grants to political subdivisions for clean energy projects.

(iii) Loans and grants to businesses or nonprofit economic development organizations for alternative energy production projects.

(iv) Loans and grants to businesses, nonprofit economic development organizations or political subdivisions for site preparation.

(2) A solar energy project, including solar thermal equipment, shall not be eligible for a loan or grant under this subsection.

(b) Renewables.—The sum of \$25,000,000 shall be allocated by the authority for loans or grants to projects related to geothermal technologies, including geothermal heat pump systems that use the ground, groundwater and underground mine water as a thermal energy source, or wind energy projects, including manufacturing facilities for wind turbines and other energy components.

(c) High performance buildings.—

(1) The sum of \$25,000,000 shall be allocated by the authority for loans or grants to one of the following to meet energy efficient standards under paragraph (2):

(i) A small business for the construction or renovation of a building for the use of the small business.

(ii) An individual for the construction or renovation of a dwelling if the individual does or will occupy the dwelling as his primary residence.

(2) The Department of General Services shall adopt standards for the certification of a high performance building under this act, to include the following:

(i) Establishing high performance, nationally recognized categories to achieve the following:

(A) Optimize the energy performance of buildings.

(B) Increase the use of and demand for environmentally preferable building materials, furnishings and finishes.

(C) Improve environmental quality and conserve natural resources in this Commonwealth.

(D) Select appropriate sites.

(E) Reduce pollutants and waste generation.

(F) Other criteria as required by the Department of General Services.

(ii) Requiring documentation to substantiate compliance with the guidelines.

(iii) Requiring third-party, postconstruction review and verification.

(d) Other solar projects.—The sum of \$80,000,000 shall be allocated by the authority for grants and loans for alternative energy production projects related to solar energy.

(e) Eligibility.—In order to be eligible to receive funds under this section, an applicant must provide the authority with the following:

(1) A detailed description of the project, including the proposed use of funds and an explanation of how the project will fulfill the goals of this act.

(2) Identification of the number of current employees and an estimate of any future employment opportunities.

(3) The cost of the project.

(4) A description of how the project will reduce the Commonwealth's reliance on nonrenewable energy.

(5) Any other information required by the authority.

(f) Eligibility of alternative energy production project.—In order to be eligible for funding under this chapter, an alternative energy production project shall have a useful life of at least four years and shall be located in this Commonwealth.

(g) Limitation.—A grant or loan for a project under this section shall not exceed \$30,000,000.

(h) Project review.—The authority shall review and prepare an assessment of each application and determine which projects will best utilize and promote the use of alternative energy and promote energy conservation in this Commonwealth. Projects shall be awarded in accordance with 64 Pa.C.S. § 1512 (relating to board). The department or the Department of

Community and Economic Development shall provide technical assistance as appropriate.

(i) Reporting.—The authority shall provide an annual report to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives by October 1, 2009, and October 1 of each year thereafter. The report shall be posted and maintained on the authority's official Internet website and shall include:

(1) A list of all loans and grants approved and loans repaid during the previous fiscal year, including the name and address of each recipient, the amount of the loan or grant and a detailed description of each approved project.

(2) The estimated energy benefits to date for all projects receiving funding during that fiscal year, including an explanation of the method used to arrive at the estimated savings.

(3) Recommendations regarding any potential amendments to this act to include new energy technologies that provide alternative energy sources that encourage or promote energy independence.

(4) A description of how the program will save energy in this Commonwealth.

(j) Administrative assistance.—The Department of Community and Economic Development shall provide administrative support to the authority.

(k) Administrative costs.—No more than 1% of funds allocated under this section shall be used by the authority for administrative costs.

## CHAPTER 5

### CONSUMER ENERGY PROGRAM

#### Section 501. Program.

There is established in the department a consumer energy program to provide loans, grants, reimbursements and rebates to individuals and small businesses in accordance with this chapter.

#### Section 502. Appropriation.

Following the expiration of one or more generation rate caps established in an electric utility restructuring proceeding under 66 Pa.C.S. § 2804(4) (relating to standards for restructuring of electric industry), the following sums shall be appropriated annually from the General Fund to the department for allocation under section 503:

- (1) For fiscal years 2008-2009 through 2011-2012, \$15,000,000.
- (2) For fiscal year 2012-2013, \$12,000,000.
- (3) For fiscal years 2013-2014 and 2014-2015, \$10,000,000.
- (4) For fiscal year 2015-2016, \$8,000,000.

