



# SUGGESTED STATE LEGISLATION

Supplement

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Developed by the  
Committee on Suggested State Legislation  
The Council of State Governments

STATE ENERGY ACTIONS







**SUGGESTED  
STATE  
LEGISLATION**

**2008 Volume**

**Supplement**

**State Energy Actions**

Developed by the  
Committee on Suggested State Legislation

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# Foreword

The Council of State Governments (CSG) is pleased to bring you this Supplement edition to the 2008 Suggested State Legislation, a valued series of compilations of draft legislation from the states about topics of current interest and importance to the states. The CSG Committee on Suggested State Legislation compiled this supplement as part of Oklahoma Governor Brad Henry's initiative as the 2007 CSG President, which focused on alternative, sustainable energy.

That initiative addressed America's need to diversify its energy sources and the role states can plan to make that happen. This Suggested State Legislation "Supplement" contains articles, Suggested State Legislation drafts, recent state legislation, and state legislation from previous SSL dockets, which address a variety of state policies to help generate power from renewable sources and steps the states and consumers alike can take to conserve energy.

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**SUGGESTED STATE LEGISLATION SUPPLEMENT  
STATE ENERGY ACTIONS**

**I. ABOUT THIS SUPPLEMENT** - (*Includes SSL drafts, recent state legislation, and legislation from recent SSL dockets*)

**II. ENERGY TRENDS – OVERVIEW, STATE SOLUTIONS** (Excerpted from *Resource Management: Sustaining Our Future-Trends in America: Navigating Turbulence to Success: 2005*)

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## ABOUT THIS SUPPLEMENT

“The reality of periodic oil shortages, erratic fluctuations in gas prices, threats to our economy and security, and growing environmental concerns illustrate the need for immediate action.”

-- Gov. Brad Henry, CSG President, 2007

As our nation’s energy needs expand, and competition for resources from foreign governments continues to grow, low-cost oil reserves will diminish and become more difficult to discover and bring to market. In addition, policymakers have highlighted the economic, environmental and national security consequences of relying on oil, natural gas and coal for the majority of our electricity generation and liquid fuel needs. National attention therefore has focused on achieving sustainable energy.

However, achieving sustainable energy is not without its challenges. Renewable energy sources currently supply only 6 percent of our energy needs, and the United States imports 60 percent of its oil from foreign sources, many of which are hostile to our nation. There are, however, steps state and local leaders can take to reduce our dependence on traditional sources of energy and promote clean, secure, and economically viable energy.

But to achieve these goals policymakers must take a multifaceted approach that stresses the importance of sustainable energy to their constituents and promotes renewable energy, energy efficiency, the clean use of traditional sources and conservationism.

The CSG Committee on Suggested State Legislation produced this Supplement to the 2008 Volume of Suggested State Legislation as part of Gov. Henry’s initiative as President of the The Council of State Governments in 2007. Generally, the legislation in this supplement:

- addresses the need for a balanced energy portfolio,
- explores the best practices in achieving abundant, economic, clean, and secure energy in the 21st century, and
- highlights how state policymakers promote sustainable energy within their communities.

Legislative summaries, “Statements,” and “Notes” in this Supplement are generally excerpted from state legislative bill digests, legislative staff reports, and related public material.



## **ENERGY TRENDS - OVERVIEW, STATE SOLUTIONS**

The prevalent view among experts is that the world could reach peak oil production capacity in the next 10 to 40 years. Likewise, natural gas supplies are projected to last about 50 years. Given these predictions and the push to reduce dependence on foreign energy sources, alternative fuels such as ethanol, biodiesel and hydrogen are gaining prominence.

Compared with the rest of the world, people in the United States use large amounts of energy, electronic devices, food, paper and natural resources. However, especially as gas prices increase in this country, Americans are starting to pay more attention to energy conservation.

States play a central role in managing natural resources and protecting the environment, including promoting energy conservation and renewable energy. Indeed, many states are taking action to promote alternatives to oil and other fossil fuels. Several states offer incentive programs to encourage the purchase of alternative fuel vehicles, the conversion of vehicles to run on biofuels, and the installation and operation of fueling facilities to serve these vehicles. States are looking at alternative energy not only as a power source, but also to fuel economic development. However, as this industry grows, so does the need for best practices, model solutions and incentives.

### **STATE SOLUTIONS**

States' Options to Encourage Energy Conservation – (Excerpted from *Resource Management: Sustaining Our Future - Trends in America: Navigating Turbulence to Success: 2005*)

States are promoting energy conservation in a number of ways, including developing standards to increase the energy efficiency of appliances and lighting. In addition, some states are concentrating on increasing the efficiency of whole buildings through their green building initiatives.

#### Promoting Energy Efficiency

New York enacted the Appliance and Equipment Energy Efficiency Standards Act of 2005. The measure establishes energy efficiency standards for appliances not included in the National Appliance Energy Conservation Act of 1987. New York's law sets energy efficiency standards for ceiling fans and light kits, furnace air handlers, commercial washing machines, commercial refrigerators, freezers and icemakers, floor lamps, unit heaters, reflector lamps, large packaged air conditioning equipment and other commercial and household items. The Act also calls on the state to develop energy efficiency standards for consumer products while they are in standby mode.<sup>127</sup>

California's law focuses on lighting. Beginning in October 2005, all new homes built in the state must meet new rules that save at least 30 percent of an average home's lighting costs. This will be accomplished by requiring that fluorescent light fixtures provide at least half the light in kitchens. Also, bathrooms, garages, laundry rooms and utility rooms must be lit by fluorescent lights or incandescent lights with motion sensors.<sup>128</sup>

Also, the California Public Utilities Commission recently agreed to spend \$2 billion over the next three years to provide consumer rebates of up to \$600 for Energy Star appliances, Energy audits, design assistance and equipment rebates designed to increase energy efficiency. State officials hope for a \$5 billion decrease in energy costs for homes and businesses and to eliminate the need to construct three power plants.<sup>129</sup>

Some states are combining efficiency efforts with an emphasis on renewable energy. In July 2005, Illinois adopted a Sustainable Energy Plan that calls for energy efficiency and

renewable energy portfolio standards. The energy efficiency standard requires utilities to develop and implement programs that reduce electricity consumption 10 percent by 2008 and 25 percent by 2015. Utility companies must assist their customers in investing in energy-saving equipment and other technologies.<sup>130</sup>

In April 2005, Iowa Gov. Thomas Vilsack issued an executive order mandating state agencies to increase their operational energy efficiency and renewable energy use. The executive order requires state facilities to reduce their energy use 15 percent by 2010 through energy efficiency measures. It also calls for the procurement of hybrid or alternative-fuel vehicles for non-law enforcement state vehicles.<sup>131</sup>

## Promoting Green Buildings

Some states are leading by example in terms of energy-efficient building. The headquarters for New York's Department of Environmental Conservation, for example, is designed for optimal energy performance, and is expected to cost approximately 40 percent less per year to operate than a typical building its size. More than half the cost of materials used in the construction was spent on recycled supplies. And 20 percent of the materials were manufactured within 500 miles of the site, which cut down on emissions released while transporting them.

The building that houses California's Environmental Protection Agency is also a model of green building principles. It maximizes natural light and uses special glass to conserve energy, and employs super high efficiency/low-mercury lighting tubes and perimeter light sensors that dim the lights in bright sunlight. The building uses solar panels, low-flow toilets, and special paints and carpets that minimize or eliminate harmful emissions. Among other features, it has 25 electric vehicle charging stations and the capacity to add a natural gas powered fuel cell.

The California Public Utilities Commission approved in September 2005 funding of \$230 million annually for the next three years for a Green Building Initiative to reduce energy consumption in government buildings by 20 percent.<sup>132</sup>

Washington passed a law in 2005 mandating that any new construction or remodeling of state buildings of more than 5,000 square feet must achieve Silver LEED (Leadership in Energy and Environmental Design) ratings.<sup>133</sup> Various types of laboratory facilities, hospitals, pumping stations, and research facilities are the only exemptions. The Silver LEED rating is the third highest rating for high-performance sustainable buildings, after Platinum and Gold.

New York's Green Buildings Initiative encourages building owners and developers to design, construct and operate buildings that are more in harmony with the environment. Executive Order 111 further builds on this initiative by directing state agencies to be more energy efficient and environmentally aware by setting new energy efficiency goals and practices, following guidelines for the construction of green buildings, procuring energy efficient products, purchasing power from renewable sources, procuring clean fuel vehicles and involving the participation of other governmental entities. Additionally, New York is among the first states in the nation to offer a tax incentive program for developers and builders of environmentally friendly buildings.<sup>134</sup>

New York's Green Building Tax Credit Program was signed into law in 2000. Since its inception, the program has issued \$25 million in tax credits for seven buildings. The law was amended in 2005 to provide an additional \$25 million in funding for up to \$2 million in tax per qualified building.<sup>135</sup>

As cited in *Resource Management: Sustaining Our Future- Trends in America: Navigating Turbulence to Success: 2005 (CSG)*

<sup>127</sup>Gov. George Pataki Press Release. 2005. “Governor signs law improving energy efficiency of appliances and electronic equipment” [online]. [Cited 20 October 2005]

<sup>128</sup>California Energy Commission. 2004. “2005 Building Energy Efficiency Standards” [online]. [Cited 20 October 2005]

<sup>129</sup>US Department of Energy. 2005. “California Approves \$2 Billion for Energy Efficiency” [online]. EERE Network News, 2005. [Cited 20 October 2005]

<sup>130</sup>Illinois Commerce Commission. 2005. “Resolution to Adopt Sustainable Energy Plan for Illinois” [online]. [Cited 20 October 2005]

<sup>131</sup>Gov. Thomas Vilsack. 2005. “State of Iowa Executive Order Number Forty-One” [online]. [Cited 20 October 2005]

<sup>132</sup>US Department of Energy. 2005. “California Approves \$2 Billion for Energy Efficiency” [online]. EERE Network News, 2005. [Cited 20 October 2005]

<sup>133</sup>Gov. Christine Gregoire Press Release. 2005. “Gov. Gregoire signs bill for first-in-nation environmental building standards” [online]. [Cited 20 October 2005]

<sup>134</sup>State submission from Ed Ingoldsby, New York State Division of the Budget.

<sup>135</sup>New York State Department of Environmental Conservation. “New York State Green Building Initiative” [online]. [Cited 20 October 2005]

## **CSG ACTION**

CSG's 16-state Southern Legislative Conference adopted the following policy positions about energy at its July 2007 meeting in Williamsburg, Virginia:

### **1. POLICY POSITION REGARDING FEDERAL RENEWABLE PORTFOLIO STANDARDS**

#### **Background**

The production of electricity using renewable energy sources has become more commonplace recently. In fact, over 20 states and the District of Columbia have adopted renewable portfolio standards (RPS) programs based on their available resources. Nonetheless, there is increasing pressure to adopt mandatory renewable portfolio standards at the federal and state level. Despite current state RPS activity, Congress is considering adopting a federal RPS mandate.

A federal mandate fails to recognize the significant differences among the states in terms of available and cost-effective renewable energy resources, and the impact on consumers' electric bills.

Not all states have abundant traditional renewable energy resources or have them located close enough to the load to render them cost effective. This is especially true in the South. Moreover, some traditional resources such as wind face resistance because there is frequent opposition to building huge wind turbines, concerns over cost impacts for additional transmission needed and reliability concerns. As a result, wind energy projects are delayed and, in some cases, cancelled. In other cases, the availability of other renewable resources, such as geothermal, are even more limited.

The states that have adopted RPS programs not only have more resources available to them, they have also included resources in their definitions of eligible renewable resources that are not included in the mandate currently being discussed in Congress. Such resources include power produced from solid waste, hydroelectric facilities, and coal waste. Some states even include expenditures on demand-side management or alternative compliance payments.

#### **Recommendation**

Because availability and cost-effectiveness of renewable energy resources vary widely among the states and regions, decisions regarding RPS programs should be left to the states, and available and cost-effective renewable energy resource options should be considered.

The Southern Legislative Conference of The Council of State Governments urges Congress to expressly allow each individual state to determine how renewable energy can be reliably and cost effectively utilized within that state and forwards its position to the President of the United States and the Secretary of Energy.

### **2. POLICY POSITION IN SUPPORT OF NUCLEAR POWER AND REFORM AND FULL FUNDING OF THE YUCCA MOUNTAIN REPOSITORY PROGRAM**

#### **Background**

Currently, the United States generates 20 percent of its electricity from nuclear power. In the South, nuclear power makes up 19.3 percent of energy generation. New emission-free nuclear power plants are essential to help meet growing demand for electricity and to preserve the fuel and technology diversity that is the strength of the U.S. electric supply system. No other source of electricity can provide the combined benefits of nuclear energy: large amounts of reliable and low-cost electricity, long-term price stability, and clean air benefits.

Nuclear power plants generate electricity to serve one in five homes and businesses in the United States. The U.S. Department of Energy (DOE) forecasts that electricity demand in the United States will increase by 50 percent by 2025. The South is the fastest growing region of the country. According to the Nuclear Regulatory Commission, 24 of the 25 expected applications for new reactor licenses will be in the 16 member states of the Southern Legislative Conference.

In 2002, the United States Congress approved, and the President signed into law, legislation establishing Yucca Mountain in Nye County, Nevada, as the site for the development of a repository for the disposal of spent nuclear fuel (SNF) and high-level waste (HLW). Nationally, there are 121 sites in 39 states which are currently storing SNF and HLW destined for geologic disposal at Yucca Mountain. Regionally, there are 45 reactors at 25 sites, in 13 of the 16 Southern Legislative Conference (SLC) states. According to 2002 population figures, in those states, 24.4 million people live within 50 miles of a nuclear power plant.

The Nuclear Waste Policy Act of 1982 requires the DOE to build and operate a specially designed disposal facility for SNF and HLW from commercial and defense activities. The federal Nuclear Waste Fund (NWF) was established by Congress in 1982 and is funded by electricity customers to pay for the disposal of used nuclear fuel from commercial power plants. Since 1983, electricity consumers have committed more than \$26 billion in fees to the NWF. Congress's current budgetary process is taking consumer money from the NWF and using it for other, unrelated programs. The federal government defaulted on its obligation to begin moving used fuel from power plants in 1998. In addition, over the past 11 years, Congress has provided \$1.23 billion less than the program has requested. Recently, the U.S. House of Representatives approved full funding of \$494.5 million for the Yucca Mountain in FFY 2008. The Senate Appropriations Committee approved \$446.1 million for FFY 2008, almost \$50 million less than what was requested by the DOE.

While the government remains in default, electricity consumers are paying millions of dollars for additional on-site storage in addition to the \$26 billion already committed to the repository program.

### Recommendation

The Southern Legislative Conference of The Council of State Governments (SLC) urges federal and state policymakers to espouse regulatory, legislative, and fiscal policies that support:

- reaffirmation of support for the development and funding of Yucca Mountain, as the repository for the disposal of high-level waste and spent nuclear fuel;
- the review of the 77,000 metric ton limit to allow use of the mountain's full capacity, as determined by technical experts;
- support management of land in and around the repository that is most advantageous to the proper operation of the Yucca Mountain program;
- mitigation of regulatory risks associated with the deployment of new advanced reactors;
- investment stimulus to support new nuclear plant construction;
- funding for nuclear energy research and development, including engineering and design work for advanced reactor designs; and
- reform of the Nuclear Waste Fund by restoring the fund to its original budgetary status; thus ensuring that fees paid by electricity customers are used solely to pay for the used fuel management program.

The Southern Legislative Conference of The Council of State Governments forwards its position to the President of the United States, members of Congress and the Secretary of Energy.

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# **ENERGY SUPPLY/GENERATION**

# Renewable Energy Standards

## Alternative Energy Portfolio Standards (2006 SSL)

This Act provides for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies and for the powers and duties of the state public utility commission.

The Act establishes a two-tiered portfolio standard to ensure that in 15 years, a percentage of all of the energy generated in the state comes from clean and efficient sources. Tier I requires a percentage of electricity sold at retail in the state to come from traditional renewable sources such as solar photovoltaic energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, biomass energy or coal-mine methane. Part of the Tier I electricity must come from solar photovoltaic cells. Tier II requires some of the electricity to be generated from waste coal, distributed generation systems, demand-side management, large-scale hydropower, municipal solid waste, generation from pulping and wood manufacturing byproducts, and integrated combined coal gasification technology.

Submitted as:

Pennsylvania

[SB 1030](#)

Status: Enacted into law in 2004.

### Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “The Alternative Energy Portfolio  
2 Standards Act.”

3  
4           Section 2. [*Definitions.*] As used in this Act:

5           A. “Alternative energy credit” means a tradable instrument that is used to establish, verify  
6 and monitor compliance with this Act. A unit of credit shall equal one megawatt hour of  
7 electricity from an alternative energy source.

8           B. “Alternative energy portfolio standards” means standards establishing that a certain  
9 amount of energy sold from alternative energy sources is included as part of the sources of  
10 electric generation by electric utilities within this state.

11           C. “Alternative energy sources” shall include the following existing and new sources for  
12 the production of electricity:

13                   (1) solar photovoltaic or other solar electric energy.

14                   (2) solar thermal energy.

15                   (3) wind power.

16                   (4) large-scale hydropower, which shall mean the production of electric power by  
17 harnessing the hydroelectric potential of moving water impoundments, including pumped storage  
18 that does not meet the requirements of low-impact hydropower under paragraph (5).

19                   (5) low-impact hydropower, consisting of any technology that produces electric  
20 power and that harnesses the hydroelectric potential of moving water impoundments, provided  
21 such incremental hydroelectric development:

22                           (i) does not adversely change existing impacts to aquatic systems;



23 (ii) meets the certification standards established by the Low Impact  
24 Hydropower Institute and American Rivers, Inc., or their successors;

25 (iii) provides an adequate water flow for protection of aquatic life and for  
26 safe and effective fish passage;

27 (iv) protects against erosion; and

28 (v) protects cultural and historic resources.

29 (6) geothermal energy, which shall mean electricity produced by extracting hot  
30 water or steam from geothermal reserves in the earth's crust and supplied to steam turbines that  
31 drive generators to produce electricity.

32 (7) biomass energy, which shall mean the generation of electricity utilizing the  
33 following:

34 (i) organic material from a plant that is grown for the purpose of being used  
35 to produce electricity or is protected by the Federal Conservation Reserve Program (CRP) and  
36 provided further that crop production on CRP lands does not prevent achievement of the water  
37 quality protection, soil erosion prevention or wildlife enhancement purposes for which the land  
38 was primarily set aside; or

39 (ii) any solid nonhazardous, cellulosic waste material that is segregated  
40 from other waste materials, such as waste pallets, crates and landscape or right-of-way tree  
41 trimmings or agricultural sources, including orchard tree crops, vineyards, grain, legumes, sugar  
42 and other crop by-products or residues.

43 (8) biologically derived methane gas, which shall include methane from the  
44 anaerobic digestion of organic materials from yard waste, such as grass clippings and leaves, food  
45 waste, animal waste and sewage sludge. The term also includes landfill methane gas.

46 (9) fuel cells, which shall mean any electrochemical device that converts chemical  
47 energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.

48 (10) waste coal, which shall include the combustion of waste coal in facilities in  
49 which the waste coal was disposed or abandoned prior to [July 31, 1982], or disposed of  
50 thereafter in a permitted coal refuse disposal site regardless of when disposed of, and used to  
51 generate electricity; or such other waste coal combustion meeting alternate eligibility  
52 requirements established by regulation. Facilities combusting waste coal shall use at a minimum a  
53 combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric  
54 filter particulate removal system. Alternative energy credits shall be calculated based upon the  
55 proportion of waste coal utilized to produce electricity at the facility.

56 (11) coal mine methane, which shall mean methane gas emitting from abandoned  
57 or working coal mines.

58 (12) demand side management consisting of the management of customer  
59 consumption of electricity or the demand for electricity through the implementation of:

60 (i) energy efficiency technologies, management practices or other  
61 strategies in residential, commercial, institutional or government customers that reduce electricity  
62 consumption by those customers;

63 (ii) load management or demand response technologies, management  
64 practices or other strategies in residential, commercial, industrial, institutional and government  
65 customers that shift electric load from periods of higher demand to periods of lower demand; or

66 (iii) industrial by-product technologies consisting of the use of a by-  
67 product from an industrial process, including the reuse of energy from exhaust gases or other  
68 manufacturing by-products that are used in the direct production of electricity at the facility of a  
69 customer.

70 (13) distributed generation system, which shall mean the small-scale power  
71 generation of electricity and useful thermal energy.

72 D. “Alternative energy system” means a facility or energy system that uses a form of  
73 alternative energy source to generate electricity and delivers the electricity it generates to the  
74 distribution system of an electric distribution company or to the transmission system operated by  
75 a regional transmission organization.

76 E. “Commission” means the state [public utility commission].

77 F. “Cost recovery period” means the longer of:

78 (1) the period during which competitive transition charges under [insert citation]  
79 (relating to competitive transition charge) or intangible transition charges under [insert citation]  
80 (relating to approval of transition bonds) are recovered or the period during which an electric  
81 bonds) are recovered; or

82 (2) the period during which an electric distribution company operates under a state  
83 Public Utility Commission-approved generation rate plan that has been approved prior to or  
84 within [one year of the effective date of this Act], but in no case shall the cost recovery period  
85 under this Act extend beyond [December 31, 2010].

86 G. “Customer-generator” means a nonutility owner or operator of a net metered distributed  
87 generation system with a nameplate capacity of not greater than [50 kilowatts] if installed at a  
88 residential service or not larger than [1,000 kilowatts] at other customer service locations, except  
89 for customers whose systems are above [one megawatt and up to two megawatts] who make their  
90 systems available to operate in parallel with the electric utility during grid emergencies as defined  
91 by the regional transmission organization, or where a microgrid is in place for the purpose of  
92 maintaining critical infrastructure, such as homeland security assignments, emergency services  
93 facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities,  
94 provided that technical rules for operating generators interconnected with facilities of an electric  
95 distribution company, electric cooperative or municipal electric system have been promulgated by  
96 the Institute of Electrical and Electronic Engineers and the state [public utility commission].

97 H. “Department” means the [department of environmental protection] of the state.

98 I. “Electric distribution company” means the term shall have the same meaning given to it  
99 in [insert citation] (relating to restructuring of electric utility industry).

100 J. “Electric generation supplier” has the same meaning given to it in [insert citation]  
101 (relating to restructuring of electric utility industry).

102 K. “Force majeure” means that upon its own initiative or upon a request of an electric  
103 distribution company or an electric generator supplier, the [state public utility commission],  
104 within [60 days], shall determine if alternative energy resources are reasonably available in the  
105 marketplace in sufficient quantities for the electric distribution companies and electric generation  
106 suppliers to meet their obligations for that reporting period under this Act. If the [commission]  
107 determines that alternative energy resources are not reasonably available in sufficient quantities in  
108 the marketplace for the electric distribution companies and electric generation suppliers to meet  
109 their obligations under this Act, then the [commission] shall modify the underlying obligation of  
110 the electric distribution company or electric generation supplier or recommend to the [general  
111 assembly] that the underlying obligation be eliminated.

112 L. “Municipal solid waste” includes energy from existing waste to energy facilities which  
113 the [Department of Environmental Protection] has determined are in compliance with current  
114 environmental standards, including, but not limited to, all applicable requirements of the Clean  
115 Air Act (69 Stat. 322,42 U.S.C. § 7401 et seq.) and associated permit restrictions, and all  
116 applicable requirements of the Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
117 Management Act.

118 M. “Net metering” means measuring the difference between the electricity supplied by an  
119 electric utility and the electricity generated by a customer-generator, when the renewable energy  
120 generating system is intended primarily to offset part or all of the customer-generator's  
121 requirements for electricity.

122 N. “Regional transmission organization” means an entity approved by the Federal Energy  
123 Regulatory Commission (FERC) that is created to operate and manage the electrical transmission  
124 grids of the member electric transmission utilities as required under FERC Order 2000, Docket  
125 No. RM99-2-000, FERC Chapter 31.089 (1999) or any successor organization approved by the  
126 FERC.

127 O. “Reporting period” means the [12-month period from June 1 through May 31]. A  
128 reporting year shall be numbered according to the calendar year in which it begins and ends.

129 P. “Retail electric customer” has the same meaning given to it in [insert citation] (relating  
130 to restructuring of electric utility industry).

131 Q. “Tier I alternative energy source” means energy derived from:

- 132 (1) solar photovoltaic energy;
- 133 (2) wind power;
- 134 (3) low-impact hydropower;
- 135 (4) geothermal energy;
- 136 (5) biologically derived methane gas;
- 137 (6) fuel cells;
- 138 (7) biomass energy; or
- 139 (8) coal mine methane.

140 R. “Tier II alternative energy source” means energy derived from:

- 141 (1) waste coal;
- 142 (2) distributed generation systems;
- 143 (3) demand-side management;
- 144 (4) large-scale hydropower;
- 145 (5) municipal solid waste;
- 146 (6) generation of electricity utilizing by-products of the pulping process and wood  
147 manufacturing process including bark, wood chips, sawdust and lignin in spent pulping liquors; or
- 148 (7) integrated combined coal gasification technology.

149 S. “True-up period” means the period each year from the end of the reporting year until  
150 [September 1].

151  
152 Section 3. [*Alternative Energy Portfolio Standards.*]

153 A. General compliance and cost recovery.

154 (1) From the effective date of this Act through and including the [15th year] after  
155 enactment of this Act, and each year thereafter, the electric energy sold by an electric distribution  
156 company or electric generation supplier to retail electric customers in this state shall be comprised  
157 of electricity generated from alternative energy sources, and in the percentage amounts as  
158 described under subsections (B) and (C).

159 (2) Electric distribution companies and electric generation suppliers shall satisfy  
160 both requirements set forth in subsections (B) and (C); provided, however, that an electric  
161 distribution company or an electric generation supplier shall be excused from its obligations  
162 under this section to the extent that the [commission] determines that force majeure exists.

163 (3) All costs for:

164 (i) the purchase of electricity generated from alternative energy sources,  
165 including the costs of the regional transmission organization, in excess of the regional  
166 transmission organization real-time locational marginal pricing, or its successor, at the delivery  
167 point of the alternative energy source for the electrical production of the alternative energy  
168 sources; and

169 (ii) payments for alternative energy credits, in both cases that are  
170 voluntarily acquired by an electric distribution company during the cost recovery period on behalf  
171 of its customers shall be deferred as a regulatory asset by the electric distribution company and

172 fully recovered, with a return on the unamortized balance, pursuant to an automatic energy  
173 adjustment clause under [insert citation] (relating to sliding scale of rates; adjustments) as a cost  
174 of generation supply [insert citation] (relating to duties of electric distribution companies), in the  
175 [first year after the expiration of its cost recovery period]. After the cost recovery period, any  
176 direct or indirect costs for the purchase by electric distribution of resources to comply with this  
177 section, including, but not limited to, the purchase of electricity generated from alternative energy  
178 sources, payments for alternative energy credits, cost of credits banked, payments to any third  
179 party administrators for performance under this Act and costs levied by a regional transmission  
180 organization to ensure that alternative energy sources are reliable, shall be recovered on a full and  
181 current basis pursuant to an automatic energy adjustment clause under [insert citation] as a cost of  
182 generation supply under [insert citation].

183 B. Tier I and solar photovoltaic shares.

184 (1) [Two years] after the effective date of this Act, at least [1.5%] of the electric  
185 energy sold by an electric distribution company or electric generation supplier to retail electric  
186 customers in this state shall be generated from Tier I alternative energy sources. Except as  
187 provided in this section, the minimum percentage of electric energy required to be sold to retail  
188 electric customers from alternative energy sources shall increase to [2%] [three years] after the  
189 effective date of this Act. The minimum percentage of electric energy required to be sold to retail  
190 electric customers from alternative energy sources shall increase by at least [0.5%] each year so  
191 that at least [8%] of the electric energy sold by an electric distribution company or electric  
192 generation supplier to retail electric customers in that certificated territory in the [15th year] after  
193 the effective date of this subsection is sold from Tier I alternative energy resources.

194 (2) Of the electric energy required to be sold from Tier I sources, the total  
195 percentage that must be sold from solar photovoltaic technologies is for:

- 196 (i) years 1 through 4 - 0.0013%;
- 197 (ii) years 5 through 9 - 0.0203%;
- 198 (iii) years 10 through 14 - 0.2500%; and
- 199 (iv) years 15 and thereafter - 0.5000%.

200 (3) Upon commencement of the beginning of the [6th reporting year], the  
201 [commission] shall undertake a review of the compliance by electric distribution companies and  
202 electric generation suppliers with the requirements of this Act. The review shall also include the  
203 status of alternative energy technologies within this state and the capacity to add additional  
204 alternative energy resources. The [commission] shall use the results of this review to recommend  
205 to the [legislature] additional compliance goals beyond year [15]. The [commission] shall work  
206 with the [department] in evaluating the future alternative energy resource potential.

207 C. Tier II share.

208 (1) Of the electrical energy required to be sold from alternative energy sources  
209 identified in Tier II, the percentage that must be from these technologies is for:

- 210 (i) years 1 Through 4 - 4.2%;
- 211 (ii) years 5 Through 9 - 6.2%;
- 212 (iii) years 10 Through 14 - 8.2%; and
- 213 (iv) years 15 And Thereafter - 10.0%.

214 D. Exemption during cost-recovery period.

215 (1) Compliance with subsections (A), (B) and (C) shall not be required for any  
216 electric distribution company that has not reached the end of its cost-recovery period or for  
217 electric generation supplier sales in the service territory of an electric distribution company that  
218 has not reached the end of its cost-recovery period. At the conclusion of an electric distribution  
219 company's cost-recovery period, this exception shall no longer apply, and compliance shall be  
220 required at the percentages in effect at that time. Electric distribution companies and electric  
221 generation suppliers whose sales are exempted under this subsection and who voluntarily sell

222 electricity generated from Tier I and Tier II sources during the cost-recovery period may bank  
223 credits consistent with subsection (E)(7).

