

**ADOPTED REGULATION OF THE DIRECTOR
OF THE OFFICE OF ENERGY**

LCB File No. R161-09

Effective June 30, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-22, section 1.8 of Assembly Bill No. 522, chapter 377, Statutes of Nevada 2009, at page 2004.

A REGULATION relating to renewable energy; establishing provisions governing loans from the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans administered by the Director of the Office of Energy; and providing other matters properly relating thereto.

Section 1. Chapter 701 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, inclusive, of this regulation, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“American Recovery and Reinvestment Act” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5.*

Sec. 4. *“Construction” has the meaning ascribed to it in section 1.2 of Assembly Bill No. 522, chapter 377, Statutes of Nevada 2009, at page 2002.*

Sec. 5. *“Director” means the Director of the Office of Energy.*

Sec. 6. *“Disadvantaged community” means a county, city or defined service area in which the median household income is less than 80 percent of the statewide median household*

income, as determined by the most recent data from the United States Census Bureau or by income surveys.

Sec. 7. *“Fund” means the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans created by section 1.5 of Assembly Bill No. 522, chapter 377, Statutes of Nevada 2009, at page 2002.*

Sec. 8. *“Net metering system” has the meaning ascribed to it in NRS 704.771.*

Sec. 9. *“Person” includes a public entity.*

Sec. 10. *“Project” means the planning, design and construction of a renewable energy system.*

Sec. 11. *“Public entity” means a department, agency or instrumentality of the State or any of its political subdivisions.*

Sec. 12. *“Renewable energy” has the meaning ascribed to it in NRS 704.7811.*

Sec. 13. *“Renewable energy system” has the meaning ascribed to it in section 1.45 of Assembly Bill No. 522, chapter 377, Statutes of Nevada 2009, at page 2002.*

Sec. 14. *In accordance with the provisions of the American Recovery and Reinvestment Act, the purpose of the Fund is to provide below market rate financing, at an interest rate not to exceed 3 percent, for projects that develop or expand renewable energy systems in this State.*

Sec. 15. *The Director will, to the extent money is available for such purposes, enter into contracts to procure such expert technical and financial management services or other services as the Director determines are necessary to carry out the provisions of sections 2 to 22, inclusive, of this regulation.*

Sec. 16. *1. Except as otherwise provided in this section, the following persons may apply for loans from the Fund:*

- (a) An owner of an existing renewable energy system in this State; or*
- (b) A person seeking to construct a new renewable energy system in this State.*

2. To be eligible for financing from the Fund, a project must:

- (a) Use reliable, proven technology; and*
- (b) Include the expansion of an existing renewable energy system to increase its electrical generating capacity or the construction of a new renewable energy system.*

3. The following projects and activities are not eligible for financing from the Fund:

- (a) Research or general planning;*
- (b) Refinancing of existing debt;*
- (c) Purchase of land or water rights; or*
- (d) Operation and maintenance.*

Sec. 17. 1. The Director will solicit applications for the financing of renewable energy projects. The solicitations will be made available to interested parties and posted on the Internet website of the Office of Energy at <http://energy.state.nv.us>. The solicitations will specify the amount of financing available and may specify an allocation of financing to categories of applicants, such as natural persons, schools, public entities and small businesses. The solicitations will specify the minimum and maximum amounts of individual loans within each category.

2. Each application for financing through the Fund must be submitted on a form prescribed by the Director and must include:

- (a) The name, address and telephone number of the applicant or the legal representative of the applicant.*

- (b) A narrative description of the proposed project, including, without limitation, a complete description of the renewable energy system and the capacity of the system.*
- (c) An estimate of the time required to recover the project cost from energy cost savings, if the project is replacing the use of fossil fuels.*
- (d) An estimate of the amount of reduction in emission of greenhouse gases, if the project is replacing the use of fossil fuels.*
- (e) An estimate of the number of jobs that will be created or retained as a result of the project.*
- (f) Maps of appropriate scale to show clearly the location of the proposed project with respect to other identifiable topographical or geographical features in the area of the project.*
- (g) A complete and legible legal description of the location of the project.*
- (h) Proof of ownership, rights-of-way, easements or agreements showing that the applicant holds or is able to acquire all land, other than public land, or acquire interests therein and any water rights necessary for the construction of the proposed project.*
- (i) A description of how the project complies with all applicable planning and zoning requirements.*
- (j) An itemized estimate of the total cost of the project and the amount of financing requested. If an estimate of the total cost of the project has been prepared by a professional engineer, the application must include a copy of that estimate.*
- (k) A statement of any other anticipated sources of funding for the project from this State, another state, a federal agency or any other entity.*

(l) If the applicant is a public entity, the median household income for the community or area that will be served by the project or for the city or county in which the project is located, including, without limitation, the source of that information.

