GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Vincent C. Gray** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**July 1, 2008**
SUBJECT:	**Fiscal Impact Statement: "Clean and Affordable Energy Act of 2008"**
REFERENCE:	**Bill Number 17-492 (Amendment in the Nature of a Substitute)[1]**

CONCLUSION

Funds are sufficient in the FY 2008 budget and proposed FY 2009 through FY 2012 budget and financial plan to implement all but one title of the proposed legislation. Funds are not sufficient to implement Title VI, which would have a fiscal impact of $100,000 in the FY 2009 through FY 2012 plan; however, this title is subject to inclusion in an approved budget and financial plan.

It is estimated that Title II of the proposed legislation would result in an increase in energy costs to the District of Columbia government of $553 thousand in FY 2009 and $3.20 million over the FY 2009 through FY 2012 financial plan period; however, these increases can be absorbed in the financial plan given planned energy conservation over the same period.

BACKGROUND

The proposed legislation would establish a new Sustainable Energy Utility (SEU) that would be responsible for achieving the following goals in the District of Columbia:

- Reducing per-capita energy consumption;
- Increasing renewable energy generating capacity;
- Limiting the growth of, and if possible, reducing the peak electricity demand;
- Improving the energy efficiency of low-income housing;

[1] Of June 10th.

- Reducing the energy demand of the largest energy users; and
- Fostering development of green-collar jobs[2].

The proposed legislation would also establish the legal, organizational and regulatory framework for implementing the SEU and its related programs in the District of Columbia, as discussed below.

Title II: Management of Sustainable Energy Programs.

Section 201: Contract with a Sustainable Energy Utility. Section 201 of the proposed legislation would establish a Sustainable Energy Utility (SEU), a private entity operating under contract to the District Department of the Environment (DDOE) with responsibility for achieving the goals itemized above.

The SEU would be funded by the Sustainable Energy Trust Fund, created by Section 210 of the proposed legislation. Additional sources of funding would be authorized for use by the Mayor, including federal funds, private funds, or other local funds.

Section 202: Structure of the SEU Contract. Section 202 of the proposed legislation would set out the structure of the SEU contract, which would be for a period of not less than five years and would be performance-based, with incentives and penalties related to the SEU's ability to meet or exceed benchmarks laid out in the contract. Section 202 would also stipulate that the contract contain a revocability clause should the SEU contractor fail to meet performance benchmarks, and specifies the mix of natural gas and electricity programs that could be funded by the SEU contract.

Section 203: Establishment of a Sustainable Energy Utility Advisory Board. Section 203 of the proposed legislation would establish an SEU Utility Advisory Board ("Board"), which would advise the Mayor and the Council on the purpose of the SEU and monitor its performance. The Board would be comprised of thirteen members with expertise in energy efficiency and/or renewable energy, including: the Mayor or his designee, who would chair the Board; the People's Counsel (or designee); the Chair of the Public Service Commission (or designee); and appointees by the Mayor (8); and Council (2). Mayoral appointments would represent a range of stakeholders, including environmental, building, energy and low-income communities.

Board members would be reimbursed for transportation, parking or mileage expenses and conference fees incurred in the performance of official duties, limited to $2,000 per board member per year. Section 203 also provides guidelines on requirements, term lengths, nominations and terminations for Board members.

Section 204: Operations of the Sustainable Energy Utility Advisory Board. Section 204 of the proposed legislation sets out the responsibilities of the Board, whose members would be nominated by the Mayor and Council within 45 days of the effective date of the act.

[2] Defined in the proposed legislation as jobs in the environmental sector of the economy whose job may involve the implementation of environmentally-conscious design, policy, and technology.

Specifically, the Board would advise the Mayor on the selection of the SEU contractor, recommend SEU performance benchmarks, meet regularly with SEU representatives to monitor SEU performance, and provide an annual report on SEU progress to the D.C. Council.

Section 204 also gives the Board the authority to convene subcommittees and working groups, and requires the Board to comply with the open meetings requirements provided by the Home Rule Act (D.C. Code § 1-207.42).

Section 205: Implementation of the Sustainable Energy Utility Contract. Section 205 of the proposed legislation sets out the responsibilities of DDOE in implementing the SEU Contract. Specifically, DDOE would:

- Manage the RFP process under which an SEU contractor will be selected by the Board, including drafting the RFP, submitting it for Board approval, releasing the RFP and submitting resulting bids to the Board for their comments and recommendations;
- Let a contract for the SEU;
- Provide staff resources to the Board;
- Maintain the trade name under which energy efficiency and renewable energy programs operate, regardless of what entity operates those programs;
- Report to the Council annually on the expenditures of money from the Sustainable Energy Trust Fund (SETF) and Energy Assistance Trust Fund (EATF);
- Operate a renewable energy rebate program; and
- Commission an annual independent review of the SEU.

