

1 ENGROSSED HOUSE
2 BILL NO. 2815

By: Key of the House

and

Anderson of the Senate

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7 (public finance - Oklahoma Clean Energy Finance
8 Program Act - Energy Office - Clean Energy Program
9 Fund - providing for implementation of program -
10 loan application procedures - providing for
11 reporting to certain committees of the Legislature
12 - Rural Clean Energy Project Finance Program Act -
13 bonds - computation of rates for clean energy
14 delivery - codification - effective date -
15 emergency)

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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1101 of Title 62, unless there
21 is created a duplication in numbering, reads as follows:

22 Sections 1 through 8 of this act shall be known and may be cited
23 as the "Oklahoma Clean Energy Finance Program Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1102 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in this act, unless the context otherwise requires:

5 1. "Area median income" means the median income of the county
6 in which the primary residence of a qualified borrower is located in
7 relation to family size, as published annually by the United States
8 Department of Housing and Urban Development;

9 2. "Certified contractor" means a contractor, including but not
10 limited to a general, heating, air conditioning, or lighting
11 contractor, certified by the program administrator to market the
12 program to potential qualified borrowers and make clean energy
13 improvements that may be financed by clean energy loans;

14 3. "Clean energy improvement" means any repair of or addition
15 or improvement to residential real property completed by or under
16 the supervision of a certified contractor that improves the energy
17 efficiency of the property or replaces all or a portion of the
18 energy from nonrenewable sources used in connection with the
19 property with energy from renewable sources;

20 4. "Clean energy loan" means a loan in a maximum amount of
21 Twelve Thousand Five Hundred Dollars (\$12,500.00) originated by a
22 participating public lender or a participating private lender to a
23 qualified borrower for the purpose of financing one or more clean
24 energy improvements to the borrower's primary residence; except

1 that, if the qualified borrower is a nonprofit corporation or local
2 government housing authority that provides units in a multiunit
3 housing project as homes to individuals or families who meet the
4 income qualifications of first-tier or second-tier qualified
5 borrowers, the maximum amount of a loan shall be Twelve Thousand
6 Five Hundred Dollars (\$12,500.00) multiplied by the number of units
7 in the multiunit housing project provided to the individuals or
8 families;

9 5. "First-tier qualified borrower" means a qualified borrower
10 whose income is less than eighty percent (80%) of area median
11 income;

12 6. "Office" means the Governor's Energy Office;

13 7. "Program" means the Oklahoma Clean Energy Finance Program;

14 8. "Program administrator" or "administrator" means one or more
15 entities selected by the Office to:

16 a. market the program,

17 b. recruit, train, and certify contractors,

18 c. measure and verify, in accordance with standards
19 established by the Office, energy, emissions, and
20 gross and net cost savings resulting from clean energy
21 improvements financed by clean energy loans originated
22 and serviced by participating public lenders and
23 private lenders,

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- 1 d. encourage homeowners to participate in utility demand-
2 side management programs where applicable, and
3 e. perform such other duties as may be authorized in this
4 act or required by the Office;

5 9. "Program fund" means the Clean Energy Program Fund created
6 in this act;

7 10. "Public lender" means a county, municipality, district,
8 authority, or other political subdivision of the state authorized to
9 make economic development, affordable housing, or housing
10 rehabilitation loans;

11 11. "Qualified borrower" means an individual or family who owns
12 his, her, or their primary residence and satisfies lending
13 guidelines established by the program administrator or a charitable
14 nonprofit corporation exempt from taxation under Section 501(c)(3)
15 of the Internal Revenue Code of 1986, as amended, or county or
16 municipal housing authority that provides homes for ownership or
17 rental to homeowners or renters who meet the income qualifications
18 of first-tier or second-tier qualified borrowers;

19 12. "Second-tier qualified borrower" means a qualified borrower
20 whose income is eighty percent (80%) or more, but less than one
21 hundred twenty percent (120%), of area median income; and

22 13. "Third-tier qualified borrower" means a qualified borrower
23 whose income is one hundred twenty percent (120%) or more of area
24 median income.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1103 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma Clean Energy Finance Program is hereby created.