224 E. Alternative energy credits.

225 (1) The [commission] shall establish an alternative energy credits program as  
226 needed to implement this Act. The provision of services pursuant to this section shall be exempt  
227 from the competitive procurement procedures of [insert citation] (relating to procurement).

228 (2) The [commission] shall approve an independent entity to serve as the  
229 [alternative energy credits program administrator]. The [administrator] shall have those powers  
230 and duties assigned by [commission] regulations. Such powers and duties shall include, but not be  
231 limited to, the following:

232 (i) create and administer an alternative energy credits certification,  
233 tracking and reporting program. This program should include, at a minimum, a process for  
234 qualifying alternative energy systems and determining the manner credits can be created,  
235 accounted for, transferred and retired.

236 (ii) submit reports to the [commission] at such times and in such manner as  
237 the [commission] shall direct.

238 (3) All qualifying alternative energy systems must include a qualifying meter to  
239 record the cumulative electric production to verify the advanced energy credit value. Qualifying  
240 meters will be approved by the [commission] as defined in paragraph (4).

241 (4) (i) An electric distribution company or electric generation supplier shall  
242 comply with the applicable requirements of this section by purchasing sufficient alternative  
243 energy credits and submitting documentation of compliance to the [program administrator].

244 (ii) For purposes of this subsection, one alternative energy credit shall  
245 represent one megawatt hour of qualified alternative electric generation, whether self-generated,  
246 purchased along with the electric commodity or separately through a tradable instrument and  
247 otherwise meeting the requirements of [commission] regulations and the [program administrator].

248 (5) The alternative energy credits program shall include provisions requiring a  
249 reporting period as defined in section 2 for all covered entities under this Act. The alternative  
250 energy credits program shall also include a true-up period as defined in section 2. The true-up  
251 period shall provide entities covered under this Act the ability to obtain the required number of  
252 alternative energy credits or to make up any shortfall of the alternative energy credits they may be  
253 required to obtain to comply with this Act. A force majeure provision shall also be provided for  
254 under the true-up period provisions.

255 (6) An electric distribution company and electric generation supplier may bank or  
256 place in reserve alternative energy credits produced in [one reporting year] for compliance in  
257 either or both of the [two subsequent reporting years], subject to the limitations set forth in this  
258 subsection and provided that the electric distribution company and electric generation supplier are  
259 in compliance for all previous reporting years. In addition, the electric distribution company and  
260 electric generation supplier shall demonstrate to the satisfaction of the [commission] that such  
261 credits:

262 (i) were in excess of the alternative energy credits needed for compliance in  
263 the year in which they were generated and that such excess credits have not previously been used  
264 for compliance under this Act;

265 (ii) were produced by the generation of electrical energy by alternative  
266 energy sources and sold to retail customers during the year in which they were generated; and

267 (iii) have not otherwise been nor will be sold, retired, claimed or  
268 represented as part of satisfying compliance with alternative or renewable energy portfolio  
269 standards in other states.

270 (7) An electric distribution company or an electric generation supplier with sales  
271 that are exempted under subsection D may bank credits for retail sales of electricity generated

272 from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the  
273 effective date of this Act. Bankable credits shall be limited to credits associated with electricity  
274 sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales  
275 from such sources by an electric distribution company or electric generation supplier during the  
276 [12-month] period immediately preceding the effective date of this Act. All credits banked under  
277 this subsection shall be available for compliance with subsections B and C for no more than [two  
278 reporting years] following the conclusion of the cost-recovery period.

279 (8) The [commission] or its designee shall develop a registry of pertinent  
280 information regarding all available alternative energy credits, credit transactions among electric  
281 distribution companies and electric generation suppliers, the number of alternative energy credits  
282 sold or transferred and the price paid for the sale or transfer of the credits. The registry shall  
283 provide current information to electric distribution companies, electric generation suppliers and  
284 the general public on the status of alternative energy credits created, sold or transferred within  
285 this state.

286 (9) The [commission] may impose an administrative fee on an alternative energy  
287 credit transaction. The amount of this fee may not exceed the actual direct cost of processing the  
288 transaction by the alternative energy credits administrator. The [commission] is authorized to use  
289 up to [5%] of the alternative compliance fees generated under subsection F for administrative  
290 expenses directly associated with this Act.

291 (10) The [commission] shall establish regulations governing the verification and  
292 tracking of energy efficiency and demand-side management measures pursuant to this Act, which  
293 shall include benefits to all utility customer classes. When developing regulations, the  
294 [commission] must give reasonable consideration to existing and proposed regulations and rules  
295 in existence in the regional transmission organizations that manage the transmission system in  
296 any part of this state. All verified reductions shall accrue credits starting with the passage of this  
297 Act.

298 (11) The [commission] shall within [120 days] of the effective date of this Act  
299 develop a depreciation schedule for alternative energy credits created through demand-side  
300 management, energy efficiency and load management technologies and shall develop standards  
301 for tracking and verifying savings from energy efficiency, load management and demand-side  
302 management measures. The [commission] shall allow for a [60-day] public comment period and  
303 shall issue final standards within [30 days] of the close of the public comment period.

#### 304 F. Alternative compliance payment.

305 (1) At the end of each program year, the [program administrator] shall provide a  
306 report to the [commission] and to each covered electric distribution company showing their status  
307 level of alternative energy acquisition.

308 (2) The [commission] shall conduct a review of each determination made under  
309 subsections B and C. If, after notice and hearing, the [commission] determines that an electric  
310 distribution company or electric generation supplier has failed to comply with subsections B and  
311 C, the [commission] shall impose an alternative compliance payment on that company or  
312 supplier.

313 (3) The alternative compliance payment, with the exception of the solar  
314 photovoltaic share compliance requirement set forth in subsection B2, shall be [\$45] times the  
315 number of additional alternative energy credits needed in order to comply with subsection B or C.

316 (4) The alternative compliance payment for the solar photovoltaic share shall be  
317 [200%] of the average market value of solar renewable energy credits sold during the reporting  
318 period within the service region of the regional transmission organization.

319 (5) The [commission] shall establish a process to provide for, at least [annually], a  
320 review of the alternative energy market within this state and the service territories of the regional  
321 transmission organizations that manage the transmission system in any part of this state. The

322 [commission] will use the results of this study to identify any needed changes to the cost  
323 associated with the alternative compliance payment program. The [commission] may raise the  
324 cost defined in this Act. If the [commission] finds that the costs associated with alternative  
325 compliance payment program must be changed, the [commission] shall present these findings to  
326 the [legislature] for legislative enactment.

327 G. Transfer to sustainable development funds.

328 (1) Notwithstanding the provisions of [insert citation] (relating to disposition,  
329 appropriation and disbursement of assessments and fees) and [insert citation] (relating to  
330 disposition of fines and penalties), alternative compliance payments imposed pursuant to this Act  
331 shall be paid into the state's [sustainable energy funds], created under the [commission's]  
332 restructuring orders under [insert citation] (relating to restructuring of electric utility industry).  
333 Alternative compliance payments shall be paid into a [special fund] of the [state sustainable  
334 energy board], established by the [commission] under [insert citation], and made available to the  
335 [regional sustainable energy funds] under procedures and guidelines approved by the [state  
336 energy board].

337 (2) The alternative compliance payments shall be utilized solely for projects that  
338 will increase the amount of electric energy generated from alternative energy resources for  
339 purposes of compliance with subsections B and C.

340 H. Nonseverability. The provisions of subsection (A) are declared to be nonseverable. If  
341 any provision of subsection (A) is held invalid, the remaining provisions of this Act shall be void.

342  
343 Section 4. [*Portfolio Requirements in Other States.*] If an electric distribution supplier or  
344 electric generation company provider sells electricity in any other state and is subject to  
345 renewable energy portfolio requirements in that state, they shall list any such requirement and  
346 shall indicate how it satisfied those renewable energy portfolio requirements. To prevent double-  
347 counting, the electric distribution supplier or electric generation company shall not satisfy this  
348 state's alternative energy portfolio requirements using alternative energy used to satisfy another  
349 state's portfolio requirements. Energy derived only from alternative energy sources inside the  
350 geographical boundaries of this state or within the service territory of any regional transmission  
351 organization that manages the transmission system in any part of this state shall be eligible to  
352 meet the compliance requirements under this Act. Electric distribution companies and electric  
353 generation suppliers shall document that this energy was not used to satisfy another state's  
354 renewable energy portfolio standards.

355  
356 Section 5. [*Interconnection Standards for Customer-Generator Facilities.*] The  
357 [commission] shall develop technical and net metering interconnection rules for customer-  
358 generators intending to operate renewable onsite generators in parallel with the electric utility  
359 grid, consistent with rules defined in other states within the service region of the regional  
360 transmission organization that manages the transmission system in any part of this state. The  
361 [commission] shall convene a stakeholder process to develop statewide technical and net  
362 metering rules for customer-generators. The [commission] shall develop these rules within [nine  
363 months] of the effective date of this Act.

364  
365 Section 6. [*Health and Safety Standards.*] The [department] shall cooperate with the state  
366 [department of labor and industry] as necessary in developing health and safety standards, as  
367 needed, regarding facilities generating energy from alternative energy sources. The [department]  
368 shall establish appropriate and reasonable health and safety standards to ensure uniform and  
369 proper compliance with this act by owners and operators of facilities generating energy from  
370 alternative energy sources as defined in this Act.

371

372 Section 7. [*Interagency Responsibilities.*]  
373 A. [Commission] responsibilities.  
374 (1) The [commission] will carry out the responsibilities delineated within this Act.  
375 The [commission] also shall, in cooperation with the [department], conduct an ongoing  
376 alternative energy resources planning assessment for this state. This assessment will, at a  
377 minimum, identify current and operating alternative energy facilities, the potential to add future  
378 alternative energy generating capacity, and the conditions of the alternative energy marketplace.  
379 The assessment will identify needed methods to maintain or increase the relative competitiveness  
380 of the alternative energy market within this state.  
381 B. [Department] responsibilities.  
382 (1) The [department] shall ensure that all qualified alternative energy sources  
383 meet all applicable environmental standards and shall verify that an alternative energy source  
384 meets the standards set forth in section 2.  
385 C. Cooperation between [commission] and [department].  
386 (1) The [commission] and the [department] shall work cooperatively to monitor  
387 the performance of all aspects of this Act and will provide an annual report to the [legislature].  
388 The report shall include at a minimum:  
389 (i) the status of the compliance with the provisions of this Act by electric  
390 distribution companies and electric generations suppliers;  
391 (ii) current costs of alternative energy on a per kilowatt hour basis for all  
392 alternative energy technology types;  
393 (iii) costs associated with the alternative energy credits program under this  
394 Act, including the number of alternative compliance payments;  
395 (iv) the status of the alternative energy marketplace within this state; and  
396 (v) recommendations for program improvements.  
397  
398 Section 8. [*Rural Electric Cooperatives.*] Each rural electric cooperative operating within  
399 this state shall offer to its retail customers a voluntary program of energy efficiency and demand-  
400 side management programs, as a means to satisfy compliance with the requirements of this Act.  
401  
402 Section 9. [*Severability.*] [Insert severability clause.]  
403  
404 Section 10. [*Repealer.*] [Insert repealer clause.]  
405  
406 Section 11. [*Effective Date.*] [Insert effective date.]



# Incentives for Energy Independence Statement

Kentucky House Bill 1, which became law in 2007:

- provides a sales tax credit for energy-efficiency projects;
- expands a coal tax credit to alternative fuel facilities and gasification facilities;
- increases a cap for a biodiesel credit,
- establishes tax credits for ethanol and cellulosic ethanol;
- provides administrative direction for the ethanol credits;
- provides for a transfer of cap among the ethanol credits;
- encourages the state finance and administration cabinet to use the LEED or Green Globe rating systems and to incorporate ENERGY STAR products into state procurements;
- encourages a review of utility usage in state-owned property;
- requires a strategy for a cleaner state vehicle fleet;
- establishes the Governor's Office of Energy Policy;
- allows the Governor's Office of Energy Policy to expend state funds for preliminary work on sites;
- establishes the Kentucky Alternative Fuel and Renewable Energy Program and Fund;
- directs the Kentucky Legislative Research Commission staff to conduct a study on energy-efficient building and design practices and a study on carbon dioxide management;
- establishes an energy technology career track program in schools;
- makes recommendations about creating a Center for Renewable Energy Research and Environmental Stewardship;
- appropriates money to the Kentucky Geological Survey for carbon sequestration and enhanced oil recovery research;
- appropriates money to a state Center for Applied Energy Research to do alternative fuel production technology research;
- appropriates money to the Kentucky Department of Education for an energy technology career track program; and
- appropriates money to establish an economic development bond pool to fund energy projects.

Submitted as:

Kentucky

[HB 1](#)

Status: Enacted into law in 2007.

# Renewable Energy Standards Note

## Colorado

[Colorado Chapter 60 of 2007](#) makes several statutory changes to a renewable energy initiative (Amendment 37) passed by state voters in 2004. Specifically, Chapter 60 expands the definitions of a “qualifying retail utility” to include all utilities, except municipally owned utilities (MOUs) serving less than 40,000 customers, and “eligible energy sources” to include recycled energy. The bill raises the standard for electricity generation from eligible energy sources for investor-owned utilities (IOUs) from:

- 3 to 5 percent for 2008 through 2010;
- 6 to 10 percent for 2011 through 2014;
- 10 to 15 percent for 2015 through 2019; and
- 10 to 20 percent for 2020 and after.

The bill also establishes a new standard for electricity generation from eligible energy sources for rural electric cooperatives (RECs), and (MOUs) serving over 40,000 customers at:

- 1 percent for 2008 through 2010;
- 3 percent for 2011 through 2014;
- 6 percent for 2015 through 2019;
- 10 percent for 2020 and after.

With regard to standard compliance, the bill establishes bonuses for certain types of generation facilities. For all qualifying utilities, each kilowatt-hour of eligible electricity generated from a community-based project as defined in the bill will count as 1.5 kilowatt-hours. For RECs and MOUs, each kilowatt-hour generated from solar generation technologies that produce electricity before FY 2015-16 will count as 3 kilowatt-hours. However, utilities may take advantage of only one bonus for each kilowatt-hour of generated electricity. For IOUs and MOUs, the maximum allowable retail rate impact from meeting the standard is raised from 1 to 2 percent of the total electric bill annually for each customer.

The bill allows utilities to develop and own up to 25 percent of total new eligible energy resources as utility rate-based property if such resources can be built at a reasonable cost compared to similar eligible energy resources available on the market. If a utility demonstrates its proposal provides significant economic development, employment or energy security benefits, a utility can own between 25 and 50 percent of total new eligible energy resources.

## New Mexico

[New Mexico SB 43](#), which became law in 2004, establishes a requirement that investor-owned electric utilities meet a “renewable portfolio standard requirement” by having renewable energy comprise no less than 5 percent of retail sales by 2006, increasing 1 percent per year and leveling off at 10 percent by 2011. “Renewable energy” is defined as electric energy generated from resources such as solar, wind, hydropower, geothermal or biomass, but does not include fossil fuel or nuclear energy. For the most part, the bill places the existing Public Regulation Commission (PRC) Rule #573 into statute. PRC Rule #573 requires the above renewable portfolio standards, which do not apply to rural electric cooperatives or municipal electric utilities.

Furthermore, the purpose of the bill is to ensure the achievement of the “renewable portfolio standard requirement” is at a reasonable cost to the utility and subsequently the ratepayer. The bill sets the amounts of renewable energy the public utilities shall sell to retail customers by certain dates, allows public utilities to recover costs of complying with the bill

through the ratemaking process, and protects public utilities and their ratepayers from renewable energy costs above a “reasonable cost threshold.”

The bill requires the PRC to establish the “reasonable cost threshold,” through hearings and research, by December 31, 2004. If the cost of renewable energy generation is above this PRC threshold, the public utility will not be required to add renewable energy to its supply portfolio. The PRC is required to consider specific factors to set the threshold, including the impact on overall rates, portfolio diversity, reliability, and availability of resources.

If good cause is shown, industrial and commercial customers can also be subject to a reduced “renewable portfolio standard requirement.” By September 1 of each year until 2012, a public utility would be required to file a report with the PRC on its purchases of renewable energy in the previous year, and show that its plans for future purchases are the least cost renewable resource. The PRC would then approve or modify procurement plans via hearings and the ratemaking process.

Lastly, language is included to reduce the Renewable Portfolio Standard (RPS) for nongovernmental customers at a single location or facility with consumption exceeding ten million kilowatt-hours per year (10,000,000 kwh/yr). This provision essentially covers the large consumers of electricity (i.e. manufacturers and other large businesses).

The number of kilowatt-hours of electricity from renewable sources procured for these customers is to be limited so that the additional cost of the RPS to each customer does not exceed the lower of 1 percent of that customer’s annual electric charges or forty-nine thousand dollars (\$49,000).

This procurement limit criterion is then increased by 1/5 percent or ten thousand dollars (\$10,000) per year until a certain date, then remains fixed at the lower of 2 percent of the customer’s annual electric charges or ninety thousand dollars (\$90,000). Clarification is then provided that the preceding language in no way affects a public utility’s right to recover all reasonable costs of complying with the RPS. The Substitute also provides the PRC the authority to defer recovery of the costs of complying with the PRS, including carrying charges.

[New Mexico SB 418](#), which became law in 2007 mandates Rural Electric Cooperatives (RECs) to include 10% renewable energy into their supply. Existing Renewable Portfolio Standards (RPS) for independently owned electric utilities are increased to 25% by 2021. The Act adds energy efficiency programs into the RPS. RECs may increase fees to meet the requirements of the bill. The bill adds definitions for a municipality, renewable energy certificate, and renewable purchased power agreement in the Renewable Energy Act.

The Act includes a new requirement for the distribution cooperative to report to its membership a summary of its purchases and generation of renewable energy. This ensures the distribution of renewable energy education and membership awareness of the RPS.

This Act further requires that starting on January 1, 2009 all renewable energy certificates used to meet the renewable portfolio standard be registered with a renewable information system to create and track ownership of the certificates for verification and protection from multiple counting of the same renewable energy certificates.

The legislation allows the PRC to open a docket for public utility applications for the purpose of identifying disincentives that discourage utility investment in energy efficiency and authorizes appropriate rule-making mechanisms to eliminate disincentives. RECs may also collect a renewable energy and conservation fee up to one percent of the customer’s bill, not to exceed \$75,000 annually for any customer. These funds may only be spent on projects to promote renewable energy, load management or energy efficiency. The PRC would establish a financial incentive program to encourage public utilities to implement cost-effective energy efficiency programs. The bill defines an “energy efficiency certificate.” Energy efficiency certificates may be used in the same manner as renewable energy certificates by a public utility for not more than 5% of the RPS.

## Minnesota

[Minnesota Chapter 3 / S.F. No. 4, Laws of Minnesota](#), enacted in 2007, amends the state's Renewable Energy Objectives (REO) that sets a target for 16 electric utilities in the state regarding the proportion of electric generation based on renewable resources, including wind, hydroelectric, biomass, and others. The current target is 10 percent of these utilities' retail electric sales generated from renewable sources by 2015. Utilities subject to the statute serve the vast majority of the state's retail electric customers. They include all investor-owned utilities, generation and transmission cooperatives and municipal power agencies; municipal utilities and cooperative electric associations are not covered by the law.

The Act requires utilities to make a “good faith effort” to meet an REO of 7 percent by 2010. It sets mandatory standards for percentage of electricity that must be generated from eligible technologies, for all other utilities subject to the statute.

The Act requires the state Public Utilities Commission (PUC) to modify or delay the implementation of a standard if it determines such action is in the public interest. In evaluating that threshold, the commission is to consider:

- impacts on utility costs, including competitive pressures on customers;
- effects on system reliability;
- technical concerns;
- delays in acquiring sites/routes due to rejection or permitting approval;
- non-delivery of needed equipment;
- transmission constraints; and
- other statutory obligations of the commission or a utility.

With respect to the first three factors, implementation may be modified or delayed only if the commission finds these impacts are significant. For the other factors, circumstances must be beyond the utility's control. A utility seeking a delay or modification must submit a plan for compliance with the standard in the same proceeding.

The Act requires the commission to establish a renewable energy credit trading system by January 1, 2008, and sets conditions regarding the credits. All utilities are required to participate in a credit-tracking system approved by the commission.

The bill requires the commission to regularly investigate compliance with the objectives and standards. It gives the commission discretionary authority to order a noncompliant utility to construct facilities or purchase energy or renewable energy credits to achieve compliance. If a utility does not comply with such an order, the commission may impose a financial penalty, not to exceed the cost of compliance.

The Act requires utilities to develop plans to enhance the transmission network to meet the standards. Utilities must meet regularly with stakeholders experienced in transmission engineering and renewable energy generation, and must submit a report to the commission by that:

- identifies critical issues to be addressed;
- includes a comprehensive conceptual planning guide and specific transmission line proposals necessary to support the standards; and
- contains a 5-year action plan that identifies specific actions that must be taken to implement proposals and further develop transmission plans.

The Act repeals a requirement that public and municipal utilities and cooperative electric associations offer customers “green pricing” programs that allow them to choose to purchase renewable and high-efficiency, low-emissions, distributed energy for some or all of their energy demand, so long as these customers pay the full cost of obtaining energy from these sources.

# Renewables Portfolio Standard Program

This Act establishes a Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a minimum percentage of electricity generated by eligible renewable energy resources in any given year as a percentage of total kilowatt hours sold to retail end-use customers each calendar year (Renewables Portfolio Standard).

The Act requires the state Public Utilities Commission (PUC) to implement the Renewables Portfolio Standard for electrical corporations, if funds are made available. Each electrical corporation is required to increase its total procurement of eligible renewable energy resources by at least 1% per year so that 20% of its retail sales are procured from eligible renewable energy resources. If an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet an annual target, the electrical corporation would be required to procure additional eligible renewable resources in subsequent years to compensate for the shortfall, if funds are made available as described. An electrical corporation with at least 20% of retail sales procured from eligible renewable energy resources in any year will not be required to increase its procurement in the following year.

The law requires the PUC to direct electrical corporations to prepare within 90 days of being deemed creditworthy, and to review and update as necessary, renewable energy procurement plans that are sufficient to satisfy its obligations under the renewables portfolio standard. The PUC must review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement by the electrical corporation. The PUC must allow an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts reasonably incurred consistent with a renewable energy procurement plan approved by the PUC.

The Act requires the state to develop a method to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the Renewables Portfolio Standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This law requires the governing board of a local publicly owned electric utility to be responsible for implementing and enforcing the Renewables Portfolio Standard, as described, and to annually report to its customers how much and how public funds are being spent to implement this state-mandated local program.

The Act authorizes any nonutility power generator using renewable fuels that entered into a contract with an electrical corporation specifying fixed energy prices for output prior to a certain date to elect an additional 5 years of fixed energy payments at a level to be determined by the PUC.

Submitted as:

California

[Chapter 516, 2002](#)

Status: Enacted into law in 2002.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Implement a Renewable
- 2 Energy Portfolio Standard Program for Certain Utilities.”

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Section 2. [*Legislative Findings.*] The [Legislature] finds and declares all of the following:

(a) (1) In order to attain a target of [20 percent] renewable energy for this state and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the [Legislature] that the state [Public Utilities Commission] and the state [Energy Resources Conservation and Development Commission] to implement the Renewables Portfolio Standard Program described in this Act.

(2) Increasing this state’s reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(3) The development of renewable energy resources may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts.

(4) The Renewables Portfolio Standard Program is intended to complement a [Renewable Energy Program] administered by the [State Energy Resources Conservation and Development Commission] and established pursuant to [insert citation].

Section 3. [*Definitions.*]

(a) As used in this Act:

(1) “Commission” means the [Public Utilities Commission] established under [insert citation].

(2) “Eligible renewable energy resource” means an electric generating facility that is one of the following:

(A) The facility meets the definition of “in-state renewable electricity generation technology” in [insert citation].

(B) A geothermal generation facility originally commencing operation prior to [September 26, 1996] shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the [Energy Commission], provided that the incremental output was not sold to an electrical corporation under contract entered into prior to [September 26, 1996]. For each facility seeking certification, the [Energy Commission] shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(C) The output of a small hydroelectric generation facility of [30 megawatts or less] procured or owned by an electrical corporation as of the date of enactment of this Act shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (a) (3) of Section 6 of this Act. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under [insert citation].

(D) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in [insert location] and was operational prior to [September 26, 1996]. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(3) “Energy Commission” means the Energy Resources Conservation and Development Commission established under [insert citation].

(3) “Procure” means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this Act is intended to

52 imply that the purchase of electricity from third parties in a wholesale transaction is the preferred  
53 method of fulfilling a retail seller's obligation to comply with this Act.

54 (4) "Retail seller" means an entity engaged in the retail sale of electricity to end-  
55 use customers, including any of the following:

56 (A) An electrical corporation, as defined in [insert citation].

57 (B) A community choice aggregator. The [commission] shall institute a  
58 rulemaking to determine the manner in which a community choice aggregator will participate in  
59 the Renewables Portfolio Standard subject to the same terms and conditions applicable to an  
60 electrical corporation.

61 (C) An electric service provider, as defined in [insert citation] subject to the  
62 following conditions:

63 (i) An electric service provider shall be considered a retail seller  
64 under this Act for sales to any customer acquiring service after [January 1, 2003].

65 (ii) An electric service provider shall be considered a retail seller  
66 under this Act for sales to all its customers beginning on the earlier of [January 1, 2006], or the  
67 date on which a contract between an electric service provider and a retail customer expires.  
68 Nothing in this subdivision may require an electric service provider to disclose the terms of the  
69 contract to the [commission].

70 (iii) The [commission] shall institute a rulemaking to determine the  
71 manner in which electric service providers will participate in the Renewables Portfolio Standard.  
72 The electric service provider shall be subject to the same terms and conditions applicable to an  
73 electrical corporation pursuant to this Act. Nothing in this paragraph shall impair a contract  
74 entered into between an electric service provider and a retail customer prior to the suspension of  
75 direct access by the [commission] pursuant to [insert citation].

76 (D) "Retail seller" does not include any of the following:

77 (i) A corporation or person employing cogeneration technology or  
78 producing power consistent with [insert citation].

79 (ii) The [Department of Water Resources] acting in its capacity  
80 pursuant to [insert citation].

81 (iii) A local publicly owned electrical utility as defined in [insert  
82 citation].

83 (5) "Renewables portfolio standard" means the specified percentage of electricity  
84 generated by eligible renewable energy resources that a retail seller is required to procure  
85 pursuant to Section 4 and Section 6 of this Act.

86  
87 Section 4. *[Duties of State Energy Commission to Establish Renewables Portfolio*  
88 *Standards.]*

89 (a) The [Energy Commission] shall do all of the following:

90 (1) Certify eligible renewable energy resources that it determines meet the criteria  
91 described in subdivision (a) of Section 3 of this Act.

92 (2) Design and implement an accounting system to verify compliance with the  
93 Renewables Portfolio Standard by retail sellers, to ensure that renewable energy output is counted  
94 only once for the purpose of meeting the renewables portfolio standard of this state or any other  
95 state, and for verifying retail product claims in this state or any other state. In establishing the  
96 guidelines governing this system, the [Energy Commission] shall collect data from electricity  
97 market participants that it deems necessary to verify compliance of retail sellers, in accordance  
98 with the requirements of this Act and the state [Public Records Act] under [insert citation]. In  
99 seeking data from electrical corporations, the [Energy Commission] shall request data from the  
100 [commission]. The [commission] shall collect data from electrical corporations and remit the data  
101 to the [Energy Commission] within [90 days] of the request.

102 (3) Allocate and award supplemental energy payments pursuant to [insert citation]  
103 to eligible renewable energy resources to cover above-market costs of renewable energy.  
104

105 Section 5. *[Duties of Public Utilities Commission to Require Renewable Energy*  
106 *Procurement Plans.]*

107 (a) The [commission] shall direct each electrical corporation to prepare renewable energy  
108 procurement plans as described in paragraph (e) of this Section to satisfy its obligations under the  
109 Renewables Portfolio Standard. To the extent feasible, this procurement plan shall be proposed,  
110 reviewed, and adopted by the [commission] as part of, and pursuant to, a general procurement  
111 plan process. The [commission] shall require each electrical corporation to review and update its  
112 renewable energy procurement plan as it determines to be necessary.

113 (1) The [commission] shall not require an electrical corporation to conduct  
114 procurement to fulfill the Renewables Portfolio Standard until it is deemed creditworthy by the  
115 [commission] upon it having attained an investment grade rating as determined by at least [two]  
116 major rating agencies. Within [90 days] of being deemed creditworthy, an electrical corporation  
117 shall conduct solicitations to implement a renewable energy procurement plan. The  
118 creditworthiness determination required by this paragraph shall apply only to the requirements  
119 established pursuant to this Act.

120 (2) Not later than [six months after the effective date of this section], the  
121 [commission] shall adopt, by rule, for all electrical corporations, all of the following:

122 (A) A process for determining market prices pursuant to subdivision (c) of  
123 Section 6 of this Act. The [commission] shall make specific determinations of market prices after  
124 the closing date of a competitive solicitation conducted by an electrical corporation for eligible  
125 renewable energy resources. In order to ensure that the market price established by the  
126 [commission] pursuant to subdivision (c) of Section 6 of this Act does not influence the amount  
127 of a bid submitted through the competitive solicitation in a manner that would increase the  
128 amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid  
129 price does not influence the establishment of the market price, the electrical corporation shall not  
130 transmit or share the results of any competitive solicitation for eligible renewable energy  
131 resources until the [commission] has established market prices pursuant to subdivision (c) of  
132 Section 6 of this Act.

133 (B) A process that provides criteria for the rank ordering and selection of  
134 least-cost and best-fit renewable resources to comply with the annual [Renewables Portfolio  
135 Standard Program] obligations on a total cost basis. This process shall consider estimates of  
136 indirect costs associated with needed transmission investments and ongoing utility expenses  
137 resulting from integrating and operating eligible renewable energy resources.

