

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

LCB File No. R157-20

February 7, 2022

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

AUTHORITY: § 1, NRS 701.575 and 701.595; §§ 2, 4-6 and 8, NRS 701.595; §§ 3 and 7, NRS 701.590 and 701.595.

A REGULATION relating to energy; revising certain definitions; revising the purposes for which money in the Account for Renewable Energy, Energy Efficiency and Energy Conservation may be used; revising provisions relating to which persons may be eligible to apply for funding from the Account; revising the application requirements for funding from the Account; revising provisions related to the review, evaluation and prioritization of such applications; repealing certain provisions related to loans from the Account; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law creates the Account for Renewable Energy, Energy Efficiency and Energy Conservation in the State General Fund. (NRS 701.575) **Section 1** of this regulation revises the definition of “Account” to be consistent with the name of the Account used in the Nevada Revised Statutes.

Existing law provides, with certain exceptions, that money in the Account may be used only: (1) to make certain loans for the construction or expansion of a renewable energy system, the construction of an energy conservation or energy efficiency project or the manufacturing of components of a renewable energy system; or (2) for any other purpose for which the United States Department of Energy has approved the use of money received pursuant to the American Recovery and Reinvestment Act of 2009 and deposited in the Account. (NRS 701.590, Pub. L. No. 111-5) Existing regulations provide that the purpose of the Account is to provide certain financing to qualified applicants for certain projects. (NAC 701.660) **Section 3** of this regulation provides that, consistent with NRS 701.590, the money in the Account may also be used for any other purpose for which the United States Department of Energy has approved the use of money received pursuant to the American Recovery and Reinvestment Act of 2009.

Existing regulations: (1) authorize the owner or operator of a project to apply for a loan from the Account; (2) require the owner or operator to submit a complete application for financing to the Director of the Department of Energy; (3) require the Director to determine whether the applicant is qualified to receive financing from the Account; and (4) provide that certain activities are not eligible for financing from the account. (NAC 701.670) **Section 4** of this regulation provides instead that: (1) a person may apply for funding from the Account; (2) the

person must submit a complete application for funding to the Director; (3) the Director must determine whether the applicant is qualified to receive funding from the Account; and (4) certain activities are not eligible for funding from the Account. **Section 2** of this regulation clarifies the definition of the term “person.”

Existing regulations require: (1) the Director to solicit applications for the financing of projects on the Internet website of the Office of Energy; and (2) each application for financing to include certain information. (NAC 701.675) **Section 5** of this regulation requires the Director to solicit applications for the funding of projects and updates the Internet address for the Office. **Section 5** also eliminates the requirement that an application include: (1) an estimate of the time required to recover the project cost; (2) a preliminary project schedule; (3) information sufficient to demonstrate the means by which a loan from the Account will be repaid; (4) security, collateral or information concerning any co-applicant or guarantor for the loan; and (5) a copy of the articles of incorporation or organizational documents of the applicant, a certificate of good standing provided by the Secretary of State, a copy of the contractor’s license of any contractor who will work on the project and proof of general liability, workers’ compensation and course of construction insurance maintained by the applicant.

Existing regulations require the Director to deny an application for a project under certain circumstances. (NAC 701.680) **Section 6** of this regulation eliminates the requirement that the Director deny an application if the Director determines that the applicant is unable to provide necessary collateral to secure the loan or lacks the capability to repay the loan.

Existing regulations require the Director to evaluate and prioritize applications submitted by qualified applicants based on certain criteria, including: (1) job creation; (2) the leveraging of additional financial resources, the availability of full financing, the proposed repayment schedule and the reliability of sources of repayment of the loan; and (3) loan amount and availability of money from the Account to meet the needs of the qualified applicant. (NAC 701.685) **Section 7** of this regulation eliminates such criteria and establishes as additional criteria the viability of and need for a qualified applicant’s project.