5 B. The Office shall oversee the program and the program
6 administrator and shall, in addition to exercising any other powers
7 and performing any other duties specified in this act:

8 1. Select the program administrator in accordance with the
9 provisions of The Oklahoma Central Purchasing Act. In selecting the
10 program administrator, the Office shall consider the extent to which
11 a potential program administrator has demonstrated experience in
12 recruiting, training, and certifying contractors or can otherwise
13 establish that it will be able to perform such functions;

14 2. Directly market the program to the general public or
15 contract with the program administrator for the marketing of the
16 program to the general public;

17 3. Develop and operate or contract with the program
18 administrator for the development and operation of a quality
19 assurance, measurement, and verification program to:

20 a. monitor the quality of clean energy improvement
21 installations, and

22 b. measure and report on energy, emissions, and gross and
23 net cost savings resulting from clean energy
24 improvements financed by clean energy loans;

1 4. Determine, in consultation with the State Treasurer, when
2 the administrative and procedural framework for the program and the
3 available administrative and financial resources for the program are
4 sufficiently developed to allow the Office to effectively oversee
5 the program. No clean energy loan shall be marketed to a potential
6 qualified borrower, applied for by a potential qualified borrower,
7 or made to a qualified borrower until the Office has determined that
8 it is ready to effectively oversee the program and instructed
9 certified contractors to begin marketing clean energy loans; and

10 5. Exercise such other powers and perform such other duties
11 necessary or incidental to or implied from the specific powers and
12 duties specified in this act.

13 C. The Clean Energy Program Fund is hereby created in the State
14 Treasury, and the following accounts are hereby created in the fund:

- 15 1. The loan buy-down account; and
- 16 2. The loan loss reserve account.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1104 of Title 62, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The program fund and the accounts of the program fund shall
21 consist of such monies as the Legislature may appropriate thereto
22 from the Clean Energy Program Fund and any gifts, grants, or
23 donations that may be made to the program fund.

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1 B. In accordance with requirements imposed upon the State
2 Treasurer, in making investments, to use prudence and care to
3 preserve the principal and to secure the maximum rate of interest
4 consistent with safety and liquidity, if the Legislature chooses not
5 to appropriate monies to the program fund or to the accounts of the
6 program fund nothing in this act shall be deemed to require the
7 State Treasurer to credit any monies to the program fund or the
8 accounts of the program fund.

9 C. All interest and income earned on the deposit and investment
10 of monies in the program fund and the accounts of the program fund
11 shall be used for the loan buy-down account and the loan loss
12 reserve account.

13 D. Monies in the loan buy-down account and loan loss reserve
14 account of the program fund shall remain in the accounts and shall
15 not be transferred to the general fund or any other fund at the end
16 of any fiscal year.

17 E. All monies in the program fund are continuously appropriated
18 to the Office, and the Office shall make payments from the loan buy-
19 down account of the program fund to participating public lenders and
20 private lenders to compensate the lenders for the reduction in the
21 amount of future interest payments resulting from the provision of
22 clean energy loans to first-tier and second-tier qualified borrowers
23 at the below-market interest rates specified by law.

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1 F. The Office shall pay the compensation for each clean energy
2 loan by paying to the lender a lump sum equal to the present value
3 of the reduction in future interest payments on the date the loan
4 closes.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1105 of Title 62, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Office shall make payments from the loan loss reserve
9 account of the program fund to compensate participating public
10 lenders and private lenders for the uncollectible amount of clean
11 energy loans any such lenders have written off. The Office shall
12 pay the compensation for each uncollectible clean energy loan by
13 paying to the lender a lump sum equal to the present value of the
14 uncollectible portion of the loan on the date the lender wrote it
15 off.

16 B. The State Treasurer shall periodically transfer monies from
17 the loan buy-down account of the program fund to the loan loss
18 reserve account of the program fund to ensure that the balance of
19 the loan loss reserve account is at least five percent (5%) of the
20 total principal amount of outstanding clean energy loans made by
21 participating public lenders and private lenders. The administrator
22 shall update the State Treasurer regarding outstanding clean energy
23 loans originated by such lenders as required by the State Treasurer

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1 so that the State Treasurer can accurately determine the appropriate
2 amount and timing of transfers.