138 (C) Flexible rules for compliance including, but not limited to permitting  
139 electrical corporations to apply excess procurement in [one year to subsequent years] or  
140 inadequate procurement in [one year to no more than the following three years].

141 (D) Standard terms and conditions to be used by all electrical corporations  
142 in contracting for eligible renewable energy resources, including performance requirements for  
143 renewable generators.

144 (3) Consistent with the goal of procuring the least-cost and best-fit eligible  
145 renewable energy resources, the renewable energy procurement plan submitted by an electrical  
146 corporation shall include, but is not limited to, all of the following:

147 (A) An assessment of annual or multiyear portfolio supplies and demand to  
148 determine the optimal mix of renewable generation resources with deliverability characteristics  
149 that may include peaking, dispatchable, baseload, firm, and as-available capacity.

150 (B) Provisions for employing available compliance flexibility mechanisms  
151 established by the [commission].



152 (C) A bid solicitation setting forth the need for renewable generation of  
153 each deliverability characteristic, required online dates, and locational preferences, if any.

154 (4) In soliciting and procuring eligible renewable energy resources, each electrical  
155 corporation shall offer contracts of no less than [10 years] in duration, unless the [commission]  
156 approves of a contract of shorter duration.

157 (5) In soliciting and procuring eligible renewable energy resources, each electrical  
158 corporation may give preference to projects that provide tangible demonstrable benefits to  
159 communities with a plurality of minority or low-income populations.

160 (b) The [commission] shall review and accept, modify, or reject each electrical  
161 corporation's renewable procurement plan [90 days] prior to the commencement of renewable  
162 procurement pursuant to this Act by the electrical corporation.

163 (c) The [commission] shall review the results of a renewable energy resources solicitation  
164 submitted for approval by an electrical corporation and accept or reject proposed contracts with  
165 eligible renewable energy resources based on consistency with the approved renewable  
166 procurement plan. If the [commission] determines that the bid prices are elevated due to a lack of  
167 effective competition amongst the bidders, the commission shall direct the electrical corporation  
168 to renegotiate such contracts or conduct a new solicitation.

169 (d) If an electrical corporation fails to comply with a [commission] order adopting a  
170 renewable procurement plan, the [commission] shall exercise its authority pursuant to [insert  
171 citation] to require compliance.

172 (e) Upon application by an electrical corporation, the [commission] may authorize another  
173 entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of  
174 eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to  
175 similar terms and conditions applicable to an electrical corporation. The [commission] shall allow  
176 the procurement entity to recover reasonable costs through retail rates subject to review and  
177 approval.

178 (f) Procurement and administrative costs associated with long-term contracts entered into  
179 by an electrical corporation for eligible renewable resources, at or below the market price  
180 determined by the [commission] pursuant to subdivision (c) of Section 6, shall be deemed  
181 reasonable per se, and shall be recoverable in rates.

182  
183 Section 6. *[Requiring Electrical Corporations to Procure a Minimum Quantity of Output*  
184 *from Eligible Renewable Energy Resources to Fulfill Unmet Long-Term Resources.]*

185 (a) In order to fulfill unmet long-term resource needs, the [commission] shall establish a  
186 Renewables Portfolio Standard requiring all electrical corporations to procure a minimum  
187 quantity of output from eligible renewable energy resources as a specified percentage of total  
188 kilowatt-hours sold to their retail end-use customers each calendar year, if sufficient funds are  
189 made available pursuant to [insert citation] to cover the above-market costs of eligible  
190 renewables, and subject to all of the following:

191 (1) An electric corporation shall not be required to enter into long-term contracts  
192 with eligible renewable energy resources that exceed the market prices established pursuant to  
193 subdivision (c) of this section.

194 (2) The [Energy Commission] shall provide supplemental energy payments from  
195 funds in a [New Renewable Resources Account in the Renewable Resource Trust Fund]  
196 established under [insert citation] to eligible renewable energy resources pursuant consistent with  
197 this Act, for above-market costs. Indirect costs associated with the purchase of eligible renewable  
198 energy resources, such as imbalance energy charges, sale of excess energy, decreased generation  
199 from existing resources, or transmission upgrades shall not be eligible for supplemental energy  
200 payments, but shall be recoverable by an electrical corporation in rates, as authorized by the  
201 [commission].

202 (3) For purposes of setting annual procurement targets, the [commission] shall  
203 establish an initial baseline for each electrical corporation based on the actual percentage of retail  
204 sales procured from eligible renewable energy resources in [2001], and, to the extent applicable,  
205 adjusted going forward pursuant to subdivision (a) of Section 3 of this Act.

206 (b) The [commission] shall implement annual procurement targets for each electrical  
207 corporation as follows:

208 (1) Beginning on [January 1, 2003], each electrical corporation shall, pursuant to  
209 subdivision (a), increase its total procurement of eligible renewable energy resources by at least  
210 an additional [1 percent of retail sales per year so that 20 percent of its retail sales are procured  
211 from eligible renewable energy resources no later than December 31, 2017]. An electrical  
212 corporation with [20 percent of retail sales procured from eligible renewable energy resources in  
213 any year] shall not be required to increase its procurement of such resources in the following year.

214 (2) Only for purposes of establishing these targets, the [commission] shall include  
215 all power sold to retail customers by the [Department of Water Resources] pursuant to [insert  
216 citation] in the calculation of retail sales by an electrical corporation.

217 (3) In the event that an electrical corporation fails to procure sufficient eligible  
218 renewable energy resources in a given year to meet any annual target established pursuant to this  
219 subdivision, the electrical corporation shall procure additional eligible renewable energy  
220 resources in subsequent years to compensate for the shortfall if sufficient funds are made  
221 available pursuant to [insert citation] to cover the above-market costs of eligible renewables.

222 (4) If supplemental energy payments from the [Energy Commission], in  
223 combination with the market prices approved by the [commission], are insufficient to cover the  
224 above-market costs of eligible renewable energy resources, the [commission] shall allow an  
225 electrical corporation to limit its annual procurement obligation to the quantity of eligible  
226 renewable energy resources that can be procured with available supplemental energy payments.

227 (c) The [commission] shall establish a methodology to determine the market price of  
228 electricity for terms corresponding to the length of contracts with renewable generators, in  
229 consideration of the following:

230 (1) The long-term market price of electricity for fixed price contracts, determined  
231 pursuant to the electrical corporation's general procurement activities as authorized by the  
232 [commission].

233 (2) The long-term ownership, operating, and fixed-price fuel costs associated with  
234 fixed-price electricity from new generating facilities.

235 (3) The value of different products including baseload, peaking, and as-available  
236 output.

237 (d) The establishment of a Renewables Portfolio Standard shall not constitute  
238 implementation by the [commission] of the federal Public Utility Regulatory Policies Act of 1978  
239 (Public Law 95-617).

240 (e) The [commission] shall consult with the [Energy Commission] in calculating market  
241 prices under subdivision (c) and establishing other Renewables Portfolio Standard policies.

242  
243 Section 7. *[New Transmission Facilities.]*

244 (a) Notwithstanding any other provision in [insert citation] inclusive, an application of an  
245 electrical corporation for a certificate authorizing the construction of new transmission facilities  
246 shall be deemed to be necessary to the provision of electric service for purposes of any  
247 determination made under [insert citation] if the [commission] finds that the new facility is  
248 necessary to facilitate achievement of the renewable power goals established in this Act.

249 (b) With respect to a transmission facility described in subdivision (a), the [commission]  
250 shall take all feasible actions to ensure that the transmission rates established by the Federal

251 Energy Regulatory Commission are fully reflected in any retail rates established by the  
252 [commission]. These actions shall include, but are not limited to:

253 (1) Making findings, where supported by an evidentiary record, that those  
254 transmission facilities provide benefit to the transmission network and are necessary to facilitate  
255 the achievement of the Renewables Portfolio Standard established in this Act.

256 (2) Directing the utility to which the generator will be interconnected, where the  
257 direction is not preempted by federal law, to seek the recovery through general transmission rates  
258 of the costs associated with the transmission facilities.

259 (3) Asserting the positions described in paragraphs (1) and (2) to the Federal  
260 Energy Regulatory Commission in appropriate proceedings.

261 (4) Allowing recovery in retail rates of any increase in transmission costs incurred  
262 by an electrical corporation resulting from the construction of the transmission facilities that are  
263 not approved for recovery in transmission rates by the Federal Energy Regulatory Commission  
264 after the [commission] determines that the costs were prudently incurred in accordance with  
265 [insert citation].

266

267 Section 8. [*Local Publicly Owned Electric Utilities and Implementing and Enforcing a*  
268 *Renewable Energy Portfolio Standard.*]

269 (a) Each governing body of a local publicly owned electric utility, as defined in [insert  
270 citation], shall be responsible for implementing and enforcing a Renewables Portfolio Standard  
271 that recognizes the intent of the [Legislature] to encourage renewable resources, while taking into  
272 consideration the effect of the standard on rates, reliability, and financial resources and the goal of  
273 environmental improvement.

274 (b) Each local publicly owned electric utility shall report, on an [annual] basis, to its  
275 customers, the following:

276 (1) Expenditures of public funds collected pursuant to [insert citation] for  
277 renewable energy resource development. Reports shall contain a description of programs,  
278 expenditures, and expected or actual results.

279 (2) The resource mix used to serve its customers by fuel type. Reports shall  
280 contain the contribution of each type of renewable energy resource with separate categories for  
281 those fuels considered eligible renewable energy resources as defined by Section 3 of this Act.

282

283 Section 9. [*Nonutility Power Generators Using Renewable Fuels Prior to 2001*]. Any  
284 nonutility power generator using renewable fuels that has entered into a contract with an electrical  
285 corporation prior to [December 31, 2001], specifying fixed energy prices for [five years] of  
286 output may negotiate a contract for an additional [five years] of fixed energy payments upon  
287 expiration of the initial [five-year] term, at a price to be determined by the [commission].

288

289 Section 10. [*Severability*.] Insert severability clause.

290

291 Section 11. [*Repealer*.] Insert repealer clause.

292

293 Section 12. [*Effective Date*.] Insert effective date.

# Sustainably Priced Energy Enterprise Development Statement

Vermont Act 61 of 2005 requires retail electricity providers in the state to use new renewable energy sources. Generally, it requires each retail electricity provider to supply an amount of energy equal to its total incremental energy growth between January 1, 2005 and January 1, 2012 from electricity generated by new renewable resources. The law provides that the retail electricity provider may meet this requirement through eligible new renewable energy credits, new renewable energy resources with renewable energy credits still attached, or a combination of those credits and resources. New renewable energy is defined to include increases in efficiency or output from existing sources, provided that in the case of combustion, the system must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions.

This Act establishes the following exemptions:

- No retail electricity provider shall be required to provide in excess of a total of 10 percent of its calendar year 2005 retail electric sales with electricity generated by new renewable resources;
- A retail provider may obtain an exemption if the retail electricity provider demonstrates and the state public service board determines that compliance with the standard would impair the provider's ability to meet the public's need for energy services after certain concerns are addressed;
- In lieu of or in addition to purchasing tradeable renewable energy credits to satisfy the portfolio requirements, a retail electricity provider in this state may pay to a renewable energy fund established by the state public service board an amount per kilowatt hour as established by the board, or the board may require any proportion of this amount to be paid to an Energy Conservation Fund; and
- Members of a Public Power Supply Authority can meet the portfolio requirements in the aggregate.

This Act creates a Sustainably Priced Energy Enterprise Development program (SPEED) to encourage the in-state development of renewable sources of electricity, or “qualifying SPEED resources,” and the development of certain combined heat and power facilities that may consume nonrenewable sources of fuel, as long as the system meets specified requirements, which include a requirement that the system as a whole have total system efficiency of at least 65 percent.

Under the SPEED program, the state public service board can:

- Designate an agent to purchase and resell electricity generated by a project;
- Allow the developer of a SPEED resource that is one megawatt or less to sell that power under a long term contract that is established at a specified margin below the hourly spot market price;
- Encourage retail electricity providers to secure long-term contracts for renewable energy that are anticipated to be below the long-term market price, over the lives of the projects;
- Make available to retail electricity providers for purchase through the SPEED program, on a pro rata basis, a specified portion of the power generated under the program;
- Create a mechanism by which a retail electricity provider may establish that it has a sufficient amount of renewable energy, or qualifying resources in its portfolio so that equity requires that the retail electricity provider be relieved from provisions that would require the purchase of SPEED power; and
- Release an applicant from meeting a requirement in state law that there be established a need for the facility.

The Act provides that if the board finds that the amount of renewable energy SPEED resources coming into service after January 1, 2005, but prior to January 1, 2013, exceeds total statewide growth in demand during the period of time between January 1, 2005 and January 1, 2012, or if it finds that the amount of qualifying SPEED resources exceeds 10 percent of total statewide load for calendar year 2005, the portfolio standards established under this act shall not be in force. In this determination, electricity produced at all facilities owned by or under long-term contract to Vermont retail electricity providers, whether it is generated inside or outside Vermont, that is new renewable energy shall be counted. If by July 1, 2012, the board determines that the goals have not been met, the portfolio standards shall go into effect in one year. The Act makes SPEED resources eligible for state economic development funding.

This Act requires the state public service board to issue progress reports to the general assembly about the state's electricity load growth, the use of renewable energy credits, the implementation of the SPEED program, an assessment of the supply portfolios of the state retail electricity providers and the resources available to meet new supply requirements likely to be triggered by the expiration of major power supply contracts, and other specified matters.

This legislation also requires that on or before September 1, 2006, the public service board shall establish by rule or order standard provisions, including applicable fees that are required to cover the total cost of interconnection to be paid by the qualified distributed generator, for agreements providing for interconnection between the facilities of a retail electricity provider under the jurisdiction of the board and the facilities of a qualified distributed generator.

The bill establishes requirements with respect to transmission planning within the state, and requires certain companies to submit ten-year plans. The objective of the plans shall be to identify the potential need for transmission system improvements as early as possible, in order to allow sufficient time to plan and implement more cost-effective nontransmission alternatives to meet reliability needs, wherever feasible. It also would identify the demand or supply parameters that generation, demand response, energy efficiency, or other nontransmission strategies would need to address to resolve the reliability deficiencies identified. It establishes a public meeting process pursuant to which a utility preparing the plan would present a draft of the plan and facilitate a public discussion to identify and evaluate nontransmission alternatives. The Act directs that before the state department of public service takes a position before the board concerning the construction of new transmission or a transmission upgrade with significant land use ramifications, the department shall hold one or more public meetings with the legislative bodies or their designees of each town, village, or city that the transmission lines cross, and shall engage in a discussion with the members of those bodies or their designees and the interested public as to the department's role as public advocate.

This Act expresses state policy to be urged in proceedings before the New England Independent System Operator, the Federal Energy Regulatory Commission and other tribunals. The policy would be that all available resources transmission, strategic generation, targeted energy efficiency, and demand response resources should be treated comparably in analysis, planning, and access to funding. The policy provides that the principal criterion for approving and selecting a regional transmission solution should be whether it is the least-cost solution to a system need on a total cost basis.

This Act requires the state department of public service on or before January 1, 2006 to investigate and report to specified legislative committees with respect to matters, including the extent to which an aggressive regionwide implementation of energy efficiency and renewable energy programs might affect the price of spot market power in the New England ISO through the effect of those programs on bid prices, where the clearing price of the electric market is reduced due to reduced electric demand.

The Act allows the public service board to embark on performance-based ratemaking on its own motion or on motion of the department of public service, and not only at the request of the

utility. It makes it clear that these programs may offer incentives, decreasing the extent to which the financial success of distribution utilities between rate cases is linked to increased sales to end use customers and may be threatened by decreases in those sales.

The Act requires the department of public service to report back to the general assembly with recommendations regarding a statewide energy code for commercial buildings. The Act requires the public service board to report to the legislature with an explanation of the results of any alternative form of regulation approved by the board, and if no such form has been approved, an explanation of why no such form has been approved. It requires biennial reports to the legislature from the board on how the state might best continue to meet its energy goals, including whether the state should meet its load growth over the succeeding 10 years, up through 2023, by a continuation of the SPEED program.

Under the Act, a person may become a member of a cooperative by purchasing and paying the cooperative for renewable energy certificates or other environmental attributes associated with the generation of electricity.

This Act requires the department of public service to report to the general assembly by January 15, 2006 with recommended procedures and efforts and initiatives to date concerning the involvement of the public in the development and siting of wind energy facilities. It requires the department of public service to study and make recommendations on the feasibility of establishing grant programs for new renewable generation systems on farms. And finally, it requires the public service board and the department of public service to report to the general assembly by no later than January 15, 2006 and again by no later than January 15, 2007 with respect to the net revenue loss and the net revenue gain to ratepayers, utilities, and state-based generators as a result of any tariff relating to locational generation capacity; and the options available to mitigate the cost impacts of any such tariff.

Submitted as:

Vermont

[Act 61](#)

Status: Enacted into law in 2005.

# Transmission and Infrastructure

## Transmission Authority (2007 SSL)

This Act creates a state-owned authority to facilitate developing electric power lines and substations.

Submitted as:

North Dakota

[Chapter 406 of 2005](#)

Status: Enacted into law in 2005.

### Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act To Provide For A State  
2 Transmission Authority.”

3  
4           Section 2. [*State Transmission Authority.*] There is created a [state transmission  
5 authority], which shall be governed an [industrial commission].

6  
7           Section 3. [*Definitions.*] As used in this Act:

8           A. “Authority” means the [industrial commission] acting as the [state transmission  
9 authority].

10           B. “Commission” means the [industrial commission].

11           C. “Industrial Commission” means [insert definition.]

12           D. “Notice of intent” means the notice to the [authority] indicating willingness to  
13 construct transmission facilities contemplated by the [authority] or to provide services fulfilling  
14 the need for such transmission facilities.

15           E. “Project area” means the geographic area in which construction of a transmission  
16 facility contemplated by the [authority] is likely to occur.

17           F. “Transmission facilities” means electric transmission lines and substations, and related  
18 structures, equipment, rights of way, and works of public improvement, located within and  
19 outside this state, excluding electric generating facilities.

20  
21           Section 4. [*Purposes.*] The [state transmission authority] is created to diversify and  
22 expand the state economy by facilitating development of transmission facilities to support the  
23 production, transportation, and utilization of [insert state] electric energy.

24  
25           Section 5. [*Powers.*] The [authority] has all powers necessary to carry out the purposes of  
26 this Act, including the power to:

27           A. make grants or loans and to provide other forms of financial assistance as necessary or  
28 appropriate for the purposes of this Act;

29           B. make and execute contracts and all other instruments necessary or convenient for the  
30 performance of its powers and functions under this Act;

31           C. borrow money and issue evidences of indebtedness as provided in this Act;

32           D. receive and accept aid, grants, or contributions of money or other things of value from  
33 any source, including aid, grants, or contributions from any department, agency, or

34 instrumentality of the United States, subject to the conditions upon which the aid, grants, or  
35 contributions are made and consistent with the provisions of this Act;

36 E. issue and sell evidences of indebtedness in an amount or amounts as the [authority]  
37 may determine, but not to exceed [eight hundred million dollars], plus costs of issuance, credit  
38 enhancement, and any reserve funds required by agreements with or for the benefit of holders of  
39 the evidences of indebtedness for the purposes for which the [authority] is created under this Act,  
40 provided that the amount of any refinancing shall not be counted toward such [eight hundred  
41 million dollar] limitation to the extent it does not exceed the outstanding amount of the  
42 obligations being refinanced;

43 F. refund and refinance its evidences of indebtedness;

44 G. make and execute interest rate exchange contracts;

45 H. enter lease-sale contracts;

46 I. pledge any and all revenues derived by the [authority] under this Act or from a  
47 transmission facility, service, or activity funded under this Act to secure payment or redemption  
48 of the evidences of indebtedness;

49 J. to the extent and for the period of time necessary for the accomplishment of the  
50 purposes for which the [authority] was created, plan, finance, develop, acquire, own in whole or  
51 in part, lease, rent, and dispose of transmission facilities;

52 K. enter contracts to construct, maintain, and operate transmission facilities;

53 L. consult with the [public service commission], regional organizations, and any other  
54 relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or other  
55 charges for transmission facilities and all services rendered by the [authority];

56 M. lease, rent, and dispose of transmission facilities owned pursuant to this Act;

57 N. investigate, plan, prioritize, and propose corridors of the transmission of electricity;

58 O. participate in and join regional transmission organizations; and

59 P. do any and all things necessary or expedient for the purposes of the [authority]  
60 provided in this Act.

61  
62 Section 6. [*Coordinating Planning Transmission Facilities and Notice.*]

63 A. The [authority] shall coordinate its plans for transmission facilities with regional  
64 organizations having transmission planning responsibilities for the project area.

65 B. Before exercising its powers to construct transmission facilities granted to it in this Act,  
66 the [authority] shall publish in a newspaper of general circulation in this state and in a newspaper  
67 in the project area, a notice describing the need for transmission facilities contemplated by the  
68 [authority]. Anyone willing to construct the transmission facilities or furnish services to satisfy  
69 the needs described in the notice have a period of [one hundred eighty days] from the date of last  
70 publication of the notice within which to deliver to the [authority] a notice of intent. After receipt  
71 of a notice of intent, the [authority] may not exercise its powers to construct transmission  
72 facilities unless the [authority] finds that exercising its [authority] would be in the public interest.  
73 In making such a finding the [authority] shall consider factors including economic impact to the  
74 state, economic feasibility, technical performance, reliability, past performance and the likelihood  
75 of successful completion and ongoing operation.

76 C. The [authority] may require a person giving a notice of intent to provide a bond and to  
77 submit a plan for completion of the transmission facilities or commencement of services within a  
78 period of time acceptable to the [authority]. If no person submits an adequate plan or bond as  
79 required by the [authority], the [authority] may proceed with contracting for construction of the  
80 facility described in the [authority's] published notice.

81



82 Section 7. [*Authority May Participate Upon Request.*] The [authority] may participate in a  
83 transmission facility through financing, planning, joint ownership, or other arrangements at the  
84 request of a person giving a notice of intent.

85  
86 Section 8. [*Evidences of Indebtedness.*]

87 A. Evidences of indebtedness of the [authority] must be authorized by resolution of the  
88 [industrial commission] and may be issued in one or more series and must bear such date or dates,  
89 mature at such time or times, bear interest at such rate or rates of interest per year, be in such  
90 denomination or denominations, be in such form, either coupon or registered, carry such  
91 conversion or registration privileges, have such rank or priority, be executed in such manner, be  
92 payable from such sources in such medium of payment at such place or places within or without  
93 the state, and be subject to such terms of redemption, with or without premium, as such resolution  
94 or resolutions may provide. Evidences of indebtedness of the [authority] are to mature not more  
95 than [forty years] from the date of issue. Evidences of indebtedness of the [authority] may be sold  
96 at such time or times and at such price or prices as the authority determines.

97 B. Evidences of indebtedness and grants, loans, or other forms of financial assistance  
98 issued by the [authority] are payable solely from:

99 1. revenues that may be received by the [authority] from transmission facilities,  
100 services, or activities funded under this Act with the proceeds of the [authority's] evidences of  
101 indebtedness, subject only to prior payment of the reasonable and necessary expenses of  
102 operating and maintaining such transmission facilities except depreciation.

103 2. amounts received by the [authority] under loans authorized under this Act.

104 3. revenues received by the [authority] under this Act from any source other than  
105 general tax revenues.

106 C. The evidences of indebtedness are not subject to taxation by the state or any of its  
107 political subdivisions and do not constitute a debt of this state within the meaning of any statutory  
108 or constitutional provision and must contain a statement to that effect on their face.

109 D. The [authority] may establish and maintain a reserve fund for evidences of  
110 indebtedness issued under this Act.

111 E. There must be deposited in the reserve fund:

112 1. all moneys appropriated by the legislative assembly to the [authority] for the  
113 purpose of the reserve fund.

114 2. all proceeds of evidences of indebtedness issued under this Act required to be  
115 deposited in the reserve fund by the terms of any contract between the [authority] and the holders  
116 of its evidences of indebtedness or any resolution of the [authority].

117 3. any lawfully available moneys of the [authority] which it may determine to  
118 deposit in the reserve fund.

119 4. any moneys from any other source made available to the [authority] for deposit  
120 in the reserve fund or any contractual right to the receipt of moneys by the [authority] for the  
121 purpose of the fund, including a letter of credit, surety bond, or similar instrument.

122 F. The [authority] must include in its biennial request to the [office of the budget] the  
123 amount, if any, necessary to restore any reserve fund established under this section to an amount  
124 equal to the amount required to be deposited in the fund by the terms of any contract or resolution  
125 approved by the [commission].

126 G. Any pledge of revenue made by the [industrial commission] as security for the  
127 [authority's] evidences of indebtedness is valid and binding from time to time when the pledge is  
128 made. The revenues or other moneys so pledged and thereafter received by the [authority] are  
129 immediately subject to the lien of any such pledge without any physical delivery thereof or  
130 further act, and the lien of any such pledge is valid and binding as against all parties having  
131 claims of any kind in tort, contract or otherwise against the [authority], regardless of whether such

132 parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is  
133 created need be filed or recorded, except in the records of the [authority].

134 H. The [authority] is authorized and empowered to obtain from any entity of the state, any  
135 department or agency of the United States of America, or any nongovernmental insurer any  
136 insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the  
137 extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as  
138 to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any  
139 evidences of indebtedness issued by the authority pursuant to this Act, and to enter into any  
140 agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity  
141 facility, and pay any required fee, unless the same would impair or interfere with the ability of the  
142 authority to fulfill the terms of any agreement made with the holders of its evidences of  
143 indebtedness.

144 I. After issuance, all evidences of indebtedness of the [authority] are conclusively  
145 presumed to be fully authorized and issued under the laws of the state, and any person or  
146 governmental unit is estopped from questioning their authorization, sale, issuance, execution, or  
147 delivery by the [authority].

148 J. When the [authority] has issued evidences of indebtedness and pledged the revenues of  
149 the transmission facilities for the payment thereof as herein provided, the [authority] shall operate  
150 and maintain the transmission facilities and shall impose and collect fees and charges for the  
151 services furnished by the transmission facilities, including those furnished to the [authority] itself,  
152 in the amounts and at the rates as are fully sufficient at all times to:

- 153 1. pay the expenses of operating and maintaining the transmission facilities;
- 154 2. provide a debt service fund sufficient to assure the prompt payment of principal  
155 and interest on the evidences of indebtedness at maturity; and
- 156 3. provide a reasonable fund for contingencies as may be required by the resolution  
157 authorizing the evidences of indebtedness.

158

159 Section 9. [*Public Service Commission Jurisdiction and Consultation.*]

160 A. The [authority] and the transmission facilities built under this Act, until sold or  
161 disposed of by the [authority], are exempt from the provisions of [insert citation]. Upon sale or  
162 disposal by the [authority], transmission facilities built under this Act are subject to the provisions  
163 of [insert citation].

164 B. The [authority] shall consult with the [public service commission] with respect to the  
165 rates charged by the [authority] for use of its transmission facilities and such rates must thereafter  
166 be considered just and reasonable in proceedings before the [public service commission] pursuant  
167 to [insert citation].

168 C. The [authority] shall conduct its activities in consultation with transmission providers,  
169 wind interests, the [Lignite Research Council], and other people having relevant expertise.

170

171 Section 10. [*Bonds as Legal Investments.*] The bonds of the [authority] are legal  
172 investments which may be used as collateral for public funds of the state, insurance companies,  
173 banks, savings and loan associations, investment companies, trustees, and other fiduciaries which  
174 may properly and legally invest funds in their control or belonging to them in bonds of the  
175 [authority]. The [state investment board] may invest in bonds of the [authority] in an amount  
176 specified by the [state investment board].

177

178 Section 11. [*Disposal of Transmission Facilities.*]

179 A. Before becoming an owner or partial owner of a transmission facility, the [authority]  
180 shall develop a plan identifying:

- 181 1. the public purposes of the [authority's] ownership;

182                   2. conditions that would make the [authority's] ownership no longer necessary for  
183 accomplishing those public purposes; and

184                   3. a plan to divest the [authority's] ownership interest as soon as economically  
185 prudent once those conditions occur.

186           B. For transmission facilities that are leased to another entity by the [authority], at the end  
187 of the lease, absent default by the lessee, the [authority] shall convey its interest in the  
188 transmission facilities to the lessee.

189           C. For transmission facilities that are owned by the [authority] without a lessee, the  
190 [authority] shall divest itself of ownership as soon as economically prudent in accordance with  
191 the divestiture plan developed pursuant to subsection A.

192

193           Section 12. [*Exemption from Property Taxes.*] Transmission facilities built under sections  
194 1 through 11 of this Act are exempt from property taxes for a period determined by the [authority]  
195 not to exceed the first [five taxable years] of operation; after this initial period, transmission lines  
196 of [two hundred thirty kilovolts] or larger and the transmission lines' associated transmission  
197 substations remain exempt from property taxes but are subject to a per mile tax at the full per mile  
198 rate and subject to the same manner of imposition and allocation as the per mile tax imposed by  
199 [insert citation] without application of the discounts provided in that subsection.

200

201           Section 13. [*Biennial Report to Legislative Council.*] The [authority] shall deliver a  
202 written report on its activities to the [legislative council] each [biennium].

203

204           Section 14. [*Severability.*] [Insert severability clause.]

205

206           Section 15. [*Repealer.*] [Insert repealer clause.]

207

208           Section 16. [*Effective Date.*] [Insert effective date.]

# Electric Transmission Facilities: Recovering Costs for Construction and Upgrading (2006 SSL)

This Act authorizes the state corporation commission to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities those costs associated with the construction or improvement of electric transmission facilities under certain circumstances. The bill covers costs for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities would be subject to the jurisdiction of the corporation commission for implementation of the Act.

