

**A BILL**

To establish the [Clean Energy Financing Institution] as a community development financing institution in [State].

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*Be it enacted by the [Legislature] of [State] assembled,*

**SECTION \_\_\_\_. CLEAN ENERGY FINANCING INSTITUTION**

**SECTION. 101. DEFINITIONS**

In this section—

**(A) Board.** The term ‘Board’ means the board of directors of the [Clean Energy Financing Institution] established under [Section 102(A)].

**(B) Clean Energy Project.** The term ‘clean energy project’ means any electricity generation, transmission, storage, heating, cooling, industrial process, reduction of oil use in transportation, or manufacturing project, or related technical assessments or energy audits, that will—

(1) reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting, distributing, or transporting energy with greater effectiveness through the infrastructure of the United States;

(2) diversify the sources of energy supply of the United States to strengthen energy security and to increase supplies with a favorable balance of environmental effects; or

(3) contribute to a stabilization of atmospheric greenhouse gas concentrations through reduction, avoidance, or sequestration of energy-related emissions of greenhouse gases.

**(C) Corporation.** The term ‘Corporation’ means the [Clean Energy Financing Institution] established under [Section 102(A)].

**(D) Qualifying Clean Energy Project.** The term ‘qualifying clean energy project’ means a clean energy project that—

(1) employs commercially ready technologies and can be deployed within [X] years of the commencement of operation of the Corporation;

(2) is commercially ready and can be carried out within the territorial borders of [State];

(3) stays current on interest and debt payment obligations; and

(4) satisfies any other conditions established by the Corporation.

## **SECTION 102. ORGANIZATION.**

**(A) Establishment.** There is established a Corporation to be known as the [Clean Energy Financing Institution] that shall be a non-profit corporation organized under Title [ ] of the U.S. Internal Revenue Code and the laws of the State of [ ].

**(B) Independent Corporation.** The Corporation shall not be a department, institution, agency or instrumentality of the State of [ ]. The Corporation shall be an independent corporation. Neither the Corporation nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation.

### **(C) Nonprofit and Nonpolitical Nature of the Corporation.**

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(3) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

**(D) Charter.** The Corporation shall be chartered from the date of enactment of this [subsection].

## **SECTION 103. PURPOSES**

The purposes of the Corporation are—

(A) To lessen the burdens of State government in the financing of qualified renewable energy, transmission, energy efficiency, distributed generation, and oil saving projects, technologies, clean energy manufacturing, and job training for energy efficiency projects, and for other related purposes.

(B) To evaluate and coordinate financing for qualified clean energy projects.

(C) To provide loans, loan guarantees, debt securitization, insurance, portfolio insurance, and other forms of financing support or risk management to qualified clean energy projects.

(D) To facilitate—

- (1) Efficient tax equity markets for qualified clean energy projects; and
- (2) The financing of long-term clean energy purchasing by governmental and non-governmental not-for-profit entities.

(E) To foster—

- (1) The development and consistent application of transparent underwriting standards, standard contractual terms, and measurement and verification protocols for qualified clean energy projects;
- (2) The creation of performance data that enables effective underwriting, risk management, and pro-forma modeling of financial performance of qualified clean energy projects to support primary financing markets and stimulate development of secondary investment markets for clean energy projects; and
- (3) The level of financing support for qualified clean energy projects necessary to advance vital national and state objectives, including—
  - (a) Achieving energy independence from foreign energy sources;
  - (b) Abating climate change by increasing zero or low carbon electricity generation and transportation capabilities;
  - (c) Realizing energy efficiency potential in existing infrastructure;
  - (d) Easing the economic effects of transitioning from a carbon based economy to a clean energy economy;
  - (e) Achieving job creation through the construction and operation of qualified clean energy projects;
  - (f) Fostering long-term domestic manufacturing capacity in the clean energy industries; and
  - (g) Complementing and supplementing other clean energy and energy efficiency legislation at the Federal or State level.

(F) [To serve as a ‘State Clean Energy Financing Institution’ within the meaning of Section [X] of Title [Y], Subtitle [Z] of the United States Code (“Energy Independence Trust”) to lessen the burdens of the federal and State government in the financing of qualified renewable energy, transmission, energy efficiency, distributed generation, and oil saving projects, technologies, clean energy manufacturing, and job training for energy efficiency projects, and for other related purposes.]