In addition, Section 205 of the proposed legislation would provide: $1 million to DDOE annually before the SEU contract award to pay for the administrative costs of implementation of the contract award process, establishing and maintaining sustainable energy branding, and establishing and maintaining a web-site; and 10 percent of the annual cost of the SEU contract to DDOE annually for these purposes following the execution of the SEU contract. These funds would be allocated from the SETF.

Section 206: Sustainable Energy Branding. Section 206 of the proposed legislation requires DDOE, within 90 days of the effective date of the legislation, to determine a brand name for the energy efficiency and renewable energy services in the District of Columbia, establish and maintain a website for the brand, provide a hotline for the brand, and ensure that all information is accurate and up-to-date.

Section 207: Electric Company. Section 207 of the proposed legislation would set out the responsibilities of the electric company, including the quick implementation of those programs that are currently funded by the Renewable Energy Trust Fund. The section stipulates that these programs, and any others approved by the Public Service Commission, may be funded from the SETF as stipulated in Section 210.

Section 207 would also require the electric company, within 30 days of the issuance of the SEU contract, to enter into a memorandum of understanding (MOU) with the SEU contractor to allow the SEU contractor access to the energy use data of all electricity customers in the District of Columbia and provide protocols to ensure privacy of the data.

Finally, Section 207 would also require the electric company, within one year of the effective date of the proposed legislation, to operate all its energy efficiency and renewable energy programs under the brand managed by the DDOE.

Section 208: Natural Gas Company. Section 208 of the proposed legislation would require the natural gas company, within 30 days of the issuance of the SEU contract, to enter into a memorandum of understanding (MOU) with the SEU contract to allow the SEU contractor access to the energy use data of all natural gas customers in the District of Columbia and provide protocols to ensure privacy of the data.

Section 209: Renewable Energy Incentive Program. Section 209 of the proposed legislation would establish a rebate program for owners of new renewable energy generation systems[3] in the District of Columbia who complete installation of the system within six months of rebate application approval. Rebate values would be based on capacity[4]:

- $3 for each of the first 3,000 installed watts of capacity;
- $2 for each of the next 7,000 installed watts of capacity; and
- $1 for each of the next 10,000 installed watts of capacity.

The rebate program would be funded by the SETF (see section 210) and administered by DDOE until the end of fiscal year 2012, with half of the funds available annually being released every 6 months. Section 209 would also establish the format and process under which the rebate application process would be administered, stipulate the information about the rebate program that must be included on a website, and require that DDOE define, within 90 days of the effective date of the proposed legislation, a method for converting the heating and cooling capacity of some systems to kilowatt hour equivalents to permit such systems to qualify for rebates under the program. Section 209 also would allow DDOE to pay for the installation of monitoring and communications systems should the data collected be made available to the public.

Section 210: Sustainable Energy Trust Fund. Section 210 of the proposed legislation would establish the Sustainable Energy Trust Fund (SETF) as a separate and nonlapsing fund within the General Fund into which assessments on the natural gas and electric companies, funds collected through the sale of credits associated with the Renewable Greenhouse Gas Initiative, and any interest on the fund balance, would be deposited.

The assessment on the natural gas company would be calculated on a per-therm basis as follows: $0.011 in fiscal year 2009; $0.012 in fiscal year 2010; and $0.014 in fiscal year 2011 and beyond. Likewise, the assessment on the electric company would be calculated on a per-kilowatt hour basis as follows: $0.0011 in fiscal year 2009; $0.0013 in fiscal year 2010; and $0.0015 in

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[3] Including solar photovoltaic, solar thermal, geothermal, wind, biomass, and methane or waste-gas capture systems.
[4] Section 209 also gives DDOE the authority to modify the incentive amount for each level of system size as market conditions dictate.

fiscal year 2011 and beyond. These assessments would apply to all sales by the electric and natural gas companies, except those to residents participating in the Residential Essential Service or Residential Aid Discount programs, and would be collected by electric and gas companies in their rates as a surcharge on customers' bills.