The corporation commission could approve inclusion of the specified costs in retail utility rates if the commission finds:

- That a regional transmission organization has identified the construction or upgrade as appropriate for reliability of the electric transmission system or for economic benefit to transmission owners and customers; and
- A state agency has determined that the project will provide measurable economic benefit to electric consumers in the state that would exceed anticipated project costs.
- The commission could approve recovery of project costs in retail electric rates only if those costs would not otherwise be recovered.

Comment:

This Act is reported to be the first to provide statutory authority for a public utility commission, based on a recommendation by a regional transmission organization, to assign full cost-recovery charges to all beneficiaries for an economic development-based transmission project. Economic development projects are all proposed non-system reliability transmission lines (e.g. to move low cost power to high cost areas, or to serve some types of new loads or generation). The significance of this bill is that it requires that approval of a transmission project by a regional transmission organization shall constitute a rebuttable presumption of the appropriateness of such a project, and recovery of unassigned costs for the project shall be assessed and collected from all beneficiaries.

Submitted as:

Kansas

[HB 2045](#)

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Cover the Cost of Building  
2 and Upgrading Electric Transmission Facilities.”

3

4           Section 2. [*Definitions.*] As used in this Act:

5           (1) “Appurtenances” means all substations, towers, poles and other structures and  
6 equipment necessary for the bulk transfer of electricity.

7           (2) “Commission” means the state [corporation commission].

8           (3) “Construction or upgrade of an electric transmission facility” means construction or  
9 upgrade of an electric line, and appurtenances with an operating voltage of 115 kilovolts or more.

10

11 Section 3. [*Criteria for Recovering Costs.*]

12 (1) Upon application, the [commission] may authorize recovery of costs associated with  
13 the construction or upgrade of an electric transmission facility if the [commission] finds that:

14 (A) A regional transmission organization has identified such construction or  
15 upgrade as appropriate for reliable operation of the integrated electric transmission system; or for  
16 economic benefits to transmission owners and customers; and

17 (B) A state agency has determined that such construction or upgrade will provide  
18 measurable economic benefits to electric consumers in all or part of this state that will exceed  
19 anticipated project costs; and

20 (2) Such costs are not being otherwise recovered.

21 (3) The [commission] shall review an application for recovery of costs pursuant to this  
22 section in an expedited manner if the application includes evidence that expedited construction or  
23 upgrade of the electric transmission facility will result in significant, measurable economic  
24 benefits to electric consumers in this state. Recommendation or approval of construction or  
25 upgrade of an electric transmission facility by a regional transmission organization shall  
26 constitute a rebuttable presumption of the appropriateness of such construction or upgrade for  
27 system reliability or economic dispatch of power.

28 (4) In determining whether to approve recovery of costs pursuant to this section the  
29 [commission] may consider factors such as the speed with which electric consumers in this state  
30 will benefit from the transmission facility and the long-term benefits of the transmission facility  
31 to electric consumers in this state, or both, and whether such factors outweigh other less costly  
32 options. An application for recovery of costs pursuant to this section shall include such  
33 information as the [commission] requires to weigh such factors, including, but not limited to,  
34 information regarding estimated line losses, reactive power and voltage implications and long-  
35 term economic and system reliability benefits.

36 (5) Any recovery of costs authorized by the [commission] pursuant to this section shall be  
37 assessed against all electric public utilities, electric municipal utilities and electric cooperative  
38 utilities receiving benefits of the construction or upgrade and having retail customers in this state.  
39 Each such utility's assessment shall be based on the benefits the utility receives from the  
40 construction or upgrade. In determining allocation of benefits and costs to utilities, the  
41 [commission] may take into account funding and cost recovery mechanisms developed by  
42 regional transmission organizations and shall take into account financial payments by  
43 transmission users and approved by the Federal Energy Regulatory Commission or regional  
44 transmission organization. Each electric public utility shall recover any such assessed costs from  
45 the utility's retail customers in a manner approved by the [commission] and each electric  
46 municipal or cooperative utility shall recover such assessed costs from the utility's retail  
47 customers in a manner approved by the utility's governing body.

48 (6) All money collected by a utility from assessments authorized by the [commission]  
49 pursuant to this section shall be paid quarterly by the utility to the transmission operator or owner  
50 designated by the [commission].

51 (7) Notwithstanding any other provision of law to the contrary, electric municipal utilities  
52 and electric cooperative utilities shall be subject to the jurisdiction of the [commission] for the  
53 limited purpose of implementing the provisions of this section.

54 Section 4. [*Severability.*] [Insert severability clause.]

55 Section 5. [*Repealer.*] [Insert repealer clause.]

56 Section 6. [*Effective Date.*] [Insert effective date.]

# Energy Facility Siting, Long Term - Statement

Oregon Chapter 683 of 2001 expedites the power generation facility siting process to encourage additional energy production and requires certain conservation activities by state agencies. The measure deletes the state Public Utility Commission's authority to offer incentives for a utility divestiture of generating plants. The measure also disallows the installation of solar heating and cooling systems without journeyman plumber certification or a specialty registration from the State Plumbing Board.

The expedited licensing provisions of the Act exempt temporary (up to two-year operation) generating facilities and standby facilities meeting certain criteria from the requirement to obtain a site certificate until July 1, 2003. The measure provides land-use planning requirements and expedites the siting review process for demonstrably low-impact gas-fired power plants, effective March 31, 2001.

The conservation provisions of HB 3788 permit the Oregon Office of Energy to waive fees and reviews for a state agency that demonstrates conservation greater than 20 percent of building code requirements. The provisions also require all state facilities constructed or renovated to exceed conservation provisions in building code requirements by 20 percent and require state agencies to reduce nonrenewable energy consumption by 10 percent.

Submitted as:

Oregon

[Chapter 683 of 2001](#)

Status: Enacted into law in 2001.

# Energy Facility Siting, Short Term - Statement

Oregon Chapter 134 of 2001 modifies the criteria for the temporary siting of certain energy generation facilities. The measure defines “temporary energy generating facility” and “standby generation facility” and creates exemptions from site certification requirements for such facilities. The measure places limits on the operation of these facilities to no longer than 24 months after the date of first commercial operation or January 2, 2006, whichever is earlier, and prohibits the granting of exemptions after July 1, 2003.

This Act changes the level at which a power plant can qualify for expedited review from the Energy Facility Siting Council (EFSC) to those with an average generating capacity of 100 megawatts or less. The measure also changes EFSC jurisdiction over renewable energy resource facilities from facilities producing 35 peak megawatts to those producing 35 average megawatts, and sets the process for determining average megawatts.

This legislation allows the Public Utility Commission to use arbitration to resolve valuation disputes relating to electric company investments. It removes requirements that investments by electric companies that fit into the categories of “economic utility investment” and “uneconomic utility investment” be made prior to the date an electric company offers direct access to businesses.

Submitted as:

Oregon

[Chapter 134 of 2001](#)

Status: Enacted into law in 2001.

# Energy Resource Zones Transmission Development

This Act requires electric utilities regulated by the state public utilities commission (PUC) to perform biennial reviews to designate energy resource zones in areas of the state in which transmission constraints hinder the delivery of electricity to consumers or hinder the development of new electric generation facilities. The bill requires utilities to submit proposed plans for the development of additional transmission facilities in energy resource zones and directs the PUC to grant or deny any necessary certificates for such development within 180 days. The bill allows the utilities to recover costs during construction of new or expanded transmission facilities through a rate adjustment clause so long as the costs are prudently incurred and not already included in the utility's base rates.

Submitted as:

Colorado

[Chapter 61 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Energy Resource  
2 Zones.”

3  
4           Section 2. [*Legislative Findings.*] The [general assembly] finds, determines, and declares  
5 that:

6                   (a) a robust electric transmission system is critical to ensuring the reliability of  
7 electric power for citizens of this state;

8                   (b) the state's vibrant economy and high quality of life depend on the continued  
9 availability of clean, affordable, reliable electricity; and

10                  (c) utilities in this state should continually evaluate the adequacy of electric  
11 transmission facilities throughout the state and should be encouraged to promptly and efficiently  
12 improve such infrastructure as required to meet the state's existing and future energy needs.

13  
14           Section 3. [*Energy Resource Zones.*]

15           (1) As used in this section, “energy resource zone” means a geographic area in the state in  
16 which transmission constraints hinder the delivery of electricity to consumers, the development of  
17 new electric generation facilities to serve consumers in the state, or both.

18           (2) On or before [October 31 of each odd-numbered year, commencing in 2007], each  
19 electric utility in this state subject to rate regulation by the state [public utilities commission]  
20 shall:

21                   (a) designate energy resource zones;

22                   (b) develop plans for the construction or expansion of transmission facilities  
23 necessary to deliver electric power consistent with the timing of the development of beneficial  
24 energy resources located in or near such zones;

25                   (c) consider how transmission can be provided to encourage local ownership of  
26 renewable energy facilities, whether through renewable energy cooperatives as provided in [insert  
27 citation] or otherwise; and



28 (d) submit proposed plans, designations, and applications for certificates of public  
29 convenience and necessity to the commission for simultaneous review pursuant to subsection (3)  
30 of this section.

31 (3) The [commission] shall approve a utility's application for a [Certificate of Public  
32 Convenience and Necessity] for the construction or expansion of transmission facilities pursuant  
33 to paragraph (b) of Subsection (2) of this section if the [public utilities commission] finds that:

34 (a) the construction or expansion is required to ensure the reliable delivery of  
35 electricity to consumers in this state or to enable the utility to meet the renewable energy  
36 standards set forth in [insert citation]; and

37 (b) that the present or future public convenience and necessity require such  
38 construction or expansion.

39 (4) Notwithstanding any other provision of law, in any application for a [Certificate of  
40 Public Convenience and Necessity] for the construction or expansion of transmission facilities  
41 pursuant to paragraph (b) of Subsection (2) of this section, the [public utilities commission] shall  
42 issue a final order within [one hundred eighty days] after the application is filed. If the [public  
43 utilities commission] does not issue a final order within that period, the application shall be  
44 deemed approved.

45  
46 Section 4. [*Recovering Costs of Building or Expanding Transmission Facilities.*]

47 (a) A public utility shall be entitled to recover, through a separate rate adjustment clause,  
48 the costs that it prudently incurs in planning, developing, and completing the construction or  
49 expansion of transmission facilities for which the utility has been granted a [Certificate of Public  
50 Convenience and Necessity] or for which the [public utilities commission] has determined that no  
51 [Certificate of Public Convenience and Necessity] is required. The transmission rate adjustment  
52 clause shall be subject to [annual] changes, which shall be effective on [January 1 of each year].

53 (b) To provide additional encouragement to utilities to pursue the construction and  
54 expansion of transmission facilities, the [public utilities commission] shall approve current  
55 recovery by the utility through the annual rate adjustment clause of the utility's weighted average  
56 cost of capital, including its most recently authorized rate of return on equity, on the total balance  
57 of construction work in progress related to such transmission facilities as of the end of the  
58 immediately preceding year. The rate adjustment clause shall be reduced to the extent that the  
59 prudently incurred costs being recovered through the adjustment clause have been included in the  
60 public utility's base rates as a result of the [public utilities commission's] final order in a rate case.

61  
62 Section 5. [*Severability.*] [Insert severability clause.]

63  
64 Section 6. [*Repealer.*] [Insert repealer clause.]

65  
66 Section 7. [*Effective Date.*] [Insert effective date.]

# Renewable Energy Industries Tax Credits

This Act directs that any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

The Act specifies that when light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system, any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system and from a customer-generated electricity renewable energy system installed on its property that is interconnected to the electric distribution system. Uniform standards for interconnection to the electric distribution system means those standards established by light and power businesses that have ninety percent of total requirements the same. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

CSG environmental policy staff report that this feed-in credit legislation is particularly relevant to the larger renewable energy effort in the U.S. because it reflects a new policy approach for the state-based promotion of clean energy.

Submitted as:

Washington

[Chapter 300, Laws of 2005](#)

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act Relating to Providing  
2 Incentives to Support Renewable Energy.”

3  
4           Section 2. [*Legislative Findings*.]

5           (a) The [legislature] finds that the use of renewable energy resources generated from local  
6 sources such as solar and wind power benefit our state by reducing the load on the state's electric  
7 energy grid, by providing nonpolluting sources of electricity generation, and by the creation of  
8 jobs for local industries that develop and sell renewable energy products and technologies.

9           (b) The [legislature] finds that this state has become a national and international leader in  
10 the technologies related to the solar electric markets. The state can support these industries by  
11 providing incentives for the purchase of locally made renewable energy products. Locally made  
12 renewable technologies benefit and protect the state's environment. The [legislature] also finds  
13 that the state's economy can be enhanced through the creation of incentives to develop additional  
14 renewable energy industries in the state.

15 (c) The [legislature] intends to provide incentives for the greater use of locally created  
16 renewable energy technologies, support and retain existing local industries, and create new  
17 opportunities for renewable energy industries to develop in this state.

18  
19 Section 3. [*Definitions.*] As used in this Act:

20 (1) “Customer-generated electricity” means the alternating current electricity that  
21 is generated from a renewable energy system located on an individual's, businesses', or local  
22 government's real property that is also provided electricity generated by a light and power  
23 business. A system located on a leasehold interest does not qualify under this definition.  
24 “Customer-generated electricity” does not include electricity generated by a light and power  
25 business with greater than [one thousand megawatt hours of annual sales or a gas distribution  
26 business].

27 (2) “Economic development kilowatt-hour” means the actual kilowatt-hour  
28 measurement of customer-generated electricity multiplied by the appropriate economic  
29 development factor.

30 (3) “Photovoltaic cell” means a device that converts light directly into electricity  
31 without moving parts.

32 (4) “Renewable energy system” means a solar energy system, an anaerobic  
33 digester as defined in [insert citation], or a wind generator used for producing electricity.

34 (5) “Solar energy system” means any device or combination of devices or  
35 elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

36 (6) “Solar inverter” means the device used to convert direct current to alternating  
37 current in a photovoltaic cell system.

38 (7) “Solar module” means the smallest nondivisible self-contained physical  
39 structure housing interconnected photovoltaic cells and providing a single direct current electrical  
40 output.

41 (8) “Standards for interconnection to the electric distribution system” means  
42 technical, engineering, operational, safety, and procedural requirements for interconnection to the  
43 electric distribution system of a light and power business.

44  
45 Section 4. [*Investment Cost Recovery Incentive.*]

46 (a) Any individual, business, or local governmental entity, not in the light and power  
47 business or in the gas distribution business, may apply to the light and power business serving the  
48 situs of the system, each fiscal year beginning on [July 1, 2005], for an investment cost recovery  
49 incentive for each kilowatt-hour from a customer-generated electricity renewable energy system  
50 installed on its property that is not interconnected to the electric distribution system. No incentive  
51 may be paid for kilowatt-hours generated before [July 1, 2005, or after June 30, 2014].

52 (b) When light and power businesses serving [eighty percent] of the total customer load in  
53 the state adopt uniform standards for interconnection to the electric distribution system, any  
54 individual, business, or local governmental entity, not in the light and power business or in the  
55 gas distribution business, may apply to the light and power business serving the situs of the  
56 system, each fiscal year, for an investment cost recovery incentive for each kilowatt-hour from a  
57 customer-generated electricity renewable energy system installed on its property that is not  
58 interconnected to the electric distribution system and from a customer-generated electricity  
59 renewable energy system installed on its property that is interconnected to the electric  
60 distribution system. Uniform standards for interconnection to the electric distribution system  
61 means those standards established by light and power businesses that have [ninety percent] of  
62 total requirements the same. No incentive may be paid for kilowatt-hours generated before [July  
63 1, 2005, or after June 30, 2014].

64 (c) (1) Before submitting for the first time the application for the incentive allowed  
65 under this section, the applicant shall submit to the [department of revenue] and to the [climate and  
66 rural energy development center at the state university], established under [insert citation], a  
67 certification in a form and manner prescribed by the [department of revenue] that includes, but is  
68 not limited to, the following information:

69 (A) The name and address of the applicant and location of the renewable  
70 energy system;

71 (B) The applicant's tax registration number;

72 (C) That the electricity produced by the applicant meets the definition of  
73 "customer-generated electricity" and that the renewable energy system produces electricity with:

74 (i) Any solar inverters and solar modules manufactured in this state;

75 (ii) A wind generator powered by blades manufactured in this state;

76 (iii) A solar inverter manufactured in this state;

77 (iv) A solar module manufactured in this state; or

78 (v) Solar or wind equipment manufactured outside of this state;

79 (D) That the electricity can be transformed or transmitted for entry into or  
80 operation in parallel with electricity transmission and distribution systems;

81 (E) The date that the renewable energy system received its final electrical  
82 permit from the applicable local jurisdiction.

83 (d) Within [thirty days] of receipt of the certification the [department of revenue] shall  
84 advise the applicant in writing whether the renewable energy system qualifies for an incentive  
85 under this section. The [department of revenue] may consult with the [climate and rural energy  
86 development center] to determine eligibility for the incentive. System certifications and the  
87 information contained therein are subject to disclosure under [insert citation].

88 (e) (1) By [August 1 of each year], application for the incentive shall be made to the  
89 light and power business serving the situs of the system by certification in a form and manner  
90 prescribed by the [department of revenue] that includes, but is not limited to, the following  
91 information:

92 (A) The name and address of the applicant and location of the renewable  
93 energy system;

94 (B) The applicant's tax registration number;

95 (C) The date of the letter from the [department of revenue] stating that the  
96 renewable energy system is eligible for the incentives under this section;

97 (D) A statement of the amount of kilowatt-hours generated by the  
98 renewable energy system in the prior fiscal year.

99 (2) Within [sixty days] of receipt of the incentive certification the light and power  
100 business serving the situs of the system shall notify the applicant in writing whether the incentive  
101 payment will be authorized or denied. The business may consult with the [climate and rural  
102 energy development center] to determine eligibility for the incentive payment. Incentive  
103 certifications and the information contained therein are subject to disclosure under [insert  
104 citation].

105 (f) Entities receiving incentive payments shall keep and preserve, for a period of [five  
106 years], suitable records as may be necessary to determine the amount of incentive applied for and  
107 received. Such records shall be open for examination at any time upon notice by the light and  
108 power business that made the payment or by the [department of revenue]. If upon examination of  
109 any records or from other information obtained by the business or [department of revenue] it  
110 appears that an incentive has been paid in an amount that exceeds the correct amount of incentive  
111 payable, the business may assess against the person for the amount found to have been paid in  
112 excess of the correct amount of incentive payable and shall add thereto interest on the amount.

113 Interest shall be assessed in the manner that the [department of revenue] assesses interest upon  
114 delinquent tax under [insert citation].

115 (g) If it appears that the amount of incentive paid is less than the correct amount of  
116 incentive payable the business may authorize additional payment.

117 (h) The investment cost recovery incentive may be paid [fifteen cents per economic  
118 development kilowatt-hour] unless requests exceed the amount authorized for credit to the  
119 participating light and power business. For the purposes of this section, the rate paid for the  
120 investment cost recovery incentive may be multiplied by the following factors:

121 (1) For customer-generated electricity produced using solar modules manufactured  
122 in this state, [two and four-tenths];

123 (2) For customer-generated electricity produced using a solar or a wind generator  
124 equipped with an inverter manufactured in this state, [one and two-tenths];

125 (3) For customer-generated electricity produced using an anaerobic digester, or by  
126 other solar equipment or using a wind generator equipped with blades manufactured in this state,  
127 [one]; and

128 (4) For all other customer-generated electricity produced by wind, [eight-tenths].

129 (i) No individual, household, business, or local governmental entity is eligible for  
130 incentives for more than [two thousand dollars per year].

131 (j) If requests for the investment cost recovery incentive exceed the amount of funds  
132 available for credit to the participating light and power business, the incentive payments shall be  
133 reduced proportionately.

134 (k) The [climate and rural energy development center] at the [state university] may  
135 establish guidelines and standards for technologies that are identified as manufactured in this state  
136 and therefore most beneficial to the state's environment.

137 (l) The environmental attributes of the renewable energy system belong to the applicant,  
138 and do not transfer to the state or the light and power business upon receipt of the investment cost  
139 recovery incentive.

140

141 Section 5. [*Allowable Tax Credits and Investment Cost Recovery Incentive Payments.*]

142 (a) A light and power business shall be allowed a credit against taxes due under [insert  
143 citation] or this Act in an amount equal to investment cost recovery incentive payments made in  
144 any fiscal year under Section 4 of this Act. The credit shall be taken in a form and manner as  
145 required by the [department of revenue]. The credit under this section for the fiscal year shall not  
146 exceed [twenty-five one-hundredths of one percent of the businesses' taxable power sales] due  
147 under [insert citation] or [twenty-five thousand dollars], whichever is greater. The credit may not  
148 exceed the tax that would otherwise be due under this Act. Refunds shall not be granted in the  
149 place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn  
150 a credit in subsequent years.

151 (b) For any business that has claimed credit for amounts that exceed the correct amount of  
152 the incentive payable under Section 4 of this Act, the amount of tax against which credit was  
153 claimed for the excess payments shall be immediately due and payable. The [department of  
154 revenue] shall assess interest but not penalties on the taxes against which the credit was claimed.  
155 Interest shall be assessed at the rate provided for delinquent excise taxes under [insert citation],  
156 retroactively to the date the credit was claimed, and shall accrue until the taxes against which the  
157 credit was claimed are repaid.

158 (c) The right to earn tax credits under this section expires [June 30, 2015]. Credits may not  
159 be claimed after [June 30, 2016].

160

161 Section 6. [*Reports.*]

162 (a) Using existing sources of information, the [insert department] shall report to the [house  
163 appropriations committee, the house committee dealing with energy issues, the senate committee  
164 on ways and means, and the senate committee dealing with energy issues] by [December 1,  
165 2009]. The report shall measure the impacts of this Act, including the total number of solar  
166 energy system manufacturing companies in the state, any change in the number of solar energy  
167 system manufacturing companies in the state, and, where relevant, the effect on job creation, the  
168 number of jobs created for residents of this state, and such other factors as the [insert department  
169 name] selects.

170 (b) The [insert department] shall not conduct any new surveys to provide the report in  
171 subsection (a) of this section.

172

173 Section 7. [*Severability.*] [Insert severability clause.]

174

175 Section 8. [*Repealer.*] [Insert repealer clause.]

176

177 Section 9. [*Effective Date.*] [Insert effective date.]

# Renewable Energy Transmission Authority

This Act creates a Renewable Energy Transmission Authority (Authority), a quasi-governmental agency to help facilitate the transmission and use of renewable energy. The Authority is authorized to:

- hire an executive director and staff and set salaries;
- acquire, maintain, and operate eligible energy transmission facilities that, within one year after beginning operation, produce at least 30 percent of the electric capacity from renewable energy sources;
- issue and sell revenue bonds, known as renewable energy transmission bonds, and set their denomination, maturities, and rates of interest;
- enter into agreements, contracts and partnerships that plan, acquire, maintain, operate, or lease eligible renewable energy facilities;
- set rates for public utilities and people using facilities owned by the Authority; and
- exercise the power of eminent domain for acquiring property or rights of way.

The Act defines renewable energy as electrical energy that is generated with low or zero emission equipment or generated by solar, wind, hydropower, geothermal, non-fossilized fuel cells and biomass resources. Electrical energy produced by fossil fuels or nuclear energy is not considered renewable energy.

The bill creates two new funds in the state treasury. A “Renewable Energy Transmission Bonding Fund” will contain revenues from operating or leasing facilities, fees, and interest earnings. Renewable Energy Transmission Bonds will be repayable from that fund. Proceeds from the bonds will be appropriated to the Authority to finance or acquire electric transmission and storage facilities, and money in that fund will be pledged for bond debt service. On the last day of January 31 and July 30 of each year, the Authority will transfer the balance of the bonding fund, except for the amount needed for the next 12 months of debt service, to a “Renewable Energy Transmission Authority Operational Fund.” This non-reverting fund will also contain appropriated monies.

Renewable Energy Transmission Bonds are exempt from state tax. Receipts from selling equipment or providing services to the Authority or any agent or lessee of the Authority can be deducted from gross receipts tax.

The bill also creates a Renewable Energy Transmission Oversight Committee.

Submitted as:

New Mexico

[HB 188](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Renewable Energy Transmission  
2 Authority Act.”

3

4           Section 2. [*Definitions.*]

5           A. As used in this Renewable Energy Transmission Authority Act:

6                   (1) “acquire” means to obtain eligible facilities by lease, construction,  
7 reconstruction or purchase;

- 8 (2) “authority” means the state [Renewable Energy Transmission Authority];  
9 (3) “bonds” means [Renewable Energy Transmission Bonds] and includes notes,  
10 warrants, bonds, temporary bonds and anticipation notes issued by the [authority];  
11 (4) “eligible facilities” means facilities to be financed or acquired by the  
12 [authority], in which, within [one year] after beginning the transmission or storage of any  
13 electricity, and thereafter, at least [thirty percent] of the electric energy, as estimated by the  
14 [authority], originates from renewable energy sources;  
15 (5) “facilities” means electric transmission and interconnected storage facilities  
16 and all related structures, properties and supporting infrastructure, including any interests therein;  
17 (6) “finance” or “financing” means the lending of bond proceeds by the [authority]  
18 to a public utility or other private person for the purpose of planning, acquiring, operating and  
19 maintaining eligible facilities in whole or in part by that public utility or other private person;  
20 (7) “project” means an undertaking by the [authority] to finance or plan, acquire,  
21 maintain and operate eligible facilities located in part or in whole within the state;  
22 (8) “public utility” means a public electric utility regulated by the state [public  
23 regulation commission] pursuant to [insert citation] and municipal utilities exempt from [public  
24 regulation commission] regulation pursuant to [insert citation] that own or operate facilities;  
25 (9) “renewable energy” means electric energy:  
26 (a) generated by use of low- or zero-emissions generation technology with  
27 substantial long-term production potential; and  
28 (b) generated by use of renewable energy resources that may include:  
29 (i) solar, wind, hydropower and geothermal resources;  
30 (ii) fuel cells that are not fossil fueled; or  
31 (iii) biomass resources, such as agriculture or animal waste, small  
32 diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river  
33 basins or watersheds in this state, landfill gas and anaerobically digested waste biomass; but  
34 (c) does not include electric energy generated by use of fossil fuel or  
35 nuclear energy; and  
36 (10) “storage” means energy storage technologies that convert, store and return  
37 electricity to help alleviate disparities between electricity supply and demand, to facilitate the  
38 dispatching of electricity or to increase economic return on the sale of electricity.  
39

40 Section 3. *[Renewable Energy Transmission Authority Created.]*

41 A. The [Renewable Energy Transmission Authority] is created as a public body, politic  
42 and corporate, separate and apart from the state, constituting a governmental instrumentality for  
43 the performance of essential public functions.

44 B. The [authority] shall be composed of [seven] members as follows:

45 (1) [three members appointed by the governor] with the advice and consent of the  
46 [senate]. The initial appointees shall be appointed for staggered terms of [one, two and three  
47 years]; thereafter the members shall be appointed for [three-year] terms;

48 (2) the [state investment officer or the state investment officer's designee];

49 (3) the [state treasurer or the state treasurer's designee];

50 (4) [one member appointed by the speaker of the house of representatives who  
51 shall serve at the pleasure of the speaker of the house]; and

52 (5) [one member appointed by the president pro tempore of the senate who shall  
53 serve at the pleasure of the president pro tempore].

54 C. The qualifications of the members shall be as follows:

55 (1) [one member appointed by the governor] shall have expertise in financial  
56 matters involving the financing of major electrical transmission projects;

57 (2) the other [four] appointed members shall have:



58 (a) special knowledge of the public utility industry, as evidenced by college  
59 degrees or by experience, at least [five] years of which must be with the public utility industry;  
60 and

61 (b) knowledge of renewable energy development; and

62 (3) no member shall represent a person that owns or operates facilities.

63 D. The members initially appointed by the [speaker of the house and the president pro  
64 tempore of the senate] shall, by lot, determine [one] to have an initial term of [two] years and  
65 [one] to have an initial term of [four] years. Thereafter, the appointments will be for staggered  
66 terms of [four] years.

67 E. In addition to the [seven] voting members, the [secretary of energy, minerals and  
68 natural resources] shall serve as an ex-officio nonvoting member of the [authority].

69 F. The [governor] shall designate an appointed member of the [authority] to serve as chair,  
70 and the [authority] may elect annually such other officers as it deems necessary.

71 G. The [authority] shall meet at the call of the chair or whenever [four] members shall so  
72 request in writing. A [majority] of members then serving constitutes a quorum for the transaction  
73 of business, but the affirmative vote of at least [four] members is necessary for any action to be  
74 taken by the [authority].

75 H. The [authority] is not created or organized and its operations are not conducted for the  
76 purpose of making a profit, but it is expected to recover the costs of operating the [authority]. No  
77 part of the revenues or assets of the [authority] shall benefit or be distributable to its members,  
78 officers or other private people. The members of the [authority] shall receive no compensation for  
79 their services, but the public members shall be reimbursed for actual and necessary expenses at  
80 the same rate and on the same basis as provided for public officers in [insert citation].

81 I. The [authority] is not subject to the supervision or control of any other board, bureau,  
82 department or agency of the state except as specifically provided in the Renewable Energy  
83 Transmission Authority Act. No use of the terms “state agency” or “instrumentality” in any other  
84 law of the state shall be deemed to refer to the [authority] unless the [authority] is specifically  
85 referred to in the law.

86 J. The [authority] is a governmental instrumentality for purposes of tort claims as defined  
87 in [insert citation].

88  
89 Section 4. *[Energy Transmission Authority Duties and Powers.]*

90 A. The [authority] shall:

91 (1) do any and all things necessary or proper to accomplish the purposes of this  
92 Renewable Energy Transmission Authority Act;

93 (2) hire an [executive director] and such other employees or other agents as it  
94 deems necessary for the performance of its powers and duties, including consultants, financial  
95 advisors and legal advisors, and prescribe the powers and duties and fix the compensation of the  
96 employees and agents. The [executive director of the authority] shall direct the affairs and  
97 business of the [authority], subject to the policies, control and direction of the [authority]; and

98 (3) maintain such records and accounts of revenues and expenditures as required  
99 by the [state auditor]. The [state auditor or the state auditor's designee] shall conduct an annual  
100 financial and legal compliance audit of the accounts of the [authority] and file copies with the  
101 [governor and the legislature].

