

Electronic Ballot of the RESNET Board of Directors on Supporting the 2030 Challenge Economic Stimulus Plan

January 22, 2009

Shall the RESNET Board of Directors endorse the proposed State Energy Efficiency Grants Program legislation (Attachment A)?

Yes (16)

No (3)

Abstain (0)

Not Voting (2)

Ben Adams
Steve Byers
Dennis Creech
Philip Fairey
David Goldstein
Tom Hamilton
Bruce Harley
Michael Holtz
Mark Jansen
Greg Nahn
Lee O'Neal
Kelly Parker
Bill Prindle
Robert Scott
Daran Wastchak
Erin Wiggins

C.T. Loyd
David Wilson
Barb Yankie

Richard Faesy
Andy Gordon

RESNET endorses the State Energy Efficiency Grants Program

Attachment A

STATE ENERGY EFFICIENCY GRANTS PROGRAM

SEC. 1. SHORT TITLE.—This Act may be cited as the “Energy Efficiency and Jobs Creation Act of 2009.”

SEC. 2. DEFINITIONS.

- (a) **ADMINISTRATOR.** – The term “Administrator” means the Administrator of the Environmental Protection Agency;
- (b) **COMMERCIAL BUILDING.** – The term “commercial building” means a building covered by ASHRAE 90.1-2007 that is located in the United States, the construction of which is completed before the date of enactment;
- (c) **COST-EFFECTIVE.** – The term “cost-effective” means that a measure achieves a net present value of economic benefits, both directly to the user and to the economy, over the life of the measure that is greater than the cost of the measure.
- (d) **ELECTRIC UTILITY.** – The term “electric utility” means any person, entity, or State agency that distributes electricity directly to retail consumers under a legal, regulatory or contractual obligation to do so;
- (e) **HOME.** – The term “home” means a principal residential dwelling unit located in the United States, the construction of which is completed before the date of enactment;
- (f) **NATURAL GAS UTILITY.** – The term “natural gas utility” means any person, entity, or State agency engaged in the local distribution of natural gas to any ultimate consumer of natural gas;

- (g) PUBLIC BUILDING. – The term “public building” means a building covered by ASHRAE 90.1-2007 that is located in the United States and is owned or leased by a governmental entity, the construction of which is completed before the date of enactment;
- (h) SECRETARY. – The term “Secretary” means the Secretary of the Department of Energy; and
- (i) STATE. – The term “State” means –
- (A) a State;
 - (B) the District of Columbia;
 - (C) the Commonwealth of Puerto Rico; and
 - (D) any other territory or possession of the United States.
- (j) STATE REGULATORY AUTHORITY. – The term “State Regulatory Authority” means a State Regulatory Authority as the term is defined in Section 3 (17) of the Public Utility Regulatory Policies Act of 1978 (Pub. L 95-617, 92 Stat. 3117)

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized and appropriated out of funds not otherwise appropriated or made available \$20,000,000,000, with such sums to remain available without fiscal year limitation.

SEC. 4. AMOUNTS OF FUNDS.

The amounts of funds provided in this Act shall be:

- (a) the following amounts for the State Energy Efficiency Grants Programs authorized by Section 5:

- (1) \$2,500,000,000 for the Home Efficiency Retrofits Program;
 - (2) \$2,500,000,000 for the Commercial Buildings Efficiency Retrofits Program;
 - (3) \$3,000,000,000 for the Public Buildings Efficiency Retrofits Program;
 - (4) \$5,000,000,000 for the Energy Efficiency Programs Matching Fund;
 - (5) \$2,000,000,000 for the Industrial Efficiency Program; and
- (b) \$5,000,000,000 for the Energy Efficiency Challenge Grants authorized by Section 6.
- (c) **INSERT AMOUNT**, as authorized by Section 8, for administration of the grant programs under this Act and assistance to States with implementation of the grants awarded pursuant to the Act.
- (d) Up to 10 percent of the funds authorized by this Act for administration and measurement and verification, as authorized by Section 9.

SEC. 5. STATE ENERGY EFFICIENCY GRANTS PROGRAMS.

(a) **GENERAL.** – Energy efficiency programs authorized by this section shall be implemented by the States or third parties designated by the States, including, but not limited to, energy service companies, electric utilities, natural gas utilities, rural electric cooperatives, municipal utilities, State designated third party administrators, or local governments.

(b) **FISCAL YEAR 2009 GRANTS.** –

(1) **GENERAL.** – All funds distributed by the Secretary under this subsection shall be distributed during Fiscal Year 2009 to the State energy offices in the States, as defined by 42 U.S.C. § 6322, or other agency designated by the Governor of the State or

the Mayor of the District of Columbia. The procedures and criteria established by subsection (c) shall not apply to this subsection.

