

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of
Columbia
Official Code*

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To establish authority to contract with a private company to be known as a Sustainable Energy Utility to administer sustainable energy programs in the District of Columbia; to establish an advisory board for the Sustainable Energy Utility; to define the responsibilities of the Sustainable Energy Utility Advisory Board; to define the role of the Sustainable Energy Utility; to lay out the structure of the Sustainable Energy Utility contract; to require the Mayor to design and implement a brand for sustainable energy services in the District of Columbia; to require the Commission to rule on a portion of Formal Case 945; to require the incumbent distribution utilities to share certain customer energy use data with the Sustainable Energy Utility; to establish a renewable energy incentive program in the District of Columbia; to establish the Sustainable Energy Trust Fund and associated assessment; to establish the Energy Assistance Trust Fund and associated assessment; to amend the Retail Competition and Consumer Protection Act of 1999 to eliminate the Reliable Energy Trust Fund and associated charge; to amend the Omnibus Utility Amendment Act of 2004 to eliminate the Natural Gas Trust Fund and associated charge; to amend the Renewable Portfolio Standard Act of 2004 to increase the renewable requirement, allow solar thermal to count as a Tier 1 solar resource, and increase the alternative compliance payment; to amend the Green Building Act of 2006 to establish benchmarking requirements for all qualified public and private buildings; to amend An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes to amend the responsibilities of the Public Service Commission; to amend AN ACT To provide a People’s Counsel for the Public Service Commission in the District of Columbia, and for other purposes to amend the responsibilities of the Office of the People’s Counsel; to require the Mayor to commission a study of the feasibility of District investment or involvement in the construction of a renewable energy generating facility; and to require lessors of nonresidential buildings to measure and bill each rental unit for energy costs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Clean and Affordable Energy Act of 2008”.

TITLE I. DEFINITIONS.

Sec. 101. Definitions.

For the purposes of this act, the term:

- (1) "Commission" means the Public Service Commission.
- (2) "District Department of the Environment," "DDOE," or "Energy Office" means the District Department of the Environment Energy Office.
- (3) "Electric company" shall have the same meaning as in the fifteenth unnumbered paragraph, beginning "The term "electric company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).
- (4) "Energy Assistance Trust Fund" or "EATF" means the Energy Assistance Trust Fund established under section 211.
- (5) "Existing electricity programs" means those programs operated by the District Department of the Environment under the names "Weatherization Plus," "Low Income Appliance Replacement Program," and "Weatherization and Rehabilitation."
- (6) "Existing low-income programs" means those programs operated by the District Department of the Environment under the names "LIHEAP Expansion and Energy Education," "RAD Expansion," "RAD Arrearages Retirement and Education Program," and "Residential Essential Service Expansion and Awareness Program."
- (7) "Existing natural gas programs" means those programs proposed or operated by the District Department of the Environment under the names "Heating System Repair, Replacement, and Tune-Up Program," "Residential Weatherization and Efficiency Program," "Energy Awareness Program," and "Saving Energy in D.C. Schools."
- (8) "Fiscal Agent" means the Office of the Chief Financial Officer.
- (9) "Gas company" shall have the same meaning as in the thirteenth unnumbered paragraph, beginning "The term "gas company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).
- (10) "Green collar jobs" means jobs in the environmental sector of the economy which jobs may involve the implementation of environmentally-conscious design, policy, or technology.
- (11) "OIML" means the International Association of Legal Metrology.
- (12) "Request for Proposals" or "RFP" means the request for proposals prepared by the District Department of the Environment for the SEU.
- (13) "Residential Aid Discount" means the utility discount program offered by the electric company to low-income electricity customers in the District of Columbia.
- (14) "Residential Essential Service" means the utility discount program offered by the gas company to low-income natural gas customers in the District of Columbia.

(15) “Solar thermal systems” means systems which utilize the sun’s radiation to efficiently heat fluids or air.

(16) “SRCC” means the Solar Rating and Certification Corporation.

(17) “Substantial improvement” has the same meaning as in section 202 of Title 12J of the District of Columbia Municipal Regulations (12J DCMR § 202).

(18) “Sustainable Energy Trust Fund” or “SETF” means the Sustainable Energy Trust Fund established under section 210.

(19) “Sustainable Energy Utility” or “SEU” means the private contractor selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

(20) “Sustainable Energy Utility Advisory Board”, “Advisory Board”, or “Board” means the board established under section 203 that advises the DDOE on the procurement of the contract with the SEU and monitors the progress of the SEU under its contract.

(21) “Temporary electricity programs” means those programs operated by the District Department of the Environment under the names “Affordable Housing Energy Efficient Rebate Program”, “Weatherization Rehabilitation Asset Partnership”, and “Home Energy Rating System”.

(21) “Utility or energy company” means a company distributing, supplying, or transmitting electricity or natural gas in the District of Columbia.