Existing regulations provide that the Director may offer loans until money from the Account is fully committed, and that each loan must meet certain documentation requirements, may not have a term longer than 15 years and must not have an interest rate that exceeds 3 percent. (NAC 701.690) Existing regulations also require applicants who receive a loan to establish, maintain and make available certain records and accounts related to the loan. (NAC 701.695) **Section 8** of this regulation eliminates those requirements.

Section 1. NAC 701.605 is hereby amended to read as follows:

701.605 “Account” means the Account for Renewable Energy, Energy Efficiency and Energy Conservation ~~Loans~~ created by NRS 701.575.

Sec. 2. NAC 701.635 is hereby amended to read as follows:

701.635 “Person” ~~includes~~ *means a natural person*, a public entity ~~H~~, *any form of business or social organization and any other nongovernmental legal entity including, without limitation, a corporation, partnership, association, trust or unincorporated organization.*

Sec. 3. NAC 701.660 is hereby amended to read as follows:

701.660 ~~The purpose of~~ *Money in* the Account is to *be used only*:

1. To provide below-market-rate financing, at an interest rate not to exceed 3 percent, to qualified applicants for projects which comply with the requirements of the American Recovery and Reinvestment Act and which meet the qualifications set forth in NRS 701.545 to 701.595, inclusive, and NAC 701.600 to 701.700, inclusive ~~H~~; *or*

2. For any other purpose for which the United States Department of Energy has approved the use of money received pursuant to the American Recovery and Reinvestment Act and deposited in the Account.

Sec. 4. NAC 701.670 is hereby amended to read as follows:

701.670 1. Except as otherwise provided in this section, ~~the owner or operator of a project~~ *a person* may apply for ~~a loan~~ *funding* from the Account.

2. To be eligible for ~~financing~~ *funding* from the Account, the ~~owner or operator of a project~~ *person* must submit a complete application to the Director and the Director must determine that the applicant is qualified to receive ~~financing~~ *funding* from the Account.

3. The following activities are not eligible for ~~financing~~ *funding* from the Account:

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

Sec. 5. NAC 701.675 is hereby amended to read as follows:

701.675 1. The Director will solicit applications for the ~~{financing}~~ *funding* of 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.}~~ <http://energy.nv.gov>. The solicitations may specify the amount of ~~{financing}~~ *funding* available, the allocation of ~~{financing}~~ *funding* to categories of applicants, such as natural persons, schools, public entities and small businesses, and the minimum and maximum amounts of individual ~~{loans}~~ *funding* within each category.

2. Each application for ~~{financing}~~ *funding* through the Account 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.

(c) ~~{An estimate of the time required to recover the project cost.}~~

~~{(d)}~~ An estimate of the amount of reduction in emission of greenhouse gases as a result of the project.

~~{(e)}~~ (d) An estimate of the number of jobs that will be created or retained as a result of the project.

~~{(f)}~~ (e) 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)}~~ (f) A complete and legible legal description of the location of the project, including the assessor's parcel number.

~~(h)~~ (g) 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.

~~(h)~~ (h) A description of how the project complies with all applicable planning and zoning requirements.

~~(h)~~ (i) An itemized estimate of the total cost of the project and the amount of ~~financing~~ *funding* requested. If an estimate of the total cost of the project has been prepared by a professional, the application must include a copy of that estimate.

~~(k)~~ (j) A statement of any other anticipated sources of funding for the project from this State, another state, a federal agency, the qualified applicant's capital or any other source.

~~(h)~~ (k) 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 provides a timetable for:~~

~~— (1) The advertising and opening of bids for the project;~~

~~— (2) Each construction phase of the project, from planning and permitting to completion and commencement of operation of the project; and~~

~~— (3) The estimated schedule of progress payments to the contractor and other costs related to the disbursement of money.~~

~~— (n) Information sufficient to demonstrate the means by which any loan made by the Director from the Account 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 for each applicant and co-applicant or guarantor, if any;~~

~~— (2) A reference from a bank, at least three direct credit references and authorization for the Director to access and use personal and commercial credit reports in the loan decision process;~~

~~— (3) Any necessary legal documents; and~~

~~— (4) Any other information required by the Director to demonstrate the means by which the applicant intends to repay the loan.~~

~~(o)~~ **(l)** Institutional, management and contractual arrangements required for successful implementation of the project.