(m) A preliminary project schedule that, as applicable, provides a timetable for the:

- (1) Advertising and opening of bids for the project;*
- (2) Start of the construction phase of the project;*
- (3) Estimated schedule of progress payments to the contractor and other costs related to the drawdown of money;*
- (4) Completion of the construction phase of the project; and*
- (5) Initiation of the operation of the project.*

(n) Information sufficient to demonstrate the means by which any loan made by the Director from the Fund will be repaid. If the applicant is a public entity, this information must include, as applicable, orders or resolutions specifying the method of loan repayment from the appropriate governing board, regulatory agency or local governing body and copies of current capital improvement plans and debt management policies as provided to the Department of Taxation pursuant to chapter 350 of NRS and any applicable regulations. If the applicant is not a public entity, the applicant shall provide:

- (1) Annual financial statements for the 3 years immediately preceding the application;*
- (2) At least three credit references; and*
- (3) Any other information required by the Director to demonstrate the means by which the applicant intends to repay the loan.*

(o) Institutional and management arrangements required for successful implementation of the project.

(p) A report on the status of the process of environmental review for the project, if applicable.

(q) A list of any required permits and a schedule of when those permits will be obtained.

(r) Security for the loan, as required by the Director.

(s) Any other information the Director determines is necessary.

Sec. 18. 1. *The Director will review each application submitted pursuant to section 17 of this regulation for completeness. An application that is incomplete will be returned to the applicant and may be resubmitted within 30 days. The Director will deny the application if the applicant fails to submit a complete application within 30 days after the incomplete application is returned to the applicant. The Director will deny an application if the Director determines that:*

(a) The project or applicant does not meet the eligibility requirements set forth in section 16 of this regulation;

(b) The project is not feasible;

(c) The applicant is unable to provide necessary collateral to secure the loan; or

(d) The applicant lacks the technical, managerial or financial capability to carry out the project and repay the loan.

2. If the Director denies an application, the Director will provide written notice to the applicant of the denial of the application and the reason for the denial.

Sec. 19. 1. *The Director will evaluate and rank each eligible applicant within each category established by the Director, based on the following criteria:*

(a) Job creation as a result of the project, if the project is to be financed with money awarded pursuant to the American Reinvestment and Recovery Act;

- (b) Renewable energy generation relative to the cost of the project;*
- (c) Reduction of the use of fossil fuels and the emission of greenhouse gases;*
- (d) Leveraging of additional financial resources; and*
- (e) Readiness of the project to proceed and be constructed within prescribed timeframes.*

2. The Director will present the ranking of eligible projects to the Interim Finance Committee for approval. Upon approval by the Interim Finance Committee, the Director will make the ranking of eligible projects available to the public and will post the ranking on the Internet website of the Office of Energy at <http://energy.state.nv.us>.

Sec. 20. *1. The Director will offer loan agreements to the applicants with the highest ranked projects within each category until money available from the Fund is fully committed. If the rankings of projects within a category are tied, money will be allocated in the order that the applications were received.*

2. Each loan agreement must be:

- (a) On a form provided by the Director; and*
- (b) Executed by all parties before the commencement of construction of the project.*

3. The term of a loan agreement will be determined by the Director but will not exceed 15 years.

4. The interest rate for all loan projects will be set by the Director, but will not exceed 3 percent. The Director may offer a lower interest rate to a public entity if the project is located in a disadvantaged community.

Sec. 21. *Each recipient of a loan from the Fund shall:*

1. Establish an official file for the project. The file must contain an adequate record of all significant actions relating to the project.

2. *Establish accounts that accurately and adequately show all amounts of money:*
 - (a) *Received as financial assistance from the Fund;*
 - (b) *Received and spent on the project; and*
 - (c) *Received as income from the project.*
3. *Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately.*
4. *Establish and maintain such other accounts and records as are required by the Director to comply with requirements for reporting established by the Federal Government.*
5. *Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the Director.*
6. *Make any records relating to the project available at any reasonable time for inspection or copying by any authorized representative of the Director.*

Sec. 22. *1. If an audit is required by federal law or by an agency of the Federal Government, or if the Director determines that an audit is necessary to ensure the integrity of the Fund, the Director may require that an audit be performed of financial records relating to a project.*

2. Any audit required pursuant to this section must be performed at the expense of the recipient by a certified public accountant who is independent of the recipient.