3 C. The State Treasurer may invest up to a total amount of
4 _____ Dollars of state monies in bonds or notes issued by
5 participating public or private lenders for the purpose of funding
6 clean energy loans during the 2010-11 fiscal year.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1106 of Title 62, unless there
9 is created a duplication in numbering, reads as follows:

10 In accordance with terms contractually agreed to by the program
11 administrator and the Office, acting on behalf of the state, the
12 program administrator shall implement and administer the program by:

13 1. Recruiting, selecting, screening, training, and certifying
14 contractors, including but not limited to general, heating, air
15 conditioning, and lighting contractors, to be certified contractors
16 capable of marketing the program and completing clean energy
17 improvements. The program administrator may charge contractors a
18 reasonable fee for training and certification, and the recruiting,
19 selection, screening, training, and certification process shall
20 include, at a minimum:

- 21 a. direct marketing of the program to contractors,
- 22 b. financial and business practices background checks of
- 23 contractors seeking to become certified contractors,
- 24 and

1 c. initial training that includes:

2 (1) education regarding the elements of the program,
3 the financial and environmental benefits of clean
4 energy improvements, including but not limited to
5 specific education regarding products qualified
6 to bear the federal energy star label, and
7 recommended means of marketing the program to
8 potential program customers, and

9 (2) the provision of information regarding additional
10 required training and other requirements for
11 contractors who may wish to become preferred
12 contractors under the federal home performance
13 with energy star program; and

14 2. Issuing annual reports regarding the administration of the
15 program as specified in Section 8 of this act.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1107 of Title 62, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A potential qualified borrower shall apply for a clean
20 energy loan by completing an initial loan application. The Office
21 or, at the discretion of the Office, the program administrator or
22 participating public lenders and private lenders shall prescribe the
23 form of the loan application and shall determine, based on the
24 application and such other information as the administrator may

1 reasonably require from the applicant, whether the applicant is a
2 qualified borrower and, if so, whether the qualified borrower is a
3 first-tier, second-tier, or third-tier qualified borrower.

4 B. A participating public lender may only originate clean
5 energy loans for first-tier and second-tier qualified borrowers. A
6 qualified borrower may choose a loan term of up to ten (10) years.
7 The State Treasurer shall, using a formula tied to a regularly
8 published interest rate index selected by the State Treasurer,
9 determine a base annual rate of interest to be charged on loans made
10 to third-tier qualified borrowers.

11 C. The State Treasurer shall set an annual rate of interest for
12 loans to second-tier qualified borrowers by subtracting a number of
13 basis points selected by the State Treasurer from the base annual
14 rate and shall set an annual rate of interest for loans to first-
15 tier qualified borrowers by subtracting a number of basis points
16 selected by the State Treasurer from the annual rate of interest for
17 loans to second-tier qualified borrowers.

18 D. The interest rate charged to a qualified borrower that is a
19 nonprofit corporation or a housing authority shall be the interest
20 rate charged to second-tier qualified borrowers; except that the
21 interest rate charged to a nonprofit corporation or housing
22 authority shall be the interest rate charged to first-tier qualified
23 buyers if the nonprofit corporation or housing authority only
24 provides the housing for which the loan will finance clean energy

1 improvements to individuals or families who are first-tier qualified
2 borrowers.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1108 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 A. No later than one (1) year from the date of issuance of the
7 first clean energy loan by a participating public lender or private
8 lender pursuant to this act, and no later than the same date each
9 subsequent year, the program administrator shall provide to the
10 Office a report detailing its administration of the program since
11 its inception and for the prior fiscal year. The report shall
12 include, at a minimum:

- 13 1. A detailed accounting of the financial status of the
14 program, including statements regarding:
- 15 a. the total number and principal amount of clean energy
16 loans originated and the number and principal amount
17 of clean energy loans originated to first-tier,
18 second-tier, and third-tier qualified borrowers,
 - 19 b. the total amount of outstanding principal and interest
20 on clean energy loans owed by qualified borrowers and
21 the amount of such principal and interest owed by
22 first-tier, second-tier, and third-tier qualified
23 borrowers,

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1 c. the total number and principal and interest amounts of
2 any uncollectible clean energy loans written off by
3 participating public lenders and private lenders and
4 the number and principal amounts of such loans issued
5 to first-tier, second-tier, and third-tier qualified
6 borrowers,

7 d. the total amount of bonds or other notes in which the
8 State Treasurer has invested as authorized by law, the
9 payments made on such bonds or other notes, and the
10 payments to be made in the future on such bonds or
11 other notes, and

12 e. the amounts paid to the administrator by the state
13 pursuant to law and any contracts entered into by the
14 state and the administrator as authorized by this act;

15 2. Estimates of the total energy, emissions, and gross and net
16 cost savings resulting from clean energy improvements financed by
17 clean energy loans; and

18 3. Any recommended program improvements.

