

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1679

By: Brown

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6 AS INTRODUCED

7 An Act relating to public finance; enacting the
8 Oklahoma Clean Energy Finance Program Act; defining
9 terms; creating Oklahoma Clean Energy Finance
10 Program; providing for oversight by certain Energy
11 Office; imposing duties on Energy Office or program
12 administrator; creating Clean Energy Program Fund;
13 creating accounts; providing for deposit of monies in
14 fund; prescribing requirements for interest;
15 prohibiting transfer of certain monies; providing for
16 payments; providing for payments to lenders;
17 providing for payments based upon uncollectible loan
18 amounts; providing for transfer of monies by State
19 Treasurer; requiring information to be provided to
20 Treasurer; authorizing certain investment; providing
21 for implementation of program; specifying
22 requirements for administration; prescribing loan
23 application procedures; providing for certain
24 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;
enacting the Rural Clean Energy Project Finance
Program Act; defining terms; providing for financing
assistance; providing for issuance of certain bonds;
imposing requirements and limitations; prescribing
maturity of bonds; providing for characterization of
indebtedness; providing for computation of rates for
clean energy delivery; providing for codification;
providing an effective date; and declaring an
emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 a. market the program,

22 b. recruit, train, and certify contractors,

23 c. measure and verify, in accordance with standards

24 established by the Office, energy, emissions, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 3. Develop and operate or contract with the program
2 administrator for the development and operation of a quality
3 assurance, measurement, and verification program to:
- 4 a. monitor the quality of clean energy improvement
5 installations, and
 - 6 b. measure and report on energy, emissions, and gross and
7 net cost savings resulting from clean energy
8 improvements financed by clean energy loans;
- 9 4. Determine, in consultation with the State Treasurer, when
10 the administrative and procedural framework for the program and the
11 available administrative and financial resources for the program are
12 sufficiently developed to allow the Office to effectively oversee
13 the program. No clean energy loan shall be marketed to a potential
14 qualified borrower, applied for by a potential qualified borrower,
15 or made to a qualified borrower until the Office has determined that
16 it is ready to effectively oversee the program and instructed
17 certified contractors to begin marketing clean energy loans; and
- 18 5. Exercise such other powers and perform such other duties
19 necessary or incidental to or implied from the specific powers and
20 duties specified in this act.
- 21 C. The Clean Energy Program Fund is hereby created in the State
22 Treasury, and the following accounts are hereby created in the fund:
- 23 1. The loan buy-down account; and
 - 24 2. The loan loss reserve account.

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

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

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

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

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

24

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

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

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

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

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

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

9 C. The State Treasurer may invest up to a total amount of
10 _____ Dollars of state monies in bonds or notes issued by
11 participating public or private lenders for the purpose of funding
12 clean energy loans during the 2015-16 fiscal year.

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

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

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

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

- 3 a. direct marketing of the program to contractors,
- 4 b. financial and business practices background checks of
5 contractors seeking to become certified contractors,
6 and

7 c. initial training that includes:

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

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

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

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

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

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

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

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

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

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

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

22 a. the total number and principal amount of clean energy
23 loans originated and the number and principal amount
24

1 of clean energy loans originated to first-tier,
2 second-tier, and third-tier qualified borrowers,

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

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

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

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

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

1 3. Any recommended program improvements.

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

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

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

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

17 As used in Sections 10 and 11 of this act, unless the context
18 otherwise requires:

19 1. "Board" means the board of county commissioners of a county
20 or the governing board of a city;

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

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

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

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

22 A. An eligible applicant may apply to the board of the county
23 or city and county in which it proposes to construct, expand, or
24 upgrade an eligible clean energy project for assistance in the

1 financing of the project. Subject to the requirements and
2 limitations specified in federal law, the Oklahoma Private Activity
3 Bond Allocation Act and subsection B of this section, if the board
4 approves the application, it may provide financing assistance by
5 issuing tax-exempt private activity bonds in a minimum amount of One
6 Million Dollars (\$1,000,000.00) on behalf of the eligible applicant.

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

10 1. The board shall enter into agreements with the eligible
11 applicant under which:

12 a. the board agrees to loan to the eligible applicant the
13 net proceeds of the bonds issued so that the eligible
14 applicant can finance all or a portion of the eligible
15 clean energy project, and

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

23 2. The bonds issued shall specify that bondholders may not look
24 to any county or city and county revenues for repayment of the

1 bonds. The bonds shall further specify that the only sources of
2 repayment for the bonds are revenues provided by the eligible
3 applicant, property of the eligible applicant, or credit enhancement
4 obtained by the eligible applicant that may be pledged to the
5 payment of the bonds; and

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

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

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

21 SECTION 12. This act shall become effective July 1, 2015.

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

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