TITLE II. MANAGEMENT OF SUSTAINABLE ENERGY PROGRAMS.

Sec. 201. Contract with a Sustainable Energy Utility.

(a) The Mayor, by, and through DDOE, shall contract with a SEU to conduct sustainable energy programs on behalf of the District of Columbia.

(b) The SEU shall be a private entity.

(c) The SEU shall conduct the sustainable energy programs under a brand name to be determined by the District Department of the Environment.

(d) The SEU contract shall provide that the SEU shall, at a minimum, achieve the following:

- (1) Reduce per-capita energy consumption in the District of Columbia;
- (2) Increase renewable energy generating capacity in the District of Columbia;
- (3) Reduce the growth of peak electricity demand in the District of Columbia;
- (4) Improve the energy efficiency of low-income housing in the District of

Columbia;

(5) Reduce the growth of the energy demand of the District of Columbia’s largest energy users; and

- (6) Increase the number of green-collar jobs in the District of Columbia.

(e) The SEU contract shall be funded by the SETF. The SEU contract may also be funded by any other source of funding available to the Mayor, including:

- (1) Federal funds;
 - (2) Private funds, subject to DDOE approval; and
 - (3) Other District funds.
- (f) All funds used to support the SEU contract shall be managed by the Fiscal Agent.
- (g) The SEU contract shall permit coordination with any similar private entity operating in an adjacent or nearby jurisdiction.
- (h) The use of private grant money by the SEU shall be subject to DDOE approval.
- (i) Notwithstanding the provisions of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), the SEU contract shall be awarded pursuant to the procedure set forth under this title.

Sec. 202. Structure of the SEU contract.

- (a) The initial SEU contract shall be for a period of not less than 5 years.
- (b) The SEU contract shall be funded as provided in section 201(e).
- (c) The SEU contract shall be performance-based and shall provide financial incentives for the SEU to surpass the performance benchmarks set forth in the SEU contract. The SEU contract shall also provide financial penalties to be applied to the SEU if the SEU fails to meet the required performance benchmarks.
- (d) The SEU contract shall require that the SEU program shall, when taken as a whole, meet the societal benefit test on an annual and contract-term basis.
- (e) Each bid shall detail how the contractor proposes to nearly meet, meet, or exceed each performance benchmark. The performance benchmarks shall be set forth in the bid.
- (f) The SEU contract shall permit the programs, benchmarks, and level of funding to be changed at any time with the approval of both the SEU and the DDOE. No change to the funding shall allow the Mayor to exceed the SETF funding limits set forth in section 210.
- (g) The SEU contract shall be revocable if the SEU fails to meet the performance benchmarks of the contract.
- (h) The SEU contract shall provide that the annual expenditure on natural gas-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the natural gas company.
- (i) The SEU contract shall provide that the expenditure on electricity-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the electricity company.
- (j) Subsections (h) and (i) shall not apply to funds from a source other than an assessment on the gas company or the electric company.
- (k) The SEU contract shall provide that the SEU shall submit, to the DDOE and Board, a quarterly report detailing expenditures under the contract and performance of SEU programs.

Sec. 203. Establishment of a Sustainable Energy Utility Advisory Board.

(a) There is established a Sustainable Energy Utility Advisory Board whose purpose shall be to:

(1) Provide advice, comments, and recommendations to the DDOE and Council regarding the procurement and administration of the SEU contract described in sections 201 and 202.

(2) Advise the DDOE on the performance of the SEU under the SEU contract;
and

(3) Monitor the performance of the SEU under the SEU contract.

(b) The Board shall be comprised of:

(1) The Mayor, or his or her designee, who shall chair the Advisory Board;
(2) The People's Counsel or his or her designee;
(3) The Chair of the Public Service Commission or his or her designee;
(4) One member appointed by the Chairman of the Council committee with oversight of the Energy Office;

(5) One member appointed by the Chairman of the Council;
(6) One member, appointed by the Mayor, representing the renewable energy industry;

(7) One member, appointed by the Mayor, representing an environmental group;
(8) One member, appointed by the Mayor, representing the low-income community;

(9) One member, appointed by the Mayor, representing the building construction industry;

(10) One member, appointed by the Mayor, representing the building management industry;

(11) One member, appointed by the Mayor, representing the economic development community with particular expertise in the generation of green-collar jobs;

(12) One member, appointed by the Mayor, representing the electric company;
and

(13) One member, appointed by the Mayor, representing the gas company.

(c) Each member of the Advisory Board appointed by the Mayor or Council shall have demonstrable expertise in energy efficiency or renewable energy.

(d) Board members shall be entitled to reimbursement for expenses, including transportation, parking, mileage expenses, and conference admission fees incurred in the performance of official duties of the Board. The reimbursement shall be limited to \$2,000 per board member per year.

(e) Each member of the Board shall serve a 3-year term.

(f) The Mayor, Council Chairman, or Chairman of the Council committee with oversight of the Energy Office may replace any appointee at any time, but shall not replace the appointee to any individual position more than 2 times per calendar year.