Section 210 of the proposed legislation also stipulates the sole uses of the SETF:

- The SEU contract would be funded in the following amounts:
  - $7.5 million in the first year of the contract;
  - $15 million in the second year of the contract;
  - $17.5 million in the third year of the contract; and
  - $20 million in the fourth and each subsequent year of the contract.
- Administration of the SEU contract by DDOE would be funded on an annual basis up to 10% of the value of the contract in that fiscal year;
- Activities of the SEU Advisory Board (see section 203) would be funded up to $26,000 per year;
- The natural gas and existing electricity programs managed by DDOE would be funded up to $6.545 million per year for FY 2009 to FY 2011;
- The temporary electricity programs managed by DDOE would funded in the amount of $916,000 in FY 2009;
- The renewable energy incentive program (see section 209) would be funded up to $2 million per year; and
- The energy efficiency programs administered by the electric company (see section 208) would be funded up to $6 million per year.

Section 210 of the proposed legislation also provides a mechanism for preventing the SETF fund balance from exceeding $10 million.

Section 211: Energy Assistance Trust Fund. Section 211 of the proposed legislation would establish the Energy Assistance Trust Fund (EATF), as a separate and nonlapsing fund within the General Fund into which assessments on the natural gas and electric companies, and any interest on the fund balance, would be deposited.

The assessment on the natural gas company would be calculated at $0.006 per therm, and the assessment on the electric company would be calculated at $0.0004 per-kilowatt hour, except on sales to residents participating in the Residential Essential Service or Residential Aid Discount programs[5].

Section 211 of the proposed legislation would also stipulate the sole use of the EATF: to fund the Universal Service Programs (enumerated D-1, D-2, D-3 and G-1) in the amount of $3.3 million per year; and to fund the Residential Aid Discount (RAD) subsidy in the amount of $3 million per year.

[5] Section 211 would also give DDOE the authority to modify the assessment mandated by the section and the programs funded by the EATF.

Section 212: Conforming Amendments. Section 212 of the proposed legislation would repeal D.C. Official Code § 34-1514, which established the Reliable Energy Trust Fund (RETF), and would transfer all funds remaining in the RETF to the SETF and EATF equally. The RETF is currently funded by a charge on electricity consumption in the District of Columbia of $0.0011 per kilowatt hour (kwh).

Section 212 of the proposed legislation would also repeal D.C. Official Code § 34-1651, which established the Natural Gas Trust Fund (NGTF), and would transfer all funds remaining in the NGTF to the SETF and EATF equally. The NGTF is currently funded by a charge on natural gas consumption in the District of Columbia of $0.005478 per therm.

Section 213: Solar and Renewable Home Improvement Financing Proposal. Section 213 of the proposed legislation would require the Public Service Commission to open an investigation, with the electric and gas companies, into mechanisms to make long-term affordable financing available to energy consumers to purchase renewable energy systems and make improvements that increase energy efficiency of buildings, including the use of energy companies' billing systems. A report on Commission findings would be due within 60 days of the close of the investigation.

Title III: Renewable Portfolio Standard.

Renewable energy portfolio standard is defined in D.C. Official Code § 34-1431 as the percentage of electricity retail sales in the District of Columbia that is to be derived from renewable sources[6]. D.C. Official Code § 34-1431 *et seq.* specifies the percentage of retail sales a supplier must provide from tier one and tier two renewable sources, as well as a specific solar energy standard, with standards increasing as a percentage of total sales annually until 2022. In addition, the code specifies a compliance fee, payable into the Renewable Energy Development Fund, which applies to electricity suppliers that fail to comply with the renewable energy portfolio standards.

Title III of the proposed legislation would amend D.C. Official Code § 34-1431 *et seq.* to:

- Clarify the definition of solar energy and establish standards for solar thermal systems[7];
- Revise the annual renewable energy portfolio standards to be applied to District of Columbia retail electricity sales;
- Revise the definition of "Customer-generator" to those with capacity of up to 1000 kilowatts (from 100 kilowatts under current law); and
- Revise the compliance fees payable into the Renewable Energy Development Fund by electricity suppliers that fail to comply with the renewable energy portfolio standards as follows:
    - $0.05 for each kilowatt-hour of shortfall from required tier one renewable sources (an increase from $0.025);

[6] Renewable sources include: tier one sources, including power from solar, wind, qualifying biomass, methane, geothermal, ocean and fuel cells producing electricity from a tier one renewable source; and tier two sources, including hydroelectric and waste-to energy power.

[7] Defined as systems which utilize the sun's radiation to efficiently heat fluids and/or air. Such systems are used in a variety of applications, such as water and space heating, absorption chilling in HVAC systems, as well as in the production of electricity.

- $0.01 for each kilowatt-hour of shortfall from required tier two renewable sources (no change from current law); and
- $0.80 for each kilowatt-hour of shortfall from required solar energy sources (an increase from $0.30).

