

PROPOSED REGULATION OF THE DIRECTOR OF THE OFFICE OF ENERGY

LCB File No. R063-11

OFFICE OF THE GOVERNOR, NEVADA STATE OFFICE OF ENERGY

Proposed Amendments to NAC 701.600 to 701.700

September 21, 2011

EXPLANATION – Matter in *blue bold italics* is new; matter in ~~strikethrough bold red~~ is material to be omitted.

NAC 701.600 Definitions. (NRS 701.595) As used in NAC 701.600 to 701.700, inclusive, the words and terms defined in NAC 701.605 to 701.655, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.605 “~~Account~~ Fund” defined. (NRS 701.595) “~~Account~~ Fund” means the ~~Account~~ Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans created by NRS 701.575.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.610 “American Recovery and Reinvestment Act” defined. (NRS 701.595) “American Recovery and Reinvestment Act” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.615 “Construction” defined. (NRS 701.595) “Construction” has the meaning ascribed to it in NRS 701.555.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.620 “Director” defined. (NRS 701.595) “Director” means the Director of the Office of Energy.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.625 “Disadvantaged community” defined. (NRS 701.595) “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.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.630 “Net metering system” defined. (NRS 701.595) “Net metering system” has the meaning ascribed to it in NRS 704.771.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.635 “Person” defined. (NRS 701.595) “Person” includes a public entity.
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.640 “Qualified Project” defined. (NRS 701.595) “*Qualified Project*” means the ~~[planning, design and construction of a renewable energy system.]~~,
(a) *construction or expansion of a renewable energy system,*
(b) *construction or operation of an energy conservation project,*
(c) *construction or operation of an energy efficiency project, or*
(d) *Manufacturing of components of a renewable energy system.*
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.645 “Public entity” defined. (NRS 701.595) “Public entity” means a department, agency or instrumentality of the State or any of its political subdivisions.
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.650 “Renewable energy” defined. (NRS 701.595) “Renewable energy” has the meaning ascribed to it in NRS 704.7811.
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.XXX “Energy conservation project” defined. “Energy conservation project” has the meaning ascribed to it in section 2 of Senate Bill No. 60 , Statutes of Nevada 2011.

NAC 701.XXX “Energy efficiency project” defined. “Energy efficiency project” has the meaning ascribed to it in section 3 of Senate Bill No. 60, Statutes of Nevada 2011.

NAC 701.655 “Renewable energy system” defined. (NRS 701.595) “Renewable energy system” has the meaning ascribed to it in NRS 701.570.
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.660 Purpose of ~~[Account] Fund.~~ (NRS 701.595) ~~[In accordance with the provisions of the American Recovery and Reinvestment Act, the]~~ *The* purpose of the ~~Account Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans~~ is to provide below-market-rate financing, at an interest rate not to exceed 3 percent, for *qualified* projects that *comply with the provisions of the American Recovery and Reinvestment Act.*
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.665 Contracts for certain expert services. (NRS 701.595) 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 NAC 701.600 to 701.700, inclusive.
(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.670 Eligibility for loans ~~[and financing]~~ from ~~[Account] the Fund.~~ (NRS 701.595)
1. Except as otherwise provided in this section, the ~~[following persons]~~ *owner or operator of a qualified project* may apply for loans from the ~~[Account] 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 ~~[Account]~~ *Fund*, the owner or operator of a *qualified* project must: **submit a complete loan application to the Director.**
 - ~~[(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 ~~[Account]~~ *Fund*:
 - (a) Research or general planning;
 - (b) Refinancing of existing debt;
 - (c) Purchase of land or water rights; or
 - (d) Operation (*except as allowed under energy conservation and energy efficiency*) and maintenance.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.675 Applications for financing of ~~[renewable energy]~~ *qualified* projects. (NRS 701.595)

1. The Director will solicit applications for the financing of ~~[renewable energy]~~ *qualified* 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]~~ *may* 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]~~ *and* the minimum and maximum amounts of individual loans within each category.
2. Each application for financing through the ~~[Account]~~ *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]~~ *qualified* 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 *qualified* 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]~~ *as a result of the qualified project.*
 - (e) An estimate of the number of jobs that will be created or retained as a result of the *qualified* project.
 - (f) Maps of appropriate scale to show clearly the location of the ~~[proposed]~~ *qualified* project with respect to other identifiable topographical or geographical features in the area of the *qualified* project.
 - (g) A complete and legible legal description of the location of the *qualified* project *including assessor's parcel number.*
 - (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]~~ *qualified* project.
 - (i) A description of how the *qualified* project complies with all applicable planning and zoning requirements.