#### Section 503. Allocation.

Money appropriated under section 502 shall be used by the department for the consumer energy program as follows:

- (1) The sum of \$92,500,000 shall be used for loans, grants, reimbursements or rebates from funds available under section 502 to



individuals residing in owner-occupied dwellings or to small businesses for the purchase and installation price of consumer energy conservation projects. An applicant shall be eligible for up to 25% of the purchase and installation price of a consumer energy conservation project. A solar energy project shall not be eligible for a loan or grant under this paragraph.

(2) In fiscal year 2008-2009, the sum of \$5,000,000 shall be transferred to the Home Energy Efficiency Loan Fund established under section 605(a).

(3) The sum of \$2,500,000 from funds available under section 502 shall be used for loans or grants to individuals or small businesses for the purchase and installation of data center consolidation projects.

#### Section 504. Standards.

(a) Consumer energy conservation projects.—The department shall develop and publish performance standards for consumer energy conservation projects. In order to be eligible for a loan, grant, reimbursement or rebate under this chapter, the project must comply with the appropriate standard.

(b) Publication.—The information required under subsection (a) shall be posted and maintained on the department's Internet website.

#### Section 505. Guidelines.

The department shall publish guidelines in the Pennsylvania Bulletin relating to the following:

(1) Eligibility of applicant.

(2) Types of products and consumer energy conservation projects eligible under this chapter.

#### Section 506. Reporting.

By October 1 of each year, the department shall provide a report to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives. The report shall include:

(1) program guidelines;

(2) the number and category of loans, grants, reimbursements or rebates; and

(3) a description of how the program will save energy in this Commonwealth.

#### Section 507. (Reserved).

#### Section 508. (Reserved).

#### Section 509. Administrative costs.

No more than 1% of the funds allocated to the department under this chapter shall be used for administrative costs.

### CHAPTER 6

#### HOME ENERGY EFFICIENCY LOAN PROGRAM

#### Section 601. Scope of chapter.

This chapter relates to the Home Energy Efficiency Loan Program.

**Section 602. Definitions.**

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

“Adult household member.” Any person over the age of 18 who resides in the home as a principal residence and who is not a full-time undergraduate student.

“Agency.” The Pennsylvania Housing Finance Agency.

“Applicant.” A person that submits an application for a low-interest rate home energy efficiency loan under this chapter.

“Approved contractor.” A contractor approved by the agency in accordance with this chapter.

“Contractor.” Any person who owns and operates an energy efficiency service-related business or who undertakes, offers to undertake or agrees to perform any energy efficiency project to be financed by a loan issued under this chapter.

“Energy efficiency project.” The purchase or installation of any of the following:

- (1) Air sealing, insulation and duct work.
- (2) Energy efficient windows and doors.
- (3) Energy efficient heating or cooling systems or repairs.
- (4) Roofing repair, replacement or improvements.

“Full-time undergraduate student.” An individual enrolled for at least 12 credit hours per semester at an institution of higher education.

“Fund.” The Home Energy Efficiency Loan Fund established under section 605.

“Home energy efficiency loan.” A low-interest rate loan awarded under this chapter.

**Section 603. Home Energy Efficiency Loan Program.**

(a) Establishment.—There is established a Home Energy Efficiency Loan Program which shall be administered by the agency. The program shall provide loans to eligible households for energy efficiency projects.

(b) Household eligibility.—Dwelling units that are owner-occupied and have an adjusted gross income, as determined by the most current Federal tax returns of all adult household members, that does not exceed 150% of the greater of the current Statewide or Area Median Income (AMI) as established by the Federal Department of Housing and Urban Development for the county in which the home is located.

(c) Applications.—An individual may submit an application to the agency requesting a loan. The application shall be on the form required by the agency and shall include or demonstrate all of the following:

- (1) The applicant’s name and address.
- (2) The identity of the approved contractor who will complete the energy efficiency project.

(3) A description of the energy efficiency project and an estimate of the cost of the project, including an itemized list of project costs, prepared by the approved contractor identified under paragraph (2).

(4) The amount of the loan sought.

(5) A statement authorizing the agency to conduct a credit history check.

(6) Any other information required by the agency.