(2) USE OF FUNDS. – Funds distributed under this subsection shall be for the programs established by subsection (d) and a State may use its discretion in allocating the funds it receives under this subsection among the programs established by subsection (d), but the State shall not allocate less than 10 percent of the total funds it receives to each of these programs except as provided by subsection (g).

(3) DISTRIBUTION FORMULA. – The Secretary shall upon receipt of the certification required by subsection (4) distribute the amounts authorized by Section 4 (a) pursuant to the following formula:

(A) 49.5 percent of the funds to States except Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands in accordance with the formula established under 42 U.S.C. § 6325 (f), as of the date of enactment; and

(B) 0.125 percent of the funds each to Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands.

(4) STATE CERTIFICATION. – The Secretary shall disburse funds under this subsection to a State upon receipt of a certification from the State that it will:

(A) begin spending the funds within three months after receipt of the funds; and

(B) fully expend the funds within eighteen months after receipt of the funds.

(c) FISCAL YEAR 2010 GRANTS. –

(1) DISTRIBUTION. – All funds distributed by the Secretary under this subsection shall be distributed during Fiscal Year 2010 to the State energy offices in the States, as defined by 42 U.S.C. § 6322, or other agency designated by the Governor of

the State or the Mayor of the District of Columbia. The Secretary may reallocate the amounts authorized by Section 4 (a) among the programs authorized by this section as appropriate. The Secretary may disburse within Fiscal Year 2010 the remaining funds authorized by Section 4 (a) to States that have completed the report required by subsection (e); and

(2) USE OF FUNDS. – The funds shall be used for the energy efficiency programs established by subsection (d). The Secretary shall apply performance-based criteria in awarding the grants, which shall give priority for funding of energy efficiency programs based on:

- (A) Cost-effectiveness of the energy efficiency programs;
 - (B) Number and quality of jobs created;
 - (C) Amount of energy saved;
 - (D) Having an effective plan for evaluation, measurement, and verification of energy savings;
 - (E) Reaching low income households and underserved populations;
 - (F) Including provisions for independent evaluation and containing adequate incentives and penalties for successful program management;
 - (G) Leveraging of private sector funds to implement more comprehensive energy efficiency projects;
 - (H) Effectiveness of expenditure or commitment of Fiscal Year 2009 grants; and
 - (I) Progress on the adoption and implementation of the building code and utility regulatory policies described in Section 7.
- (d) PROGRAM DESCRIPTIONS. –

(1) HOME EFFICIENCY RETROFITS PROGRAM. –

(A) GENERAL. – The funds for the Home Efficiency Retrofits Program shall be for programs where the entity implementing the program provides grants for energy efficiency retrofits to homes. Grants shall be provided to the owner upon completion of a retrofit pursuant to either the prescriptive or performance-based compliance options under this paragraph.

(B) PRESCRIPTIVE OPTION. – Grants provided under the prescriptive option of this paragraph shall be for achieving energy savings from measures selected from a prescriptive list and installed in the home. The Administrator shall develop this list, which shall designate combinations of measures that can save 10 percent or 20 percent on space conditioning and water heating consumption. Grants of \$1,000 shall be provided for savings of 10 percent and \$2,000 for savings of 20 percent. The contractor or installer shall provide a statement that the measures claimed were taken from the list correctly and were installed properly. At any time after 1 year from the date of enactment the Administrator may discontinue the prescriptive option and adjust the grant amount under this subparagraph.

(C) PERFORMANCE-BASED OPTION. – Grants provided under the performance-based option shall be for retrofits achieving whole home energy savings. A grant of \$3,000 shall be provided for a 20 percent reduction in whole home energy consumption with an additional \$150 for

each additional 1 percent reduction up to a maximum of \$12,000. Energy savings under this subparagraph shall be determined by comparison of the energy consumption of the home before the retrofit to the consumption of the home after the retrofit. Percent improvement shall be documented through the use of a whole home simulation software program approved by the Administrator or by the difference between before and after home energy ratings on the “HERS Index” as specified in the Residential Energy Services Network Publication No. 06-001. A minimum of 15 percent of the retrofits performed under this subparagraph shall be randomly subject to a third party verification of all work associated with the retrofit, and the Administrator may adjust this percentage beginning one year after date of enactment and based on program experience. The Administrator shall determine the level of contractor certification necessary for retrofits performed under this subparagraph and may adjust this level in response to program data. The Administrator may develop an additional incentive for advanced contractor certifications. The Administrator may adjust the grant amounts under this subparagraph based on program data after one year from the date of enactment.