102 B. The [authority] may:

103 (1) make and execute agreements, contracts and other instruments necessary or  
104 convenient in the exercise of its powers and functions with any person or governmental agency;

105 (2) enter into contractual agreements with respect to one or more projects upon the  
106 terms and conditions the [authority] considers advisable;

107 (3) use the services of executive departments of the state upon mutually agreeable  
108 terms and conditions;

109 (4) enter into partnerships with public or private entities;

110 (5) identify and establish corridors for the transmission of electricity within the  
111 state;

112 (6) through participation in appropriate regional transmission forums, coordinate,  
113 investigate, plan, prioritize and negotiate with entities within and outside the state for the  
114 establishment of interstate transmission corridors;

115 (7) pursuant to Subsection C of this section, finance or plan, acquire, maintain and  
116 operate eligible facilities necessary or useful for the accomplishment of the purposes of this Act;

117 (8) pursuant to the provisions of [insert citation], exercise the power of eminent  
118 domain for acquiring property or rights of way for public use if needed for projects if such action  
119 does not involve taking utility property or does not materially diminish electric service reliability  
120 of the transmission system in this state, as determined by the [public regulation commission];

121 (9) receive by gift, grant, donation or otherwise, any sum of money, aid or  
122 assistance from the United States, this state, any other state, any political subdivision or any other  
123 public or private entity;

124 (10) for any project, provide information and training to employees of the project  
125 regarding any unique hazards that may be posed by the project, as well as training in safety work  
126 practices and emergency procedures;

127 (11) issue bonds pursuant to this Renewable Energy Transmission Authority Act  
128 as necessary to undertake a project;

129 (12) enter into contracts for the lease and operation by the [authority] of eligible  
130 facilities owned by a public utility or other private person;

131 (13) enter into contracts for leasing eligible facilities owned by the [authority],  
132 provided that any revenue derived pursuant to the lease shall be deposited in a [Renewable  
133 Energy Transmission Bonding Fund] created by Section 9 of this Act;

134 (14) collect payments of reasonable rates, fees, interest or other charges from  
135 people using eligible facilities to finance eligible facilities and for other services rendered by the  
136 [authority], provided that any revenue derived from payments made to the [authority] shall be  
137 deposited in the [Renewable Energy Transmission Bonding Fund];

138 (15) borrow money necessary to carry out the purposes of the Renewable Energy  
139 Transmission Authority Act and mortgage and pledge any leases, loans or contracts executed and  
140 delivered by the [authority];

141 (16) sue and be sued; and

142 (17) adopt such reasonable administrative and procedural rules as may be  
143 necessary or appropriate to carry out its powers and duties.

144 C. Except as provided in this subsection, the [authority] shall not enter into any project if  
145 public utilities or other private people are performing the acts, are constructing or have  
146 constructed the facilities, or are providing the services contemplated by the [authority], and are  
147 willing to provide funds for and own new infrastructure to meet an identified need and market.  
148 Before entering into a project, the following procedures shall be implemented:

149 (1) the [authority] shall provide to each public utility and the [public regulation  
150 commission] and publish [one] time in a newspaper of general circulation in this state and [one]  
151 time in a newspaper in the area where the eligible facilities are contemplated and on a publicly  
152 accessible web page maintained by the [authority], an initial notice describing the project that the  
153 [authority] is contemplating, including a detailed description of the existing or anticipated  
154 renewable energy sources that justify the determination by the [authority] that the project  
155 facilities are eligible facilities. The description shall contain, at a minimum, the names of all  
156 people who already are or will develop the renewable energy sources, all people who will own the

157 renewable energy sources and the peak output capacity, source type, location and anticipated  
158 connection date of the renewable energy sources;

159 (2) any person with an interest that may be affected by the proposed project shall  
160 have [thirty days] from the date of the last publication of the initial notice to challenge, in writing,  
161 the determination by the [authority] that the facilities are eligible facilities. If a challenge is  
162 received by the [authority] within the [thirty days], the [authority] shall hold a public hearing no  
163 sooner than [thirty] days after receiving the challenge and after a minimum of [two weeks] notice  
164 in the same newspapers and web page in which the initial notice was given. Following the public  
165 hearing, the [authority] shall make a final determination of eligibility and give notice of the  
166 determination pursuant to [insert citation]. Any person or governmental entity participating in the  
167 hearing may appeal the final determination by filing a notice of appeal with a [district court]  
168 pursuant to [insert citation];

169 (3) public utilities and other people willing and able to provide money for, acquire,  
170 maintain and operate the eligible facilities described in the notice shall have the following time  
171 period to notify the [authority] of intention and ability to provide money for, acquire, maintain  
172 and operate the eligible facilities described in the notice:

173 (a) within [ninety days] of the date of the last publication of the initial  
174 notice if no challenge is received pursuant to Paragraph (2) of this subsection; or  
175 (b) within [ninety days] of the date of the notice of determination if a  
176 challenge is received pursuant to Paragraph (2) of this subsection; and

177 (4) in the absence of notification by a public utility or other person pursuant to  
178 Paragraph (3) of this subsection, or if a person, having given notice of intention to provide money  
179 for, acquire, maintain and operate the eligible facilities contemplated by the [authority], fails to  
180 make a good faith effort to commence the same within [twelve] months from the date of  
181 notification by the [authority] of its intention, the [authority] may proceed to finance or plan,  
182 acquire, maintain and operate the eligible facilities originally contemplated, provided that a  
183 person that, within the time required, has made necessary applications to acquire federal, state,  
184 local or private permits, certificates or other approvals necessary to acquire the eligible facilities  
185 shall be deemed to have commenced the same as long as the person diligently pursues the  
186 permits, certificates or other approvals.

187 D. In soliciting and entering into contracts for the transmission or storage of electricity,  
188 the [authority] and any person leasing or operating eligible facilities financed or acquired by the  
189 [authority] shall, if practical, give priority to those contracts that will transmit or store electricity  
190 to be sold and consumed in this state.

191 E. The [authority] and any eligible facilities acquired by the [authority] are not subject to  
192 the supervision, regulation, control or jurisdiction of the [public regulation commission]; provided  
193 that nothing in this subsection shall be interpreted to allow a public utility to include the cost of  
194 using eligible facilities in its rate base without the approval of the [public regulation commission].

195 F. In exercising its powers and duties, the [authority] shall not own or control facilities  
196 unless:

197 (1) the facilities are leased to or held for lease or sale to a public utility or such  
198 other person approved by the [public regulation commission];

199 (2) the operation, maintenance and use of the facilities are vested by lease or other  
200 contract in a public utility or such other person approved by the [public regulation commission];

201 (3) the facilities are owned or controlled for a period of not more than [one  
202 hundred eighty days] after termination of a lease or contract described in Paragraph (1) or (2) of  
203 this subsection or after the [authority] gains possession of the facilities following a breach of such  
204 a lease or contract or as a result of bankruptcy proceedings; or

205 (4) the facilities do not affect in-state retail rates or electric service reliability.

206 G. A public utility subject to regulation of the [public regulation commission] pursuant to  
207 the [insert citation] may recover the capital cost of a project undertaken pursuant to this  
208 Renewable Energy Transmission Authority Act from its retail customers only if the project has  
209 received a [certificate of public convenience and necessity] from the [public regulation  
210 commission]. A municipal utility exempt from regulation of the [public regulation commission]  
211 may recover such costs only if the project has been approved by the governing body of the  
212 municipality. Costs associated with a project undertaken pursuant to the Renewable Energy  
213 Transmission Authority Act are not recoverable from retail utility customers except to the extent  
214 the costs are prudently incurred and the project is used and useful in serving those customers as  
215 determined by the state [public regulation commission].

216  
217 Section 5. *[Renewable Energy Transmission Authority Act is Full Authority for Issuance*  
218 *of Bonds, Which are Legal Investments.]*

219 A. The Renewable Energy Transmission Authority Act is, without reference to any other  
220 Act of the [legislature], full authority for the issuance and sale of [Renewable Energy  
221 Transmission Bonds], which [bonds] shall have all the qualities of investment securities under the  
222 Uniform Commercial Code and shall not be invalid for any irregularity or defect or be contestable  
223 in the hands of bona fide purchasers or holders thereof for value.

224 B. The [bonds] are legal investments for any person or board charged with the investment  
225 of any public funds and are acceptable as security for any deposit of public money.

226  
227 Section 6. *[Renewable Energy Transmission Bonds--Appropriation of Proceeds.]*

228 A. The [authority] is authorized to issue and sell revenue bonds, known as [Renewable  
229 Energy Transmission Bonds], payable solely from the [Renewable Energy Transmission Bonding  
230 Fund], in compliance with this Renewable Energy Transmission Authority Act, for the purpose  
231 of entering into a project when the [authority] determines that the project is needed.

232 B. The net proceeds from the [bonds] are appropriated to the [authority] for the purpose of  
233 financing or acquiring eligible facilities.

234  
235 Section 7. *[Renewable Energy Transmission Bonds, Form and Execution.]*

236 A. The [authority], except as otherwise specifically provided in this Renewable Energy  
237 Transmission Authority Act, shall determine at its discretion the terms, covenants and conditions  
238 of the [bonds], including, but not limited to, date of issue, denominations, maturities, rate or rates  
239 of interest, call features, call premiums, registration, refundability and other covenants covering  
240 the general and technical aspects of the issuance of the [bonds].

241 B. The [bonds] shall be in such form as the [authority] may determine, and successive  
242 issues shall be identified by alphabetical, numerical or other proper series designation.

243 C. [Bonds] shall be signed and attested by the [executive director of the authority] and  
244 shall be executed with the facsimile signature of the [chair of the authority] and the facsimile seal  
245 of the [authority], except for [bonds] issued in book entry or similar form without the delivery of  
246 physical securities. Any interest coupons attached to the [bonds] shall bear the facsimile signature  
247 of the [executive director of the authority], which officer, by the execution of the [bonds], shall  
248 adopt as the [executive director's] own signature the facsimile thereof appearing on the coupons.  
249 Except for [bonds] issued in book entry or similar form without the delivery of physical  
250 securities, the Uniform Facsimile Signature of Public Officials Act shall apply, and the [authority]  
251 shall determine the manual signature to be affixed on the [bonds].

252  
253 Section 8. *[Procedure for Sale of Renewable Energy Transmission Bonds.]*

254 A. [Bonds] shall be sold by the [authority] at such times and in such manner as the  
255 [authority] may elect, either at private sale for a negotiated price or to the highest bidder at public  
256 sale for cash at not less than par and accrued interest.

257 B. In connection with any public sale of the [bonds], the [authority] shall publish a notice  
258 of the time and place of sale in a newspaper of general circulation in the state and in a recognized  
259 financial journal outside the state. The publication shall be made [once each week for two  
260 consecutive weeks prior to the date fixed for such sale], the last publication to be [two business  
261 days prior to the date of sale]. The notice shall specify the amount, denomination, maturity and  
262 description of the [bonds] to for sale and the place, day and hour at which sealed bids therefore  
263 shall be received. All bids, except those of the state, shall be accompanied by a deposit of [two  
264 percent] of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned  
265 upon rejection of the bid. At the time and place specified in such notice, the [authority] shall open  
266 the bids in public and shall award the [bonds], or any part thereof, to the bidder or bidders  
267 offering the best price. The [authority] may reject any or all bids and readvertise.

268 C. The [authority] may sell a [bond] issue, or any part thereof, to the state or to one or  
269 more investment bankers or institutional investors at private sale.

270  
271 Section 9. *[Renewable Energy Transmission Bonding Fund Created.]*

272 A. A “Renewable Energy Transmission Bonding Fund” is created in the [state treasury].  
273 The [fund] shall consist of revenues received by the [authority] from operating or leasing eligible  
274 facilities, fees and service charges collected, and, if the [authority] has provided financing for  
275 eligible facilities, money from payments of principal and interest on loans. Earnings of the [fund]  
276 shall be credited to the [fund]. Balances in the [fund] at the end of any fiscal year shall remain in  
277 the [fund], except as provided in this section.

278 B. Money in the Renewable Energy Transmission Bonding Fund is pledged for the  
279 payment of principal and interest on all [bonds] issued pursuant to this Renewable Energy  
280 Transmission Authority Act. Money in the fund is appropriated to the [authority] for the purpose  
281 of paying debt service, including redemption premiums, on the [bonds] and the expenses incurred  
282 in the issuance, payment and administration of the [bonds].

283 C. On the [last day of January and the last day of July of each year], the [authority] shall  
284 estimate the amount needed to make debt service and other payments during the next [twelve  
285 months] from the [Renewable Energy Transmission Bonding Fund] on the [bonds] plus the  
286 amount that may be needed for any required reserves. The [authority] shall transfer to the  
287 [Renewable Energy Transmission Authority Operational Fund] any balance in the [Renewable  
288 Energy Transmission Bonding Fund] above the estimated amounts.

289 D. [Bonds] issued pursuant to this Renewable Energy Transmission Authority Act shall be  
290 payable solely from the [Renewable Energy Transmission Bonding Fund] or, with the approval of  
291 the bondholders, such other special funds as may be provided by law and do not create an  
292 obligation or indebtedness of the state within the meaning of any constitutional provision. No  
293 breach of any contractual obligation incurred pursuant to that Act shall impose a pecuniary  
294 liability or a charge upon the general credit or taxing power of the state, and the [bonds] are not  
295 general obligations for which the state's full faith and credit is pledged.

296 E. The state does hereby pledge that the Renewable Energy Transmission Bonding Fund  
297 shall be used only for the purposes specified in this section and pledged first to pay the debt  
298 service on the [bonds] issued pursuant to the Renewable Energy Transmission Authority Act. The  
299 state further pledges that any law requiring the deposit of revenues in the Renewable Energy  
300 Transmission Bonding Fund or authorizing expenditures from the [fund] shall not be amended or  
301 repealed or otherwise modified so as to impair the [bonds] to which the Renewable Energy  
302 Transmission Bonding Fund is dedicated as provided in this section.

303

304 Section 10. [*Renewable Energy Transmission Authority Operational Fund.*] A  
305 “Renewable Energy Transmission Authority Operational Fund” is created in the [state treasury].  
306 The [fund] shall consist of money appropriated and transferred to the [fund]. Earnings from  
307 investment of the [fund] shall be credited to the [fund]. Money in the [fund] is appropriated to the  
308 [authority] for the purpose of carrying out the provisions of this Renewable Energy Transmission  
309 Authority Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year  
310 shall not revert. Disbursements from the [fund] shall be made upon warrants drawn by the  
311 [secretary of finance and administration] pursuant to vouchers signed by the [executive director of  
312 the authority].

313  
314 Section 11. [*Authority to Refund Bonds*] The [authority] may issue and sell at public or  
315 private sale bonds to refund outstanding [Renewable Energy Transmission Bonds] by exchange,  
316 immediate or prospective redemption, cancellation or escrow, including the escrow of debt  
317 service funds accumulated for payment of outstanding [bonds], or any combination thereof, when,  
318 in its opinion, such action will be beneficial to the state.

319  
320 Section 12. [*Suit May be Brought to Compel Performance of Officers.*] Any holder of  
321 [bonds] or any person or officer being a party in interest may sue to enforce and compel the  
322 performance of the provisions of this Renewable Energy Transmission Authority Act.

323  
324 Section 13. [*Renewable Energy Transmission Bonds Tax Exempt.*] All [Renewable Energy  
325 Transmission Bonds] are exempt from taxation by the state or any of its political subdivisions.

326  
327 Section 14. [*Report to Legislature.*] The [authority] shall submit a report of its activities to  
328 the [governor and to the legislature] not later than [December 1] of each year. Each report shall  
329 set forth a complete operating and financial statement covering its operations for the previous  
330 fiscal year.

331  
332 Section 15. [*Legislative Oversight.*]

333 A. In addition to its other duties, the [finance authority oversight committee] shall:

334 (1) monitor and oversee the operation of the [Renewable Energy Transmission  
335 Authority];

336 (2) meet on a regular basis to receive and review reports from the [authority] on  
337 implementation of the provisions of the Renewable Energy Transmission Authority Act and to  
338 review rules proposed for adoption pursuant to that Act;

339 (3) review and provide assistance and advice to the [authority] before the  
340 [authority] enters into a project;

341 (4) undertake an ongoing examination of the statutes, constitutional provisions,  
342 regulations and court decisions governing energy transmission and renewable energy  
343 development; and

344 (5) report its findings and recommendations, including recommended legislation or  
345 necessary changes, to the [governor, to the public regulation commission] and to each session of  
346 the [legislature]. The report and proposed legislation shall be made available on or before  
347 [December 15] of each year.

348 B. [Once each calendar quarter], the [authority] shall report to the [legislative finance  
349 committee] on all expenditures made and activities conducted in the fiscal year to date pursuant to  
350 the provisions of the Renewable Energy Transmission Authority Act.

351  
352 Section 16. [*Deduction - Gross Receipts - Equipment for Certain Electric Transmission or  
353 Storage Facilities.*] Receipts from selling equipment to the Renewable Energy Transmission

354 Authority or an agent or lessee of the [authority] may be deducted from gross receipts if the  
355 equipment is installed as part of an electric transmission facility or an interconnected storage  
356 facility acquired by the [authority] pursuant to the Renewable Energy Transmission Authority  
357 Act.

358

359 Section 17. [*Deduction--Compensating Tax--Equipment for Certain Electric Transmission*  
360 *or Storage Facilities*]. The value of equipment installed as part of an electric transmission facility  
361 or an interconnected storage facility acquired by the Renewable Energy Transmission Authority  
362 pursuant to the Renewable Energy Transmission Authority Act may be deducted in computing  
363 compensating tax due.

364

365 Section 18. [*Deduction--Gross Receipts--Services Provided for Certain Electric*  
366 *Transmission and Storage Facilities.*] Receipts from providing services to the Renewable Energy  
367 Transmission Authority or an agent or lessee of the [authority] for the planning, installation,  
368 repair, maintenance or operation of an electric transmission facility or an interconnected storage  
369 facility acquired by the [authority] pursuant to this Renewable Energy Transmission Authority  
370 Act may be deducted from gross receipts.

371

372 Section 19. [*Severability.*] [Insert severability clause.]

373

374 Section 20. [*Repealer.*] [Insert repealer clause.]

375

376 Section 21. [*Effective Date.*] [Insert effective date.]

# Surface Owners Protection Act

Generally, this Act provides surface owners a right to compensation while allowing oil and gas operators access to surface owners' property under certain conditions. This Act establishes the duties and requirements to which oil and gas operators and surface landowners must adhere to negotiate surface access agreements and determine compensation for property damages from oil and gas operations. The Act provides for oil and gas operator bonding in certain circumstances and limits its applicability to maintenance and ongoing production activities related to existing oil or gas operations conducted within the scope of an surface access agreement entered into prior to July 1, 2007. It also contains provisions for attorney's fees and costs for prevailing parties in court actions and treble damages if the court finds actions to be knowing and willful.

Submitted as:

New Mexico

[HB 827 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as "The Surface Owners Protection Act."

2

3           Section 2. [*Applicability.*]

4           1. The Surface Owners Protection Act applies to:

5                 A. private fee surface land; and

6                 B. leasehold interests in any land on which oil and gas operations are conducted  
7 when the tenant incurs damages to leasehold improvements as a result of oil and gas operations.

8

9           Section 3. [*Definitions.*]

10          1. As used in this Surface Owners Protection Act:

11                 A. "oil and gas operations" means all activities affecting the surface owner's land  
12 that are associated with exploration, drilling or production of oil or gas, through final reclamation  
13 of the affected surface;

14                 B. "operator" means a person with the legal right to conduct oil and gas operations  
15 and includes the agents, employees and contractors of that person;

16                 C. "reclaim" means to substantially restore the surface affected by oil and gas  
17 operations to the condition that existed prior to oil and gas operations, or as otherwise agreed to in  
18 writing by the operator and surface owner;

19                 D. "surface owner" means a person who holds legal or equitable title, as shown in  
20 the records of the county clerk, to the surface of the real property on which the operator has the  
21 legal right to conduct oil and gas operations;

22                 E. "surface use and compensation agreement" means an agreement between an  
23 operator and a surface owner specifying the rights and obligations of the surface owner and the  
24 operator concerning oil and gas operations; and

25                 F. "tenant" means a person who occupies land or premises belonging to another in  
26 subordination to the owner's title and with the owner's assent, express or implied.

27



28 Section 4. [*Compensation for Damages Caused by Oil and Gas Operations.*]

29 1. An operator shall compensate the surface owner for damages sustained by the surface  
30 owner, as applicable, for loss of agricultural production and income, lost land value, lost use of  
31 and lost access to the surface owner's land and lost value of improvements caused by oil and gas  
32 operations. The payments contemplated by this section only cover land affected by oil and gas  
33 operations.

34 2. An operator shall not be responsible for allocating compensation between the surface  
35 owner and any tenant, except that an operator shall compensate a tenant of the surface owner for  
36 any leasehold improvements damaged as a result of the operator's oil and gas operations if the  
37 improvements are approved and authorized by the surface owner. The compensation shall equal  
38 the cost of repairing or replacing the improvements.

39 3. An operator shall reclaim all the surface affected by the operator's oil and gas  
40 operations.

41

42 Section 5. [*Notice to Surface Land Owners About Proposed Oil and Gas Operations.*]

43 1. Prior to initial entry upon the land for activities that do not disturb the surface,  
44 including inspections, staking, surveys, measurements and general evaluation of proposed routes  
45 and sites for oil and gas operations, the operator shall provide at least [five business days'] notice  
46 by certified mail or hand delivery to the surface owner.

47 2. No less than [thirty days] before first entering the surface of the land to conduct oil and  
48 gas operations, an operator shall, by certified mail or hand delivery, give the surface owner notice  
49 of the planned oil and gas operations. The notice shall include:

50 A. sufficient disclosure of the planned oil and gas operations to enable the surface  
51 owner to evaluate the effect of the operations on the property;

52 B. a copy of this Surface Owners Protection Act;

53 C. the name, address, telephone number and, if available, facsimile number and  
54 electronic mail address of the operator and the operator's authorized representative; and

55 D. a proposed surface use and compensation agreement addressing, at a minimum  
56 and to the extent known, the following issues:

57 I. placement, specifications, maintenance and design of well pads,  
58 gathering pipelines and roads to be constructed for oil and gas operations;

59 II. terms of ingress and egress upon the surface of the land for oil and gas  
60 operations;

61 III. construction, maintenance and placement of all pits and equipment used  
62 or planned for oil and gas operations;

63 IV. use and impoundment of water on the surface of the land;

64 V. removal and restoration of plant life;

65 VI. surface water drainage changes;

66 VII. actions to limit and effectively control precipitation runoff and erosion;

67 VIII. control and management of noise, weeds, dust, traffic, trespass, litter and  
68 interference with the surface owner's use;

69 IX. interim and final reclamation;

70 X. actions to minimize surface damages to the property;

71 XI. operator indemnification for injury to persons caused by the operator;

72 and

73 XII. an offer of compensation for damages to the surface affected by oil and  
74 gas operations.

75 3. The notices required by this section shall be given to the surface owner at the address  
76 shown by the records of the county clerk at the time the notice is given. If legal title and equitable  
77 title are not held by the same person, notice shall be given to both the holder of legal title and to

78 the holder of equitable title at the addresses shown by the records of the county clerk at the time  
79 the notice is given.

- 80 4. Upon receipt of the notice required by this section, the surface owner may:  
81 A. accept the proposed surface use and compensation agreement within [twenty  
82 days]; or  
83 B. reject the proposed surface use and compensation agreement; provided that,  
84 failure to accept the proposed agreement within [twenty days] shall be deemed to be a rejection  
85 by the surface owner. If the proposed agreement is rejected, the surface owner may enter into  
86 negotiations with the operator, including, if the parties agree, binding arbitration or mediation.

87 5. Notices required by the Surface Owners Protection Act shall be deemed to have been  
88 received [five days] after mailing by certified mail or immediately upon hand delivery.

89 6. The operator and the surface owner may enter into a mutually acceptable agreement  
90 that sets forth the rights and obligations of the parties with respect to the surface activities  
91 conducted by the operator.

92  
93 Section 6. [*Entry Without Agreement Bond.*]

94 1. If, after [thirty days] from a surface owner receiving notice pursuant to Section 5 of this  
95 Surface Owners Protection Act, no surface use and compensation agreement has been entered  
96 into, the operator may enter the surface owner's property and conduct oil and gas operations:

97 A. after depositing a surety bond, letter of credit from a banking institution, cash or  
98 a certificate of deposit with a surety company located in this state or financial institution for the  
99 benefit of the surface owner in the amount of [ten thousand dollars (\$10,000) per well location].  
100 The surety bond, letter of credit, cash or certificate of deposit shall only be released by the surety  
101 company or financial institution if:

102 I. the surface owner provides notice that compensation for damages has  
103 been paid;

104 II. the surface owner and the operator have executed a surface use and  
105 compensation agreement or otherwise agreed that the security should be released;

106 III. there has been a final resolution of the judicial appeal in any action for  
107 damages and any awarded damages have been paid; or

108 IV. all wells have been plugged and abandoned and the operator has not  
109 conducted oil and gas operations on the surface owner's property for a period of [six years]; or

110 B. after posting a blanket surety bond, letter of credit from a banking institution,  
111 cash or a certificate of deposit with a surety company or financial institution in the sum of  
112 [twenty-five thousand dollars (\$25,000)] subject to the following criteria:

113 I. the surety company or financial institution shall hold the corporate surety  
114 bond, letter of credit, cash or certificate of deposit for the benefit of the surface owners of this state  
115 and shall ensure that such security is in a form readily payable to a surface owner awarded  
116 damages in an action brought pursuant to this Surface Owners Protection Act;

117 II. the bond, letter of credit, cash or certificate of deposit shall remain in full  
118 force and effect as long as the operator continues oil and gas operations in this state;

119 III. the bond, letter of credit, cash or certificate of deposit shall not be  
120 released until [six years] after the operator has deposited with the surety company or financial  
121 institution a certified statement from the [oil conservation division of the energy, minerals and  
122 natural resources department] that, according to the records of the [division], the operator is not the  
123 operator of record of any well in this state and does not hold any outstanding drilling permits in  
124 this state; and

125 IV. in the event that, pursuant to a judgment, all or a portion of the bond,  
126 letter of credit, cash or certificate of deposit has been used to pay a surface owner, the operator

127 shall immediately post additional security so that the total amount posted equals [twenty-five  
128 thousand dollars (\$25,000)] and,  
129 V. if the operator does not post the additional security, the surety or financial  
130 institution shall publish notice to that effect in a paper of general circulation in each county of the  
131 state in which oil or gas is produced.

132

133 Section 7. [*Damages.*]

134 1. In an action brought pursuant to the Surface Owners Protection Act, if a court finds  
135 compensation is owed under Section 4 of this Surface Owners Protection Act, the court may also  
136 award the prevailing party:

137 A. attorney fees and costs if:

138 I. the operator conducted oil and gas operations without providing notice as  
139 required by this Act;

140 II. the operator conducted oil and gas operations without a surface use and  
141 compensation agreement and before depositing a bond or other surety as required by this Act;

142 III. the operator conducted oil and gas operations outside the scope of a  
143 surface use and compensation agreement and, when entering into the agreement, knew or should  
144 have known that oil and gas operations would be conducted outside the scope of the agreement;  
145 or

146 IV. the surface owner failed to exercise good faith in complying with the  
147 provisions of the Surface Owners Protection Act or the terms of a surface use and compensation  
148 agreement; or

149 B. attorney fees, costs and treble damages if the court finds, by clear and  
150 convincing evidence, that:

151 I. the operator willfully and knowingly entered upon the premises for the  
152 purpose of commencing the drilling of a well:

153 a. without giving notice of the entry as required by this Act; or

154 b. without a surface use and compensation agreement with the  
155 surface owner and before depositing a bond or other surety pursuant to this Act; or

156 II. either the surface owner or the operator willfully and knowingly  
157 violated the surface use and compensation agreement.

158

159 Section 8. [*Remedies not Exclusive.*] The remedies provided by the Surface Owners  
160 Protection Act are not exclusive and do not preclude a person from seeking other remedies  
161 allowed by law.

162

163 Section 9. [*Emergency Situations.*] Notwithstanding any provisions of the Surface Owners  
164 Protection Act to the contrary, no notice, surface use and compensation agreement or bond shall  
165 be required in emergency situations for activities to protect health, safety or the environment.

166

167 Section 10. [*Temporary Provision--Applicability.*]

168 1. The provisions of the Surface Owners Protection Act apply to all oil and gas operations  
169 commenced on or after [July 1, 2007] except maintenance and ongoing production activities  
170 related to an oil or gas well producing or capable of producing oil or gas on [June 30, 2007] for  
171 which the operator has a valid permit from the [oil conservation division of the energy, minerals  
172 and natural resources department], provided that:

173 A. reentries, workovers and other oil or gas operations are subject to this Act if the  
174 activities disturb additional surface; and

175 B. the duty to reclaim, as stated in that Act, is applicable to such a well that is not  
176 plugged and abandoned on [July 1, 2007]; and

177           2. oil and gas operations conducted within the scope of an agreement, entered into prior to  
178 [July 1, 2007], between a surface owner and an operator that sets forth the rights and obligations  
179 of the parties with respect to surface activities conducted by the operator.

180

181           Section 11. [*Severability.*] [Insert severability clause.]

182

183           Section 12. [*Repealer.*] [Insert repealer clause.]

184

185           Section 13. [*Effective Date.*] [Insert effective date.]

# Sustainable Energy Utility

This Act creates a Sustainable Energy Utility (SEU), a competitively selected nonprofit under contract to the state Energy Office, to coordinate and promote the sustainable use of energy in the state. The SEU will use competitive markets and leveraged private-financing to deliver cost-effective end-use energy services that allow state residents to save 30% of their annual energy usage. The SEU will coordinate services that target residential, commercial, industrial, and transportation energy end-users in all energy markets, including electricity, heating fuels, green buildings, clean vehicles, customer-sited renewable energy, and affordable energy. The SEU will serve as a comprehensive statewide information clearinghouse, or the “one-stop-shop” for sustainable energy services in the state. The SEU will use competitively selected Implementation Contractors to deliver services.