## **SECTION. 104. BOARD OF DIRECTORS AND COMMITTEES**

### **(A) Board of Directors.**

**(1) In general.** The board of directors is the governing body of the Corporation with all powers of governing and directing, and of overseeing the management of the business and affairs of, the Corporation.

**(2) Initial Board.** The initial Board shall include a Chief Executive Officer, selected by the Governor of [State] and 6 additional members who shall be appointed by the Governor. The term of the initial Chief Executive Officer shall be 7 years.

**(3) Number.** The Board may change, from time to time, the number of members constituting the entire Board.

**(4) Appointment.** With the exception of the Chief Executive Officer, the members of the Board shall be appointed or elected in the manner set forth in the Bylaws.

**(5) Terms of Office.** The term of office of each member of the Board, other than the Chief Executive Officer, shall be 3 years, except that any member of the Board elected by the Board to fill a vacancy in a Board position arising before the expiration of its term may, as determined by the Board, serve for the remainder of that term or until the next annual meeting of the Corporation.

**(6) Reappointment.** Members of the Board may be reappointed for 2 additional terms of service as members of the Board.

**(7) Continuation of Service.** Any member of the Board whose term has expired may continue to serve on the Board until the earlier of—

(a) The date on which such member’s successor is appointed; or

(b) The end of the 6-month period beginning on the date such member’s term expires.

**(8) Chairman.** The Board shall select a Chairman from among its members in the manner prescribed by the bylaws of the Corporation.

**(9) Meetings.** The Board shall meet at least quarterly.

**(10) Compensation of Members.** A member of the Board shall be compensated at the prevailing rate for service on the Board of corporations of similar size.

**(11) Bylaws, Policies and Administrative Provisions.** The Board shall adopt such bylaws, policies and administrative provisions as are necessary to the functioning of the Corporation and consistent with the provisions of this subsection.

**(12) Quorum.** The presence of a majority of the Board shall constitute a Quorum.

**(13) Public Access.** The Board meetings shall be open to the public, except that if the agenda includes confidential matters, personnel matters or the receipt of legal advice, the portions of the meeting relating to such confidential matters may be closed to the public. The minutes of all public meetings of the Corporation shall be available to and readily accessible by the public.

**(B) Committees; Advisors.** The Board—

(1) May appoint, from its own members, an executive committee to exercise such powers of the Board when the Board is not in session as may be provided in the bylaws of the Corporation;

(2) May appoint such other committees or advisory councils or committees with such powers as may be provided in the bylaws of the Corporation or by resolution of the Board; and

(3) May retain advisors as it deems necessary and useful in the manner set forth in the bylaws of the Corporation or by resolution of the Board.

## **SECTION. 105. OFFICERS**

**(A) Chief Executive Officer.** The Chief Executive Officer shall be elected by the Governor of [State]. Following the appointment of the initial Chief Executive Officer, the term of the Chief Executive Officer shall be 6 years.

**(B) Other Officers.** The Corporation shall have such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No officer of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of pay for officers of non-profit organizations of similar size and stature. No individual other than a citizen of [State] may be an officer of the Corporation. All officers shall serve at the pleasure of the Board.

**(C) Limitation on Liability.** No director, officer, employee or agent of the Corporation, while acting within the scope of his or her authority, shall be subject to any personal liability resulting from exercising or carrying out any of the Corporation's purposes or powers.

**(D) Corporate Governance.** The Corporation and its Board shall develop and comply with policies and principles concerning the corporate governance of the Corporation, which shall include, but shall not be limited to (i) standing audit, nominating and compensation committees of the Board, (ii) auditor independence, (iii) financial controls and disclosure, (iv) a conflict of interest policy, and (v) a code of ethics for directors, officers and employees.

## **SECTION. 106. DEVELOPMENT OF STANDARDS**

**(A) Development of Standards.** Before making any loan, loan guarantee, debt securitization instrument, insurance, portfolio insurance, or such other form of financing support or risk management, the Corporation shall develop standards to govern the administration of the Corporation through rules, policies, and procedures that specify:

- (1) Eligibility of borrowers and the types of projects eligible for financing support;
- (2) Requirements concerning the technical and economic viability and revenue self-sufficiency of eligible projects;
- (3) Required collateral or other security;
- (4) Terms and conditions of financing support;
- (5) Criteria to establish financial feasibility and to measure the amount of state assistance necessary for particular projects; and
- (6) Other relevant criteria, standards, or procedures.