(d) Review of project financing applications.—The agency shall review the application to determine if:

(1) The project is eligible for financing under this program.

(2) The applicant is eligible to receive a loan under this program.

(3) The value of the proposed collateral and the financial resources of the applicant are sufficient to repay the loan.

(4) The statement of the estimated cost of the project is accurate and reasonable.

(5) The applicant complied with all other criteria established by the agency.

(e) Approval of loan applications.—Once the application is deemed complete, the agency may approve the application. The agency shall have complete discretion in determining whether a proposed energy efficiency project is eligible for a loan.

(f) Security.—All loans awarded under this act shall be secured by a lien on the property for which the loan was approved and other sufficient collateral as determined by the agency.

(g) Limitations.—

(1) An applicant may not apply for a loan in an amount less than \$1,000 nor more than \$10,000.

(2) The agency shall not require a loan to be repaid in full within six months of the loan closing date.

(3) The interest rate shall be a below-market, fixed interest rate, as determined by the agency.

(4) The loan repayment period may not exceed ten years with no prepayment penalty.

Section 604. Approved contractors.

(a) Registration required.—No contractor may undertake, offer to undertake or agree to perform any energy efficiency project to be financed by a loan issued under this program unless the contractor is approved by the agency.

(b) Application for enrollment.—A contractor may apply to become an approved contractor by filing an application with the agency. The application shall be on the form prescribed by the agency and shall include or demonstrate all of the following:

(1) For an individual applicant, the name, home address, home telephone number and driver's license identification number of the applicant or an identification card issued by the Department of

Transportation, as well as the individual's business name, address and telephone number if different, and all prior business names and addresses of home improvement businesses.

(2) For a partnership applicant, the name, home address, home telephone number and driver's license identification number of each partner, as well as the partnership name, address and telephone number.

(3) For a corporation, limited liability company or limited partnership applicant, the name, home address, home telephone number and driver's license identification number of each officer, each director or each individual holding greater than a 5% stake in the business, as well as the entity's business name, address and telephone number.

(4) For an out-of-State corporation, limited liability company or limited partnership, the name and address of the entity's resident agent or registered office provider within this Commonwealth and any registration number or license number issued to the entity by its home state or political subdivision of the other state, if applicable.

(5) For a joint venture applicant, the name, address and telephone number of the joint venture, as well as the name, address and telephone number of each party to the joint venture. If the parties to a joint venture include business entities, the information required from the entities under this subsection shall also be provided.

(6) A complete description of the nature of the contracting business of the applicant, including a statement defining the service area of the business.

(7) A statement whether any of the following apply:

(i) The individual or individuals making application, even if doing so as part of a business entity application, has ever been convicted of a criminal offense related to a home improvement transaction, fraud, theft, a crime of deception or a crime involving fraudulent business practices.

(ii) The applicant has ever filed a petition in bankruptcy or, within the last ten years, received a final civil judgment entered against the applicant or businesses in which the applicant held an interest that was related to a home improvement transaction.

(iii) The applicant's certificate or the certificate of a business with which the person making application held an interest has ever been revoked or suspended pursuant to an order issued by a court of competent jurisdiction in this Commonwealth or any other state or political subdivision thereof and, if so, the current status of the certificate.

(8) Whether within the last ten years the applicant has been suspended or debarred from participating in any Federal, State or local program through which public funding or other assistance is provided to consumers for home improvements.

(9) Proof of liability insurance covering personal injury in an amount not less than \$50,000 and insurance covering property damage caused by the work of the contractor in an amount not less than \$50,000.

(c) Approval of application.—Upon being satisfied that all requirements have been met, the agency may approve the application and, if approved, designate the applicant as an approved contractor. The agency shall not approve an application if any of the following conditions exist:

(1) The individual or individuals making application, even if doing so as part of a business entity application, has ever been convicted of a criminal offense related to a home improvement transaction, fraud, theft, a crime of deception or a crime involving fraudulent business practices.

(2) The applicant has ever been suspended or debarred from participating in any Federal, State or local program through which public funding or other assistance is provided to consumers for home improvements.

#### Section 605. Home Energy Efficiency Loan Fund.

(a) Establishment.—Money transferred to the agency under section 503(2) shall be deposited into a restricted receipts account to be known as the Home Energy Efficiency Loan Fund and used in association with loans awarded by the agency under this program.