Title IV: Public Service Commission and the Office of the People's Counsel
Title IV of the proposed legislation would clarify the roles of the Public Service Commission and the Office of the People's Counsel to include conservation of natural resources and the preservation of environmental quality.

Title V: Energy Benchmarking Requirements for Private and Government Buildings
Title V of the proposed legislation would amend D.C. Official Code § 6-1451 *et seq.* to establish benchmarking requirements for existing buildings in the District of Columbia based on the Energy Star® Portfolio Manager[8] benchmarking tool and require that results be made available publicly. Specifically, Title V would require that, using Energy Star® Portfolio Manager:

- Ten buildings owned or operated by the District of Columbia be benchmarked and results made public within 90 days of the effective date of the act;
- All buildings owned or operated by the District of Columbia[9] be benchmarked and results made public within 1 year of the effective date of the act; and
- All privately-owned buildings over 50,000 square feet of gross floor area[10] be benchmarked annually on a schedule set out in the proposed legislation.

In addition, Title V of the proposed legislation would require that, for new construction or substantial building improvements with permits submitted after January 1, 2012, the Energy Star® Target Finder Tool[11] be used to estimate the building's energy performance, and the Energy Star® Portfolio Manager be used to benchmark the building annually. Results of all statements would be made publicly available.

Title VI: Renewable Energy Study
Title VI of the proposed legislation would require the Mayor to commission a study to determine the viability of the D.C. government pursuing a new large-scale wind energy project through private or public financing. The title is subject to inclusion in an approved budget and financial plan.

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[8] Defined as the tool developed by EPA Energy Star that rates the performance of a qualifying building, relative to similar building nationwide, accounting for the impacts of year-to-year weather variations, building size, location, and several operating characteristics, using the Environmental Protection Agency's national energy performance rating system.
[9] Provided that the building has at least 10,000 square feet of gross floor area and can be rated by Energy Star® benchmarking tools.
[10] Provided that the building can be rated by Energy Star® benchmarking tools.
[11] Defined as the tool developed by EPA Energy Star that helps set performance goals and energy ratings for building projects during their design phase.

FINANCIAL PLAN IMPACT

Funds are sufficient in the FY 2008 budget and proposed FY 2009 through FY 2012 budget and financial plan to implement all but one title of the proposed legislation. Funds are not sufficient to implement Title VI, which would have a fiscal impact of $100,000 in the FY 2009 through FY 2012 plan; however, this title is subject to inclusion in an approved budget and financial plan.

It is estimated that Title II of the proposed legislation would result in an increase in energy costs to the District of Columbia government of $553 thousand in FY 2009 and $3.20 million over the FY 2009 through FY 2012 financial plan period; however, these increases can be absorbed in the financial plan given planned energy conservation over the same period.

Title II: Management of Sustainable Energy Programs.
Title II of the proposed legislation would authorize $16.49 million in expenditures from the SETF in FY 2009 and $72.69 million in the FY 2009 to FY 2012 period. Given a beginning fund balance of $3.64 million and estimated SETF revenues of $16.43 million in FY 2009 and $79.75 million in the FY 2009 to FY 2012 period, SETF funds are estimated to be sufficient to implement the SETF programs in the proposed legislation.

Likewise, Title II would authorize $6.3 million in expenditures from the EATF in FY 2009 and $25.2 million in the FY 2009 to FY 2012 period. With a beginning EATF fund balance of $3.64 million and EATF revenues of $6.60 million in FY 2009 and $26.38 million in the FY 2009 to FY 2012 period, EATF funds are estimated to be sufficient to implement the EATF programs in the proposed legislation.[12]

It is estimated that funds are sufficient in the proposed legislation to fund the costs to DDOE of implementation and administration of all programs proposed in Title II.

[12] SETF and EATF revenues are estimated assuming annual D.C. electricity consumption of 11,846 million kilowatt hours and annual D.C. natural gas consumption of 309 million therms (Source: D.C. Public Service Commission).

