

No. 2014-165

AN ACT

HB 1672

Providing for the testing of new, environmentally beneficial and energy-efficient technologies within various State agencies.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the State Agency Green Technology Implementation Act.

Section 2. Legislative intent.

The General Assembly finds as follows:

(1) It is the responsibility of the General Assembly to ensure that the resources of this Commonwealth are used in a manner consistent with energy efficiency and environmental stewardship.

(2) As technology advances, opportunities arise to test new technologies within this Commonwealth's State agencies in order to increase energy conservation, reduce costs and promote demand-side management.

(3) Through the testing of new, energy-efficient technologies, the Department of General Services will gain the ability to identify new ways to reduce costs and improve efficiency, creating an avenue for implementation of all State agencies upon the recommendation of the Secretary of General Services and the testing agency.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Demand-side management." The management of customer consumption of electricity or the demand for electricity through the implementation of:

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

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

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

"Department." The Department of General Services of the Commonwealth.

"Secretary." The Secretary of General Services of the Commonwealth.

"State agency." An executive agency, an independent agency, a State-affiliated entity or a State-related institution as defined by 62 Pa.C.S. § 103 (relating to definitions), including the unified judicial system and its officers and agencies, that for the purposes of this act will be testing a new technology, product or process in order to determine its effectiveness in promoting energy conservation, energy efficiency or demand-side management, which new technology, product or process conforms to the high-performance building standards adopted by the Department of General Services under section 307(c) of the act of July 9, 2008 (1st Sp.Sess., P.L.1873, No.1), known as the Alternative Energy Investment Act.

Section 4. Authority of secretary.

The following shall apply:

(1) If, in the course of the secretary's official duties, the secretary determines that the use of a certain technology, product or process would promote energy conservation, energy efficiency or demand-side management, the secretary may authorize a State agency to test the technology, product or process by using it in the agency's operations on a trial basis. The following shall apply:

(i) The purpose of a test program shall be to validate the effectiveness and feasibility of the technology, product or process in reducing energy usage and costs or promoting demand-side management. No agency shall undertake testing of any technology, product or process unless the business entity manufacturing or marketing the technology, product or process demonstrates that:

(A) use of such technology, product or process by the State agency will not adversely affect safety;

(B) sufficient research and development has occurred to warrant participation in the test program;

(C) the technology, product or process has potential for commercialization not later than two years following the completion of the test program by a State agency under this section; and

(D) use of such technology, product or process by the State agency will not adversely affect performance or warranties of any other installed equipment or materials.

(ii) If the secretary finds that using the technology, product or process would be feasible in the operations of a State agency and would not have a detrimental effect on the operations, the secretary, with the approval of the Governor, may authorize a State agency to accept delivery of the technology, product or process and to undertake such a test program.

(2) The secretary may not authorize a State agency to test a technology, product or process unless the business entity or entities benefiting from the field testing pay all of the associated costs.

(3) The secretary may not authorize a State agency to test a technology, product or process unless the business entity benefiting from the field testing assumes all risks of liability associated with testing the technology, product or process and undertakes the responsibility to

indemnify the Commonwealth for all claims, including environmental and tort claims.

(4) The secretary may not authorize a State agency to test a technology, product or process unless the technology or product being tested has been certified by an approved, independent, nationally recognized testing or certification program that the technology, product or process will produce energy savings at the level it claims and under conditions similar to the test to be conducted. The following shall apply:

(i) The business entity manufacturing or marketing the technology, product or process shall provide proof of its independent, nationally recognized testing or certification in a form and manner as determined by the department, and the department shall accept and approve of the testing or certification before testing may take place at a State agency.

(ii) Standards for qualifications of an independent third party entity shall be determined by the department.

(5) If the secretary determines that the test program sufficiently demonstrates that the technology, product or process reduces energy usage and costs or promotes demand-side management and the testing agency determines that the product meets its independent requirements, if any, for technology, product or process testing and acceptance, the secretary and the administrative head of the testing agency may procure the technology, product or process in accordance with 62 Pa.C.S. (relating to procurement), including through addition of the technology, product or process to a department Statewide requirements contract of proper scope if determined to be appropriate by the secretary. Testing agencies with independent procurement authority under 62 Pa.C.S. may procure the item or authorize its use in accordance with that authority. The secretary may encourage implementation in any or all State agencies. Testing criteria, protocol, metrics and goals shall be developed by the department. At a minimum, the testing shall be designed to replicate the results attested to by the approved, independent, nationally recognized testing or certification program.

(6) If the secretary determines that the test program does not sufficiently demonstrate that the technology, product or process reduces energy usage and costs or promotes demand-side management, at the secretary's direction, the business entity manufacturing or marketing this technology, product or process shall be responsible for removing the product and returning the agency's facility back to its original status at the cost of the business entity in the time frame provided.

Section 5. State agency responsibilities.

The following shall apply:

(1) The testing agency shall maintain records related to test programs, as required by the secretary and determined by the department.

(2) All proprietary information derived from test programs shall be exempt from the provisions of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(3) The testing of a technology, product or process shall have a demonstration period of no less than 30 days and no more than 200

calendar days unless the testing agency determines that the specific technology warrants a longer demonstration period.

(4) Testing methodology and results shall not be considered proprietary information.

Section 6. Purchasing.

Acquisition of any technology, product or process for purposes of the test program established under this act shall not be deemed to be a purchase under the provisions of State procurement law. Upon implementation of a technology, product or process at a State agency after the testing period has expired, the department may make such purchases for implementation as are authorized under 62 Pa.C.S. (relating to procurement). State agencies whose purchasing is not provided for by the department or which exercise independent purchasing authority are authorized to make such purchases as applicable under this act and may further authorize use of the technology, product or process as provided under State law.

Section 7. Commonwealth endorsement.

Testing of a technology, product or process at a State agency as provided for in this act shall not constitute approval by the Commonwealth or otherwise endorsement of the technology, product or process or of the business entity by the Commonwealth, nor shall the Commonwealth be used in marketing, advertisement or promotional activity related to the technology, product or process or of the business entity. A claim of endorsement by the Commonwealth without the approval of the secretary and the Governor shall result in the business entity's disqualification from further testing under this act.

Section 8. Business entity clarification.

For purposes of this act, a business entity that allows the testing of its technology, product or process in a State agency shall not be considered a State advisor or State consultant as defined in the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.

Section 9. Effective date.

This act shall take effect in 60 days.

APPROVED—The 22nd day of October, A.D. 2014

TOM CORBETT