This Act creates a Fiscal Agent to serve, under contract to the Energy Office, as the SEU’s “treasury.” The Act also creates an Oversight Board to ensure that the SEU meets responsibilities and performance targets enumerated in its contract with the Energy Office.

This Act creates initial performance targets for the SEU as well as evaluation and monitoring mechanisms to ensure that SEU energy savings are verifiable. The SEU can get a bonus if it exceeds program targets by 120%. It can be penalized if it generates less than 80% of those program targets.

This Act gives the state Energy Office, on behalf of the SEU, the authority to raise a series of special purpose tax-exempt bonds with a total value capped of \$30 million between 2007 and 2015. Any such bonds may only be used to fund SEU contractors and programs. The state will not be liable for repayment of any such bonds.

Submitted as:

Delaware

[Chapter 54 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Create a Sustainable Energy  
2 Utility.”

3  
4           Section 2. [*Legislative Findings.*] The [General Assembly] finds that there remain in this  
5 state significant, cost-effective opportunities to acquire end-user energy efficiency savings that  
6 can lower customers’ bills and reduce the environmental impacts of energy production, delivery,  
7 and use. This state has an opportunity to create new markets for customer-sited renewable energy  
8 generation that will help build jobs in this state, improve our national security, keep value within  
9 the local economy, improve energy reliability, and protect residents from the damaging effects of  
10 recurrent energy price spikes.

11  
12           Section 3. [*Definitions.*]

13           (a) As used in this Act:

14                   (1) “Sustainable Energy Utility” (SEU) is the program under which the contract  
15 administrator must operate according to the provisions of this section to develop and coordinate

16 programs for energy end-users in this state for the purpose of promoting the sustainable use of  
17 energy in this state.

18 (2) “Fiscal Agent” means an entity or person contracted by the state [Energy  
19 Office] to assist in the financial management of the SEU.

20 (3) “Contract Administrator” means a nonprofit corporation contracted through  
21 competitive bid by the state [Energy Office] that manages the functions and responsibilities of the  
22 SEU.

23 (4) “SEU Oversight Board” (Board) means a board comprised of public, academic  
24 and private sector representatives that acts to establish and revise SEU performance targets and to  
25 oversee SEU program planning, implementation, and evaluation to ensure compliance with  
26 performance targets.

27 (5) “Implementation Contract” means a contract as defined under [insert citation].

28 (6) “Implementation Contractor” means any entity competitively contracted by the  
29 SEU to implement specific programs and services.

30 (7) “State Energy Coordinator” as defined under [insert citation].

31 (8) “State Energy Office “ (Energy Office) as defined under [insert citation].  
32

#### 33 Section 4. [*Sustainable Energy Utility Administrative Organization.*]

34 (a) This Act creates the “Sustainable Energy Utility” (SEU) Program. The SEU Program  
35 through the [Contractor Administrator] shall design and deliver comprehensive end-user energy  
36 efficiency and customer-sited renewable energy services to households and businesses in this  
37 state. The SEU shall be unaffiliated with any of the state’s electric or gas utilities, public or  
38 private, and it will operate through the [Contract Administrators] under contract to the state  
39 [Energy Office] under the direction of the [State Energy Coordinator]. The SEU shall be known  
40 by a trade name to be determined by the [Energy Office].

41 (b) Routine administration of the SEU shall be managed by a [Contract Administrator].  
42 The funds to support the SEU’s activities shall be managed by a [Fiscal Agent]. This institutional  
43 structure, with ultimate responsibility for oversight residing with the state [Energy Office] under  
44 the direction of the [State Energy Coordinator] and the [Board], as detailed in this Act, is intended  
45 to protect not only the SEU’s independence, but also to assure that its performance is continually  
46 and closely monitored and that it always has the strongest incentives to operate as efficiently as  
47 possible. The SEU [Contract Administrator] and [Fiscal Agent] will be selected by the state  
48 [Energy Office] through an open, competitive bidding process.  
49

#### 50 Section 5. [*State Energy Office Responsibilities Relating to the Development, 51 Implementation, and Monitoring of the SEU.*]

52 (a) The state [Energy Office] shall assume the following responsibilities relating to the  
53 development, implementation, and monitoring of the SEU:

54 (1) The [Energy Office] shall prepare Requests for Proposals (RFPs) to solicit bid  
55 proposals to engage each of the [two] administrator contractors: the SEU [Contract  
56 Administrator] and the [Fiscal Agent]. The RFPs shall be open to public comment, amended if  
57 necessary, and then submitted to the [Board] for approval prior to release. To maintain  
58 independence between each of the administrative functions, any bidder for an administrator  
59 contract, and any bidder’s affiliate, shall not concurrently hold or be awarded the other  
60 administrator contract. Neither shall any bidder for the [Contract Administrator] be affiliated with  
61 a utility, public or private, that operates in this state, or any agency of this state, or any entity  
62 providing power or fuel to this state's distribution utilities or residents.

63 (2) The [Energy Office] shall determine and describe in detail in the RFPs the  
64 following: the roles of each contracted position; the relevant performance targets set by  
65 legislation, the [Energy Office] or the [Board]; the bidding and contract procedures; the criteria

66 for evaluation of bid proposals; and the annual reporting requirements. In addition, the [Energy  
67 Office] shall define performance incentives such that if the SEU exceeds program targets by  
68 [120%] it shall receive a bonus, and if the SEU achieves less than [80%] of program targets it  
69 shall be charged a penalty. By written agreement between the [Energy Office] and the SEU,  
70 performance incentives may be passed through to [Implementation Contractors] when the  
71 [Energy Office] and SEU decide this is in the best interest of the state's development of  
72 sustainable energy resources.

73 (3) The [Energy Office] must require bidders for the [Contract Administrator] to  
74 present, in their proposals, plans including, but not limited to: evaluation, monitoring and  
75 verification of program performance; data collection and management; and financial  
76 management.

77 (4) The [Energy Office] shall ask bidders for the [Contract Administrator] to  
78 describe how they will obtain information from, and be responsive to, the public, and how bidders  
79 intend to resolve disputes with stakeholders and customers.

80 (5) The [Energy Office] shall evaluate the proposals based on criteria outlined in  
81 the RFP and then select and hire the contractors for the two positions.

82 (6) The [Energy Office] shall determine the contract period for each administrator  
83 position, but such periods shall be [no less than three years and no more than five years]. The  
84 [Energy Office] may offer a renewal contract to a current contractor for [one additional contract  
85 term], provided the contractor has met or exceeded expectations and the [Board] approves of the  
86 renewal. The contract must be open to the public through the RFP process after [two consecutive  
87 terms by one contractor].

88 (7) The [Energy Office] shall report biannually to the [Board] on the progress of  
89 the SEU and the management of the [Contract Administrator] and [Fiscal Agent] contracts.

90 (8) The [Energy Office] shall ensure continuity of program implementation and  
91 sufficient carry-over funding during the transition period between the end of [one SEU contract  
92 term] and the beginning of another SEU contract term, so that citizens of this state may still have  
93 regular access to sustainable energy services during transitional periods.

94 (9) The [Energy Office] must use the appropriate responsibilities outlined in the  
95 this Act to develop additional RFP guidelines for each contractor.

96 (10) The [Energy Office] shall develop appropriate means to issue [Renewable  
97 Energy Certificates] and [Solar Renewable Energy Certificates], as defined in [insert citation], for  
98 renewable energy technologies sited in this state.

99  
100 Section 6. *[SEU Oversight Board.]*

101 (a) There is hereby created the [SEU Oversight Board] (Board) which shall, from passage  
102 of this Act until [January 31, 2008], consist of all members of a [Sustainable Energy Utility Task  
103 Force ("Task Force")] appointed pursuant to [insert citation]. By [December 31, 2007] the [Task  
104 Force] shall recommend to the [General Assembly] the composition of the [Board] to serve after  
105 [January 31, 2008].

106 (b) The [Chair of the Sustainable Energy Utility Task Force] shall preside as [Chairperson  
107 of the Board] or shall appoint a [presiding officer for the Board from among the members].

108 (c) [Board] members shall serve without compensation except for travel allowed in  
109 paragraph (h) of this subsection.

110 (d) No [Board] member shall receive financial gain from service on the [Board].

111 (e) [Board] members shall not be employed by any organization directly or indirectly  
112 affiliated with the SEU or its contractors for a period of not less than [two years] after the end of  
113 their service on the [Board].

114 (f) The [Board] shall adopt by-laws, within [three months] from the enactment of this  
115 section, to govern itself.

- 116 (g) The [Board] shall have the following responsibilities:  
117 (1) review and approve Requests for Proposals developed by the [Energy Office]  
118 for the contracts of the [SEU Contract Administrator and Fiscal Agent].  
119 (2) review and approve the annual and contract-term SEU performance targets  
120 recommended by the [Contract Administrator].  
121 (3) review and approve any proposed modifications to SEU performance targets or  
122 program designs during the contract term of the [Contract Administrator].  
123 (4) contract an independent professional agency to monitor and verify results  
124 reported by the [Contract Administrator] in annual and contract-term reports.  
125 (5) receive biannual reports from the [Energy Office] and offer recommendations  
126 to the [Energy Office] regarding the management of the SEU.  
127 (h) In order for the [Board] to meet its obligations, the SEU shall annually set aside a  
128 budget at the beginning of the state fiscal year not to exceed [seventy-five thousand real 2007  
129 dollars, and not to be less than fifty thousand real 2007 dollars]. Use of these funds shall be  
130 limited to the following:  
131 (1) Payment of consultant fees for independent analyses of policy and program  
132 options to improve SEU performance voted by [two-thirds of Board members].  
133 (2) Supported travel by [Oversight Board members] to conferences and workshops  
134 of direct relevance to sustainable energy market development and performance. Supported travel  
135 is capped for individual members at [three thousand real 2007 dollars] and only [one] supported  
136 travel can be requested by a member in a fiscal year.  
137 (3) Sponsorship of annual statewide competitions by elementary, middle and/or  
138 high school students in this state to recommend SEU service logos, mottos or new sustainable  
139 energy measures.  
140 (4) Other uses as voted by [two-thirds of the members of the Oversight Board] that  
141 can be shown to directly improve the performance of the SEU and/or the state's development of  
142 sustainable energy resources.

143  
144 Section 7. *[Fiscal Agent.]*

- 145 (a) A [Fiscal Agent] shall assist the [Energy Office] with the financial management of the  
146 SEU program. The [Fiscal Agent] is the SEU's "Treasury." The [Fiscal Agent] may be contracted  
147 by fee only or by a fee-plus-incentive structure as determined by the [Energy Office]. The  
148 primary responsibilities of the [Fiscal Agent] are to:  
149 (1) Receive funds for the SEU from the funding sources outlined in this Act,  
150 disburse these funds to the [SEU Contract Administrator] under the direction of the [Energy  
151 Office], and keep accurate records of such transactions;  
152 (2) Interface with bonding and revenue authorities;  
153 (3) Oversee financial transactions involving renewable energy certificates (RECs)  
154 and possible [Solar Lifeline] activities; and  
155 (4) Pay SEU invoices.

156  
157 Section 8. *[SEU Contract Administrator.]* A [Contract Administrator] will manage the  
158 day-to-day functions and responsibilities of the SEU. The [Contract Administrator's] chief  
159 responsibilities are program research and design, administration of [Implementation Contracts],  
160 and oversight to ensure the [Implementation Contractors] meet appropriate performance and  
161 budgetary targets. The [Contract Administrator] may be contracted by fee only or by a fee-plus-  
162 incentive structure as determined by the [Energy Office].

163  
164 Section 9. *[SEU Program Research and Design.]*



165 (a) The [Contract Administrator] shall undertake a comprehensive resource analysis to  
166 support initial program planning for the SEU. The analysis must include demographic energy use  
167 assessments, population and economic growth estimates, energy consumption forecasts, regional  
168 energy efficiency trend analyses, technical and economic potential estimates, and market potential  
169 assessments. The comprehensive resource analysis must:

170 (1) assess energy end-user markets, including electricity end-uses, natural gas end-  
171 uses, clean vehicles, green buildings, weatherization, and affordable energy services;

172 (2) assess energy end-user demographic sectors, including low-income, residential,  
173 commercial, industrial, agricultural, and transportation sectors; and

174 (3) assess energy end-use equipment, including appliances, lighting, heating,  
175 cooling, industrial processes, and vehicles.

176 (b) Using the results from the analysis from this Section of this Act, the [Contract  
177 Administrator] shall select markets, end-users, and end-use equipment for the SEU to target  
178 through its programs.

179 (c) The [Contract Administrator] shall develop a comprehensive suite of program designs  
180 based on the analysis and selected markets, end-users, and end-use equipment, as described in  
181 subparagraphs (a)(1) and (b)(1) of this subsection. Each program design must specify, at  
182 minimum, program goals, performance targets, an estimated budget, an implementation strategy,  
183 and an evaluation strategy. The [Contract Administrator] is not required to design or initiate all  
184 programs at once, but it must demonstrate how each program fits within the [Contract  
185 Administrator's] overall strategy to meet its own performance targets as well as the SEU's long-  
186 term performance targets established in Section 12 of this Act.

187 (d) The [Contract Administrator] is expected to fulfill the following responsibilities  
188 through program designs, RFPs for [Implementation Contractors], and program implementation:

189 (1) to be responsive to customers and market forces in implementing and  
190 redesigning the programs it delivers;

191 (2) to design a portfolio of programs to allow all energy end-users, regardless of  
192 electricity or gas retail providers, and regardless of market segment or end-use fuel, to participate  
193 in the SEU programs;

194 (3) to promote program initiatives and market strategies that address the needs of  
195 people or businesses facing the most significant barriers to participation;

196 (4) to promote coordinated program delivery, including coordination with low  
197 income weatherization programs, other efficiency programs, and utility programs;

198 (5) to coordinate with relevant regional and national energy efforts and markets,  
199 including markets for pollution emissions offsets and credits, and renewable energy credits;

200 (6) to consider innovative approaches to delivering sustainable energy services,  
201 including strategies to encourage third party financing and leveraged customer contributions to  
202 the cost of program measures, as consistent with principles of sound program design;

203 (7) to offer "one-stop shopping" and be the point-of-contact for sustainable energy  
204 services in this state;

205 (8) to create a comprehensive website that provides easy access to SEU programs  
206 and information for all citizens in this state, allowing them to participate in SEU programs  
207 electronically;

208 (9) to emphasize "lost opportunity" markets, which are sustainable energy  
209 measures that can only be cost-effectively captured at particular times, such as during new  
210 construction or extensive remodeling; and

211 (10) to emphasize market strategies to deliver services.

212 (e) The [Contract Administrator] shall continue to research and assess the resources and  
213 market needs for sustainable energy services in this state, as described in subparagraph (a)(1) of  
214 this Section, while program implementation is ongoing. The [Contract Administrator] and other

215 stakeholders will use this research to assess the impacts and effectiveness of SEU programs; to  
216 make adjustments to SEU program performance targets; to reassess targeted markets, end users,  
217 and end uses; and to recommend further policy initiatives for consideration by the [Legislature].  
218

219 Section 10. *[Administration of Implementation Contracts.]*

220 (a) With the exception of education and public outreach programs, which the [Contract  
221 Administrator] may implement itself with approval of the [Energy Office] and [Board], all other  
222 SEU programs must be delivered by competitively selected [Implementation Contractors].

223 (b) The SEU shall propose rules to guide the bidding process and criteria to guide bid  
224 selection. The RFPs shall specify a contract term of [no less than two years], and, in order to  
225 ensure program continuity during transition periods, [no longer than six (6) months] beyond the  
226 [Contract Administrator's] contract term with the [Energy Office].

227 (c) The [Contract Administrator] shall be responsible for selecting winning  
228 [Implementation Contractor] bids.

229 (d) Any entity, including electricity or gas utilities in this state, may bid for an  
230 [Implementation Contract]. If an affiliate of the [Contract Administrator] bids, or intends to bid,  
231 for an [Implementation Contract], both the [Contract Administrator] and its affiliate must ensure  
232 that the affiliate does not benefit from any unfair advantage resulting from insider information.

233 (e) RFPs for competitively bid [Implementation Contracts] should include provisions for  
234 performance-based incentives as appropriate to ensure that program targets are achieved or  
235 exceeded.

236 (f) If an [Implementation Contractor] is not successfully selected through the RFP bidding  
237 process, the [Contract Administrator] may implement its own program delivery process subject to  
238 approval by the [Energy Office] and [Board].  
239

240 Section 11. *[Oversight, Monitoring, and Verification of SEUs.]*

241 (a) The [Board] must review the [Contract Administrator's] proposed program designs,  
242 performance targets, and RFPs before the [Contract Administrator] submits RFPs for bid. When  
243 reviewing and approving the SEU's programs and RFPs, the [Board] must ensure that program  
244 coordination between the [Contract Administrator, Implementation Contractors], and customers is  
245 as streamlined and simple as possible from the customer's perspective. The [Board] shall ensure  
246 that the SEU's programs will provide packaged-services. Rather than simply providing the most  
247 cost-effective or easiest-to-provide services, packaged-services must be designed to provide  
248 customers with as many relevant end-use services at once, each time the [Contract Administrator  
249 or the Implementation Contractors] have contact with a customer.

250 (b) The [Contract Administrator] must develop and maintain information services to  
251 collect all performance, market, and financial data necessary to monitor and evaluate SEU  
252 performance as specified in its contract with the [Energy Office]. The [Contract Administrator]  
253 must make such data available to the [Energy Office] and [Board] upon request.

254 (c) Consistent with the specific terms of its contract and Generally Accepted Accounting  
255 Principles, the [Contract Administrator] must prepare and submit detailed documentation and  
256 invoices for administrative, management, and program costs to the [Fiscal Agent] for review in  
257 order to receive payment.

258 (d) The [Contract Administrator] must develop appropriate mechanisms to accurately  
259 evaluate, monitor, and verify program performance and [Implementation Contractor]  
260 performance.

261 (e) The [Contract Administrator] shall have [30 days] to respond to complaints from, or  
262 disputes among, affected persons or entities. After [30 days] any unresolved complaints shall be  
263 presented to the [Energy Office] and [Board].

264 (f) The [Contract Administrator] shall submit to the [Board] for approval any reports  
265 produced by the [Contract Administrator] that codify current practices or detail new practices or  
266 substantive changes in the SEU's implementation of programs and services.

267 (g) The [Contract Administrator] shall conduct site visits and review the files of the  
268 [Implementation Contractors] as necessary to ensure contract compliance.

269 (h) The [Energy Office] must ensure that adequate evaluation, monitoring, and  
270 verification mechanisms are in place so that:

271 (1) The [Energy Office] and [Board] can verify that both SEU and  
272 [Implementation Contractor] expenditures result in verifiable energy savings over the expected  
273 lifetime of each energy-saving measure.

274 (2) The SEU and [Implementation Contractors] are held responsible for the energy  
275 savings reportedly achieved through program activities and expenditures.

276  
277 Section 12. [*SEU Initial Program Targets for Energy Efficiency.*] By [December 31,  
278 2015], the SEU shall have achieved an average [30%] reduction in annual energy usage for SEU  
279 participants, with a target of [one-third (1/3)] of the participant savings occurring for residential  
280 clients, based on [January 1, 2006] baseline levels. The [Energy Office] and [Board] may increase  
281 or accelerate this target if a comprehensive resource analysis indicates a greater cost-effective  
282 end-user energy efficiency potential exists or if the SEU achieves performance targets ahead of  
283 schedule.

284  
285 Section 13. [*Solar Lifeline Program.*] For the purposes of this Section, a low-income  
286 household shall be defined as a household in this state that qualifies for assistance from the [Low-  
287 Income Home Energy Assistance Program] as defined in [insert citation]. The SEU shall have the  
288 authority to administer a state [Solar Lifeline Program] established under [insert citation], which  
289 shall provide, by [December 31, 2015] each low-income household with a life-sustaining supply  
290 of at least [200 kilowatt-hours per month of low-cost electricity not to exceed 5 cents per kWh in  
291 real 2007 dollars from in-state solar electric resources], the electricity generated thereof dedicated  
292 entirely for use by low-income households in the [Solar Lifeline] program. The [Energy Office]  
293 shall devise annual [Solar Lifeline Program] goals that specify a targeted amount of installed  
294 photovoltaic capacity and a targeted number of households to be served. Such targets shall  
295 increase at a reasonable rate each year until sufficient in-state photovoltaic capacity has been  
296 installed to provide, by [December 31, 2015], each low-income household with at least [200  
297 kilowatt-hours per month of low-cost solar electricity]. Implementation of the [Solar Lifeline  
298 Program] and the obligation to meet the [December 31, 2015] target shall depend upon the  
299 [Energy Office] and SEU obtaining the approval of the [Board], as voted by a majority of [Board]  
300 members. The chief criterion for [Board] approval shall be that the [Energy Office] and SEU have  
301 identified self-sustaining funds for the program or that the [Legislature] has approved designated  
302 funds for the purpose of maintaining the [Solar Lifeline Program].

303  
304 Section 14. [*SEUs and Affordable Energy.*] The SEU shall assess strategies and funding  
305 mechanisms to weatherize at least [eight hundred (800)] low-income households as defined under  
306 Section 13 of this Act, per year, not counting those households served with [Weatherization  
307 Assistance Program] funding as defined under [insert citation]. The SEU shall target services to  
308 households living in [single-family owner-occupied units and mobile homes, single-family rental  
309 units, rental buildings with five units or less], and [large multifamily buildings with greater than  
310 five units]. The SEU shall target [three] low-income levels: [200% of the federal poverty level,  
311 60% of the state median income, and 80% of the state median income].

312  
313 Section 15. [*Green Buildings and Clean Vehicles.*]

314 (a) The state [Energy Office] shall define “Green Buildings” and “Clean Vehicles”  
315 programs as appropriate to meet statewide energy efficiency targets established in paragraph (1)  
316 of this Section, and with consideration for current best-practice definitions. To establish initial  
317 SEU performance targets for [Clean Vehicles] and [Green Buildings] programs, the [Energy  
318 Office], under the leadership of the [State Energy Coordinator], and the [Board] shall either:

319 (1) determine appropriate initial SEU performance targets for Clean Vehicles and  
320 Green Buildings market programs to be included in the SEU [Contract Administrator] Request  
321 For Proposal,

322 (2) or the [Energy Office] and [Board] may require that bidders for the SEU  
323 [Contract Administrator] propose such performance targets.

324

325 Section 16. [*Customer-sited Renewable Energy.*]

326 (a) Targets and rebate levels for Customer-sited Renewable Energy Technologies  
327 (Customer-sited Renewables) shall be established by the [Energy Office], under the direct  
328 supervision of the [State Energy Coordinator]. Customer-sited Renewables shall include solar  
329 electric, solar thermal, geothermal and wind energy systems not to exceed in capacity the levels  
330 specified in net-metering regulations as defined under [insert citation].

331 (b) Under the direct supervision of the [State Energy Coordinator], the [Energy Office]  
332 shall develop incentive tiers for different Customer-sited Renewables and customer classes based  
333 on identified state best practices. Rebates shall not exceed [fifty percent of the incremental cost of  
334 Customer-sited Renewables compared to the retail cost of electricity]. Rebates shall decline over  
335 time unless the [Energy Office] and SEU agree that doing so will prevent SEU clients from  
336 maximizing installed capacity of Customer-sited Renewable Energy in a least-cost manner.

337 (c) Under the direct supervision of the [State Energy Coordinator], the [Energy Office]  
338 shall specify a certain fraction of SEU-supported Customer-sited Renewables to be located at  
339 residential locations. The SEU shall furnish [three] services to participants who purchase  
340 Customer-sited Renewables. First, it shall provide incentives sufficient to cover the incremental  
341 cost of investing in Customer-sited Renewables, in accord with [Energy Office] incentive tiers  
342 and current retail energy prices. Second, the SEU shall obtain, on behalf of participants,  
343 Renewable Energy Certificates (RECs) and Solar Renewable Energy Certificates (SRECs), as  
344 defined in [insert citation]. Third, the SEU shall negotiate the wholesale price for RECs and  
345 SRECs for SEU participants, using its ability to aggregate Customer-sited Renewables to the best  
346 advantage of SEU participants. For these services, the SEU shall charge a fee sufficient to pay its  
347 costs and to maintain incremental cost investments in Customer-sited Renewables. This fee can  
348 be assessed as a one-time charge or an annual payment subject to the mutual agreement of the  
349 SEU and the participant. The [Energy Office], under direct supervision of the [State Energy  
350 Coordinator], shall determine a fair and reasonable rate that the SEU may charge for aggregating  
351 RECs and SRECs. The SEU fee shall not exceed [35% of the retail value of RECs or SRECs].

352 (d) The state [Energy Office] shall contract with the SEU [Contract Administrator] to  
353 assist in the administration of some or all of a [Green Energy Fund] established under [insert  
354 citation] and in accordance with [insert citation]. The SEU through the [Contract Administrator]  
355 may independently raise a series of special purpose bonds, tax-exempt if eligible, with a  
356 cumulative initial value between [2007 and 2015 capped at thirty million real 2007 dollars (\$30  
357 million 2007)]. In any event, the initial SEU [Contract Administrator] must provide financial  
358 warranty to pay its first year of administrative costs. Any such bond monies shall only be used to  
359 fund the SEU [Contract Administrator] and its [Implementation Contractors] to meet  
360 responsibilities outlined in this section, including administrative costs and overhead,  
361 implementation costs including the cost of contracting [Implementation Contractors], operating  
362 expenses, and incentive costs. Bond monies shall not fund the [Fiscal Agent], nor internal  
363 [Energy Office] responsibilities or staff, nor duties required of the [Board], including independent

364 SEU evaluation, monitoring, and verification. All bond monies shall be held and disbursed by the  
365 [Fiscal Agent]. The state [General Fund] shall not be liable for the repayment of any special  
366 purpose bonds, tax-exempt if eligible, by the state [Energy Office] on behalf of the SEU.

367 (e) Revenue sources contributing to the SEU for the purpose of paying bond debt may  
368 include but not be limited to funds from shared savings agreements with SEU participants and  
369 partial proceeds from the sale of [Renewable Energy Credits] in local and regional markets. The  
370 [Green Energy Fund] shall provide equity leverage for the SEU. Staffing necessary for the  
371 [Energy Office] to fulfill its responsibilities in this Act shall be funded from the state [Energy  
372 Answers Program] as defined under [insert citation] and by existing program funding within the  
373 [Department of Natural Resources and Environmental Control].

374

375 Section 17. [*Severability.*] [Insert severability clause.]

376

377 Section 18. [*Repealer.*] [Insert repealer clause.]

378

379 Section 19. [*Effective Date.*] [Insert effective date.]

## Alternative Fuels

### Biodiesel Fuel (2004 SSL)

This Act establishes regulations for selling biodiesel fuel. Biodiesel is a clean-burning fuel made from domestically produced renewable fats and oils such as soybean oil or recycled cooking oils. It is registered as a fuel and fuel additive with the Environmental Protection Agency and meets standards from the California Air Resources Board and American Society for Testing and Materials.

Submitted as:

Arizona

[Chapter 104 of 2002](#)

Status: Enacted into law in 2002.

#### Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act Regulating the Sale of  
2 Biodiesel Fuel.”

3  
4           Section 2. [*Definitions.*] As used in this Act:

5           (1) “Biodiesel” means a diesel fuel substitute that satisfies all of the following:

6                   (a) Is produced from nonpetroleum renewable resources if the qualifying volume  
7 of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by  
8 the California Air Resources Board pursuant to 13 California Code of Regulations Sections 2281  
9 and 2282 in effect on January 1, 2000.

10                   (b) Meets the registration requirement for fuels and additives established by the  
11 Environmental Protection Agency pursuant to Section 211 of the Clean Air Act.

12                   (c) The use of the diesel fuel substitute complies with the requirements listed in  
13 10 Code of Federal Regulations Part 490, as printed in the *Federal Register*, Volume 64, Number  
14 96, May 19, 1999.

15                   (d) Is sold, offered or exposed for sale as a neat product or blended with diesel  
16 fuel.

17           (2) “Department” means the [state department of weights and measures].

18           (3) “Diesel” means a refined middle distillate for use as a fuel in a compression-ignition  
19 internal combustion engine.

20           (4) “Director” means the [director of the department of weights and measures].

21           (5) “Person” means both the plural and the singular, as the case demands, and includes  
22 individuals, partnerships, corporations, companies, societies and associations.

23  
24           Section 3. [*Prohibitions Against Selling Biodiesel Fuel.*]

25           (1) A person shall not sell or offer or expose for sale biodiesel that is not tested or does  
26 not meet the specifications established by the American Society for Testing and Materials  
27 (ASTM) D6751 or any blend of biodiesel and diesel fuel that is not tested or does not meet the  
28 specifications established by ASTM D975 and that contains sulfur in excess of [five hundred  
29 parts per million] for use in areas as defined in [insert citation].

30 (2) A person that blends biodiesel that is intended as a final product for the fueling of  
31 motor vehicles shall report to the [director] by the [fifteenth day of each month] the quantity and  
32 quality of biodiesel shipped to or produced in this state during the preceding month. A person  
33 who supplies biodiesel subject to this subsection shall report the following by batch:

34 (a) The percentage of biodiesel in a final blend.

35 (b) The volume of the finished product.

36 (c) For neat biodiesel, the results of analysis for those parameters established by  
37 ASTM D6751.

38 (d) For biodiesel blended with any diesel fuel, the results of the analysis of the  
39 following motor fuel parameters as established by ASTM D975:

40 (I) Sulfur content.

41 (II) Aromatic hydrocarbon content.

