

**PROPOSED REGULATION OF THE DIRECTOR OF
THE OFFICE OF ENERGY**

LCB File No. R161-09

November 17, 2009

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, except that an applicant proposing to install a net metering system must have been selected as a participant in the Solar Energy Systems Incentive Program, Wind Energy Systems Demonstration Program or Waterpower Energy Systems Demonstration Program established pursuant to chapter 701B of NRS.

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 contracts 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 contract 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 contract 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.