(g) Any Board member who is an employee of the District government, or who serves on the Board as the representative of a particular organization, group, business, or other entity, including an elected official, shall be removed from the Board upon leaving the employment of the District government, elected office, or other entity, as applicable.

Sec. 204. Operations of the Sustainable Energy Utility Advisory Board.

(a) Within 45 days after the effective date of this act, the Mayor, Council Chairman, and Chairman of the Council committee with oversight of the Energy Office shall appoint the respective members of the Board.

(b) Within 120 days after the effective date of this act, the Board shall adopt rules and procedures governing its meetings and decisionmaking processes. The procedures shall include a formal means for members of the Board to submit their dissent from the recommendations of the Board with the comments of the Board provided to the DDOE.

(c) Within 210 days after the effective date of this act, the Board shall recommend to the Mayor performance benchmarks for the SEU contract based on the requirements set forth in section 201.

(d) Within 60 days after the submission of a draft RFP to the Board by the DDOE, pursuant to section 205(b), the Board shall submit to the DDOE and Council comments on the draft RFP.

(e) Within 60 days of the final submission of bids for the contract for the SEU, the Board shall submit to the DDOE and Council comments on the bids submitted for the SEU contract.

(f) During the term of a SEU contract, the Board shall meet quarterly with representatives from the SEU to monitor the performance of the SEU and programs operated by the SEU.

(g) The Board shall present a report on the progress of the SEU to the Council annually, with the 1st report being due 30 days after the conclusion of the 1st year of the SEU contract. The DDOE shall make this document available to the public on its website within 10 days of its submission to the Council.

(h) The Board may convene any subcommittees and working groups it considers appropriate without any limitation as to the membership of such groups.

(i) All Board meetings shall be subject to the open meeting provisions contained in section 742 of the District of Columbia Home Rule Act, effective December 24, 1973 (87 Stat. 831; D.C. Official Code §1-207.42).

(j) The DDOE shall provide staff resources to the Board and coordinate the involvement of staff from the Public Service Commission, Office of the People's Counsel, and any other appropriate agency or organization as necessary for the Board to fulfill its mandate.

Sec. 205. Implementation of the Sustainable Energy Utility contract.

(a) The District Department of the Environment shall be responsible for the procurement and monitoring of the contract for the SEU, including:

- (1) Drafting and revising the RFP for the SEU;
- (2) Staffing the Advisory Board;
- (3) Accepting the bids for the SEU contract;
- (4) Reviewing bids for the SEU contract; and

(5) All other responsibilities not otherwise expressly delegated to another entity for purposes of operation under this act.

(b) Within 180 days of the Board's recommendation of performance benchmarks for the SEU contract, pursuant to section 204(c), the DDOE shall prepare a draft RFP and submit the RFP to the Board for comments. In preparing the RFP, the DDOE shall consult with at least one person or organization that has had experience in the drafting of a RFP for the state-wide provision of end-user energy efficiency services, and shall hold an industry day to solicit the advice and input of private entities that may bid on the contract.

(c) Within 60 days of the receipt of the Board's comments on the RFP pursuant to section 204(d), the DDOE shall revise the RFP to the extent it considers necessary and shall issue the RFP for bids for such period as it considers appropriate.

(d) Within 30 days of the completion of the bidding period, the DDOE shall submit the bids to the Board. The Board shall have 30 days to recommend a bidder or, failing the submission of a bid considered adequate by the Board, recommend the modification of the RFP.

(e) If the DDOE determines that there is not a sufficient bid, DDOE shall modify the RFP, if necessary, and solicit additional bids.

(f) The DDOE shall maintain the brand name adopted pursuant to section 206.

(g) The DDOE shall administer the transition from one SEU to another.

(h) Prior to the execution of the contract with the SEU, \$1 million shall be allocated annually for the purposes of:

- (1) Preparing the RFP;
- (2) Staffing the Board;
- (3) Maintaining the brand name adopted pursuant to section 206; and
- (4) Operating the renewable energy rebate program established by section 209.

(i) After the execution of the contract with the SEU, 10% of the annual cost of the SEU contract shall be allocated to DDOE for administrative costs.

(j) The DDOE shall submit to the Council, within 30 days following the end of each fiscal year, a report detailing the expenditures of money from the SETF and EATF during the previous fiscal year. The DDOE shall make this document available to the public on its website within 10 days of its receipt.

(k) The DDOE shall commission, on an annual basis, an independent review of the performance and expenditures of the SEU and shall provide the results of this review to the Board and Council within 6 months of the conclusion of each year of the SEU contract.

Sec. 206. Sustainable energy branding.

(a) Within 90 days after the effective date of this act, the DDOE shall determine a brand name for the provision of energy efficiency and renewable energy services in the District of Columbia.