(D) COORDINATION WITH OTHER INCENTIVES. –Energy savings shall not include those measures for which a federal tax incentive is being sought or obtained, even if the grant recipient is not also the recipient of the tax incentive.

(E) ASSIGNABILITY. – The incentives provided under this paragraph shall be fully assignable in whole or in part by building owners or their authorized agents, including relevant government agencies, to third party providers with responsibility for undertaking or funding the activity necessary for the project to qualify for the incentive.

(2) COMMERCIAL BUILDINGS EFFICIENCY RETROFITS PROGRAM. –

(A) GENERAL. – The funds for the Commercial Buildings Efficiency Retrofits Program shall be for programs that provide incentives for building energy efficiency retrofits to the owner of a commercial building or aggregation of commercial buildings. The incentives shall be for buildings or aggregation of buildings that improve energy performance by a minimum of 20 percent with reference to the energy consumption during the previous year of the building or aggregation of buildings being retrofitted, while adjusting for other relevant factors including, but not limited to, changes in occupancy loads and process energy. The energy savings shall be determined by using an established energy benchmarking tool designated by the Administrator.

(B) INCENTIVES. – The Administrator shall establish the amount and form of the incentives under this paragraph in such a manner that encourages implementation of retrofits that achieve the largest and most durable improvements in energy performance. The initial incentive amounts shall be 60 percent of the total retrofit cost up to the following:

- i) \$0.15 dollars per square foot of retrofit floor area for 20 percent savings;
- ii) \$0.75 dollars per square foot of retrofit floor area for 30 percent savings;
- iii) \$1.60 dollars per square foot of retrofit floor area for 40 percent savings; and
- iv) \$2.50 dollars per square foot of retrofit floor area for 50 percent savings.

The Administrator may alter the incentive amounts and form based on gathered data during program implementation, including, but not limited to, the development of incentives for particular building types. The building owner or authorized agent shall receive 60 percent of the qualified incentive amount when the work is completed and the energy savings achieved by the retrofit are verified to be 20 percent or greater. Up to 40 percent of the incentive amount shall be awarded over a 3 year period for 20 percent savings or greater, with the amount awarded proportionate to the level of sustained performance improvement. No award shall be granted for sustained performance improvements less than 20 percent. The Administrator may determine requirements for disclosure of energy performance.

(C) ASSIGNABILITY. – The incentives provided under this paragraph shall be fully assignable in whole or in part by building owners or their authorized agents, including relevant government agencies, to

third party providers with responsibility for undertaking or funding the activity necessary for the project to qualify for the incentive.

(D) COORDINATION WITH OTHER INCENTIVES. –Energy savings shall not include measures funded by paragraph (3) or for which a federal tax incentive is being sought or obtained, even if the grant recipient is not also the recipient of the tax incentive.

(3) PUBLIC BUILDINGS EFFICIENCY RETROFITS PROGRAM. –

(A) GENERAL. – The funds for the Public Buildings Retrofits Program shall be for programs that provide incentives for building energy efficiency retrofits to a government entity that owns or leases a building. The incentives shall be for buildings or aggregation of buildings that improve energy performance by a minimum of 20 percent. Energy savings shall be documented and verified in accordance with accepted State, national and international measurement and verification protocols.

(B) INCENTIVES. – The Secretary shall establish the amount and form of the incentives under this paragraph in such a manner that encourages implementation of retrofits that achieve the largest and most durable improvements in energy performance. The initial incentive amounts shall be 60 percent of the retrofit cost up to the following:

- (i) \$0.50 dollars per square foot of retrofit floor area for 20 percent savings;

(ii) \$0.05 dollars per square foot of retrofit floor area for each additional percent savings achieving a total savings between 20 percent and 30 percent; and

(iii) \$0.10 dollars per square foot of retrofit floor area for each additional percent savings achieving a total savings of 30 percent and above.

The Secretary may alter the incentive amounts and form based on gathered data during program implementation and may develop incentive amounts for particular building types and for operational improvements. Buildings that receive incentives under this paragraph should be required to benchmark and publicly disclose energy performance according to requirements defined by the Secretary.

(C) ASSIGNABILITY. – The incentives provided under this paragraph shall be fully assignable in whole or in part by building owners or their authorized agents, including relevant government agencies, to third party providers with responsibility for undertaking or funding the activity necessary for the project to qualify for the incentive.

