STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 2530 By: Brown

AS INTRODUCED

An Act relating to public finance; enacting the Oklahoma Clean Energy Finance Program Act; defining terms; creating Oklahoma Clean Energy Finance Program; providing for oversight by certain Energy Office; imposing duties on Energy Office or program administrator; creating Clean Energy Program Fund; creating accounts; providing for deposit of monies in fund; prescribing requirements for interest; prohibiting transfer of certain monies; providing for payments; providing for payments to lenders; providing for payments based upon uncollectable loan amounts; providing for transfer of monies by State Treasurer; requiring information to be provided to Treasurer; authorizing certain investment; providing for implementation of program; specifying requirements for administration; prescribing loan application procedures; providing for certain borrower classifications; prescribing method for computation of interest rates; requiring annual report; prescribing content of report; providing for reporting to certain committees of the Legislature; providing for codification; providing an effective date; and declaring an emergency.

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

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

Sections 1 through 8 of this act shall be known and may be cited as the "Oklahoma Clean Energy Finance Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 62, unless there is created a duplication in numbering, reads as follows:

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

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

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

3. "Clean energy improvement" means any repair of or addition or improvement to residential real property completed by or under the supervision of a certified contractor that improves the energy efficiency of the property, replaces all or a portion of the energy from nonrenewable sources used in connection with the property with energy from renewable sources or provides for the acquisition of energy-efficient products, including but not limited to Energy-Star compliant appliances or appliances that meet another qualified rating system;

4. "Clean energy loan" means a loan in a maximum amount of Twelve Thousand Five Hundred Dollars ($12,500.00) originated by a participating public lender or a participating private lender to a qualified borrower for the purpose of financing one or more clean energy improvements to the borrower's primary residence; except that, if the qualified borrower is a nonprofit corporation or local government housing authority that provides units in a multiunit housing project as homes to individuals or families who meet the income qualifications of first-tier or second-tier qualified borrowers, the maximum amount of a loan shall be Twelve Thousand Five Hundred Dollars ($12,500.00) multiplied by the number of units in the multiunit housing project provided to the individuals or families;

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

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

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

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

a. market the program,

b. recruit, train, and certify contractors,

c. measure and verify, in accordance with standards established by the Office, energy, emissions, and

gross and net cost savings resulting from clean energy improvements financed by clean energy loans originated and serviced by participating public lenders and private lenders,

d. encourage homeowners to participate in utility demand-side management programs where applicable, and

e. perform such other duties as may be authorized in this act or required by the Office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The loan buy-down account; and

2. The loan loss reserve account.

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

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

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

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

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

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

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

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

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

B. The State Treasurer shall periodically transfer monies from the loan buy-down account of the program fund to the loan loss

reserve account of the program fund to ensure that the balance of the loan loss reserve account is at least five percent (5%) of the total principal amount of outstanding clean energy loans made by participating public lenders and private lenders. The administrator shall update the State Treasurer regarding outstanding clean energy loans originated by such lenders as required by the State Treasurer so that the State Treasurer can accurately determine the appropriate amount and timing of transfers.

C. The State Treasurer may invest up to a total amount of _____ Dollars of state monies in bonds or notes issued by participating public or private lenders for the purpose of funding clean energy loans during the 2011-12 fiscal year.

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

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

1. Recruiting, selecting, screening, training, and certifying contractors, including but not limited to general, heating, air conditioning, and lighting contractors, to be certified contractors capable of marketing the program and completing clean energy improvements. The program administrator may charge contractors a reasonable fee for training and certification, and the recruiting,

selection, screening, training, and certification process shall include, at a minimum:

a. direct marketing of the program to contractors,

b. financial and business practices background checks of contractors seeking to become certified contractors, and

c. initial training that includes:

(1) education regarding the elements of the program, the financial and environmental benefits of clean energy improvements, including but not limited to specific education regarding products qualified to bear the federal Energy-Star label or any other qualified rating system, and recommended means of marketing the program to potential program customers, and

(2) the provision of information regarding additional required training and other requirements for contractors who may wish to become preferred contractors under the federal home performance with Energy-star program; and

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

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

A. A potential qualified borrower shall apply for a clean energy loan by completing an initial loan application. The Office or, at the discretion of the Office, the program administrator or participating public lenders and private lenders shall prescribe the form of the loan application and shall determine, based on the application and such other information as the administrator may reasonably require from the applicant, whether the applicant is a qualified borrower and, if so, whether the qualified borrower is a first-tier, second-tier, or third-tier qualified borrower.

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

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

selected by the State Treasurer from the annual rate of interest for loans to second-tier qualified borrowers.

D. The interest rate charged to a qualified borrower that is a nonprofit corporation or a housing authority shall be the interest rate charged to second-tier qualified borrowers; except that the interest rate charged to a nonprofit corporation or housing authority shall be the interest rate charged to first-tier qualified buyers if the nonprofit corporation or housing authority only provides the housing for which the loan will finance clean energy improvements to individuals or families who are first-tier qualified borrowers.

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

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

1. A detailed accounting of the financial status of the program, including statements regarding:

a. the total number and principal amount of clean energy loans originated and the number and principal amount of clean energy loans originated to first-tier, second-tier, and third-tier qualified borrowers,

b. the total amount of outstanding principal and interest on clean energy loans owed by qualified borrowers and the amount of such principal and interest owed by first-tier, second-tier, and third-tier qualified borrowers,

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

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

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

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

3. Any recommended program improvements.

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

SECTION 9. This act shall become effective July 1, 2012.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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