42 (III) Cetane number.

43 (IV) Specific gravity.

44 (V) American Petroleum Institute Gravity.

45 (VI) The temperatures at which ten per cent, fifty per cent and ninety per  
46 cent of the diesel fuel boiled off during distillation.

47 (3) The report required by subsection 2 of this section shall be on a form prescribed by  
48 the [director] and shall contain a certification of truthfulness and accuracy of the data submitted  
49 and a statement of the supplier's consent permitting the [department] or its authorized agent to  
50 collect samples and access records as provided in rules adopted by the [department]. A corporate  
51 officer who is responsible for operations at the facility that produces or ships the final product  
52 shall sign the report.

53 (4) A person shall label dispensers at which biodiesel is dispensed in such a manner as to  
54 notify other persons of the volume percentage of biodiesel in the finished product.

55  
56 Section 4. [*Severability.*] [Insert severability clause.]

57  
58 Section 5. [*Repealer.*] [Insert repealer clause.]

59  
60 Section 6. [*Effective Date.*] [Insert effective date.]

# Ethanol Production Incentive (2004 SSL)

This Act establishes a countercyclical financial incentive for the production of ethanol in any newly constructed ethanol production plants. This Act is based upon a North Dakota law that implemented the first program in the nation to create a market-based support system for the growing ethanol industry.

Submitted as:

North Dakota

[SB 2222](#)

Status: Enacted as Chapter 57 in 2003.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish Ethanol  
2 Production Incentives.”

3  
4           Section 2. [*Definition.*] In this Act, “eligible facility” means an ethanol production plant  
5 constructed in this state after [July 31, 2003].

6  
7           Section 3. [*Ethanol Production Incentive - Calculation and Payment.*] The [agricultural  
8 products utilization commission] shall provide [quarterly] to each eligible facility a production  
9 incentive based on the average [state] price per bushel of corn received by farmers during the  
10 quarter, as established by the state [agricultural statistics service] and the average [state] rack  
11 price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American  
12 Coalition for Ethanol. The amount payable as a production incentive must be calculated by  
13 including the sum arrived at under subsection 1 of this section with the sum arrived at under  
14 subsection 2.

15           1.       a. If the average quarterly price per bushel of corn is above [one dollar and eighty  
16 cents], for each [one cent] by which the quarterly price is above [one dollar and eighty cents], the  
17 [agricultural products utilization commission] shall add to the amount payable under this section  
18 [one-tenth of one cent] times the number of gallons of ethanol produced by the eligible facility  
19 during the quarter.

20                   b. If the average quarterly price per bushel of corn is [one dollar and eighty cents],  
21 the [agricultural products utilization commission] shall add [zero] to any amount payable under  
22 this section.

23                   c. If the average quarterly price per bushel of corn is below [one dollar and eighty  
24 cents], for each [one cent] by which the quarterly price is below [one dollar and eighty cents], the  
25 [agricultural products utilization commission] shall subtract from the amount payable under this  
26 section [one-tenth of one cent] times the number of gallons of ethanol produced by the eligible  
27 facility during the quarter.

28           2.       a. If the average quarterly rack price per gallon of ethanol is above [one dollar and  
29 thirty cents], for each [one cent] by which the average quarterly rack price is above [one dollar  
30 and thirty cents], the [agricultural products utilization commission] shall subtract from the  
31 amount payable under this section, [two-tenths of one cent] times the number of gallons of  
32 ethanol produced by the eligible facility during the quarter.



33 b. If the average quarterly rack price per gallon of ethanol is [one dollar and thirty  
34 cents], the [agricultural products utilization commission] shall subtract [zero] from any amount  
35 payable under this section.

36 c. If the average quarterly rack price per gallon of ethanol is below [one dollar and  
37 thirty cents], for each [one cent] by which the average quarterly rack price is below [one dollar  
38 and thirty cents], the [agricultural products utilization commission] shall add to the amount  
39 payable under this section [two-tenths of one cent] times the number of gallons of ethanol  
40 produced by the eligible facility during the quarter.

41  
42 Section 4. [*Subsidy Limitations.*] The [agricultural products utilization commission] may  
43 not distribute more than [one million six hundred thousand dollars] annually in payments under  
44 section 3 of this Act. No eligible facility may receive state ethanol payments that exceed a  
45 cumulative total of [ten million dollars]. Change in ownership of an eligible facility does not  
46 affect the [ten million dollar cumulative total] allowed to be paid to that eligible facility under  
47 this section.

48  
49 Section 5. [*Ethanol Production Incentive Fund - Continuing Appropriation.*] There is  
50 created in the [State Treasury] a special fund known as the [Ethanol Production Incentive Fund].  
51 The [Fund] consists of transfers made in accordance with section 7 of this Act and deposits made  
52 in accordance with section 8 of this Act. All money in the [Fund] is appropriated on a continuing  
53 basis to the [agricultural products utilization commission] for use in paying ethanol production  
54 incentives under sections 3 and 4 of this Act and section 6 of this Act.

55  
56 Section 6. [*Duration and Limitation of Ethanol Plant Production Incentives.*]

57 1. An ethanol plant that was in operation before [July 1, 1995], and which has a  
58 production capacity of fewer than [fifteen million gallons (56781000 liters)] of ethanol may  
59 receive up to [six hundred thousand dollars] in production incentives from the state for  
60 production in a fiscal year. An ethanol plant that was in operation before [July 1, 1995], and  
61 which produced [fifteen million (56781000 liters) or more gallons] in the previous fiscal year is  
62 eligible to receive an equal share in up to [three hundred thousand dollars] in production  
63 incentives from the state in a fiscal year.

64 2. The [agricultural products utilization commission] shall determine the amount of  
65 production incentives to which a plant is entitled under this section by multiplying the number of  
66 gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by [forty  
67 cents]. The [commission] shall forward the production incentives to the plant upon receipt of an  
68 affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit  
69 must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to  
70 be sold at retail to consumers. Within [ninety days] after the conclusion of the plant's fiscal year,  
71 the plant shall submit to the [budget section of the legislative council] a statement by a certified  
72 public accountant indicating whether the plant produced a profit from its operation in the  
73 preceding fiscal year, after deducting the payments received under this section.

74  
75 Section 7. [*Distribution of Registration Fees Collected.*] Any money in the [Registration  
76 Fund] accruing from license fees or from other like sources, in excess of the amount required to  
77 pay salaries and other necessary expenses, in accordance with the [legislature's] appropriation  
78 for such purposes, must be promptly deposited in the [Highway Tax Distribution Fund] which  
79 must be distributed in the manner as prescribed by law. The [state treasurer] shall transfer  
80 annually from the [Highway Tax Distribution Fund] to the [Ethanol Production Incentive Fund]  
81 an amount equal to [forty percent] of all sums collected for the registration of farm vehicles

82 under [insert citation] that no transfer may be made in an amount that would result in the balance  
83 of the [Ethanol Production Incentive Fund] exceeding [five million dollars].

84

85 Section 8. [*Refund of Tax for Fuel Used for Agricultural Purposes - Reductions.*] Any  
86 consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the  
87 motor vehicle fuel tax has been paid may file a claim with the [commissioner] for a refund under  
88 [insert citation]. The amount of the tax refund under this section must be reduced by [seven  
89 cents] per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds  
90 claimed by aircraft fuel users. [One cent] per gallon [3.79 liters] withheld from the refund must  
91 be deposited in the [Ethanol Production Incentive Fund].

92

93 Section 9. [*Severability.*] [Insert severability clause.]

94

95 Section 10. [*Repealer.*] [Insert repealer clause.]

96

97 Section 11. [*Effective Date.*] [Insert effective date.]

# Hydrogen Research and Development (2002 SSL)

This Act establishes a program to promote hydrogen as an energy resource.

Submitted as:

Hawaii

[SB 1435 SD 1](#)

Status: Enacted into law as Act 283 in 2001.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Private-Public  
2 Partnership to Promote and Support Hydrogen as an Energy Resource.”  
3

4           Section 2. [*Legislative Findings.*] Scientists have recognized hydrogen as a potential  
5 source of fuel for many years. Currently, hydrogen is used in industrial processes, rocket fuel, and  
6 spacecraft propulsion. With further research and development, hydrogen could competitively  
7 serve as an alternative source of energy for fueling vehicles and generating electricity.

8           Recognizing the potential of hydrogen fuel, the United States Department of Energy and  
9 the private sector have for several years funded hydrogen research and development programs.  
10 The federal government alone allocates an average of \$18,000,000 annually for hydrogen  
11 research and development. Currently, the market capitalization of fuel cell companies that rely on  
12 hydrogen as its fuel source is in excess of \$10,000,000,000.

13           The [Legislature] finds that this state represents an excellent site to attract government and  
14 industry investment in hydrogen. Major advantages include:

15                   (1) The availability of indigenous renewable resources, including geothermal  
16 energy;

17                   (2) The excellent research capabilities at the [state university];

18                   (3) This state’s location for trade opportunities;

19                   (4) This state’s high transportation fuel costs; and

20                   (5) Significant progress in hydrogen research and development in this state.

21           In addition, the [Legislature] recognizes that large-scale hydrogen use for transportation  
22 can be competitive this decade that fleet and military transportation have the largest potential for  
23 hydrogen and fuel cell use.

24           On the national level, advancements are taking place to develop technologies that will  
25 utilize hydrogen as a fuel source. Major companies are investing in the development of fuel cells  
26 for both stationary and mobile power. Automakers are projecting the commercial availability of  
27 fuel cell powered vehicles that could be fueled by hydrogen within this decade. Significant  
28 amounts of investments are being made to develop fuel cells and other distributed generation  
29 technologies.

30           With its traditional high fuel costs and a wealth of renewable energy resources, this state  
31 could attract these advanced technology development companies for research and development,  
32 testing, and deployment. These factors can lead to the development of a hydrogen-based  
33 economy where this state produces more of its own environmentally clean fuels, thus reducing its  
34 dependence on fossil fuels, and resulting in job growth, reduced pollution, and a more robust state  
35 economy.

36 Therefore, the [Legislature] finds that the state should do more to continue efforts to  
37 enhance hydrogen use in it.

38  
39 Section 3. [*Hydrogen Public/Private Partnership: Establishment*]

40 (a) There is established within the [department of business, economic development, and  
41 tourism], for administrative purposes only, the Hydrogen Public/Private Partnership to support  
42 and promote hydrogen use in this state. The [state university] shall provide assistance to the  
43 [department].

44 (b) The [department] shall invite the participation of, and representatives from, the  
45 following entities to the partnership:

46 (1) The state, including the [state university] and any of its entities, as appropriate;

47 (2) The counties;

48 (3) The federal government, including the military;

49 (4) The utilities;

50 (5) The private sector; and

51 (6) The environmental community.

52 (c) The [department], with the assistance of the Partnership, shall:

53 (1) Sponsor a stakeholder workshop with interested parties to review and critique  
54 the state's hydrogen plan;

55 (2) Evaluate and adopt policy options to promote industry investment in hydrogen  
56 infrastructure;

57 (3) Initiate pilot projects to install multi-megawatt electrolyzers to produce  
58 hydrogen from indigenous resources in the state;

59 (4) Conduct a comprehensive evaluation and market study for the production of  
60 hydrogen;

61 (5) Conduct engineering assessments of biomass or wind energy pathways for  
62 hydrogen;

63 (6) Initiate pilot projects that include distribution of hydrogen produced in the  
64 state;

65 (7) Initiate discussion of tax incentives for investors; and

66 (8) Conduct assessments of potential cost benefits to consumers and recommend  
67 ways to educate consumers about the benefits of hydrogen fuel.

68 (d) The [department] shall submit annual reports regarding the partnership to the  
69 [Legislature] no later than [twenty (20)] days prior to the convening of each regular session. The  
70 reports shall include summaries of accomplishments, including expenditures, research projects  
71 funded, and external funding received.

72  
73 Section 4. [*Appropriations.*] There is appropriated out of the general revenues of this state  
74 the sum of [insert amount] or so much thereof as may be necessary for fiscal year [insert date] to  
75 support hydrogen research and development efforts; provided that funds shall be made available  
76 under this Act on the basis of [one (1)] dollar of general revenues for every [insert amount]  
77 dollars from the federal government or the private sector. The sum appropriated shall be  
78 expended by the [department of business, economic development, and tourism] for the purposes  
79 of this Act.

80  
81 Section 5. [*Severability.*] [Insert severability clause.]

82  
83 Section 6. [*Repealer.*] [Insert repealer clause.]

84  
85 Section 7. [*Effective Date.*] [Insert effective date.]

# Alternative Fuel Sales

This Act authorizes motor fuel franchise dealers to obtain alternative fuels from a supplier other than a franchise distributor.

Submitted as:

New York

[A11868](#) (became Chapter 410 of 2006)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act might be cited as “An Act to Permit Motor Fuel  
2 Franchise Dealers to Sell Alternative Fuels.”

3

4           Section 2. [*Dealer's Right to Deal With Suppliers Other Than His Distributor.*]

5           (A) Any provision of a motor fuel franchise which requires a franchise motor fuel dealer  
6 to purchase or sell products of the distributor other than motor fuel or which prohibits a dealer  
7 from purchasing or selling such products of people or firms other than the distributor, shall be null  
8 and void. Any person or firm who is a distributor, or an officer, agent or employee of a  
9 distributor, who shall threaten, harass, coerce or attempt to coerce a franchise motor fuel dealer  
10 for the purpose of compelling the dealer to purchase or sell such products of the distributor or to  
11 refrain from purchasing or selling such products of people or firms other than the distributor shall  
12 be guilty of a violation and shall be subject to a fine in an amount up to [five hundred dollars] for  
13 each violation.

14           (B)   (1) Any provision of a franchise which prohibits a franchise motor fuel dealer from  
15 purchasing or selling any of the alternative motor fuels set forth in paragraph 2 of this subsection  
16 B from a person or firm other than the distributor, or limits the quantity of such motor fuel to be  
17 purchased from such other person or firm, or any provision of a franchise which directly or  
18 indirectly discourages such a dealer from purchasing or selling such alternative motor fuels from  
19 such other person or firm, shall be null and void as it pertains to that particular motor fuel if the  
20 distributor does not supply or offer to supply to the dealer such alternative motor fuel. Nothing  
21 contained in this paragraph, however, shall grant to any dealer any rights, authority or obligation  
22 with respect to the permissible uses of the premises or facilities owned, leased or controlled by a  
23 distributor pursuant to the terms of the franchise.

24                   (2) For the purposes of this section, “alternative motor fuel” shall mean any of the  
25 following:

- 26                           (a) A blend of [eighty-five percent ethanol and fifteen percent gasoline];  
27                           (b) A blend of [at least two percent methyl-ester], commonly referred to as  
28 “bio-diesel,” and diesel motor fuel;  
29                           (c) Motor fuel comprised primarily of methane, stored in a gaseous or  
30 liquid state and suitable for use and consumption in the engine of a motor vehicle, commonly  
31 referred to as “compressed natural gas;” or  
32                           (d) Hydrogen.

33           (3) Any person who is a distributor, or an office, agent or employee of a  
34 distributor, who threatens, harasses, coerces or attempts to coerce a franchise motor fuel dealer  
35 for the purpose of compelling such dealer to refrain from purchasing or selling alternative motor

36 fuel from a person or firm other than the distributor shall be guilty of a violation and be subject to  
37 a fine in an amount up to [one thousand dollars] for each violation.

38

39 Section 3. [*Severability.*] Insert severability clause.

40

41 Section 4. [*Repealer.*] Insert repealer clause.

42

43 Section 5. [*Effective Date.*] Insert effective date.

## Solar

# Solar Energy Systems Statement

California Chapter 132 of 2006 requires the State Energy Resources Conservation and Development Commission (Energy Commission) and state Public Utilities Commission (PUC) to develop and adopt regulations to encourage the development and use of solar energy systems and devices and to inform the public about such systems and devices.

The bill directs the Energy Commission to study and make findings whether, and under what conditions, solar energy systems should be required on new residential and nonresidential buildings and to periodically update the study thereafter.

This Act directs the PUC and Energy Commission to develop performance-based incentives for installing solar energy systems and devices in buildings and guidelines for solar energy systems receiving ratepayer funded incentives. The bill directs the Energy Commission to conduct random audits of solar energy systems installed under the Act to determine if those systems meet their prescribed operating efficiency standards.

The Act requires by a certain date, sellers of production homes to offer the option of a solar energy system to all customers negotiating to purchase a new production home constructed on land meeting certain criteria and to disclose certain information about solar energy systems. The Act enables sellers of production homes to forgo this requirement for a given project by installing solar energy systems generating specified amounts of electricity on other projects.

This Act requires all local publicly owned electric utilities that sell electricity at retail to adopt, implement, and finance a solar initiative program the purpose of investing in, and encouraging the increased installation of, residential and commercial solar energy systems. The bill requires a local publicly owned electric utility to make certain program information available to its customers, to the Legislature, and to the Energy Commission on an annual basis beginning June 1, 2008.

The law directs the PUC to order electric service providers to expand the availability of net energy metering so that it is offered on a first-come-first-served basis until the time that the total rated generating capacity used by all eligible customer-generators exceeds 2.5% of the electric service provider's aggregate customer peak demand. The bill requires the PUC to report by a certain date to the Governor and Legislature on the costs and benefits of net energy metering, wind energy co-metering, and co-energy metering to participating customers and nonparticipating customers and with options to replace the economic costs of different forms of net metering with a mechanism that more equitably balances the interests of participating and nonparticipating customers.

This Act requires the Contractors' State License Board to review and revise as necessary licensing classifications and examinations to ensure that contractors authorized to perform work on solar energy systems have the requisite qualifications to perform the work.

Submitted as:

California

[Chapter 132 of 2006](#)

Status: Enacted into law in 2006.

# ENERGY CONSERVATION



## General

# Energy Conservation (2008 SSL)

This Act enables the state development finance authority to enter into agreements with federal agencies to finance energy conservation measures. An energy conservation measure is an improvement or equipment that would create operational or energy cost savings.

Submitted as:

Kansas

[HB 2169](#)

Status: Enacted into law in 2007.

### Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit State and Federal  
2 Agencies to Finance Energy Conservation Measures.”  
3

4           Section 2. [*Definitions.*] As used in this Act:

5           (A) “Authority” means the [state development finance authority] created by [insert  
6 citation].

7           (B) “Bonds” means any [bonds, notes, debentures, interim certificates, grant and revenue  
8 anticipation notes, interest in a lease, lease certificate of participation] or other evidences of  
9 indebtedness, whether or not the interest on which is subject to federal income taxation, issued by  
10 the [Authority] pursuant to this Act.

11           (C) “Energy conservation measure” means an energy study, audit, improvement or  
12 equipment which is designed to provide energy and operational cost savings at least equivalent to  
13 the amount expended by a participating state or federal agency for such energy study, audit,  
14 improvement or equipment over a period of not more than [30 years after the date] such  
15 improvement or equipment is installed or becomes operational, as the case may be.

16           (D) “Federal entity” means the government of the United States of America or any  
17 bureau, department, instrumentality or other agency of the federal government.  
18

19           Section 3. [*State Development Finance Authority Permitted to Contract or Enter*  
20 *Agreement with a Federal Entity to Implement Energy Conservation Measures.*]

21           (A) The [state development finance authority] is authorized to contract or enter into a  
22 finance, pledge, loan or lease-purchase agreement with a federal entity for an energy conservation  
23 measure as defined in [Section 2 of this Act] to facilitate the financing thereof or to provide  
24 security for the repayment of bonds authorized under this Act.

25           (B) Before executing any contract or finance, pledge, loan or lease-purchase agreement  
26 under this section, the affiliated energy conservation contractor shall provide to the participating  
27 federal and state agencies and the [state development finance authority] plans for the proposed  
28 energy conservation measures prepared by an engineer licensed to practice in this state. The  
29 energy conservation contractor shall also provide a report of the calculations showing the  
30 estimated energy and operational cost savings that would result from the proposed energy  
31 conservation measures.

32           (C) The [state development finance authority] is hereby authorized to issue revenue bonds  
33 in amounts sufficient to pay the costs of energy conservation measures as defined in this Act for

34 or on behalf of federal entities for facilities located in the state, and to contract with federal  
35 entities with respect to such energy conservation measures and such revenue bonds. The bonds,  
36 and interest thereon, issued pursuant to this section shall be payable from revenues derived from  
37 the use, lease, occupation or operation of the facilities for which such energy conservation  
38 measures are undertaken; any other revenues, appropriations, grants or moneys of a federal entity  
39 available therefore; or any combination thereof.

40 (D) Revenue bonds, including refunding revenue bonds, issued under this section shall  
41 not be an obligation of the state of this state and shall not constitute an indebtedness of the state,  
42 nor shall those constitute indebtedness within the meaning of any constitutional or statutory  
43 provision limiting the incurring of indebtedness.

44 (E) Revenue bonds, including refunding revenue bonds, issued under this section and the  
45 income derived therefrom are and shall be exempt from [all state, county and municipal taxation  
46 in the state except state estate taxes].

47 (F) The total costs of energy conservation measures for state facilities initiated by state  
48 agencies under this Act, for any fiscal year, exclusive of financing costs, shall not exceed the  
49 amounts approved for such energy conservation measures by the [state corporation commission].

50 (G) The [state corporation commission] is authorized to provide administrative support  
51 and resources available as requested by federal entities developing energy conservation measures  
52 under this Act. The [state corporation commission] may fix, charge and collect reasonable fees  
53 for any administrative support and resources or other services provided to the parties developing  
54 energy conservation measures under this Act.

55

56 Section 4. [*Severability.*] [Insert severability clause.]

57

58 Section 5. [*Repealer.*] [Insert repealer clause.]

59

60 Section 6. [*Effective Date.*] [Insert effective date.]

# Next Generation Energy Statement

Minnesota Chapter 136 of 2007 is intended to bolster investments in renewable power, increase energy conservation, and decrease the state's contribution to global warming.

This Act establishes goals to reduce per capita use of fossil fuels by 15 percent by 2015, and to derive 25 percent of the total energy used in the state from renewable power sources by 2025. The law calls for cutting the state's greenhouse gas emissions to 15 percent below 2005 base levels by 2015, 30 percent by 2025 and 80 percent by 2050.

The law requires several state agencies and a wide array of stakeholders to work together to come up with a "climate change action plan" that will identify and evaluate a broad range of greenhouse gas reduction strategies, assess the potential costs and benefits of the various options, including the potential cost to consumers, and recommend a course of action to the Legislature.

The plan must also make recommendations about a system whereby a cap would be placed on overall greenhouse gas emissions and power companies assigned "allowances" of emissions that they can trade with one another.

This law prohibits the construction of any power plants that would produce a net increase in carbon emissions after Aug. 1, 2009. The law states that unless "a comprehensive state law or rule ... that directly limits and substantially reduces greenhouse gas emissions" is enacted and is in effect by that date:

- no large fossil fuel-fired powerplant can be built in Minnesota;
- no utility can import electricity from a large fossil fuel-fired powerplant built in another state that was not operating on Jan. 1, 2007; and
- no Minnesota utility can purchase electricity from an outstate utility under a contract that exceeds 50 megawatts for a term of five years.

This Act contains a five-part conservation and efficiency strategy that includes:

- establishing a statewide energy conservation goal of 1.5 percent of annual retail electric and gas sales;
- expanding and improving the state's conservation improvement program;
- providing research and development and technical assistance to utility companies through the state Department of Commerce;
- increasing energy efficiency in state buildings; and
- removing financial disincentives for utility companies to promote energy conservation by "decoupling" a utility's revenue from its changes in energy sales.

The law makes a number of changes to the state Community-Based Energy Development (C-BED) statutes, including:

- expanding the types of projects that qualify for the program from wind only to include all renewable energy technologies;
- increasing the financial benefits for communities that invest in renewable power by stipulating that at least 51 percent of the gross revenues from any power purchase agreement flow to owners and qualifying local entities;
- encouraging utilities to make use of C-BED projects in meeting the state's renewable energy standard; and
- removing a 2.7 cents per kilowatt hour cap on the price utilities pay for energy from C-BED projects.

Other changes include a statewide study of dispersed generation potential, a study of wind development property agreements and the establishment of a C-BED Advisory Task Force to be appointed by the Legislative Electric Energy Task Force.

This bill requires landlords make sure residential rental properties are fitted with weather stripping, caulking, storm windows, and storm doors when any such measure “will result in energy procurement cost savings ... that will exceed the cost of implementing that measure.”

The law also directs a study to be conducted by a Legislative Electric Energy Task Force about the potential economic and environmental costs of constructing a new nuclear power plant in the state. The study must compare those costs with the costs of constructing a coal power plant fitted with state-of-the-art carbon capture and sequestration technology.

Submitted as:

Minnesota

[Chapter 136 of 2007](#)

Status: Enacted into law in 2007.

## Buildings

# Conservation of Energy and Natural Resources In the Design of State Building Projects (2007 SSL)

This Act encourages state agencies that are constructing new, or renovating existing, buildings to use either the Green Globes or Leadership in Energy and Environmental Design (LEED) sustainable building programs to assess the environmental attributes of the structure. The legislation also creates a Legislative Task Force on Sustainable Building Design and Practices to review and advise state agencies about “green” building practices.

Submitted as:

Arkansas

[Act 1770 of the 2005 Regular Session](#)

Status: Enacted into law in 2005.

### Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Promote the Conservation of  
2 Energy and Natural Resources in the Design of State Building Projects.”

3  
4           Section 2. [*Legislative Findings.*] It is found and determined by the [Legislature] that:

5           (1) State-funded building projects have a significant impact on the environment of our  
6 State, the economy, and the health and productivity of building inhabitants;

7           (2) State government currently spends approximately [seventy million dollars] annually  
8 for electricity and natural gas consumed in state buildings, and energy expenditures have been  
9 increasing at nearly [four percent (4%)] per year over the last [ten (10) years];

10           (3) It is incumbent upon this state government to lead by example to minimize energy use  
11 and environmental impact in state buildings;

12           (4) Innovations in building science, technology, and operations are available to maximize  
13 the economic utility of state-funded building projects and reduce energy costs, while achieving  
14 the best environmental performance, and while reducing adverse impacts on the environment; and

15           (5) (A) Incorporating principles of sustainability in building design will enhance  
16 efficient management of material resources and waste, protection of health and indoor  
17 environmental quality, reduce the longer term costs of construction and operation of state-funded  
18 buildings, and promote the use of appropriate state products in the buildings.

19           (B) In recognition of the economic, energy conservation, and environmental  
20 benefits of sustainable building design, it is in the best interest of this state to initiate a process to  
21 encourage improved building practices, to provide support and information to assist state agencies  
22 in carrying out the purposes of this Act, and to continue development of best building practices  
23 through a legislative task force to evaluate and report to the [General Assembly] the progress  
24 being made under this Act.

25  
26           Section 3. [*Definitions.*] As used in this Act:

27           (1) “Adaptive reuse” means the modification, to accommodate a function other than its  
28 original intent, of any building site and existing inhabited structure;

29 (2) (A) “Building project” means any inhabited physical structure and project building  
30 site.  
31 (B) “Building project” does not include ancillary structures or buildings with  
32 temporary occupancy such as park restrooms, pavilions, storage facilities, or similar structures.  
33 (C) “Building project” includes any structure in which any individual spends more  
34 than an hour of time within the structure, such as residences, offices, visitors’ centers, classrooms,  
35 administration buildings, etc.;

36 (3) “Grant applicant” means any individual, institution, governmental jurisdiction, or other  
37 organization recognized by the granting department or agency as qualified to apply for financial  
38 assistance from any state department, agency, or office for the purpose of planning, designing, or  
39 constructing a new or rehabilitated building;

40 (4) (A) “Green Globes” means the online environmental assessment tool as developed  
41 by the Green Building Initiative as of December 2004.  
42 (B) “Green Globes” allows designers, property owners, and managers to evaluate  
43 and rate buildings against best sustainable building design and practices, and integrate principles  
44 of sustainable architecture at every stage of project delivery in order to design and construct  
45 buildings that will be energy and resource efficient, achieve operational savings, and provide  
46 healthier environments in which to live and work;

47 (5) (A) “Leadership in Energy and Environmental Design” means the following  
48 building rating systems developed by the United States Green Building Council:  
49 (i) LEED-NC 2.1, as it exists on January 1, 2005;  
50 (ii) LEED-EB, as it exists on January 1, 2005; or  
51 (iii) LEED-CI, as it exists on January 1, 2005.  
52 (B) “Leadership in Energy and Environmental Design” allows designers, property  
53 owners, and managers to evaluate and rate buildings against best sustainable building design and  
54 practices, and integrate principles of sustainable architecture at every stage of project delivery in  
55 order to design and construct buildings that will be energy- and resource-efficient, achieve  
56 operational savings, and provide healthier environments in which to live and work;

57 (6) “Newly designed construction project” means any building and its building site for  
58 which a contract has been entered into beginning [July 1, 2005], to construct a building and  
59 building site improvements as outlined in Leadership in Energy and Environmental Design or  
60 Green Globes rating systems;

61 (7) “Project building site” means all property associated with a building, including the  
62 defined legal description of the property or the defined project limits;

63 (8) (A) “Project limits” means the physical boundaries of a construction project within  
64 which all construction activity must occur.  
65 (B) “Project limits” includes material and equipment storage space, lay down or  
66 prefabrication space, clearing, grubbing, and drainage improvements;

67 (9) “Project team” means the persons or individuals representing the state agency or  
68 owner, professional design consultants, and building contractor, if a contractor is determined prior  
69 to design;

70 (10) “Proposed construction project” means all building construction projects in the  
71 conceptual planning stages for which a design contract has been executed after [July 1, 2005];

72 (11) “Public and private partnerships” means any private development that uses state  
73 money to assist in the planning, design, or construction of a building project, such as a building  
74 project providing economic incentives for development;

75 (12) “Public funding” means federal or state funds that are allocated for a state building  
76 project;

77 (13) “Rehabilitation project” means any building project involving the modification or  
78 adaptive reuse of an existing facility in which [twenty-five percent (25%)] or more of the physical  
79 structure, façade, or interior space of a facility is being changed or modified;

80 (14) “State agency” means all departments, offices, boards, commissions, and institutions  
81 of the state, including the [state-supported institutions of higher education];

82 (15) “State building project” means any inhabited physical structure and project building  
83 site in which:

84 (A) A state agency secures the design or construction contract; and

85 (B) Public funding is used in whole or in part to design or construct the project;

86 and

87 (16) “Sustainable” means that:

88 (A) A building integrates building materials and methods that promote  
89 environmental quality, energy conservation, economic vitality, and social benefit through the  
90 design, construction, and operation of the built environment;

91 (B) A building merges sound, environmentally responsible practices into [one (1)]  
92 discipline that looks at the environmental, economic, and social effects of a building or built  
93 project as a whole; and

94 (C) The design encompasses the following broad topics:

95 (i) Efficient management of energy and water resources;

96 (ii) Management of material resources and waste;

97 (iii) Protection of environmental quality;

98 (iv) Protection of health and indoor environmental quality;

99 (v) Reinforcement of natural systems; and

100 (vi) Integrating the design approach.