(D) COORDINATION WITH OTHER INCENTIVES. –Energy savings shall only include those measures for which no incentive under paragraph (2) or federal tax incentive is being sought or obtained, even if the grant recipient is not also the recipient of the tax incentive;

(4) ENERGY EFFICIENCY PROGRAMS MATCHING FUND. –

(A) GENERAL. – The Secretary shall award matching grants to States to support and expand State approved energy efficiency programs that are funded by the State or through rates and are offered by an electric utility, natural gas utility, rural electric cooperative, municipal utility, independent administrator, State, or other party. Grants shall be awarded only if the State or ratepayer funding for the programs is at least at the same level as in 2008, and shall require an equal match from State or ratepayer funds. The effectiveness of programs supported by funds under this paragraph must be measured and verified. The programs supported by funds under this paragraph must include a measurement and verification plan approved by the State.

(B) USE OF FUNDS. – The funds under this paragraph shall be provided to the program providers to continue and expand State approved energy efficiency programs. The uses of the funds shall include, but are not limited to, the following:

- (i) adopting the full range of measures to reduce energy and capacity;
- (ii) expanding the participation levels, geographic coverage, savings amounts and range of technologies used;
- (iii) expanding the program delivery support infrastructure such as training programs, union apprenticeship and affiliated training activities and customer education.

The programs under this paragraph must be comprised of cost-effective energy efficiency measures, independent of fuel type. Programs offered by a regulated utility must be overseen by a State Regulatory Authority. Programs offered by a non-utility program administrator must be overseen by the State agency designated by the Governor of the State or the Mayor of the District of Columbia;

(C) DISCLOSURE. – A State shall provide to the Secretary prior to receiving funds under this paragraph for State approved electric or natural gas utility energy efficiency programs the following information:

(i) the program names, sectors served, anticipated energy savings and other benefits as normally reported to its State Regulatory Authority;

(ii) the prior year actual expenditures and supporting documentation;

(iii) planned expanded programs and budgets with the matching funds that would be provided under this paragraph; and

(iv) citations of the State Regulatory Authority proceedings related to the State approved efficiency programs.

(5) INDUSTRIAL ENERGY EFFICIENCY. –

(A) GENERAL. – The funds for the Industrial Energy Efficiency Program shall be for investments in industrial energy efficiency retrofits and a direct loan program to manufacturers to expand production of energy efficient equipment.

(B) RETROFITS. – The funds under this paragraph for industrial energy efficiency retrofits shall be for energy efficiency improvements in existing industrial facilities, utilizing established methods, including implementing potential investments identified as a result of the Department of Energy’s Save Energy Now and Industrial Assessment Center programs.

(C) LOAN PROGRAM. – The funds under this paragraph for a direct loan program to manufacturers shall be for direct loans to manufacturers that either implement cost-effective energy saving projects in their facilities or expand production of energy efficient equipment, as defined by the Secretary. Loans provided under the program:

(i) shall have an interest rate that, as of the date on which the loan is made, is equal to the cost of funds to the Department of the Treasury for obligations of comparable maturity;

(ii) shall have a term equal to the lesser of (I) the projected life of the eligible project to be carried out using funds from the loan as determined by the State, or (II) 25 years;

(iii) may be subject to a deferral in repayment for not more than 5 years after the date on which the eligible project carried out using funds from the loan first begins operations, as determined by the State; and

(iv) shall be repaid in full if the loan recipient moves production activities for which the loan was made outside of the United States during the term of the loan.

(e) **REPORTS ON USE OF FUNDS.** – Within ten months of the release of funds from the Secretary to a State under Section 5 (b), the State shall report to the Secretary and the Administrator on the use of funds. This report shall include: the measured and verified energy savings actually produced, projected energy savings over the next twelve months, the specific entities implementing the energy efficiency programs, identification of who received the efficiency improvements, how the funds were used, the direct and indirect employment created as a result of the programs supported by the funds, the results of verification requirements, and any other information the Secretary or Administrator deems appropriate. A three-month period shall be given to a jurisdiction to cure any failures in compliance with the requirements under this subsection.

(f) **SUSPENSION OF FUNDS.** – If a State fails to meet the requirements under this section, the Secretary shall suspend further grants to the State until the requirements have been met or the relevant grant has been refunded.