Title II: Estimated Revenues and Expenditures Designated Funds (in Millions)					
SETF	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**4 Year Total**
Beginning SETF Balance[1]	$3.64	$3.58	$7.13	$6.31	
SETF Natural Gas Assessment	$3.40	$3.71	$4.33	$4.33	$15.78
SETF Electricity Assessment	$13.03	$15.40	$17.77	$17.77	$63.97
SETF Expenditures	($16.49)	($15.57)	($22.92)	($18.63)	($72.69)
Ending SETF Balance	**$3.58**	**$7.13**	**$6.31**	**$9.78**	

EATF	FY 2009	FY 2010	FY 2011	FY 2012	4 Year Total
Beginning EATF Balance[1]	$3.64	$3.93	$4.23	$4.52	
EATF Natural Gas Assessment	$1.86	$1.86	$1.86	$1.86	$7.43
EATF Electricity Assessment	$4.74	$4.74	$4.74	$4.74	$18.95
EATF Expenditures	($6.30)	($6.30)	($6.30)	($6.30)	($25.20)
Ending EATF Balance	**$3.93**	**$4.23**	**$4.52**	**$4.82**	

Source: Office of Revenue Analysis
[1]FY 2009 Beginning SETF and EATF Fund Balances result from the equal allocation of the RETF and NGTF fund balances when RETF and NGTF are repealed, assuming an effective date of October 1 2008.

Despite adequate funding for the proposed SETF and EATF programs, a cost is estimated for Title II given anticipated increases in energy costs for the D.C. government that would result from the assessments that generate the SETF and EATF revenues. Under current law, the RETF and NGTF are funded through charges to energy customers, based on consumption, at rates of $0.0011 per kilowatt hour and $0.005478 per therm respectively. The assessments on utility providers proposed in Title II would replace these charges, but sum to higher rates at $0.0015 per kilowatt hour and $0.017 per therm in FY 2009, rising to $0.0019 per kilowatt hour and $0.019 per therm in FY 2011 and thereafter.

Estimated increases in energy costs to the District of Columbia government would therefore be $553 thousand in FY 2009 and $3.2 million in the FY 2009 to FY 2012 period, as shown in the table below.[13] The Office of the City Administrator advises that energy- and cost-saving measures are already underway and, as a result, these increased costs will be offset by expected decreases in energy consumption in D.C. government buildings. Energy conservation initiatives that will be implemented during the same period include use of compact fluorescent bulbs, and the installation of programmable thermostats, automatic computer shut-off systems, and green roofs.

[13] D.C. government consumption of electricity is estimated to be 909.8 million kilowatt hours annually and 16.4 million therms annually (Source: D.C. Public Service Commission).

Title II: Increased Costs to D.C. Government Electricity and Natural Gas (in Millions)					
	FY 2009	FY 2010	FY 2011	FY 2012	4 Year Total
Impact of Increased Electricity Cost	($0.36)	($0.55)	($0.73)	($0.73)	($2.37)
Impact of Increased Natural Gas Cost	($0.19)	($0.21)	($0.22)	($0.22)	($0.84)
Total Impact	($0.55)	($0.75)	($0.95)	($0.95)	($3.20)

Source: Office of Revenue Analysis

Further, the proposed PSC investigation into long-term affordable financing for consumers' renewable energy systems and building improvements may result in further energy rate increases in the future should a mechanism for funding a long-term affordable financing program be implemented as a result of the findings of the investigation. It is important to note that in such a case there would be further spending pressures placed on the D.C. government in the form of higher energy costs.[14]

Title III: Renewable Portfolio Standard.
The Renewable Energy Development Fund is currently in its first year of operation, with initial revenues accruing to the fund beginning in the spring of this year. The DDOE estimates revenues for FY 2008 of no more than $200,000; however, DDOE has no information on how the compliance fees that comprise these revenues break-down between tier one, tier two, or solar standards. As such, potential increases in revenues to the fund that would result from Title III of the proposed legislation are inestimable at this time.

Title IV: Public Service Commission and the Office of the People's Counsel
At this time, it is estimated that funds are sufficient in the proposed FY 2009 through FY 2012 budget and financial plan to implement Title IV of the proposed legislation. The proposed legislation is not anticipated to have a fiscal effect on the District's budget and financial plan.

Title V: Energy Benchmarking Requirements for Private and Government Buildings
At this time, it is estimated that funds are sufficient in the proposed FY 2009 through FY 2012 budget and financial plan to implement Title V of the proposed legislation. The proposed legislation is not anticipated to have a fiscal effect on the District's budget and financial plan.

Title VI: Renewable Energy Study
It is estimated that the commission of a study to determine the viability of the D.C. government pursuing a new large-scale wind energy project through private or public financing would cost $100,000. Funds are not sufficient in the proposed FY 2009 to FY 2012 budget and financial plan to implement Title VI of the proposed legislation; however, this title is subject to inclusion in an approved budget and financial plan.

[14] As the cost to the PSC of investigative proceedings is born off-budget in the form of assessments to the energy providers, implementation of the investigation itself would result in no fiscal impact to the agency budget.