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Client Alert 08-124

Pennsylvania's Alternative Energy Investment Act

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Pennsylvania's Alternative Energy Investment Act of 2008 ("AEIA"), signed into law by Gov. Edward G. Rendell July 9, 2008, is important legislation that provides long-term incentives for development of alternative energy projects and related programs in Pennsylvania.

Grants and Loans for Renewable Energy Projects

AEIA provides \$600 million in grants and loans, a substantial portion of which is available to businesses engaged in development of wind, biofuel, solar and geothermal energy projects in Pennsylvania.

\$600 Million Allocated. Specifically, the legislation authorizes: (1) the appropriation of up to \$500 million to fund a variety of alternative energy initiatives, several of which are noted below, and (2) the availability of an additional \$100 million through 2016 to fund, among other things, loans, grants, reimbursements, and rebates to individuals and small businesses for the purchase and installation of consumer energy conservation projects, limited to 25 percent of installed cost.

Funding Available for Most Project Costs. Funds allocated for alternative energy initiatives may be applied for a wide range of project costs, including many site preparation and infrastructure expenses, as well as plant construction and equipment procurement and installation costs. These loans and grants are available to any corporation, partnership, limited liability company, or other commercial entity engaged in development of a qualifying renewable energy project in Pennsylvania.

Grants for Wind Farms and Other Renewable Projects. As noted, the law provides substantial incentives to commercial developers of wind, biomass, solar and geothermal projects. Included among the alternative energy initiatives supported by the legislation's grant and loan programs are:

- Loans and grants to support the development of alternative and renewable energy projects (except solar) by businesses and local governments
- Apecific grants and loans related to solar energy production projects
- Loans or grants related to businesses to construct manufacturing facilities in Pennsylvania for production of wind turbines and other energy components
- Funding for collaborative energy research projects and data centers

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- Allocations for pollution control technology in aid of fossil fuel energy-generator efforts to meet state and federal environmental standards

Alternative Energy Production Tax Credit

AEIA creates alternative energy production tax credits in regard to development of wind, biomass, solar and geothermal energy projects in Pennsylvania. A developer may secure these credits against qualifying Pennsylvania tax liabilities in an amount not to exceed 15 percent of development costs, subject to an annual maximum credit of \$1 million for each taxpayer.

Annual Limitations on Available Credits. The total amount of credits authorized by the law is \$50 million, which is made available through 2016 in staggered amounts for each year of the authorization. The credits will be secured by developers on a first-come, first-approved basis in each taxable year, and accordingly all applicants are advised to pay strict attention to anticipated rules and procedures for securing available credits under AEIA.

All Development Costs Qualify. As in the case with the loan and grant program created by AEIA, a broad spectrum of project expense may be included in the developer's application for the new legislation's incentives. AEIA provides that all development, equipment and construction costs may be included in the calculation of development costs that serve as the basis for the alternative energy credits.

Credits Start Immediately. The new statute takes effect immediately. Accordingly, qualifying wind, biomass, solar and geothermal projects under development in 2008 may include development costs made throughout 2008 when applying for alternative energy production credits on or before Sept. 15, 2009, in accordance with procedures specified in AEIA.

Carry-Forward and Sale of Credits to Third Parties. Credits granted that are unable to be absorbed against corresponding qualifying tax liabilities in Pennsylvania in any taxable year may be carried forward against further tax liabilities for up to five years. Carry-backs or refunds are not permitted, but AEIA does permit a taxpayer to sell or assign unused alternative energy production credits upon the prior written approval of the Pennsylvania Department of Revenue.

Pass-Through of Credits to Partners and Members. AEIA also permits small business corporations ("S corps"), partnership and limited liability company developers to elect to pass through alternative energy production credits to their shareholders, partners and members who have qualifying Pennsylvania tax liabilities.

Small Business and Consumer Incentives

The law, originally Special Session House Bill 1, will also establish a \$150 million consumer energy program for individuals and small businesses to support projects that conserve energy and use it more efficiently—something that is increasingly important as the costs for electricity, fuels and natural gas continue to increase. The \$150 million will be allocated over eight years, with \$20 million annually through 2014-15 and another \$10 million in 2015-16 that will include:

- \$92.5 million so homeowners and small business owners can cover 25 percent of the cost of purchasing and installing energy conservation tools and weatherize their buildings
- \$50 million in tax credits of up to \$1 million a year per project for developing and building alternative energy projects
- \$5 million to support an Energy Efficiency Loan Fund through the Pennsylvania Housing Finance Agency

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