

A BILL

To establish the Clean Energy Revolving Loan Fund in [State].

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

SECTION ____. CLEAN ENERGY REVOLVING LOAN FUND

SECTION. 101. DEFINITIONS

In this section—

(A) 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.

(B) Fund. The term ‘Fund’ means the [Clean Energy Revolving Loan Fund] established under [Section 102].

(C) Manager. The term ‘Manager’ means the [Head of the State Energy Agency] charged with administering the Fund.

(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 Fund;
- (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 Manager.

SECTION 102. ORGANIZATION.

The Fund is established in the State Treasury, separate and distinct from the State's [General Fund], to be administered by the [Head of State Energy Agency]. Interest and proceeds from financing activities earned by the Fund shall be credited to the Fund. The Fund is nonlapsing.

SECTION 103. PURPOSES

The purposes of the Fund are—

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

(E) [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”) as a qualifying state entity or program with a similar purpose and function as the [EIT]].

SECTION. 104. ADVISORY COMMITTEE AND MANAGER

(A) Manager. The [Head of State Energy Agency] shall serve as the Manager of the Fund.

(B) Advisory Committee. The [Head of State Energy Agency] shall appoint an Advisory Committee to review and make recommendations regarding proposed rules and regulations to govern the Fund and applications submitted for financing support through the Fund.

(C) Appointment of Advisory Committee. Nine members shall be appointed to the Advisory Committee. Each member shall be appointed to serve a four-year term, commencing on the date of appointment, and until a successor is appointed and qualified. The members shall represent the interest of the citizens of this State and shall be knowledgeable in the areas of clean energy technology, natural resource development, environmental protection, finance, agriculture, local government operations and utility operations.

(D) Meetings. The Advisory Committee shall meet at least monthly.

(E) Quorum. The presence of a majority of the Advisory Committee shall constitute a Quorum.

(F) Public Access. The Advisory Committee 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 Advisory Committee shall be available to and readily accessible by the public.

(G) Presiding Officer. The Advisory Committee shall elect its own presiding officer, adopt rules for its procedure and meet on call of the presiding officer or a majority of the members. A majority of the members shall constitute a quorum to do business. The director shall provide administrative facilities and services for the committee.

(H) Financing Support Approval. After consideration of the recommendation of the Advisory Committee, the Manager may approve or reject the financing of a qualifying clean energy project described in an application. Approval of a loan, loan guarantee, debt securitization instrument, insurance, portfolio insurance, or such other approved form of financing support or risk management by the Manager shall include a certification of the amount of financing support. The Manager's approval of financing support shall be based on a finding that:

- (1) The proposed qualifying clean energy project is eligible to receive financing support under this [section] and the rules and regulations established for administration of the Fund;
- (2) The proposed qualifying clean energy project will advance the national and state objectives stated in [subsection], above;
- (3) The proposed qualifying clean energy project is technically and economically feasible and a reasonable risk;
- (4) The plan for development of the project is satisfactory;
- (5) The applicant is qualified, creditworthy and responsible and is willing and able to enter into a contract with the Manager for development and repayment as provided under the rules of the Fund;
- (6) There is a need for the proposed qualifying clean energy project and the applicant's financial resources are adequate to provide the working capital to maintain the project after completion; and
- (7) Moneys in the Fund are or will be available to provide the financing support proposed for the qualifying clean energy project.

SECTION. 105. DEVELOPMENT OF STANDARDS

(A) Promulgation of Regulations. Before making any loan, loan guarantee, debt securitization instrument, insurance, portfolio insurance, or such other form of financing support or risk management, the Manager shall, by rule or regulation, 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) Approval by Advisory Committee. Regulations promulgated under this subsection must be approved by majority vote of the Advisory Committee of the Fund.

SECTION. 106. FUNDING SOURCES

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

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

(C) Credit Market Access. The Fund 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 Fund may also borrow from commercial lenders.

(D) Loan Paybacks. Once the Fund is capitalized and begins its clean energy financing support activities, the Fund 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 Fund may provide loans to leverage and otherwise catalyze equity investments in clean energy projects.

(E) Carbon Emission Reduction Credits. In the event that a market for carbon emission credits emerges, the Fund 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.

(F) 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.

[(G) 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 Fund.]

SECTION. 107. LENDING; FINANCING; EXPENDITURES

(A) In General. The Fund 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 Fund determines appropriate, for any qualifying clean energy project.

(B) Eligibility. The Fund 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 Fund 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 Manager of the Fund determines appropriate.

(D) Financing Activities. The Fund 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 Fund determines such financing activity is appropriate and consistent with carrying out the terms of this subsection.

(E) Trusts. The Fund 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 Fund 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 Fund 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 Advisory Committee. 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 Manager of the Fund—

- (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 Manager, on such entity's use of such support and its progress fulfilling the objectives for which such support was granted, and the Manager 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 Manager, 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 Fund.

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

SECTION. 108. Hiring and Contracting Authority

(A) Notwithstanding any otherwise applicable rules and regulations of the [State] government, the Fund may employ and otherwise contract with employees and provide compensation to such employees to the extent deemed necessary by the Manager, in consultation with the Advisory Committee.

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

SECTION. 109. Conflicts of Interest

No Advisory Committee member, officer, attorney, agent, or employee of the Fund 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 Fund, partnership, or association in which such individual is directly or indirectly personally interested.

SECTION. 110. Reports and Audits.

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

(B) Annual Audit of Accounts. The accounts of the Fund 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 Fund 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 Fund.