19 B. No later than each January 30, the Office shall report to
20 the relevant committee of the House of Representatives and the
21 relevant committee of the State Senate regarding the program. The
22 report shall include the information provided to the Office in the
23 program administrator's annual report and whatever additional
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1 information the Office deems relevant to fully apprise the
2 committees regarding the status of the program.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1201 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 Sections 9 through 11 of this act shall be known and may be
7 cited as the "Rural Clean Energy Project Finance Program Act".

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1202 of Title 62, unless there
10 is created a duplication in numbering, reads as follows:

11 As used in Sections 10 through 11 of this act, unless the
12 context otherwise requires:

13 1. "Board" means the board of county commissioners of a county
14 or the governing board of a city;

15 2. "Clean energy" means energy derived from biomass, geothermal
16 energy, solar energy, small hydroelectricity, and wind energy, as
17 well as any hydrogen derived from any of the foregoing;

18 3. "Eligible applicant" means an individual property owner or a
19 group of property owners that do not own the entirety of a
20 cooperative electric association and that seek to construct, expand,
21 or upgrade an eligible clean energy project located or to be located
22 on the applicant's property; and

23 4. "Eligible clean energy project" means a project owned by an
24 eligible applicant that produces or transmits clean energy for

1 public benefit only, has a nameplate rating of no more than fifty
2 (50) megawatts and is not a part of a larger project with a
3 nameplate rating of more than fifty (50) megawatts, and is located
4 within the certificated service area of a cooperative electric
5 association. "Eligible clean energy project" includes transmission
6 lines to the point of entry to the power grid of a cooperative
7 electric association, a generation and transmission electric
8 corporation or association, or any federal agency and any other
9 equipment or facility, including, but not limited to, substation
10 upgrades needed to deliver the clean energy produced by an eligible
11 clean energy project to a market.

12 SECTION 11. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1203 of Title 62, unless there
14 is created a duplication in numbering, reads as follows:

15 A. An eligible applicant may apply to the board of the county
16 or city and county in which it proposes to construct, expand, or
17 upgrade an eligible clean energy project for assistance in the
18 financing of the project. Subject to the requirements and
19 limitations specified in federal law, the Oklahoma Private Activity
20 Bond Allocation Act and subsection B of this section, if the board
21 approves the application, it may provide financing assistance by
22 issuing tax-exempt private activity bonds in a minimum amount of One
23 Million Dollars (\$1,000,000.00) on behalf of the eligible applicant.

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1 B. A board shall issue tax-exempt private activity bonds on
2 behalf of an eligible applicant to finance an eligible clean energy
3 project subject to the following requirements and limitations:

4 1. The board shall enter into agreements with the eligible
5 applicant under which:

6 a. the board agrees to loan to the eligible applicant the
7 net proceeds of the bonds issued so that the eligible
8 applicant can finance all or a portion of the eligible
9 clean energy project, and

10 b. the eligible applicant agrees that it has the sole
11 responsibility to pay, either directly or indirectly
12 through the board or a bond trustee, all financial
13 obligations owed to bondholders and that it shall
14 provide and maintain any reserve deemed necessary by
15 the board to ensure that the financial obligations are
16 paid;

17 2. The bonds issued shall specify that bondholders may not look
18 to any county or city and county revenues for repayment of the
19 bonds. The bonds shall further specify that the only sources of
20 repayment for the bonds are revenues provided by the eligible
21 applicant, property of the eligible applicant, or credit enhancement
22 obtained by the eligible applicant that may be pledged to the
23 payment of the bonds; and
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1 3. The repayment term for the bonds issued shall not exceed ten
2 (10) years.

3 C. Because private activity bonds are payable only from the
4 sources specified in this act, such bonds shall not be deemed to
5 create county or city and county indebtedness or a multiple-fiscal-
6 year obligation within the meaning of any provision of the state
7 constitution or the laws of this state, and a board may issue such
8 bonds without voter approval.

9 D. The rates charged by an eligible applicant for the delivery
10 of clean energy produced by an eligible clean energy project shall
11 be set to allow recovery of all costs necessarily incurred to
12 deliver the clean energy to a market, including, but not limited to,
13 the costs of substation upgrades, transmission lines to the point of
14 entry to the power grid of a cooperative electric association, and
15 any wheeling charges imposed by a cooperative electric association.

16 SECTION 12. This act shall become effective July 1, 2010.

17 SECTION 13. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

1 Passed the House of Representatives the 11th day of March, 2010.

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3
4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2010.

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9 Presiding Officer of the Senate