(b) Within 90 days after the effective date of this act, the DDOE shall establish and maintain a website for the brand, with a web address of the brand name bracketed by www. and .org, .com, or .gov. The purpose of this website shall be to serve as a portal that will provide information about every energy efficiency and renewable energy program available to District residents and businesses, including those offered by:

- (1) The DDOE;
- (2) The SEU;
- (3) The electricity or natural gas companies;
- (4) The federal government;
- (5) Nonprofit entities; and
- (6) Any contractors or subcontractors for any of the entities set forth in

paragraphs (1) through (5) of this subsection.

(c) The DDOE shall provide a phone number that shall serve as a hotline for the brand during normal business hours.

(d) The DDOE shall be responsible for working with providers of energy efficiency and renewable energy services to ensure that all information is accurate and up-to-date.

Sec. 207. Electric company.

(a) Within 90 days of the completion of the record on Formal Case 945, the Commission shall issue an order regarding the demand-side management programs proposed by the electric company.

(b) In considering Formal Case 945, the Commission shall seek to approve those programs that:

- (1) Can be implemented most quickly;
- (2) Take advantage of the electric company's frequent contact with customers;

and

(3) Do not replicate the efforts of sustainable energy programs operated by the DDOE.

(c) The programs that the Commission approves may be funded by the SETF under section 210.

(d)(1) Within 30 days after the execution of a contract with the SEU, the electric company shall disclose, or allow access to, the aggregate energy use data for every rate class for electric company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(2) The electric company shall ensure the privacy of any and all customer information, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(3) The electric company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data.

(e) Within one year after the effective date of this act, all energy efficiency and renewable energy programs administered by the electric company and funded by the SETF shall be operated in coordination with the brand managed by the DDOE. To effectuate this mandate, the electric company shall:

(1) Prominently display the name and logo of the brand name on all advertisements of the programs;

(2) Include the website and phone number for the DDOE brand on all advertisements of the programs;

(3) Post a link to the brand website on all company webpages related to energy efficiency and renewable energy; and

(4) Provide timely, accurate, and comprehensive information regarding its programs to the DDOE to permit DDOE to include such information in material provided to the public.

Sec. 208. Natural gas company.

(a) Within 30 days after the execution of a contract with the SEU, the gas company shall disclose, or allow access to, the aggregate energy use data for every rate class for gas company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(b) The gas company shall ensure the privacy of any and all customer information, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(c) The gas company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data.

Sec. 209. Renewable energy incentive program.

(a) There is established a rebate program that shall provide funding to the owners of the following new renewable energy generation systems in the District of Columbia:

- (1) Solar photovoltaic;
- (2) Solar thermal;
- (3) Geothermal;
- (4) Wind;
- (5) Biomass; and
- (6) Methane or waste-gas capture.

(b) The program shall provide funding in the following amounts:

- (1) The amount of \$3 for each of the first 3,000 installed watts or watt-equivalents of capacity;
- (2) The amount of \$2 for each of the next 7,000 installed watts or watt-equivalents of capacity; and
- (3) The amount of \$1 for each of the next 10,000 installed watts or watt-equivalents of capacity.

(c) The program shall be administered by DDOE and shall operate until the end of fiscal year 2012.

(d) The program shall receive funding from the SETF as set forth in section 210.

(e) DDOE shall allocate ½ of the funds available annually every 6 months.

(f) DDOE shall only fund systems installed in the District of Columbia.

(g) Applications shall be considered and approved or rejected in the order in which they are received. Rebate payments shall be awarded immediately upon receipt by DDOE of the invoice for the purchase of the renewable energy generating equipment.

(h)(1) An owner shall have 6 months from the date of the approval of its rebate application to complete the installation.

(2) DDOE shall visit each project site to verify the completion of each project upon the earlier of 14 days of notification by the owner of the completion of the project or 6 months after DDOE approves the project for funding. If the project has not been completed, the DDOE may, in its discretion, allow the owner up to an additional 6 months to complete the installation. If the owner fails to complete the installation within the period allowed under paragraph (1) of this subsection, it shall return the amount of the rebate within 30 days after the expiration of such period. If the owner fails to return the rebate money within 30 days after the expiration of such period, this subsection shall constitute a lien on all of the property, real or personal, of the owner to secure repayment of the rebate.

(i) Within 90 days after the effective date of this act, the DDOE shall post, and update monthly, on the website required by section 206, information about the rebate program, including:

- (1) The date that funds shall be made available;
- (2) A printable copy of the rebate application determined by DDOE;

(3) The amount of rebate funds remaining to be awarded; and

(4) The amount of rebate funds awarded.

(j) The application form for the rebate shall be substantially the same as the application for the analogous program in use in Maryland as of the date of the program.

(k) Within 90 days after the effective date of this act, the DDOE shall define a method for converting the heating and cooling capacity of solar thermal and geothermal systems to kilowatt equivalents to permit such systems to qualify for rebates under this program.

(l) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to modify the incentive program as market conditions dictate.

