

The Stimulus Package, Energy and New York State

Co-authored by:

Vincent DeVito, *Partner*, Bowditch & Dewey, LLP

and

Jerry Kremer, *Chairman*, New York AREA



The American Recovery and Reinvestment Act of 2009, commonly referred to as the stimulus package, was signed into law by President Barack Obama on February 17th. The President has stated that the Act’s purpose, among other things, is to jump start America’s economy by providing tax relief, improving the nation’s infrastructure and providing employment opportunities for laid-off workers.

As it relates to the nation’s energy and environmental policies, President Obama has said the stimulus package will encourage new energy supply, improve the environment, and facilitate the development of new “green” technologies by providing tax credits and funding for these initiatives. It specifically states that domestic renewable energy capacity will be doubled in the next three years and it will result in the largest weatherization project in the nation’s history by modernizing 75 percent of federal office buildings and more than one million homes.

In this issue brief, New York AREA reviews the stimulus package and how it may affect the state’s energy policies.

Energy and New York in the Stimulus Package

New York State can expect to receive approximately \$25 billion over the next two years as a result of the Act. Some of the money will go directly to energy programs, research and development. Additionally, millions of those dollars could be re-directed from infrastructure, transportation and other sectors to potentially impact the energy industry as well. New York State will also receive \$126 million through the State Energy Program¹, \$31 million in alternative energy block grants, and \$404 million to help finance low-income weatherization programs. Governor Paterson (D) has also indicated his desire to capitalize on the \$2 billion designated for energy storage technologies for his proposed battery storage consortium.²

The Act includes the following provisions related to alternative and renewable energy³:

- Long-term extension and modification of the renewable energy production tax credit – It extends the placed-in-service date for wind facilities to three years and also extends the placed-in-service date for the

¹ State Energy Program (SEP) – The Department of Energy’s (DOE) State Energy Program provides grants to the states to design and carry out their own renewable energy and energy efficiency programs.
http://apps1.eere.energy.gov/state_energy_program/about.cfm

² “Making New York More Energy Independent and Energy Efficient” – Office of New York Governor David Paterson.
http://www.state.ny.us/governor/press/factsheet_0107092.html

³ As set forth in the final text of the approved House of Representatives and Senate conference report, published by the U.S. Government Printing Office, and according to the Senate Finance and House Ways and Means Committees.



following qualifying facilities: closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities.

- Temporary election to claim the investment tax credit in lieu of the production tax credit – Previously, facilities that produced electricity from solar were eligible to take a 30 percent investment tax credit in the year that the facility is placed into service. Other renewable facilities not based on solar power are eligible for a production tax credit. The Act now allows facilities to claim the investment tax credit in lieu of the production tax credit.
- Repeal subsidized energy financing limitation on the investment tax credit – Previously, the investment tax credit had to be reduced if the property qualifying for the investment tax credit was also financed with industrial development bonds or through any other federal, state, or local subsidized financing program. The Act repeals the financing limitation and allows individuals and businesses to qualify for the full amount of the investment tax credit even if the property is financed with industrial bonds or any other subsidized energy financing.
- Removal of dollar limitations on certain energy credits – Previously several caps were placed on tax credits for businesses and individuals utilizing wind energy, solar water heating, small wind energy and qualifying geothermal heat pumps. The Act repeals the capped dollar amounts and makes all properties eligible for an uncapped 30 percent credit.
- Clean renewable energy bonds (“CREBs”) – It authorizes an additional \$1.6 billion of new clean renewable energy bonds to finance facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, marine renewable, and trash combustion facilities. The money will be divided up in thirds, with a third going to qualifying projects of state/local/tribal governments, a third to public power providers, and a third going to electric cooperatives.
- Qualified energy conservation bonds – The Act provides an additional \$2.4 billion of qualified energy conservation bonds to finance state, municipal and tribal government programs and initiatives designed to reduce greenhouse gas emissions. The Act also notes that qualified energy conservation bonds may be issued to make loans and grants for capital expenditures to implement green community programs as well as for programs in which utilities provide ratepayers with energy-efficient property and recoup the costs of the property over an extended period of time.
- Tax credits for energy-efficient improvements to existing homes – The Act extends the tax credits through 2010 for improvements to energy-efficient existing homes. The Act also increases the amount of allowable tax credit to 30 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements during the taxable year. The Act also eliminates the individual dollar caps that previously existed and instead provides an aggregate \$1,500 cap on all property qualifying for credit.
- Tax credits for alternative refueling property – The Act increases the tax credit businesses can receive for installing alternative fuel pumps in 2009 and 2010 from the current 30 percent (capped at \$30,000) to 50 percent (capped at \$50,000). Hydrogen refueling pumps, however, would remain at 30 percent with the cap increased to \$200,000. The individual alternative refueling property credit would also increase from 30 percent (capped at \$1,000) to 50 percent (capped at \$2,000).