- (j) An itemized estimate of the total cost of the *qualified* project and the amount of financing requested. If an estimate of the total cost of the *qualified* 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 *qualified* project from this State, another state, a federal agency or any other ~~[entity]~~ *source including borrower's capital*.
- (l) If the applicant is a public entity, the median household income for the community or area that will be served by the *qualified* project or for the city or county in which the *qualified* project is located, including, without limitation, the source of that information.
- (m) A preliminary *qualified* project schedule that ~~[, as applicable,]~~ provides a timetable for the:
 - (1) Advertising and opening of bids for the *qualified* project;
 - (2) ~~[Start of the construction phase]~~ *All construction phases from planning and permitting to completion and commencement of operation* of the *qualified* project;
 - (3) Estimated schedule of progress payments to the contractor and other costs related to the ~~[drawdown]~~ *disbursement* 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 ~~[Account]~~ *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 *for all applicants, co-applicants and guarantors (if any)*;
 - (2) ~~[At least three credit references]~~ *A bank reference, three or more direct credit references and authorization for the lender to access and use personal and commercial credit reports in the loan decision process*; and
 - (3) *Legal documents appropriate to the borrower and acceptable to the Director.*~~[(3)4]~~ Any other information required by the Director to demonstrate the means by which the applicant intends to repay the loan.
- (o) Institutional, ~~[and]~~ management, *and/or contractual* arrangements required for successful implementation of the *qualified* project.
- (p) *Contractor's license, articles of incorporation (or organization and operating agreement), certificate of good standing with the State of Nevada Secretary of State ("SOS"), general liability, SIIS and course of construction insurances on the qualified project.*
- ~~[(p)q]~~ A report on the status of the process of environmental review for the *qualified* project, if applicable.

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

~~(f)s~~) ~~[Security]~~ *Collateral or co-borrower/guarantor* for the loan, as required by the Director.

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

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.680 Review of applications; denial. (NRS 701.595)

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 ~~[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 NAC 701.670;

(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.

(e) The applicant is unable or unwilling to agree to the documentation requirements, terms, conditions, covenants and restrictions of the loan approval.

1. 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.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.685 Evaluation and ~~[ranking]~~ prioritizing of eligible ~~[applicants]~~ applications: Criteria; approval by Interim Finance Committee. (NRS 701.595)

1. The Director will evaluate and ~~[rank]~~ *prioritize* each eligible ~~[applicant within each category established by the Director.]~~ *application* based on the following criteria:

(a) Job creation as a result of the *qualified* project *relative to the cost of the qualified project*, ~~[if the project is to be financed with money awarded]~~ pursuant to the American ~~[Reinvestment] Recovery~~ and ~~[Recovery] Reinvestment~~ Act;

(b) Renewable energy generation *or savings* relative to the cost of the *qualified* project;

(c) Reduction of the use of fossil fuels and/or the emission of greenhouse gases *relative to the cost of the qualified project*;

(d) Leveraging of additional financial resources, *full financing available, proposed repayment schedule and reliability of sources of repayment*; and

(e) Readiness of the *qualified* project to proceed ~~[and be constructed within prescribed time frames]~~, *quality of qualified project management and qualified project duration*.

(f) Loan amount and availability of funds in the Fund to meet the qualified project's needs.

2. The Director will ~~[present the ranking of eligible projects to]~~ *request authority from* the Interim Finance Committee ~~[for approval]~~ *to fund loans*. 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]~~ *post the list of qualified projects eligible for funding* on the Internet website of the Office of Energy at <http://energy.state.nv.us>.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.690 ~~[Loan agreements]~~ *Loan documentation*: Offers; requirements; terms; interest rate. (NRS 701.595)

1. The Director ~~[will]~~ *may* offer ~~[loan agreements]~~ *loans according to the priority established by the Director* ~~[to the applicants with the highest ranked projects within each category]~~ until money available from the ~~[Account]~~ *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.]~~ *Loan offers will have expiration dates. Loan documents that are not execute to the satisfaction of the Director prior to the expiration date may lose their funding opportunity.*
2. ~~[Each loan agreement must be]~~ *The loans will be documented according to the unique characteristics of the loan. Documents will be:*
 - (a) ~~[On a form provided by the Director]~~ *Prepared by the Director*; and
 - (b) *Approved by the State Attorney General; and*
 - (~~b~~)c) *Executed by all parties, in form and substance acceptable to the Director* before the ~~[commencement of construction of the project]~~ *funding of the loan.*
3. The term of a loan ~~[agreement]~~ will be determined by the Director ~~[but]~~ *and* will not exceed 15 years.
4. The interest rate for all ~~[loan projects]~~ *loans* will be set by the Director, ~~[but]~~ *and* will not exceed 3 percent. The Director may offer a lower interest rate to a public entity if the *qualified* project is located in a disadvantaged community.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.695 *Recordkeeping and accounting requirements for* ~~[recipients of loans]~~ *borrowers*. (NRS 701.595) Each ~~[recipient]~~ *borrower* of ~~[a loan from]~~ the ~~[Account]~~ *Fund* shall:

1. Establish an ~~[official]~~ *dedicated* file for the *qualified* project. The file must contain an adequate record of all significant actions relating to the *qualified* project.
2. Establish accounts that accurately and adequately show all amounts of money:
 - (a) Received as financial assistance from the ~~[Account]~~ *Fund*;
 - (b) Received and spent on the *qualified* project; and
 - (c) Received as income from the *qualified* project.
3. Establish a system of accounting which ensures that the final total costs of the *qualified* 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* to comply with requirements for reporting established by the Federal Government.
5. Retain all records relating to the *qualified* 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 *qualified* project available at any reasonable time for inspection or copying by any authorized representative of the Director.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)

NAC 701.700 *Audit*. (NRS 701.595)

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 ~~[Account]~~

Fund, the Director may require that an audit be performed ~~[of financial]~~ *on the* records relating to a *qualified* project.

2. Any audit required pursuant to this section must be performed at the expense of the ~~[recipient]~~ *borrower* by ~~[a certified public accountant]~~ *an appropriate professional expert* who is independent of the ~~[recipient]~~ *borrower*.
3. A report of the audit must be prepared by the auditor in the form prescribed by the Director.

(Added to NAC by Office of Energy by R161-09, eff. 6-30-2010)