(m) DDOE may pay for the installation of monitoring and communications systems, for collecting generation data from renewable energy systems funded by the rebate program and transmitting it to a designated web site; provided, that the system owner shall permit the DDOE to make the data publicly accessible on the DDOE website.

Sec. 210. Sustainable Energy Trust Fund.

(a)(1) There is established as a nonlapsing fund the Sustainable Energy Trust Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The Sustainable Energy Trust Fund shall be funded by an assessment on the natural gas and electric companies under subsection (b) of this section and from the sale of credits associated with the Regional Greenhouse Gas Initiative or any successor program. All funds collected from these sources shall be deposited into the SETF and shall be disbursed by the Fiscal Agent.

(2) All funds deposited into the Sustainable Energy Trust Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) There is imposed upon the natural gas company an assessment calculated on sales on a per-therm basis as follows:

(A) The amount of \$.011 in fiscal year 2009;

(B) The amount of \$.012 in fiscal year 2010;

(C) The amount of \$.014 in fiscal year 2011 and each year thereafter.

(2) There is imposed upon the electric company an assessment calculated on sales on a per-kilowatt hour basis as follows:

(A) The amount of \$.0011 in fiscal year 2009;

(B) The amount of \$.0013 in fiscal year 2010;

(C) The amount of \$.0015 in fiscal year 2011 and each year thereafter.

(3) The assessments shall be paid to the Fiscal Agent before the 21st day of each month, beginning in November, 2008, or the 1st full month following the effective date of this act, whichever is later, for sales for the preceding billing period.

(4) The assessment shall be applied to the sale of every kilowatt hour and therm in the District, except to those sold to residents participating in the Residential Essential Service or Residential Aid Discount programs operated by DDOE.

(5) Nothing in this title shall be construed to prohibit the electric company or natural gas company from recovering the assessment imposed under paragraphs (1) and (2) of this section, respectively, in its rates as a surcharge on customers' bills.

(c) The funds in the Sustainable Energy Trust Fund shall be used solely to fund:

(1) The SEU contract in the following amounts:

(A) The amount of \$7.5 million in the 1st year of the contract;

(B) The amount of \$15 million in the 2nd year of the contract;

(C) The amount of \$17.5 million in the 3rd year of the contract; and

(D) The amount of \$20 million in the 4th and each subsequent year of the initial contract, and for each year of any subsequent contract;

(2) The administration of the SEU contract by DDOE, on an annual basis, equal to 10% of the payments under the contract in that fiscal year;

(3) An independent review of the performance of the SEU under section 205(1) in the amount of \$100,000 annually;

(4) The activities of the SEU Advisory Board under section 203 in the amount of \$26,000 annually;

(5) Existing electricity programs in the amount of \$3.545 million annually for fiscal years 2009 through 2011;

(6) Temporary electricity programs in the amount of \$916,000 for fiscal year 2009;

(7) Existing natural gas programs in the amount of \$3 million annually for fiscal years 2009 through 2011;

(8) Renewable energy incentive program under section 209 in the amount of \$2 million annually for fiscal years 2009 through 2012, of which up to \$20,000 annually may be used to pay for the installation of monitoring and communications systems; and

(9) Energy efficiency programs administered by the electric company under section 207 in the amount of \$6 million annually for fiscal years 2009 through 2011.

(d) If, at the beginning of a fiscal year, the fund balance of the SETF exceeds the projected annual cost of all programs pursuant to subsection (c) of this section in that fiscal year by at least \$10 million, the Fiscal Agent shall suspend payment and the collection of the SETF assessment, until such excess is estimated by the Fiscal Agent to be \$5 million.

(e) The DDOE shall submit to the Council a quarterly report detailing:

(1) Expenditures from the SETF; and

(2) The performance of SETF programs operated by the DDOE.

Sec. 211. Energy Assistance Trust Fund.

(a)(1) There is established as a nonlapsing fund the Energy Assistance Trust Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The Energy Assistance Trust Fund shall be funded by an assessment on the natural gas and electric companies under subsection (b) of this section. All funds collected from these sources shall be deposited into the EATF and be disbursed by the Fiscal Agent.

(2) All funds deposited into the Energy Assistance Trust Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) There is imposed upon sales of the gas company an assessment of \$.006 per therm.

(2) There is imposed upon the sales of the electric company an assessment of \$.0004 per-kilowatt hour.

(3) The assessments shall be paid to the Fiscal Agent before the 21st day of each month, beginning in November, 2008, or the first full month following the effective date of this act, whichever is later, for sales for the preceding billing period.

(4) The assessment shall be applied to the sale of every kilowatt hour and therm in the District, except sales to residents participating in the Residential Essential Service or Residential Aid Discount programs operated by DDOE.

(5) Nothing in this title shall be construed to prohibit the electric company or natural gas company from recovering the assessment imposed under paragraphs (1) and (2) of this section, respectively, in its rates as a surcharge on customers' bills.