- Plug-in electric drive vehicle – It modifies and increases the tax credit for each qualified plug-in electric drive vehicle placed in service during the taxable year. The base amount of the credit was \$2,500 if the vehicle draws propulsion from a battery with at least five kilowatts hours of capacity. The credit is increased by \$417 to \$2,197 and an additional \$417 is added for each kilowatt hour of battery capacity past five kilowatts with a cap at 16 kilowatt hours (approximately \$7,500). The credit will begin to phase out in the first calendar quarter in which the manufacturer records its 200,000th sale of a plug-in electric drive vehicle. Third sentence should be clarified or removed.
- CO₂ capture tax credit – The Act revises the previous credit and requires that any taxpayer who claims the \$10 credit per ton of carbon dioxide captured and transported for use in enhanced oil recovery must also ensure that such carbon dioxide is permanently stored in a geologic formation.
- Parity for transit benefits – Current law provides a tax-free fringe benefit employers can provide to employees for transit and parking. The benefits were previously set at different dollar amounts. The new provision equalizes the benefits at \$230 a month for 2009, indexes them equally for 2010, and clarifies that certain transit benefits apply to federal employees.

Additionally, the Act encourages use of the U.S. Department of Energy’s loan guarantee program. Prior to enactment of the stimulus package, those seeking benefit of the program were required to pay the cost of the enhanced credit opportunity. The Act removes this obstacle and several other barriers to using the program by simplifying the application process and timeline for approval. The Act also focuses on transportation and other industrial sectors who may receive funding through infrastructure, housing and/or research dollars.

Federal agencies are just beginning to report on their use of the stimulus funds and time will reveal specific allocations within the states and localities. The Obama Administration has indicated that detailed agency financial reports will become available on May 15, 2009. This will further help government, businesses and individuals track funding allocated to the energy sector as well as maintain the transparency and accountability called for by President Obama and Congress.

Although specific allocations have yet to be determined, it is clear that the American Recovery and Reinvestment Act is a fundamental shift in U.S. energy policy, providing financial incentives for Americans to invest in green energy and energy efficiency to reduce carbon emissions and make the United States the leader in green technology.

Specific Elements of the Stimulus Package	
\$126 billion (\$15 billion in tax relief)	Infrastructure improvements and scientific research
\$59 billion	Healthcare-related programs
\$78 billion (\$25 billion in tax relief)	Education and training for displaced workers
\$65 billion (\$22 billion in tax relief)	Energy-related programs and initiatives
\$144 billion	Fiscal relief for state and local governments
\$142 billion	Additional spending for “protecting the vulnerable”
\$8 billion	Expenditures classified as “other”

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About the Authors:

Vincent DeVito is a Partner and corporate attorney at Bowditch & Dewey, LLP with a focus on clean energy technology and traditional energy clients. Mr. DeVito is an authority on renewable energy development and corporate sustainability issues and has closely worked on legislative and regulatory corporate disclosure and compliance matters at the state, national, and international levels. Mr. DeVito has strategically advised members of the President's Cabinet, governors, ambassadors, and corporate leaders, and has participated in each major federal initiative that has impacted the energy industry this decade, including the development of the U.S. Department of Energy's Loan Guarantee Program. Mr. DeVito served as the U.S. Assistant Secretary of Energy for Policy and International Affairs. In that capacity, he oversaw the Climate Change Technology Program, and served as the U.S. manager of the North American Energy Working Group, a task force created to pursue the development of a fully integrated North American energy market. Immediately prior to joining the Department of Energy, Mr. DeVito served as a state and federal energy regulator, and is licensed to practice law in the District of Columbia, Massachusetts, and New York.

Jerry Kremer is the Chairman of the New York Affordable Reliable Electricity Alliance (New York AREA). Mr. Kremer is a partner and chair of the Municipal and Regulatory Affairs Department at Ruskin Moscou Faltischek. He is also a member of the firm's Corporate & Securities Department and Energy Group. Mr. Kremer has enjoyed a long and distinguished career not only in law, but also in government. A 23-year veteran of the New York State Assembly, he was the only Long Island legislator to ever head the prestigious Ways and Means Committee. He served in that post for 12 years, and served by appointment of the Governor on the Metropolitan Transportation Authority's Capital Review Board and the Public Authorities Control Board.

About New York AREA: Founded in November 2003, the New York Affordable Reliable Electricity Alliance (New York AREA) is a diverse group of more than 150 business, labor, and community groups whose mission and purpose is to ensure that New York has an ample and reliable electricity supply, and economic prosperity for years to come. New York AREA helps to educate policy makers, businesses, and the general public regarding the necessity and importance of safe, low-cost and reliable electricity. For additional information visit: www.area-alliance.org.

Additional Information

President Obama's American Recovery and Reinvestment Act website:
<http://www.recovery.gov/>

Governor Paterson's press release on New York State funding:
http://www.ny.gov/governor/press/press_0214091.html

The New York Times breakdown of stimulus money:
http://projects.nytimes.com/44th_president/stimulus

New York's guide to the American Recovery and Reinvestment Act:
<http://economicrecovery.ny.gov/DirectAid/aidnewyork.htm>

U.S. Department of Energy: Energy Efficiency and Renewable Energy News:
http://apps1.eere.energy.gov/news/news_detail.cfm/news_id=12248

Bowditch & Dewey, LLP:
<http://www.bowditch.com/NewsPublicationsEvents/Publications?find=22301&veWhereAml=101>