**(B) Public Input Process.** The Board shall develop a process for approving the standards specified in subsection (A) that includes public notice and an opportunity for interested stakeholders to submit comments on proposed standards.

**(C) Approval by Board.** Standards adopted under this subsection must be approved by majority vote of the Board of the Corporation.

## **SECTION. 107. FUNDING SOURCES**

**(A) Borrowing from the government.** The [State Department of Treasury] may make loans available to the Corporation subject to any applicable requirements.

**(B) Individuals, corporations, and foundations.** The Corporation may receive charitable gifts, grants, contributions as well as loans from individuals, corporations, and philanthropic foundations.

**(C) Credit Market Access.** The Corporation may raise capital through issuing its own bonds and/or notes, including tax-exempt bond offerings and small denomination “green bonds” that consumers could purchase on a retail basis. The Corporation may also borrow from commercial lenders.

**[(D) CDFI Fund and New Market Tax Credits.** In consultation with existing “Community Development Financial Institutions” as defined under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994, codified Title 12, Section 4702 of the United States Code (“CDFI”), local community development organizations, and appropriate community stakeholders, the Corporation may seek to qualify as a CDFI and to be eligible for funding from the CDFI Fund administered by the United States Department of Treasury. As a CDFI, the Corporation would be eligible to receive discount loans from banks seeking to meet their Community Reinvestment Act obligations. The Corporation would be treated as a qualified community development entity for purposes of Section 45D and Section 1400N(m) of the Internal Revenue Code.]

**(E) Loan Paybacks.** Once the Corporation is capitalized and begins its clean energy financing support activities, the Corporation may receive monies for its financing support, such as a return of and interest on its direct loans to cover administrative expenses and credit risk, and through partnering with other investors. For example, the Corporation may provide loans to leverage and otherwise catalyze equity investments in clean energy projects.

**(F) Carbon Emission Reduction Credits.** In the event that a market for carbon emission credits emerges, the Corporation may participate as a credit supplier using credits earned from its clean energy financing projects, consistent with any rules or laws governing offsets, renewable energy credits, or other tradeable instruments.

**(G) Any Special Purpose Funds that [State Legislature] May Decree.** At [State Legislature’s] direction the Corporation may receive additional appropriations or other funds to provide financing support for special clean energy, energy efficiency, oil saving, or carbon reduction projects.

**[(H) Utility Bill Surcharge.** Pursuant to [Authorizing Statute/Regulation], the [State Energy Agency] shall assess or cause to be assessed a charge of not less than [X] per kilowatt hour charged to each end use customer of electric services in this State, which shall be deposited into the Corporation.]

## **SECTION. 108. LENDING; FINANCING; EXPENDITURES**

**(A) In General.** The Corporation shall establish a program to provide on a competitive basis loans, loan guarantees, debt securitization, insurance, portfolio insurance, and other forms of financing support or risk management, as the Corporation determines appropriate, for any qualifying clean energy project.

**(B) Eligibility.** The Corporation shall allow the following individuals and entities to apply for financing support for qualifying clean energy projects:

- (1) An individual who is a resident of [State];
- (2) A [State] business;
- (3) A nonprofit organization or public cooperative;
- (4) A nonprofit corporation;
- (5) An agency, office, public corporation, or other government entity of [State];
- (6) An agency, office, public corporation, or other government entity of a local or municipal government of [State].

**(C) Financing Requirements.** The Corporation may only provide financing support (including loans, loan guarantees, debt securitization, insurance, portfolio insurance, and other forms of financing support or risk management) under paragraph (A) if—

- (1) Such support is commercially reasonable [and does not exceed [80] percent of the capitalization of the qualified clean energy project]; and
- (2) Is secured by the underlying project or such other collateral as the Chief Executive Officer of the Corporation determines appropriate.