(c) The Energy Assistance Trust Fund shall be used solely to fund:

(1) The existing low-income programs in the amount of \$3.3 million annually;
and

(2) The Residential Aid Discount subsidy in the amount of \$3 million annually.

(d) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to modify the assessments under subsection (b) of this section and the programs funded by the EATF.

(e) The DDOE shall submit to the Council a quarterly report detailing:

(1) Expenditures from the EATF; and

(2) The performance of EATF programs operated by the DDOE.

Sec. 212. Conforming amendments.

(a)(1) Section 114 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1514), is repealed.

Repeal
§ 34-1514

(2) One-half of the funds remaining in the Reliable Energy Trust Fund shall be transferred to the Sustainable Energy Trust Fund and ½ of the funds shall be transferred to the Energy Assistance Fund.

(b)(1) Section 101 of the Omnibus Utility Amendment Act of 2004, effective April 12, 2005 (D.C. Law 15-142; D.C. Official Code § 34-1651), is repealed.

Repeal
§ 34-1651

(2) One-half of the funds remaining in the Natural Gas Trust Fund shall be transferred to the Energy Assistance Trust Fund and ½ of the funds shall be transferred to the Sustainable Energy Trust Fund.

Sec. 213. Solar and Renewable Home Improvement Financing Proposal.

(a) Within 90 days after the effective date of this act, the Commission shall open an investigation into mechanisms to make long-term affordable financing available to energy consumers to purchase:

(1) Renewable energy generating systems, including solar thermal and solar photovoltaic panels and geothermal heating and cooling systems; and

(2) Home and business improvements that increase the energy efficiency of buildings, including weatherizing, adequate insulation, efficient doors and windows, and central air conditioning.

(b) The Commission's investigation shall include the means by which the electric and gas companies' billing systems can be used to collect payments from individuals to purchase renewable energy generating systems and make energy efficiency improvements to homes and businesses.

(c) Within 60 days after the close of the record of the investigation, the Commission shall issue a report, including findings, on the feasibility of the implementation of the proposal set forth in subsections (a) and (b) of this section.

TITLE III. RENEWABLE PORTFOLIO STANDARDS.

Sec. 301. The Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431 *et seq.*), is amended as follows:

(a) Section 3(14)(D.C. Official Code § 34-1431(14)) is amended to read as follows:

“(14) “Solar energy” means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy, that is collected, generated, or stored for use at a later time.”.

Amend
§ 34-1431

(b) Section 4 (D.C. Official Code § 34-1432) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) For nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year, the solar systems shall be rated and certified by the SRCC and the energy output shall be determined by an onsite energy meter that meets performance standards established by OIML.

Amend
§ 34-1432

“(2) For nonresidential solar heating, cooling, or process heat property systems producing or displacing 10,000 or less than 10,000 kilowatt hours per year, the solar systems shall be rated and certified by the SRCC and the energy output shall be determined by the SRCC OG-300 annual system performance rating protocol applicable to the property, by the SRCC OG-100 solar collector rating protocol, or by an onsite energy meter that meets performance standards established by OIML; and

“(3) For residential solar thermal systems, the system shall be certified by the SRCC and the energy output shall be determined by the SRCC OG-300 annual rating protocol or by an onsite energy meter that meets performance standards established by OIML.”.

(2) Subsection (c) is amended to read as follows:

“(c) The renewable energy portfolio standard shall be as follows:

“(1) In 2008, 2% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.011% from solar energy;

“(2) In 2009, 2.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.019 % from solar energy;

“(3) In 2010, 3% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.028% from solar energy;

“(4) In 2011, 4% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.04% from solar energy;

“(5) In 2012, 5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.07% from solar energy;

“(6) In 2013, 6.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.10% from solar energy;

“(7) In 2014, 8% from tier one renewable sources; 2.5% from tier two renewable sources, and not less than 0.13% from solar energy;

“(8) In 2015, 9.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.17% from solar energy;

“(9) In 2016, 11.5% from tier one renewable sources, 2% from tier two renewable sources, and not less than 0.21% from solar energy;

“(10) In 2017, 13.5% from tier one renewable sources, 1.5% from tier two renewable sources, and not less than 0.25% from solar energy;

“(11) In 2018, 15.5% from tier one renewable sources, 1% from tier two renewable sources, and not less than 0.30% from solar energy;

“(12) In 2019, 17.5% from tier one renewable sources, 0.5% from tier two renewable sources, and not less than 0.35% from solar energy; and

“(13) In 2020, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 0.4% from solar energy.”.

(3) A new subsection (e) to read as follows:

“(e) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from

solar energy systems interconnected to the distribution grid serving the District of Columbia. Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia, can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia.”.

(c) Section 6(c) (D.C. Official Code § 34-1434(c)) is amended as follows:

Amend
§ 34-1434

(1) Paragraph (1) is amended to read as follows:

"(1) Five cents for each kilowatt-hour of shortfall from required tier one renewable sources;”.