(g) **REALLOCATION OF FUNDS.** – If a State determines that a State cannot expend at least 15 percent of the total funds it receives under subsection (b) to each of the programs established by Section 5 (d), then the State may petition the Secretary for a waiver of this requirement. Upon the grant of the waiver by the Secretary, the State may reallocate the unusable funds to other programs established by Section 5 (d). The waiver petition shall explain the rationale for the proposed waiver. Before submitting a petition, the State shall solicit input from interested parties in the State, in accordance with applicable and appropriate State procedures. Upon receipt of a petition, the Secretary shall post it on a publicly available website. The Secretary shall rule on each petition within 30 days of receipt, including providing an explanation of the rationale behind its

decision. Such decisions shall be posted on a publicly available website. A State petition is deemed approved if not substantively acted upon within thirty days.

SEC. 6. ENERGY EFFICIENCY CHALLENGE GRANTS.

(a) GENERAL. – The Secretary shall award grants under this section to States that have complied with the conditions specified in Section 7 to fund energy efficiency programs, including, but not limited to programs authorized by Section 5 (d) and programs that are eligible for matching grants under Section 5 (d) (4).

(b) DISTRIBUTION FORMULA. – The amount of funding each State is eligible to receive under this section shall be determined by the following formula:

- (1) 99 percent of the funds to States except Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands allocated in accordance with the formula established under 42 U.S.C. § 6325 (f), as of the date of enactment;
- (2) 0.25 percent of the funds each to Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands.

(c) AWARD OF GRANTS. – The Secretary shall distribute to a State 50 percent of its eligible amount as determined by subsection (b) if it satisfies one of the conditions of Section 7 (a) and 100 percent of its eligible amount as determined by subsection (b) if it satisfies both conditions of Section 7 (a).

(d) FINAL DISTRIBUTION. – All funds remaining under this section as of June 30, 2011 shall be distributed by the Secretary in Fiscal Year 2011 in accordance with subsections (b) and (c) to the States eligible to receive grants under this section on that date. The eligibility amount under subsection (c) for purposes of this subsection shall be the degree of compliance with the conditions as of June 30, 2011.

SEC. 7. CONDITIONS FOR AWARD OF ENERGY EFFICIENCY CHALLENGE GRANTS.¹

(a) **CONDITIONS FOR AWARD OF ENERGY EFFICIENCY CHALLENGE GRANTS.** – A State is eligible to receive funding for Energy Efficiency Challenge Grants under Section 7 only if (1) the Secretary has determined that the State has adopted by July 1, 2010 the utility regulatory policies in subsection (b) for each electric and natural gas utility that has rates regulated by the State; and (2) the Secretary has determined that the State has adopted and is implementing the building energy codes policies in subsection (c).

(b) **UTILITY REGULATORY POLICIES.** – The utility regulatory policies are:

(1) policies that ensure that the utility’s recovery of prudent fixed costs of service is timely and independent of its retail sales, without in the process shifting prudent costs from variable to fixed charges. This cost shifting constraint shall not apply to rate designs adopted prior to the date of enactment;

(2) cost recovery for prudent investments in energy efficiency; and

(3) an earnings opportunity associated with cost-effective energy efficiency savings.

(c) The building energy codes policies are:

¹ The National Association of State Energy Officials (NASEO) supports the Act and the Energy Efficiency Challenge Grants, but opposes conditioning receipt of the challenge grants on the adoption of the policies in this section. NASEO believes that such adoption should only be a factor to consider in awarding the grants.

- (1) a building energy code for residential buildings throughout the State that meets or exceeds the 2009 International Energy Conservation Code, or achieves equivalent or greater energy savings;
- (2) a building energy code for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings; and
- (3) a plan for the jurisdiction achieving compliance with the building energy codes within 8 years of enactment in at least 90 percent of new and renovated residential and commercial building space, including (A) active training and enforcement programs, and (B) measurement of the rate of compliance each year.

SEC. 8. ADMINISTRATION AND ASSISTANCE. –

(a) The Department of Energy shall be provided **INSERT AMOUNT** to administer this Act and provide technical assistance to the States.

(b) The Environmental Protection Agency shall be provided **INSERT AMOUNT** to administer this Act and provide technical and marketing assistance to the States.

SEC. 9. USE OF FUNDS FOR ADMINISTRATION AND EVALUATION.

A State may utilize up to ten percent of the funds provided under this Act for administration of the programs under this Act, and up to five percent of the funds provided under this Act for measurement and verification

SEC. 10. RULEMAKING.

Any rules required to distribute the Fiscal Year 2009 grants under Section (5) (b) shall be promulgated within 45 days of the date of enactment. The Secretary shall promulgate rules on how Fiscal Year 2010 grants will be distributed under Section 5 (c),

including, but not limited to, the State reports submitted in accordance with Section 5 (e), by June 30, 2009. All other rules needed to implement this Act shall be promulgated within 6 months of the date of enactment.