**(D) Financing Activities.** The Corporation may facilitate financing transactions in tax equity markets and long-term purchasing of clean energy by governmental and non-governmental not-for-profit entities, to the degree and extent that the Corporation determines such financing activity is appropriate and consistent with carrying out the terms of this subsection.

**(E) Trusts.** The Corporation is authorized to create, accept, execute, and otherwise administer in all respects trusts, receiverships, conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings and activities, as appropriate for financing purposes. Instruments issued by the Corporation pursuant to this [subsection] are, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

**(F) Fees.** The Corporation shall assess reasonable fees on its activities, including loans, loan guarantees, insurance, portfolio insurance, and other forms of financing support or risk management it provides so as to cover its reasonable costs and expenses, as determined by the Board, provided the Corporation operates as a not-for-profit entity. To the extent a loan or loan guarantee is issued using funding from the United States Treasury, interest payments must be sufficient to pay any applicable credit subsidy costs to the United States under the Federal Credit Reform Act of 1990. The credit subsidy cost fee would be paid by the borrower and would be treated as a permitted project cost.

**(G) Spending Safeguards.** The Chief Executive Officer of the Corporation—

- (a) Shall require any entity receiving financing support (including a loan, loan guarantee, debt securitization, insurance, portfolio insurance, and other forms of financing support or risk management) pursuant to this [subsection] to report quarterly, in a format specified by the Chief Executive Officer, on such entity's use of such support and its progress fulfilling the objectives for which such support was granted, and the Chief Executive Officer shall make these reports available to the public;
- (b) May establish additional reporting and information requirements for any recipient of financing support made available pursuant to this [subsection];
- (c) Shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any financing support made available pursuant to this [subsection];
- (d) May, in addition to and consistent with any other authority under applicable law, deobligate financing support made available pursuant to this subsection to entities that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Chief Executive Officer, and award these funds competitively to new or existing applicants consistent with this [subsection];
- (e) Shall create and maintain a fully searchable database, accessible on the Internet (or successor protocol) at no cost to the public, that contains at least—
  - (i) a list of each entity that has applied for a loan, loan guarantee, insurance, portfolio insurance, or other forms of financing support or risk management under this [subsection];
  - (ii) a description of each application;
  - (iii) the status of each such application;
  - (iv) the name of each entity receiving funds made available pursuant to this [subsection];

(v) the purpose for which such entity is receiving such funds;

(vi) each quarterly report submitted by the entity pursuant to this [subsection]; and

(vii) such other information sufficient to allow the public to understand and monitor loans, loan guarantees, insurance, portfolio insurance, and other forms of financing support or risk management provided under this [subsection];

(f) To the extent practicable, data maintained under clause (e) shall be used to inform private capital markets, including the development of underwriting standards for the financing of clean energy projects and energy efficiency projects;

(g) Shall make all financing transactions available for public inspection, including formal annual reviews by both a private auditor and the [State Auditing Official/Comptroller General]; and

(h) Shall at all times be available to receive public comment in writing on the activities of the Corporation.

**(H) Protection of Confidential Business Information.** To the extent necessary and appropriate, the Chief Executive Officer may redact any information regarding applicants and borrowers to protect confidential business information.

#### **SECTION. 109. Hiring and Contracting Authority**

(A) Notwithstanding any otherwise applicable rules and regulations of the [State] government, the Corporation may employ and otherwise contract with employees and provide compensation to such employees at prevailing rates for compensation for similar positions in private industry.

(B) Employees of the Corporation shall not be deemed employees of the State government, for any purpose.

(C) The Corporation may employ or otherwise contract with banks, credit agencies, attorneys, and other third parties at customary commercial rates.

#### **SECTION. 110. Conflicts of Interest**

No Board member, officer, attorney, agent, or employee of the Corporation shall in any manner, directly or indirectly, participate in the deliberation upon, or the determination of, any question affecting such individual's personal interests, or the interests of any

Corporation, partnership, or association in which such individual is directly or indirectly personally interested.

**SECTION. 111. Reports and Audits.**

**(A) Annual Report.** Each year the Corporation shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Corporation during the previous year.

**(B) Annual Audit of Accounts.** The accounts of the Corporation shall be audited annually. Such audits shall be conducted with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

**(C) Annual Financial Audit.** The Corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.