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

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

~~(r) Security, collateral or information concerning any co-applicant or guarantor for the loan, as required by the Director.~~

~~— (s) A copy of the articles of incorporation or organizational documents of the applicant, a certificate of good standing provided by the Secretary of State, a copy of the contractor's license of any contractor who will perform any work on the project and proof of general liability, workers' compensation and course of construction insurance maintained by the applicant.~~

~~(t)~~ **(o)** Any other information the Director determines is necessary.

Sec. 6. NAC 701.680 is hereby amended to read as follows:

701.680 1. The Director will review each application submitted pursuant to NAC 701.675 for completeness. An application that is incomplete will be returned to the applicant and may be resubmitted. 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 NAC 701.670;

(b) The project is not feasible;

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

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

~~(e)~~ (d) The applicant is unable or unwilling to comply with the requirements, terms or conditions of the ~~loan~~ *funding* or the ~~loan~~ approval process.

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. 7. NAC 701.685 is hereby amended to read as follows:

701.685 1. The Director will evaluate and prioritize the applications submitted by qualified applicants based on the following criteria:

(a) ~~Job creation as a result~~ *Viability* of the qualified applicant's project ; ~~relative to the cost of the project;~~

(b) *The need for a qualified applicant's project, as established by the qualified applicant or the State, in order to further the State's energy conservation goals and promote the continued development of renewable energy in the State;*

(c) Renewable energy generation, energy saved, efficiency increased or renewable energy system components manufactured relative to the cost of the qualified applicant's project;

~~[(e)]~~ (d) Reduction of the use of fossil fuels and the emission of greenhouse gases relative to the cost of the qualified applicant's project;

~~[(d) Leveraging of additional financial resources, the availability of full financing, the proposed repayment schedule and the reliability of sources of repayment of the loan;] and~~

(e) Readiness of the qualified applicant's project to proceed, the quality of the management of the project and the expected duration of the project . ~~[(e)] and~~

~~—(f) Loan amount and availability of money from the Account to meet the needs of the qualified applicant.]~~

2. The Director will give preference to larger energy conservation projects, larger energy efficiency projects and larger renewable energy systems.

3. The Director will request approval from the Interim Finance Committee to make ~~[(loans)]~~ *grants* of money from the Account. Upon approval by the Interim Finance Committee, the Director will post a list of the qualified applicants on the Internet website of the Office of Energy at ~~[(http://energy.state.nv.us.)] <http://energy.nv.gov>.~~

Sec. 8. NAC 701.690 and 701.695 are hereby repealed.

TEXT OF REPEALED SECTIONS

701.690 Loans: Offers; requirements for loan documents; terms; interest rate. (NRS 701.595)

1. The Director may offer loans according to the priority established by the Director until money available from the Account is fully committed. Each loan offer will have an expiration date determined by the Director. If a qualified applicant who receives a loan offer does not execute the loan documents to the satisfaction of the Director before the expiration date of the loan offer, the qualified applicant may lose his or her opportunity to receive a loan from the Account.

2. Loans will be documented according to the unique characteristics of each loan. The loan documents for each loan must be:

- (a) Prepared by the Director;
- (b) Approved by the Attorney General; and
- (c) Executed by all parties in a form and manner acceptable to the Director before the

Director will make a loan from the Account.

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

4. The interest rate for all loans will be set by the Director, but will not exceed 3 percent.

The Director may offer a lower interest rate to a qualified applicant who is a public entity if the project is located in a disadvantaged community.

701.695 Recordkeeping and accounting requirements for qualified applicants who receive loans. (NRS 701.595)

Each qualified applicant who receives a loan from the Account shall:

1. Establish a dedicated 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 Account;
 - (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 and required for compliance with the 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.

