

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2815 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Mike Brown

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 FLOOR SUBSTITUTE
4 FOR

HOUSE BILL NO. 2815

By: Key

7 FLOOR SUBSTITUTE

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

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1101 of Title 62, unless there
23 is created a duplication in numbering, reads as follows:
24

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

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

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

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

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

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

22 4. "Clean energy loan" means a loan in a maximum amount of
23 Twelve Thousand Five Hundred Dollars (\$12,500.00) originated by a
24 participating public lender or a participating private lender to a

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

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

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

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

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

- 18 a. market the program,
- 19 b. recruit, train, and certify contractors,
- 20 c. measure and verify, in accordance with standards
21 established by the Office, energy, emissions, and
22 gross and net cost savings resulting from clean energy
23 improvements financed by clean energy loans originated
24

1 and serviced by participating public lenders and
2 private lenders,

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

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

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

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

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

21 12. "Second-tier qualified borrower" means a qualified borrower
22 whose income is eighty percent (80%) or more, but less than one
23 hundred twenty percent (120%), of area median income; and
24

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

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

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

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

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

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

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

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

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

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

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

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

18 1. The loan buy-down account; and

19 2. The loan loss reserve account.

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

23 A. The program fund and the accounts of the program fund shall
24 consist of such monies as the Legislature may appropriate thereto

1 from the Clean Energy Program Fund and any gifts, grants, or
2 donations that may be made to the program fund.

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

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

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

19 E. All monies in the program fund are continuously appropriated
20 to the Office, and the Office shall make payments from the loan buy-
21 down account of the program fund to participating public lenders and
22 private lenders to compensate the lenders for the reduction in the
23 amount of future interest payments resulting from the provision of
24

1 clean energy loans to first-tier and second-tier qualified borrowers
2 at the below-market interest rates specified by law.

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

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

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

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

1 loans originated by such lenders as required by the State Treasurer
2 so that the State Treasurer can accurately determine the appropriate
3 amount and timing of transfers.

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

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

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

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

22 a. direct marketing of the program to contractors,
23
24

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

4 c. initial training that includes:

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

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

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

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

22 A. A potential qualified borrower shall apply for a clean
23 energy loan by completing an initial loan application. The Office
24 or, at the discretion of the Office, the program administrator or

1 participating public lenders and private lenders shall prescribe the
2 form of the loan application and shall determine, based on the
3 application and such other information as the administrator may
4 reasonably require from the applicant, whether the applicant is a
5 qualified borrower and, if so, whether the qualified borrower is a
6 first-tier, second-tier, or third-tier qualified borrower.

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

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

21 D. The interest rate charged to a qualified borrower that is a
22 nonprofit corporation or a housing authority shall be the interest
23 rate charged to second-tier qualified borrowers; except that the
24 interest rate charged to a nonprofit corporation or housing

1 authority shall be the interest rate charged to first-tier qualified
2 buyers if the nonprofit corporation or housing authority only
3 provides the housing for which the loan will finance clean energy
4 improvements to individuals or families who are first-tier qualified
5 borrowers.

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

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

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

- 18 a. the total number and principal amount of clean energy
19 loans originated and the number and principal amount
20 of clean energy loans originated to first-tier,
21 second-tier, and third-tier qualified borrowers,
22 b. the total amount of outstanding principal and interest
23 on clean energy loans owed by qualified borrowers and
24 the amount of such principal and interest owed by

1 first-tier, second-tier, and third-tier qualified
2 borrowers,

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

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

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

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

20 3. Any recommended program improvements.

21 B. No later than each January 30, the Office shall report to
22 the relevant committee of the House of Representatives and the
23 relevant committee of the State Senate regarding the program. The
24 report shall include the information provided to the Office in the

1 program administrator's annual report and whatever additional
2 information the Office deems relevant to fully apprise the
3 committees regarding the status of the program.

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

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

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

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

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

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

19 3. "Eligible applicant" means an individual property owner or a
20 group of property owners that do not own the entirety of a
21 cooperative electric association and that seek to construct, expand,
22 or upgrade an eligible clean energy project located or to be located
23 on the applicant's property; and
24

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

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

17 A. An eligible applicant may apply to the board of the county
18 or city and county in which it proposes to construct, expand, or
19 upgrade an eligible clean energy project for assistance in the
20 financing of the project. Subject to the requirements and
21 limitations specified in federal law, the Oklahoma Private Activity
22 Bond Allocation Act and subsection B of this section, if the board
23 approves the application, it may provide financing assistance by
24

1 issuing tax-exempt private activity bonds in a minimum amount of One
2 Million Dollars (\$1,000,000.00) on behalf of the eligible applicant.

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

6 1. The board shall enter into agreements with the eligible
7 applicant under which:

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

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

19 2. The bonds issued shall specify that bondholders may not look
20 to any county or city and county revenues for repayment of the
21 bonds. The bonds shall further specify that the only sources of
22 repayment for the bonds are revenues provided by the eligible
23 applicant, property of the eligible applicant, or credit enhancement
24

1 obtained by the eligible applicant that may be pledged to the
2 payment of the bonds; and

3 3. The repayment term for the bonds issued shall not exceed ten
4 (10) years.

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

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

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

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

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24 52-2-10279 CJB 03/09/10

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