

Cullen  
Weston  
Pines  
& Bach

A Limited Liability  
Partnership

*Attorneys at Law*

122 West Washington Avenue  
Suite 900  
Madison, Wisconsin 53703  
(608) 251-0101  
(608) 251-2883 Fax  
www.cwpb.com

Lee Cullen  
Lester A. Pines  
Steven A. Bach  
Alison TenBruggencate  
Carol Grob  
Linda L. Harfst  
Curt F. Pawlisch  
Jordan Loeb  
Tamara B. Packard

Elise Clancy Ruoho  
Nicholas E. Fairweather  
Kira E. Loehr  
Theresa R. Gabriel  
Jeffrey L. Vercauteren

Of Counsel:  
Cheryl Rosen Weston

**MEMORANDUM**

---

From: Lee Cullen  
Curt Pawlisch  
Jeff Vercauteren

Date: February 26, 2009

Re: Renewable Energy and Energy Efficiency Opportunities in the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (“Stimulus Package”) signed into law by President Obama on February 17 provides substantial opportunities for renewable energy and energy efficiency projects. These opportunities are summarized below. Many of these provisions are available on a first come, first served basis; thus, there is a clear incentive to move quickly and expediently to obtain these funds. We have explored these provisions in detail. We encourage you to review this memorandum at your earliest convenience and contact us to discuss how to take advantage of these important and substantial opportunities.

**I. RENEWABLE ENERGY PRODUCTION.**

**A. Production Tax Credit Extension.**

The Production Tax Credit provides a per-kilowatt-hour tax credit for renewable electricity generated by the taxpayer. The current credit is 2.1 cents per kilowatt-hour for wind energy and 1 cent per kilowatt-hour for most other types of renewable energy. The duration of the credit is ten years after the date the facility is placed in service. The Stimulus Package extends the placed-in-service date for wind energy facilities to qualify for the credit through December 31, 2012 and for other types of renewable energy through December 31, 2013. The amount of this particular credit is reduced by a fraction, not to exceed one-half, for all grants provided by a federal, state, or local government, for state or local government bond proceeds received, for subsidized energy financing provided by a federal, state, or local government, and for any other federal tax credit allowable for property included in the project.

**B. Investment Tax Credit in Lieu of Production Tax Credit.**

In lieu of the Production Tax Credit, the Stimulus Package allows the owner of a renewable energy facility to elect to claim the Investment Tax Credit in the amount of 30 percent of the cost basis of depreciable tangible property (excluding a building and its structural components) in a wind energy facility placed in service in 2009 through 2012 and other specified renewable energy facilities placed in service in 2009 through 2013. The investment tax credit is a general business credit under Section 38 of the Tax Code; any unused credit may be carried back two years or carried forward 20 years to the earliest year in which the taxpayer has tax liability to offset. The credit is reduced by a fraction for all subsidized energy financing received from a federal, state, or local energy conservation or production program.

**C. Department of Energy Grant in Lieu of Tax Credits.**

In lieu of the Production Tax Credit and the Investment Tax Credit, the Stimulus Package allows taxpayers to apply for a grant from the Department of Energy to pay for renewable energy property placed in service in 2009 or 2010, or placed in service in 2011 or 2012 if construction begins in 2009 or 2010. The amount of the grant is equal to 30 percent of the cost basis of the renewable energy facility. Payment of the grant is made within 60 days after the facility is placed in service. The grant is not available to (1) any federal, state, or local government, (2) any 501(c) tax-exempt organization, (3) any cooperative electric company or clean renewable energy bond lender, or (4) any partnership or other pass-thru entity in which an entity described in (1)-(3) holds an equity or profits interest.

**D. Clean Renewable Energy Bonds.**

Clean Renewable Energy Bonds (CREBs) are used by certain government entities and cooperative electric companies to finance renewable energy projects. The bondholder receives federal tax credits in lieu of traditional bond interest. Hence the borrower does not pay interest, but does normally pay a loan placement fee of some type. The Stimulus Package authorizes an additional \$1.6 billion in federal tax credits for new CREBs.

**E. Loan Guarantees.**

The Stimulus Package authorizes DOE to make loan guarantees for the installation of renewable energy systems for which construction is commenced by September 30, 2011. This renewable energy loan guarantee program shares the same \$6 billion appropriation as the transmission loan guarantee program discussed below. The loan guarantee can equal up to 80 percent of the project cost. The repayment term is the lesser of 90 percent of the projected useful life of the project or 30 years. The program is intended to provide funding for proven renewable technologies.

## **II. ENERGY EFFICIENCY AND ON-SITE RENEWABLE ENERGY FUNDING.**

The Stimulus Package appropriates \$16.8 billion to the Department of Energy (“DOE”) to fund Energy Efficiency and Renewable Energy programs. In addition to the grants discussed below, DOE is authorized to make additional grants in excess of the state’s base allocation if the governor notifies DOE in writing that he will obtain necessary assurances that (1) the applicable state regulatory agency will implement policies to align utility financial incentives to help customers improve energy efficiency (usually referred to as “decoupling”), (2) the state or applicable local governments will adopt building codes that meet specified energy efficiency requirements, and (3) the state will use the grants for energy efficiency and renewable energy programs.

### **A. Energy Efficiency and Conservation Block Grants.**

Of this appropriation, \$3.2 billion is allocated to states in the form of Energy Efficiency and Conservation Block Grants, \$400,000 of which will be awarded on a competitive basis. Of this amount, \$1.9 billion will be allocated directly to designated entitlement communities (generally any city with a population of at least 35,000 and any county with a population of at least 200,000). In Wisconsin, these are the cities of Appleton, Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Milwaukee, Neenah, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, Wauwatosa, and West Allis, and the counties of Dane, Milwaukee, and Waukesha.