(b) Revolving loan fund.—Proceeds of bonds issued to fund the loans authorized under this chapter and any moneys received as loan repayments, or moneys otherwise made available to the fund, shall be deposited in the fund and made available for additional loans. No more than 1% of the funds may be used for reasonable administrative costs.

#### Section 606. Annual report.

(a) Contents.—On or before December 1 of each year, the agency shall prepare a report evaluating the loans awarded under this chapter during the previous fiscal year. The report shall be submitted to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives and include the following, listed by county where appropriate:

(1) The total number of applications received and loans awarded.

(2) The date of approval of each loan, including the original principal balance, the interest rate and the repayment period.

(3) A brief description of the energy efficiency project for which the loan was made.

(4) Any recommendation to the General Assembly for improvements in the program.

(5) Any other information deemed by the agency to be relevant or necessary to complete a comprehensive review of the program, provided that personal information of individual loan recipients shall be considered confidential and not subject to disclosure.

(6) A description of the energy savings resulting from the project.

(b) Report posting.—The agency shall post and maintain the report on the agency's Internet website.

Section 607. Agency guidelines.

The agency shall promulgate guidelines necessary for the administration and enforcement of this act, which shall be published by the agency in the Pennsylvania Bulletin within 90 days of the effective date of this section.

#### CHAPTER 7

### ALTERNATIVE ENERGY PRODUCTION TAX CREDIT PROGRAM

Section 701. Establishment.

There is established the Alternative Energy Production Tax Credit Program.

Section 702. Definitions.

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

“Alternative energy production tax credit.” The credit provided for under this chapter.

“Pass-through entity.” A partnership as defined under section 301(n.0) of the Tax Reform Code of 1971, or a Pennsylvania S corporation as defined under section 301(n.1) of the Tax Reform Code of 1971.

“Qualified tax liability.” The liability for taxes imposed under Article III, IV or VI of the Tax Reform Code of 1971. The term does not include any tax withheld by an employer from an employee under Article III of the Tax Reform Code of 1971.

“Taxpayer.” An entity subject to tax under Article III, IV or VI of the Tax Reform Code of 1971.

Section 703. Eligible applicants.

(a) General rule.—A taxpayer who develops or constructs an alternative energy production project located in this Commonwealth with a useful life of at least four years may apply for an alternative energy production tax credit as provided under this chapter. By September 15, 2009, a taxpayer must submit an application to the department on a form prescribed by the department, setting forth the amount of the investment in an alternative energy production project that was made in the taxable year that ended in the prior calendar year.

(b) Application.—An application shall be developed by the department and shall include:

- (1) Type and location of the alternative energy production project.
- (2) Total cost of the alternative energy production project.
- (3) Any other information deemed appropriate by the department.

Section 704. Award of tax credits.

(a) Qualification.—A taxpayer that is eligible under section 703 shall receive an alternative energy production tax credit for the taxable year in an amount equal to 15% of the total amount of all development, equipment and construction costs paid for alternative energy production projects, not to

exceed \$1,000,000 for each taxpayer, in the taxable year to be applied against the taxpayer's qualified tax liability.

(b) Calculation.—In calculating the total amount of all development, equipment and construction costs paid for alternative energy production projects, the taxpayer shall deduct the amount of any grant or other subsidy received in relation to the alternative energy production project for which the credit is sought by the taxpayer from a Federal, State or local government entity, including an authority.

(c) Notification of applicant.—The department shall, within 90 days of receipt, review each application and notify the applicant whether or not the applicant is approved for a tax credit.

(d) Notification of Department of Revenue.—Upon determination by the department that an approved applicant has incurred costs for an alternative energy production project, the Department of Revenue shall issue to an applicant a tax certificate that sets forth the amount of alternative energy production tax credit approved for the eligible applicant.

#### Section 705. Carryover, refund, assignment and carryback of credit.

(a) Carryover.—If the taxpayer cannot use the entire amount of the alternative energy production tax credit for the taxable year in which the alternative energy production tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the alternative energy production tax credit is carried over to a succeeding taxable year, it is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The alternative energy production tax credit provided under this chapter may be carried over and applied to succeeding taxable years for no more than five taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.—An alternative energy production tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the alternative energy production tax credit is applied against any tax liability under subsection (a).