101  
102 Section 4. [*State Standards.*]

103 (a) If a state agency decides to pursue either the Leadership in Energy and Environmental  
104 Design certification or the Green Globes certification, the standards of this section shall apply for  
105 the purpose of this state’s building projects.

106 (b) (1) Use of the Leadership in Energy and Environmental Design rating system shall  
107 be with the following supplemental provisions specific to this state’s building projects:

108 (A) Under LEED Credit EQ 4.4, [one (1) point] shall be awarded for the  
109 use of composite wood and agrifiber products if the architect or responsible party provides  
110 appropriate documentation that the products are third-party certified as meeting the American  
111 National Standards Institute standard requirements, ANSI A208.1 for Particleboard Standard and  
112 ANSI A 2808.2 for MDF, for formaldehyde emissions or contain no added urea-formaldehyde;

113 (B) Under LEED Credit MR 4, [one (1) point] shall be awarded when the  
114 sum of postconsumer recycled content plus [one-half (1/2)] of the preconsumer recycled content  
115 constitutes at least [ten percent (10%)] of the total value of the materials in the project. A [second  
116 point] shall be awarded if the sum of postconsumer recycled content plus [one-half (1/2)] of the  
117 preconsumer content constitutes at least [twenty percent (20%)] of the total value of the materials  
118 in the project. The valuation is to be determined by using the LEED-NC letter template;

119 (C) Under LEED Credit MR 6, [one (1) point] shall also be awarded for the  
120 use of renewable, bio-based materials for [five percent (5%)] of the total value of all the products  
121 used in the project that are either residuals of or products grown or harvested under a recognized  
122 sustainable management system, such as the Forest Stewardship Council, the Sustainable Forestry  
123 Initiative Program, the American Tree Farm System, the Canadian Standards Association, the  
124 Organic Trade Association, and the Association for Bamboo in Construction. The applicable  
125 vendor’s or manufacturer’s certification documentation must be provided;

126 (D) Under LEED Credit MR 7, [one (1) point] shall also be awarded for the  
127 use of renewable, bio-based raw materials certified in accordance with [one (1) or more] premier  
128 certification programs for environmental management for [fifty percent (50%)] of the total value  
129 of all bio-based materials and products used in the project. Certification programs include, but are  
130 not limited to, the Forest Stewardship Council, the Sustainable Forestry Initiative, the American  
131 Tree Farm System, the Canadian Standards Association, the Organic Trade Association, and the  
132 Association for Bamboo in Construction. The applicable vendor's or manufacturer's certification  
133 documentation must be provided;

134 (E) Under LEED Innovation in Design Credit 1.1, [one (1) point] will be  
135 awarded if [five percent (5%)] or more of the mass of all building materials used are carbon  
136 sequestering bio-based products managed under a recognized sustainable management plan; and

137 (F) Under LEED Innovation in Design Credit 1.2, [one (1) point] will be  
138 awarded for the use of bio-based materials derived from multiple credible certified sources  
139 supported by an environmental management system certified under the International Organization  
140 for Standardization standard ISO 14001, including the Forest Stewardship Council, the  
141 Sustainable Forestry Initiative, the American Tree Farm System, the Canadian Standards  
142 Association, the Organic Trade Association, and the Association for Bamboo in Construction.  
143 The applicable vendor's or manufacturer's certification documentation must be provided.

144 (2) Use of the Green Globes rating system shall be with the following  
145 supplemental provision specific to this state's building projects:

146 (A) An additional [fifteen (15) points] shall be awarded if [five percent  
147 (5%)] or more of the mass of all building materials used are carbon sequestering wood bio-based  
148 products; and

149 (B) [Fifteen (15) points] will be awarded for the use of bio-based materials  
150 derived from multiple credible certified sources supported by an environmental management  
151 system certified under the International Organization for Standardization standard ISO 14001,  
152 including the Forest Stewardship Council, the Sustainable Forestry Initiative, the American Tree  
153 Farm System, the Canadian Standards Association, the Organic Trade Association, and the  
154 Association for Bamboo in Construction. The applicable vendor's or manufacturer's certification  
155 documentation must be provided.

156  
157 Section 5. [*Application to State Building Projects.*] State agencies conducting or funding  
158 a public building project or rehabilitation project are encouraged to refer to and should utilize  
159 whenever possible and appropriate the Leadership in Energy and Environmental Design or Green  
160 Globes rating systems referred to in this Act.

161  
162 Section 6. [*Legislative Task Force on Sustainable Building Design and Practices.*]

163 (a) The Legislative Task Force on Sustainable Building Design and Practices is  
164 established to:

165 (1) continue to review, discuss, and advise on issues related to sustainable design  
166 and practices for buildings;

167 (2) monitor case study projects and evaluate performance and outcomes relevant to  
168 high performance building strategies;

169 (3) serve as a reference for educational resources; and

170 (4) ask for a review of sustainable building design and practices performed by state  
171 agencies.

172 (b) (1) The task force shall be composed of no more than [twenty (20)] members. The  
173 number of members shall be determined by agreement between the [Chair of the Senate Interim  
174 Committee on Public Health, Welfare, and Labor and the Chair of the House Interim Committee  
175 on Public Health, Welfare, and Labor].



176 (2) The [Chair of the Senate Interim Committee on Public Health, Welfare, and  
177 Labor and the Chair of the House Interim Committee on Public Health, Welfare, and Labor] shall  
178 appoint the membership pursuant to procedure agreed upon by the chairs.

179 (3) The task force shall include members of the [General Assembly] and members  
180 of the public.

181 (4) The cochair of the task force shall be members of the [General Assembly].  
182 One (1) cochair shall be a member of the [Senate] and one (1) cochair shall be a member of the  
183 [House of Representatives].

184 (c) The legislative members of the task force shall be entitled to mileage and per diem at  
185 the same rate as for attending other legislative committees.

186 (d) The task force shall receive staff support from the [Bureau of Legislative Research].

187 (e) The task force shall expire on [July 1, 2007], unless continued by an Act of the  
188 [General Assembly].

189

190 Section 7. [*Emergency Clause.*] It is found and determined by the [General Assembly] of  
191 this state that there is a need to incorporate energy and natural resource conservation measures  
192 into state buildings and state-funded buildings; that this Act will assist the state to provide better  
193 use of natural resources, and that this Act is immediately necessary because of the need to  
194 incorporate standards into new construction. Therefore, an emergency is declared to exist and this  
195 Act being necessary for the preservation of the public peace, health, and safety shall become  
196 effective on [July 1, 2005].

197

198 Section 8. [*Severability.*] [Insert severability clause.]

199

200 Section 9. [*Repealer.*] [Insert repealer clause.]

201

202 Section 10. [*Effective Date.*] [Insert effective date.]

# Shielded Outdoor Lighting (2006 SSL)

The purpose of this Act is to conserve energy and preserve the environment through the regulation of outdoor lighting fixtures. The Act directs that no public funds shall be used to install an outdoor lighting fixture unless it is shielded and no state funds shall be used for the installation of a shielded or unshielded mercury vapor outdoor lighting fixture. It requires the state department of environmental quality to promulgate regulations prohibiting any person or entity from knowingly placing or disposing of lights containing mercury in a landfill after January 1, 2008. It requires electric public utilities in the state to offer a shielded lighting service option.

Submitted as:

Arkansas

[Act 1963 \(2005\)](#)

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Encourage the Use of  
2 Shielded Outdoor Lighting.”

3  
4           Section 2. [*Purpose.*] The purpose of this Act is to conserve energy and preserve the  
5 environment through the regulation of outdoor lighting fixtures.

6  
7           Section 3. [*Definitions.*] As used in this Act:

8           (a) “Outdoor lighting fixture” means an automatically-controlled, outdoor artificial  
9 illuminating device, whether permanent or portable, used for illumination or advertisement,  
10 including searchlights, spotlights, and floodlights, whether for architectural lighting, parking lot  
11 lighting, landscape lighting, billboards, or street lighting; and

12           (b) “Shielded” means a fixture that is covered in a manner that light rays emitted by the  
13 fixture, either directly from the lamp or indirectly from the fixture, are projected below a  
14 horizontal plane running through the lowest point on the fixture where light is emitted.

15  
16           Section 4. [*Shielding: Prohibitions, Exemptions.*]

17           (a) After [January 1, 2006]:

18                   (1)   (A) No public funds shall be used to install an outdoor lighting fixture  
19 unless it is shielded.

20                           (B) The provisions of subdivision (a)(1) of this section shall not apply to a  
21 municipally owned utility if the municipal employee responsible for procurement determines that  
22 the cost of acquiring a shielded outdoor lighting fixture will be more expensive than the  
23 alternative after comparing:

24                                   (i) The cost of the fixtures; and

25                                   (ii) The projected energy cost of the operation of the fixtures;

26                   (C) No state funds shall be used for the installation of a shield or  
27 unshielded mercury vapor outdoor lighting fixture.

28           (2) The [Department of Environmental Quality] shall promulgate regulations  
29 prohibiting any person or entity from knowingly placing or disposing of lights containing  
30 mercury in a landfill after [January 1, 2008].

31 (3) (A) Each electric public utility shall offer a shielded lighting service  
32 option.

33 (B) Not later than [January 1, 2006], each electric public utility shall file an  
34 application with the [Public Service Commission] to establish a schedule of rates and charges for  
35 the provision of a shielded lighting service option to the utility's customers.

36 (C) The [Public Service Commission] shall require each electric public  
37 utility to inform its customers of the availability of the shielded lighting service.

38 (b) This Act does not apply to acquisitions of:

39 (1) Incandescent outdoor lighting fixtures of one hundred fifty watts (150W) or  
40 less or other light sources of seventy watts (70W) or less;

41 (2) Outdoor lighting fixtures on advertisement signs on interstate or federal  
42 primary highways;

43 (3) (A) Outdoor lighting fixtures existing and legally installed before the  
44 effective date of this Act.

45 (B) However, if an existing outdoor lighting fixture exempted from the  
46 provisions of this Act under subdivision (b)(3)(A) of this section needs to be replaced, the  
47 acquisition of the replacement outdoor lighting fixture shall be subject to the provisions of this  
48 Act;

49 (4) Navigational lighting systems at airports or other lighting necessary for aircraft  
50 safety; and

51 (5) Outdoor lighting fixtures that are necessary for worker safety at farms,  
52 ranches, dairies, or feedlots or industrial, mining, or oil and gas facilities.

53

54 Section 5. [*Penalties.*] Violations of this Act are punishable by a warning for a first offense  
55 and a fine of [twenty-five dollars] minus the replacement cost for each offending outdoor lighting  
56 fixture for a second or subsequent offense or for an offense that continues for [thirty calendar  
57 days] from the date of the warning.

58

59 Section 6. [*Enforcement.*] This Act may be enforced by a town, city, or county of this state  
60 by seeking injunctive relief in a court of competent jurisdiction.

61

62 Section 7. [*Provisions Supplemental.*] The provisions of this Act are cumulative and  
63 supplemental and shall not apply within a town, city, or county of this state that by ordinance has  
64 adopted provisions restricting light pollution that are equal to or more stringent than the  
65 provisions of this Act.

66

67 Section 8. [*Severability.*] [Insert severability clause.]

68

69 Section 9. [*Repealer.*] [Insert repealer clause.]

70

71 Section 10. [*Effective Date.*] [Insert effective date.]

## Appliances and Equipment

# Appliance and Equipment Energy Efficiency Standards

According to the U.S. Department of Energy:

“Appliance manufacturers must produce products that either meet minimum federal energy efficiency standards, or that consume no more than the amount of energy than federal standards allow. The U.S. Congress established minimum energy efficiency standards for many major appliances through:

- Part B of Title III of the Energy Policy and Conservation Act (EPCA)
- Public Law 94-163, as amended by the National Energy Conservation Policy Act
- Public Law 95-619, by the National Appliance Energy Conservation Act
- Public Law 100-12, by the National Appliance Energy Conservation Amendments of 1988
- Public Law 100-357
- The Energy Policy Act of 1992
- Public Law 102-486.

These standards do not affect the marketing of products manufactured before the standards went into effect. Any products already made and in stock can be sold.

Appliances and other products covered by these standards include:

- Refrigerators
- Freezers
- Room air conditioners
- Clothes dryers
- Clothes washers
- Dishwashers
- Kitchen ranges and ovens
- Pool heaters
- Television sets (withdrawn in 1995)
- Water heaters
- Fluorescent lamp ballasts
- Incandescent reflector lamps

Through these laws, Congress also has established schedules for the U.S. Department of Energy to review and revise these standards.

As a result of these federal laws, the Federal Trade Commission has established the Appliance Labeling Rule, which requires manufacturers of most major home appliances to attach labels that provide an estimate of the product's energy consumption or energy efficiency. These familiar yellow-and-black EnergyGuide labels also show the highest and lowest energy consumption or efficiency estimates of similar appliance models.”

See - [http://www.eere.energy.gov/consumer/your\\_home/appliances/index.cfm/mytopic=10050](http://www.eere.energy.gov/consumer/your_home/appliances/index.cfm/mytopic=10050)

According to the U.S. Department of Energy:

“The federal government sets the minimum standards for appliances, *but state and local governments often use other programs to increase the efficiency of consumer appliances.*”

See - <http://www.eere.energy.gov/states/alternatives/appliances.cfm>

Arizona Chapter 226 of 2005 establishes minimum energy efficiency requirements for 12 appliances, including four that must meet California’s minimum requirements. Specifically, the Arizona Act in this Energy Supplement:

- provides pertinent definitions for specific appliances and related equipment;
- specifies that the provisions apply to such products sold, offered for sale or installed in Arizona;
- states that the provisions do not apply to products that are:
  1. manufactured in Arizona but sold outside the state;
  2. manufactured out-of-state and sold at wholesale in-state, for final sale and installation outside Arizona;
  3. installed in mobile homes at the time of construction; and
  4. designed for installation and use in recreational vehicles.
  5. located in a laundry facility that is a part of an apartment complex or mobile home park;
- mandates that the following products’ standards meet the energy efficiency requirements as adopted by the California Legislature;
  1. automatic commercial icemakers;
  2. commercial clothes washers;
  3. commercial refrigerators, freezers and refrigerator freezers, except pulldown refrigerators with transparent doors may meet a requirement five percent lower than California regulations; and
  4. single voltage external AC to DC power supplies;
- specifies that the energy efficient standards for the outlined products go into effect January 1, 2008 unless the product is a commercial refrigerator, freezer, or refrigerator freezer or large packaged air conditioning equipment. For these products the date is January 1, 2010;
- states that a person is guilty of deceptive trade practice if the person knowingly sells or installs an appliance that does not meet the applicable energy efficiency standards outlined in the bill;
- allows the Attorney General to enforce the provisions of this bill and assess a civil penalty of not more than \$500 per violation;
- stipulates that money collected as civil penalties for violating this Act be deposited into the state General Fund;
- requires the Department of Commerce Energy Office to conduct a comparative review of the standards outlined in the bill and those of other states and report the findings and recommendations to the Speaker of the House, President of the Senate, and the Director of the Arizona State Library, Archives and Public Records; and
- stipulates that manufacturers must provide written certification to the Department of Commerce stating that products sold meet efficiency standards outlined in this bill except for products already registered and published on a database in a state with like standards.

#### Other State Appliance Energy Efficiency laws/regulations

California - 2007 Appliance Efficiency Regulations, (California Code of Regulations, Title 20, Sections 1601 through 1608)

Connecticut - Substitute for Raised H.B. No. 5523 of 2006 and Substitute Senate Bill No. 145, Public Act No. 04-85;  
Maryland - HB747 of 2004;  
Massachusetts - Code Chapter 25;  
Washington - ESHB 1062 of 2005 and SSB6840 of 2006

Interested state officials should review current federal standards governing appliance energy efficiency to see how those current standards might affect efforts to enact or update energy appliance standards in their state.

Submitted as:

Arizona

[Chapter 226 of 2005](#)

Status: Enacted into law in 2005.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Appliance and  
2 Equipment Energy Efficiency Standards.”  
3

4           Section 2. [*Definitions.*] As used in this Act:

5                 1. “automatic commercial icemaker” means a factory made assembly that is  
6 shipped in one or more packages, that consists of a condensing unit and icemaking section  
7 operating as an integrated unit, that makes and harvests ice cubes and that may store or dispense  
8 ice. Automatic commercial icemaker includes machines with capacities between fifty and two  
9 thousand five hundred pounds per twenty-four hours.

10                2. “ballast” means a device used with an electric discharge lamp to obtain  
11 necessary circuit conditions such as voltage, current and waveform for starting and operating the  
12 lamp.

13                3. “commercial clothes washer” means a soft mount horizontal or vertical axis  
14 clothes washer that both:

15                         (a) has a clothes container compartment no greater than three and one-half  
16 cubic feet in the case of a horizontal axis product or no greater than four cubic feet in the case of a  
17 vertical axis product.

18                         (b) is designed for use by more than one household, such as in multifamily  
19 housing, apartments or coin laundries.

20                 4. “commercial prerinse spray valve” means a handheld device designed to spray  
21 water on dishes, flatware and other food service items for the purpose of removing food residue  
22 prior to cleaning.

23                 5. “commercial refrigerator, freezer and refrigerator freezer” means self-contained  
24 refrigeration equipment that:

25                         (a) is not a consumer product as regulated pursuant to 42 United States  
26 Code Chapter 77.

27                         (b) operates at a chilled, frozen, combination chilled-frozen or variable  
28 temperature for the purpose of storing or merchandising food, beverages or ice.

29                         (c) may have transparent or solid or both transparent and solid hinged  
30 doors, sliding doors or a combination of hinged and sliding doors.

31 (d) incorporates most components involved in the vapor-compression  
32 cycle and the refrigerated compartment in a single cabinet.

33 (e) does not include:

34 (i) units with eighty-five cubic feet or more of internal volume.

35 (ii) walk-in refrigerators or freezers.

36 (iii) units with no doors.

37 (iv) freezers specifically designed for ice cream.

38 6. "high-intensity discharge lamp" means a lamp in which light is produced by the  
39 passage of an electric current through a vapor or gas and in which the light producing arc is  
40 stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three  
41 watts per square centimeter.

42 7. "illuminated exit sign" means an internally illuminated sign that is designed to  
43 be permanently fixed in place to identify a building exit and that consists of an electrically  
44 powered integral light source that both illuminates the legend "exit" and any directional indicators  
45 and provides contrast between the legend, any directional indicators and the background.

46 8. "large packaged air conditioning equipment" means electrically operated, air  
47 cooled air conditioning and air conditioning heat pump equipment that has cooling capacity  
48 greater than or equal to two hundred forty thousand btu per hour but less than seven hundred sixty  
49 thousand btu per hour and that is built as a package and shipped as a whole to end user sites.

50 9. "low voltage dry type distribution transformer" means a transformer to which all  
51 of the following apply:

52 (a) has an input voltage of six hundred volts or less.

53 (b) is air cooled.

54 (c) does not use oil as a coolant.

55 (d) is rated for operation at a frequency of sixty hertz.

56 10. "metal halide lamp" means a high intensity discharge lamp in which the major  
57 portion of the light is produced by radiation of metal halides and their products of dissociation,  
58 possibly in combination with metallic vapors.

59 11. "metal halide lamp fixture" means a light fixture designed to be operated with  
60 a metal halide lamp and a ballast for a metal halide lamp.

61 12. "probe start metal halide ballast" means a ballast used to operate metal halide  
62 lamps that does not contain an ignitor and which instead starts lamps by using a third starting  
63 electrode probe in the arc tube.

64 13. "pulldown refrigerator" means a commercial refrigerator specifically designed  
65 to rapidly reduce all integrated product temperatures from ninety degrees Fahrenheit to thirty-  
66 eight degrees Fahrenheit over a twelve hour period when fully loaded with beverage containers.

67 14. "single voltage external AC to DC power supply" means a device that:

68 (a) is designed to convert line voltage ac input into lower voltage DC  
69 output.

70 (b) is able to convert to only one DC output voltage at a time.

71 (c) is sold with, or intended to be used with, a separate end use product  
72 that constitutes the primary power load.

73 (d) is contained within a separate physical enclosure from the end use  
74 product.

75 (e) is connected to the end use product via a removable or hard wired  
76 male/female electrical connection, cable, cord or other wiring.

77 (f) does not have batteries or battery packs, including those that are  
78 removable and that physically attach directly to the power supply unit.

79 (g) does not have a battery chemistry or type selector switch and indicator  
80 light or does not have a battery chemistry or type selector switch and a state of charge meter.

81 (h) has a nameplate output power less than or equal to two hundred fifty  
82 watts.

83 15. “torchiera” means a portable electric lighting fixture with a reflective bowl that  
84 directs light upward onto a ceiling so as to produce indirect illumination on the surfaces below. A  
85 torchiera may include downward directed lamps in addition to the upward, indirect illumination.

86 16. “traffic signal module” means a standard eight inch or twelve inch traffic  
87 signal indication, consisting of a light source, a lens and all other parts necessary for operation.

88 17. “transformer” means a device that consists of two or more coils of insulated  
89 wire and that is designed to transfer alternating current by electromagnetic induction from one  
90 coil to another to change the original voltage or current value. Transformer does not include:

91 (a) transformers with multiple voltage taps, with the highest voltage tap  
92 equaling at least twenty per cent more than the lowest voltage tap.

93 (b) transformers, such as those commonly known as drive transformers,  
94 rectifier transformers, auto transformers, uninterruptible power system transformers, impedance  
95 transformers, regulating transformers, sealed and nonventilating transformers, machine tool  
96 transformers, welding transformers, grounding transformers or testing transformers, that are  
97 designed to be used in a special purpose application and that are unlikely to be used in general  
98 purpose applications.

99 18. “unit heater” means a self-contained, vented fan type commercial space heater  
100 that uses natural gas or propane and that is designed to be installed without ducts within a heated  
101 space, except that unit heater does not include any products covered by federal standards  
102 established pursuant to 42 United States Code Chapter 77 or any product that is a direct vent,  
103 forced flue heater with a sealed combustion burner.

104  
105 Section 3. [*Applicability.*]

106 A. This Act applies to the following types of new products sold, offered for sale or  
107 installed in this state:

- 108 1. Automatic commercial ice makers.
- 109 2. Commercial clothes washers.
- 110 3. Commercial prerinse spray valves.
- 111 4. Commercial refrigerators, freezers and refrigerator freezers.
- 112 5. Illuminated exit signs.
- 113 6. Large packaged air conditioning equipment.
- 114 7. Low voltage dry type distribution transformers.
- 115 8. Metal halide lamp fixtures.
- 116 9. Single voltage external AC to DC power supplies.
- 117 10. Torchieres.
- 118 11. Traffic signal modules.
- 119 12. Unit heaters.

120 B. This Act does not apply to:

- 121 1. New products manufactured in this state and sold outside this state.
- 122 2. New products manufactured outside this state and sold at wholesale inside this  
123 state for final retail sale and installation outside this state.
- 124 3. Products installed in mobile manufactured homes at the time of construction.
- 125 4. Products designed expressly for installation and use in recreational vehicles.
- 126 5. Products installed in a laundry facility located within an apartment complex or  
127 mobile home park at the time of construction or replacement. For the purposes of this paragraph,  
128 “apartment complex” means any real property that has one or more structures and that contains  
129 four or more dwelling units for rent or lease that are subject to the [insert citation].

130



131 Section 4. [Standards.]

132 A. Except as provided in subsection B, the following standards apply beginning January 1,  
133 2008:

134 1. Automatic commercial icemakers shall meet the requirements of Section 1605.3  
135 of the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4, in effect on the  
136 effective date of this Act.

137 2. Commercial clothes washers shall meet the requirements of Section 1605.3 of  
138 the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4, in effect on the  
139 effective date of this Act.

140 3. Commercial prerinse spray valves shall have a flow rate equal to or less than 1.6  
141 gallons per minute.

142 4. Commercial refrigerators, freezers and refrigerator freezers shall meet the  
143 requirements of Section 1605.3 of the California Code of Regulations, Title 20: Division 2,  
144 Chapter 4, Article 4, in effect on the effective date of this Act, except that pulldown refrigerators  
145 with transparent doors shall meet a requirement five per cent less stringent than shown in the  
146 California Regulations.

147 5. Illuminated exit signs shall have an input power demand of five watts or less per  
148 illuminated face and shall either have a power factor of at least 0.70 or meet the power factor  
149 product specification of the Energy Star Program requirements, whichever is higher.

150 6. Large packaged air conditioning equipment shall meet a minimum energy  
151 efficiency ratio of 10.0 for air conditioning without an integrated heating component or with  
152 electric resistance heating integrated into the unit, 9.8 for air conditioning with heating other than  
153 electric resistance integrated into the unit, 9.5 for air conditioning heat pumps without an  
154 integrated heating component or with electric resistance heating integrated into the unit and 9.3  
155 for air conditioning heat pump equipment with heating other than electric resistance integrated  
156 into the unit. Large packaged air conditioning heat pumps shall meet a minimum coefficient of  
157 performance in the heating mode of 3.2 measured at a high temperature rating of forty-seven  
158 degrees Fahrenheit.

159 7. Low voltage dry type distribution transformers shall meet the class 1 efficiency  
160 levels for low voltage distribution transformers specified in table 4-2 of the guide for determining  
161 energy efficiency for distribution transformers, published by the National Electrical  
162 Manufacturers Association (Nema Standard TP-1-2002), in effect on the effective date of this  
163 Act.

164 8. Metal halide lamp fixtures designed to be operated with lamps rated greater than  
165 or equal to one hundred fifty watts but less than or equal to five hundred watts shall not contain a  
166 probe start metal halide lamp ballast.

167 9. Single voltage external AC to DC power supplies shall meet the tier one energy  
168 efficiency requirements of section 1605.3 of the California Code of Regulations, Title 20:  
169 Division 2, Chapter 4, Article 4, in effect on the effective date of this Act. This standard applies  
170 to single voltage AC to DC power supplies that are sold individually and to those that are sold as  
171 a component of or in conjunction with another product.

172 10. Torchieres shall not use more than one hundred ninety watts. A torchiere shall  
173 be deemed to use more than one hundred ninety watts if any commercially available lamp or  
174 combination of lamps can be inserted in its socket and cause the torchiere to draw more than one  
175 hundred ninety watts when operated at full brightness.

176 11. Traffic signal modules shall meet the product specification of the Energy Star  
177 Program requirements for traffic signals developed by the United States Environmental Protection  
178 Agency that took effect in February 2001, shall have a power factor of at least 0.90 and shall be  
179 installed with compatible, electrically connected signal control interface devices and conflict  
180 monitoring systems.

181 12. Unit heaters shall be equipped with an intermittent ignition device and shall  
182 have either power venting or an automatic flue damper.

183 B. The standards prescribed by subsection A apply beginning January 1, 2010, if the  
184 product is a commercial refrigerator, freezer or refrigerator freezer or large packaged air  
185 conditioning equipment.

186 C. Beginning on [May 31, 2008], and every [three years] thereafter, the [department of  
187 commerce energy office] shall conduct a comparative review and assessment of the standards  
188 prescribed by subsection A and energy efficiency standards adopted in other states. The  
189 [department of commerce energy office] shall:

190 1. Submit a report of its findings and recommendations to the [speaker of the  
191 house of representatives and president of the senate].

192 2. Provide a copy of the report to the [director of the state library, archives and  
193 public records].

194

195 Section 5. [*Certification and Compliance; Violation; Civil Penalty.*]

196 A. Except as provided in subsection B of this section, beginning January 1, 2008:

197 1. A person engages in a deceptive trade practice when, in the course of the  
198 person's business, vocation or occupation, the person knowingly sells or installs a product that  
199 does not meet or exceed an applicable energy efficiency standard set forth in Section 4 of this  
200 Act.

201 2. Manufacturers shall certify in writing to the [department of commerce energy  
202 office] that products sold in this state meet efficiency standards of this Act. Certification to other  
203 states with like standards that publish databases of compliant products shall be permitted as an  
204 alternative to certifying to the [department of commerce energy office].

205 B. The requirements prescribed by subsection A of this section apply beginning January 1,  
206 2010, if the product is a commercial refrigerator, freezer or refrigerator freezer or large packaged  
207 air conditioning equipment.

208 C. A deceptive trade practice pursuant to subsection A, paragraph 1 of this section is an  
209 unlawful practice under [insert citation] and subject to enforcement by the [attorney general]. The  
210 [attorney general] may investigate and take appropriate action as prescribed by [insert citation].  
211 Notwithstanding [insert citation], the penalty for violation of this section shall be a civil penalty  
212 of not more than [five hundred dollars] per violation. All monies collected as civil penalties  
213 pursuant to this subsection shall be deposited into the state [General Fund].

214

215 Section 6. [*Severability.*] [Insert severability clause.]

216

217 Section 7. [*Repealer.*] [Insert repealer clause.]

218

219 Section 8. [*Effective Date.*] [Insert effective date.]