These grants assist state and local governments in implementing strategies to reduce fossil fuel emissions and energy use. Eligible activities include conducting residential and commercial building energy audits, establishing financial incentive programs for energy efficiency improvements, issuing grants to non-profit organizations to perform energy efficiency retrofits, developing and implementing programs to conserve energy used in transportation, developing and implementing building codes and inspection services to promote building energy efficiency, installing light emitting diodes (LEDs), and developing, implementing, and installing on or in any government building on-site renewable energy technology. In Wisconsin, the Department of Commerce and the Office of Energy Independence will likely receive and administer these funds.

### **B. State Energy Program.**

Also included in the appropriation to DOE, \$3.1 billion must be allocated to states for the State Energy Program. This program provides grants to states to address their energy priorities and program funding to adopt emerging renewable energy and energy efficiency technologies. This funding will provide resources for activities in state energy offices, including key initiatives such as residential, commercial, and governmental energy efficiency retrofits. In Wisconsin, the Office of Energy Independence and/or the DOA Division of State Facilities (DSF) will likely receive and administer these funds.

### **III. FACILITIES IMPROVEMENT.**

#### **A. Public School Facilities and Higher Education Facilities.**

The Stimulus Package appropriates \$8.8 billion in grants to states for public safety and government services, including assistance to public schools and institutions of higher education for modernization, renovation, and repair of facilities, and improvements consistent with a recognized green building rating system. The grants are allocated partially based on K-12 population and partially based on total population. States are not required to use any of these funds for green building improvements, as would have been required by the Green High-Performing Schools provision proposed by the House, although the funds are available for such purposes.

#### **B. Qualified Energy Conservation Bonds.**

The Stimulus Package appropriates an additional \$2.4 billion for qualified energy conservation bonds. These bonds are used by state and local governments to finance energy efficiency and conservation improvements to existing public buildings. The bondholder receives federal tax credits in lieu of traditional bond interest, and hence the loan is interest-free for the borrower except for any loan origination fee.

#### **C. Qualified School Construction Bonds.**

The Stimulus Package creates a new category of tax credit bonds to fund construction, rehabilitation, or repair of a public school or the acquisition of land for such construction. The bonds must be issued by a state or local government where the school is located and the bond proceeds must be used exclusively for the purposes described in the preceding sentence. The bill authorizes \$11 billion in bonds per year for 2009 and 2010, 60 percent of which is allocated to states through an established formula and 40 percent of which is allocated to designated large school districts and other school districts with a high level of need for structural improvements.

#### **D. Alternative Fuel Vehicle Refueling Property Credit.**

The Stimulus Package extends and expands the tax credit available for depreciable property used for storing or dispensing (a) any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, or hydrogen or (b) any mixture of biodiesel containing at least 20 percent biodiesel. The credit is equal to 50 percent of the cost basis of the property, up to \$50,000, applicable in the year the property is placed in service, through 2010. The credit can also be carried back two years or forward 20 years as a general business credit.

#### **IV. TRANSMISSION.**

##### **A. Electricity Delivery and Reliability Funding.**

The Stimulus Package appropriates \$4.5 billion to DOE for Electricity Delivery and Energy Reliability. These funds are intended to modernize the electric grid through smart grid technology implementation, demand response equipment, enhanced security and reliability of energy infrastructure, integration of dispersed renewable and distributed generators, and energy storage research and deployment. Specifically, these funds will provide for research and development, pilot projects, and federal matching funds for the Smart Grid Investment Program.

Of this amount, \$80 million must be used by the Office of Electricity Delivery and Energy Reliability within DOE to conduct a resource assessment and analysis of future demand and transmission requirements in consultation with FERC in order to facilitate the development of regional transmission plans. DOE and FERC must also provide technical assistance to the North American Electric Reliability Corporation, regional reliability entities, and transmission operators for formation of interconnection-based transmission plans for Eastern and Western Interconnections and ERCOT.

##### **B. Loan Guarantee Program.**

The transmission loan guarantee program, sharing the same appropriation as the renewable energy loan guarantee program discussed above, provides DOE with \$6 billion to make loans for proven technology transmission projects, including construction, upgrading, and reconductoring. Project construction must begin by September 30, 2011.

#### **V. MANUFACTURING.**

##### **A. Qualifying Advanced Energy Project Credit.**

The Qualifying Advanced Energy Project Credit is an addition to the Investment Credit provisions allowing a taxpayer a credit equal to 30 percent of the tax basis of eligible property placed in service during the tax year. In order to qualify, the project must re-equip, expand, or establish a manufacturing facility for the production of, *inter alia*, (1) property used to produce wind or solar energy, (2) fuel cells for electric vehicles, or (3) electric grids to support transmission or storage of intermittent energy sources. Further, the property placed in service through the project must be necessary for the production of the energy property and be depreciable tangible property (excluding a building and its structural components). A manufacturer must submit an application to receive certification for the credits; there is a cap of \$2.3 billion on the amount of credits that can be certified. The applicant has three years from the date of issuance of certification to place the project in service.

**B. Advanced Batteries Manufacturing Grants.**

Included in the appropriation to DOE, \$2 billion must be made available for grants for the production of advanced batteries and components. Qualifying manufacturing activities include the production of advanced battery systems, vehicle batteries, advanced lithium ion batteries, and hybrid electrical systems, including components and software.

**VI. WORKER TRAINING.**

The Stimulus Package provides \$100 million for worker training in electricity delivery and energy reliability, to be administered and distributed by DOE. The Act also provides \$500 million for job training programs that prepare workers for careers in energy efficiency and renewable energy, to be administered and distributed by the Department of Labor through a competitive grant program.