(c) Carryback and refund.—A taxpayer is not entitled to carry back or obtain a refund of an unused alternative energy production tax credit.

(d) Sale or assignment.—

(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, an alternative energy production project tax credit granted to the taxpayer under this chapter if no claim for allowance of the credit is filed within one year from the date the credit is approved by the department and the Department of Revenue under this act. The department, in consultation with the Department of Revenue, shall establish guidelines for the approval of applications under this subsection.

(2) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due.

(3) Notwithstanding any other provision of law, the Department of Revenue shall assess the tax of an applicant under this subsection within 120 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(e) Purchasers and assignees.—The purchaser or assignee of all or a portion of a tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

#### Section 706. Limitation on tax credits.

(a) Total.—The total amount of credits approved by the department shall not exceed:

- (1) \$5,000,000 in fiscal years 2008-2009 through 2011-2012.
- (2) \$8,000,000 in fiscal year 2012-2013.
- (3) \$10,000,000 in fiscal years 2013-2014 through 2014-2015.
- (4) \$2,000,000 in fiscal year 2015-2016.

(b) Formula.—If the total amount of alternative energy production tax credits approved for all taxpayers exceeds the amount allocated for those credits, then the alternative energy production tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the alternative energy production tax credit approved for the applicant divided by the total of all alternative energy production tax credits approved for all applicants, the algebraic equivalent of which is:

taxpayer's alternative energy production tax credit = amount allocated for those credits x (alternative energy production tax credit approved for the applicant/total of all alternative energy production tax credits approved for all applicants).

#### Section 707. Pass-through entity.

(a) General rule.—If a pass-through entity has any unused tax credit under section 705, the entity may elect, in writing, according to the department's procedures, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) Additional credit and limitation.—The credit provided under subsection (a) is in addition to any alternative energy production tax credit to which a shareholder, member or partner of a pass-through entity is otherwise entitled under this chapter. A pass-through entity and a shareholder, member



or partner of a pass-through entity may not claim a credit under this chapter for the same alternative energy production investment.

(c) Application.—A shareholder, member or partner of a pass-through entity to whom credit is transferred under subsection (a) must immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Section 708. Reporting.

(a) General rule.—No later than September 1 of each year, the department, in consultation with the Department of Revenue, shall submit a report to the General Assembly summarizing the effectiveness of the tax credit provided under this chapter. The report shall include the name of each taxpayer utilizing the credit as of the date of the report and the amount of credits approved for or utilized by each taxpayer. The report may also include recommendation for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Finance Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives and the chairman and minority chairman of the Finance Committee of the House of Representatives. The report shall include the following information, which shall be separated by geographic location within this Commonwealth:

(1) The amount of credits claimed during the fiscal year.

(2) The number of alternative energy production projects receiving a tax credit and the dollar amount of tax credits granted under this chapter in the aggregate and by project.

(3) The types, locations and costs of projects.

(4) The total amount spent in this Commonwealth during the fiscal year by each alternative energy production project.

(5) The estimated benefits of the projects in creating alternative energy.

(6) The total amount of tax revenues generated in this Commonwealth from alternative energy production projects.

(7) The total number of jobs created during the fiscal year by alternative energy production projects.

(b) Public information.—Notwithstanding any law providing for confidentiality of tax records, the following shall be public information:

(1) Information in the report under subsection (a) which shall be posted on the Internet websites of the Department of Revenue and the department.

(2) The identity of each taxpayer utilizing a tax credit under this chapter and the amount of credits approved and utilized by each taxpayer which shall be made available annually, beginning no later than one year after the credits were granted.

Section 709. Termination.

The department shall not approve an alternative energy production tax credit under this chapter for taxable years ending after December 31, 2016.

Section 710. Regulations.

The department, in cooperation with the Department of Revenue, shall promulgate regulations necessary for the implementation and administration of this chapter.

Section 711. Applicability of chapter.

This chapter shall apply as follows:

(1) Except as provided in paragraph (2), this chapter shall apply to taxable years beginning after December 31, 2007.

(2) The tax credit under this chapter shall apply to alternative energy production projects commencing on or after the effective date of this section.

CHAPTER 29  
MISCELLANEOUS PROVISIONS

Section 2901. Effective date.

This act shall take effect immediately.

APPROVED—The 9th day of July, A.D. 2008.

EDWARD G. RENDELL