(2) Paragraph (3) is amended to read as follows:

"(3) Fifty cents in 2009 until 2018 for each kilowatt-hour of shortfall from required solar energy sources.”.

(3) New paragraphs (4) and (5) are added to read as follows:

"(4) Beginning on March 1, 2010, and annually thereafter, energy companies that sell electricity in the District of Columbia shall file an energy portfolio report for the preceding calendar year with DDOE, which shall include a breakdown of the average cost per kilowatt hour of electricity that the company sold in the District of Columbia by source of generation, to include coal, gas, oil, nuclear, solar, land-based wind, off-shore wind, and other renewable sources. The breakdown of cost should also include the average capital cost per kilowatt, as well as the average fixed and variable costs associated with operations and maintenance per megawatt.

"(5) Beginning in 2018, and every year thereafter, the DDOE shall review the data found in the energy portfolio reports, and recommend to the Council a revised annual compliance fee. The proposed alternative compliance fee shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, and legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed alternative compliance fee by resolution within this 45-day review period, the proposed rules shall be deemed approved.”.

(d) Section 8 (D.C. Official Code § 34-1436) is amended by adding a new subsection (f) to read as follows:

Amend
§ 34-1436

"(f) The DDOE shall provide to the Council a quarterly report detailing:

"(1) Expenditures from the Renewable Energy Development Fund; and

"(2) The performance of programs or projects funded by the Renewable Energy Development Fund.”.

Sec. 302. Section 2(a)(15)(A) of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501(a)(15)(A)) is amended by striking the phrase “100 kilowatts” and inserting the phrase “1000 kilowatts” in its place.

Amend
§ 34-1501

TITLE IV. PUBLIC SERVICE COMMISSION AND THE OFFICE OF THE PEOPLE’S COUNSEL.

Sec. 401. Section 8 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; codified in scattered sections of the Title 34 of the District of Columbia Official Code), is amended by adding a new paragraph (96A) to read as follows:

"Par. (96A) In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality."

Sec. 402. Section 1 of AN ACT To provide a People’s Counsel for the Public Service Commission in the District of Columbia, and for other purposes, approved January 2, 1975 (88 Stat. 1975; D.C. Official Code § 34-804), is amended by adding a new subsection (e) to read as follows:

Amend § 34-804

"(e) In defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office shall consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality."

TITLE V. ENERGY BENCHMARKING REQUIREMENTS FOR PRIVATE AND GOVERNMENT BUILDINGS.

Sec. 501. The Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234, D.C. Official Code § 6-1451.01 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 6-1451.02) is amended by adding a new subsection (a-1) to read as follows:

Amend § 6-1451.02

“(a-1)(1) Beginning 90 days after the effective date of the Clean and Affordable Energy Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-492), 10 buildings owned or operated by the District of Columbia shall be benchmarked using the Energy Star® Portfolio Manager benchmarking tool, and the results made available to the public on the Internet through the DDOE website.

“(2) Beginning one year after the effective date of the Clean and Affordable Energy Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-492), all buildings owned or operated by the District or any of its instrumentalities shall be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool; provided, that the building has at least 10,000 square feet of gross floor area and is of a building type for which Energy Star® benchmarking tools are available. Benchmark and Energy Star® statements of energy performance for each building shall, within 60 days of being generated, be

made available to DDOE, which shall then make them accessible to the public via an online database.”.

(b) Section 4 (D.C. Official Code § 6-1451.03) is amended as follows:

Amend
§ 6-1451.03

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) All privately-owned buildings shall be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool as designated by the schedule in paragraph (2) of this subsection; provided, that the buildings are of a building type for which Energy Star® tools are available. Benchmark and Energy Star® statements of energy performance for each building shall, by January 1 of the following year, be made available to DDOE. DDOE shall, upon the receipt of the 2nd annual benchmarking data for each building, make the data accessible to the public via an online database.

“(2) The schedule shall be as follows:

“(A) All buildings over 200,000 square feet of gross floor area beginning in 2010 and thereafter;

“(B) All buildings over 150,000 square feet of gross floor area beginning in 2011 and thereafter;

“(C) All buildings over 100,000 square feet of gross floor area beginning in 2012 and thereafter; and

“(D) All buildings over 50,000 square feet of gross floor area beginning in 2013 and thereafter.”

(2) A new subsection (b-1) is added to read as follows:

“(b-1) A project that has submitted the 1st construction building construction permit after January 1, 2012, for new construction or substantial improvement shall, prior to construction, estimate its energy performance using the Energy Star® Target Finder Tool and be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool; provided, that the building has 50,000 square feet of gross floor area or more and is of a building type for which Energy Star® tools are available. Benchmark and Target Finder scores and Energy Star® statements of energy performance for each building shall, within 60 days of being generated, be made available to DDOE, which shall make the data accessible to the public via an online database.”.