3. A report of the audit must be prepared by the auditor in the form prescribed by the Director.

**NOTICE OF ADOPTION OF REGULATION
LCB File No. R_161-09**

The Nevada State Office of Energy adopted regulations assigned LCB File No. R161-09_V3 which pertain to chapter 701 of the Nevada Administrative Code on May 24, 2010. A Copy of the regulations as adopted is attached hereto.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notice of workshop and notice of intent to act upon the regulation were made available at the Nevada State Office of Energy and sent by U.S. mail to all county libraries in Nevada.

A workshop was held on April 26, 2010, and the minutes of that meeting, attached hereto, contain a summary of the substance of the workshop. On April 22, 2010 the Nevada State Office of Energy issued a Notice of Intent to Act Upon a Regulation, which incorporated the comments received via email to delete restrictive language in Section 16(1)(b). There were no comments from interested parties at either the public workshop or the public hearing and no opposition to the adoption of the regulations.

- 2. The number of persons who:**

- (a) **Attended the hearing:** May 24, 2010: 5
- (b) **Testified at the hearing:** May 24, 2010: 0
- (c) **Submitted written comments:** 2

- 3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from the affected businesses in the same manner as they were solicited from the public. There were no responses from businesses.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Not applicable: Minor changes were made to the proposed regulation.

- 5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) **Both adverse and beneficial effects;**

The proposed regulation will result in a work increase within the Nevada State Office of Energy. The provisions of the regulations set up a process for how the Office of Energy will solicit, review, evaluate, rank, and deny applications for revolving loan funds. The regulations also create procedures for offering loan agreements, maintaining records, and conducting audits.

(b) Both immediate and long-term effects.

The adoption of the regulations will benefit the public and the construction industry generally in the near and long-term by increasing availability of low interest funding for the construction of renewable energy projects that will offset the applicant's electric usage and dependence on fossil fuels.

6. The estimated cost to the agency for enforcement of the adopted regulation:

The proposed regulations present no significant foreseeable or anticipated cost or decrease in costs for implementation. As long as the legislature allocates a portion of the interest from the revolving loan funds to pay for the program and administrative costs associated with implementation and enforcement per the terms of the ARRA there will be no burden to the State's general fund for implementation.

7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed permanent regulations do not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

N/A

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or

expansion of a small business. In making this determination the Director considered the fact that the regulation only applies to the activity of the Nevada State Office of Energy and imposes no direct requirements on any private businesses other than those who may be the direct recipient of money from the Fund.

WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATIONS
PURSUANT TO AB 522
MINUTES

Monday, April 26, 2010, 1:30 PM
Capitol Annex

Those attending the Workshop included:

Robert Nellis, NSOE
J. J. Johnson, Electra Therm, Inc.
Jeneane Harter, HiTech Communications
Kristen Geddes, Attorney General

Sean Sever, NSOE
Lorayn Walser, NSOE
Fred England, Oski Energy
Rick Lamb, Sweptwind

Robert Nellis, Energy Program Manager for the Nevada State Office of Energy, opened the meeting by stating the purpose of the Workshop, which was to solicit comments on the adoption of regulations to implement the provisions of section 1.1-1.8 of Assembly Bill 522. Copies of the proposed text were available for review.

Mr. Nellis then called for public input. There being none, he briefly reviewed the proposed adoption of regulations, as follows:

- a) Sections 1-15. Definitions and Authorizations.
- b) Section 16 (1): The adoption of procedures for the receipt, review and determination of eligibility and action upon applications for loan funds for renewable energy systems pursuant to section 1.75 of AB522.
- c) Section 16 (2)-(3): Adoption of procedures for determining eligibility of persons, projects and activities eligible for financing from the Fund.
- d) Section 17: Adoption of procedure by which the Director will solicit applications for the financing of renewable energy projects.
- e) Section 18: Adoption of procedure by which the Director will review applications for completeness and may deny incomplete applications.
- f) Section 19: Adoption of procedure by which the Director will evaluate and rank eligible applications.
- g) Section 20: Adoption of procedure by which the Director will offer loan contracts and related terms to the highest ranked applicants.
- h) Section 21: Procedures for loan recipients to maintain accounts and records or loan funds received.
- i) Section 22: Procedures for conducting an audit on loan recipients.

There being no further comments or questions, on a motion and second, the meeting was adjourned at 1:45 pm.

Respectfully submitted,

Valerie D. Osgood
Recording Secretary.