TITLE VI. RENEWABLE ENERGY STUDY.

Sec. 601. Renewable energy study.

Within one year after the effective date of this act, the Mayor shall commission a study to determine the economic, legal, and technical viability of the District government pursuing a new large-scale wind energy project through public financing or private financing.

Sec. 602. Applicability.

This title shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

TITLE VII. SUBMETERING PROVISIONS.

Sec. 701. Definitions.

For the purposes of this title, the term:

(1) "Building" means all of the individual units served through the same utility-owned meter within a property defined as Class 2 Property under D.C. Official Code § 47-813(c-6).

(2) "Building owner, operator, or manager" means any person or entity responsible for the operation and management of a building.

(3) "Commission" means the Public Service Commission.

(4) "Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.

(5) "Electricity supplier" shall have the same meaning as in section 101(17) of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501(17).)

(6) "Natural gas supplier" shall have the same meaning as in section 3(12) of the Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code § 34-1671.02(12)).

(7) "Nonresidential rental unit" means real property leased for commercial purposes.

(8) "Owner-paid areas" means the portion of the real property for which the owner bears financial responsibility for energy costs, which portions include areas outside individual units or in owner-occupied or shared areas.

(9) "Public utility," "utility," or "utility company" shall have the same meaning as in the third unnumbered paragraph, beginning "the term "public utility" section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-214).

(10) "Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located.

Sec. 702. Commission to promulgate rules, including standards.

(a) The Commission shall promulgate rules, including standards, under which any owner, operator, or manager of a building which is not individually metered for electricity or gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating:

(1) The cost of electrical or gas consumption for each nonresidential rental unit;
and

(2) Electrical or gas demand and customer charges made by the utility and electricity and natural gas supplier.

(b) In addition to other appropriate safeguards for the tenant, the rules shall require that a building owner, operator, or manager:

(1) Shall not impose on the tenant any charges over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company, the electricity supplier, and natural gas supplier to the building owner, operator, or manager, including any sales, local utility, or other taxes, if any; provided, that additional service charges permitted by section 703 may be collected to pay administrative costs and billing; and

(2) Shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours.

(c)(1) For the purposes of Commission enforcement of the rules adopted under this section, building owners, operators, or managers shall be treated as public utilities for the purposes of making a complaint under section 8(47) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 984; D.C. Official Code § 34-917), and any rules governing the making of complaints adopted under section 8(32) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 982; D.C. Official Code § 34-902).

(2) All submetering equipment shall be subject to the same rules, including standards, established by the Commission for accuracy, testing, and recordkeeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of section 8(57) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 987; D.C. Official Code § 34-303).

(3) All energy allocation equipment shall be subject to rules, including standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each nonresidential rental unit.

(4) Violations of Commission rules and orders issued under this section shall be subject to the penalty provisions set forth in section 8(87) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 992; D.C. Official Code § 34-708), and section 1 of AN ACT To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia, approved April 5, 1939 (53 Stat. 569; D.C. Official Code § 34-731).

(d) In implementing this section, no building owner, operator, or manager shall be considered a public utility engaged in the business of distributing or reselling electricity or gas except as provided in subsection (c) of this section. The building owner, operator, or manager may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the building.

Sec. 703. Energy submetering and energy allocation equipment.

(a) Energy submetering equipment or energy allocation equipment may be used in a building if it is authorized in the rental agreement or lease for the nonresidential rental unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the Commission pursuant to subsection (b) of this section.

(b)(1) If energy submetering equipment or energy allocation equipment is used in any building, the building owner, operator, or manager shall bill the tenant for electricity or natural gas for the same billing period as the utility, the electricity supplier, or the natural gas supplier serving the building, unless the rental agreement or lease expressly provides otherwise.

(2) A late payment charge shall not be imposed on all amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of 1%, and an additional late payment charge at the rate of 1 1/2 % on the remaining unpaid balance per billing month thereafter.

(c) Energy allocation equipment shall be tested periodically under Commission rules by the building owner, operator, or manager. Upon the request by a tenant, the building owner, operator, or manager shall test the energy allocation equipment without charge. The test shall be conducted without charge to the tenant and shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 business days after the completion of the test.

(d) A building owner, operator, or manager shall maintain adequate records regarding energy submetering equipment or energy allocation equipment. A tenant may inspect and copy the records for the nonresidential unit during reasonable business hours at a convenient location within the building. The building owner, operator, or manager may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

(e) Notwithstanding any enforcement action undertaken by the Commission pursuant to its authority under section 702, tenants and owners, operators, or managers shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or section 703.

TITLE VIII. APPLICABILITY; EFFECTIVE DATE; AND FISCAL IMPACT STATEMENT.

Sec. 801. Applicability.

This act shall apply on the later of October 1, 2008, or the effective date of this act.

Sec. 802. Fiscal impact statement.

The Council adopts the July 1, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 803. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia