

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2118

By: Brown

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6 AS INTRODUCED

7 An Act relating to public finance; enacting the  
8 Oklahoma Clean Energy Finance Program Act; defining  
9 terms; creating Oklahoma Clean Energy Finance  
10 Program; providing for oversight by certain Energy  
11 Office; imposing duties on Energy Office or program  
12 administrator; creating Clean Energy Program Fund;  
13 creating accounts; providing for deposit of monies in  
14 fund; prescribing requirements for interest;  
15 prohibiting transfer of certain monies; providing for  
16 payments; providing for payments to lenders;  
17 providing for payments based upon uncollectable loan  
18 amounts; providing for transfer of monies by State  
19 Treasurer; requiring information to be provided to  
20 Treasurer; authorizing certain investment; providing  
21 for implementation of program; specifying  
22 requirements for administration; prescribing loan  
23 application procedures; providing for certain  
24 borrower classifications; prescribing method for  
computation of interest rates; requiring annual  
report; prescribing content of report; providing for  
reporting to certain committees of the Legislature;  
enacting the Rural Clean Energy Project Finance  
Program Act; defining terms; providing for financing  
assistance; providing for issuance of certain bonds;  
imposing requirements and limitation; prescribing  
maturity of bonds; providing for characterization of  
indebtedness; providing for computation of rates for  
clean energy delivery; providing for codification;  
providing an effective date; and declaring an  
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1101 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4 Sections 1 through 8 of this act shall be known and may be cited  
5 as the "Oklahoma Clean Energy Finance Program Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1102 of Title 62, unless there  
8 is created a duplication in numbering, reads as follows:

9 As used in this act, unless the context otherwise requires:

10 1. "Area median income" means the median income of the county  
11 in which the primary residence of a qualified borrower is located in  
12 relation to family size, as published annually by the United States  
13 Department of Housing and Urban Development;

14 2. "Certified contractor" means a contractor, including but not  
15 limited to a general, heating, air conditioning, or lighting  
16 contractor, certified by the program administrator to market the  
17 program to potential qualified borrowers and make clean energy  
18 improvements that may be financed by clean energy loans;

19 3. "Clean energy improvement" means any repair of or addition  
20 or improvement to residential real property completed by or under  
21 the supervision of a certified contractor that improves the energy  
22 efficiency of the property or replaces all or a portion of the  
23 energy from nonrenewable sources used in connection with the  
24 property with energy from renewable sources;

1       4. "Clean energy loan" means a loan in a maximum amount of  
2 Twelve Thousand Five Hundred Dollars (\$12,500.00) originated by a  
3 participating public lender or a participating private lender to a  
4 qualified borrower for the purpose of financing one or more clean  
5 energy improvements to the borrower's primary residence; except  
6 that, if the qualified borrower is a nonprofit corporation or local  
7 government housing authority that provides units in a multiunit  
8 housing project as homes to individuals or families who meet the  
9 income qualifications of first-tier or second-tier qualified  
10 borrowers, the maximum amount of a loan shall be Twelve Thousand  
11 Five Hundred Dollars (\$12,500.00) multiplied by the number of units  
12 in the multiunit housing project provided to the individuals or  
13 families;

14       5. "First-tier qualified borrower" means a qualified borrower  
15 whose income is less than eighty percent (80%) of area median  
16 income;

17       6. "Office" means the Governor's Energy Office;

18       7. "Program" means the Oklahoma Clean Energy Finance Program;

19       8. "Program administrator" or "administrator" means one or more  
20 entities selected by the Office to:

21           a. market the program,

22           b. recruit, train, and certify contractors,

23           c. measure and verify, in accordance with standards

24                established by the Office, energy, emissions, and

1 gross and net cost savings resulting from clean energy  
2 improvements financed by clean energy loans originated  
3 and serviced by participating public lenders and  
4 private lenders,

5 d. encourage homeowners to participate in utility demand-  
6 side management programs where applicable, and

7 e. perform such other duties as may be authorized in this  
8 act or required by the Office;

9 9. "Program fund" means the Clean Energy Program Fund created  
10 in this act;

11 10. "Public lender" means a county, municipality, district,  
12 authority, or other political subdivision of the state authorized to  
13 make economic development, affordable housing, or housing  
14 rehabilitation loans;

15 11. "Qualified borrower" means an individual or family who owns  
16 his, her, or their primary residence and satisfies lending  
17 guidelines established by the program administrator or a charitable  
18 nonprofit corporation exempt from taxation under Section 501(c)(3)  
19 of the Internal Revenue Code of 1986, as amended, or county or  
20 municipal housing authority that provides homes for ownership or  
21 rental to homeowners or renters who meet the income qualifications  
22 of first-tier or second-tier qualified borrowers;

1        12. "Second-tier qualified borrower" means a qualified borrower  
2 whose income is eighty percent (80%) or more, but less than one  
3 hundred twenty percent (120%), of area median income; and

4        13. "Third-tier qualified borrower" means a qualified borrower  
5 whose income is one hundred twenty percent (120%) or more of area  
6 median income.

7        SECTION 3.        NEW LAW        A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1103 of Title 62, unless there  
9 is created a duplication in numbering, reads as follows:

10        A. The Oklahoma Clean Energy Finance Program is hereby created.

11        B. The Office shall oversee the program and the program  
12 administrator and shall, in addition to exercising any other powers  
13 and performing any other duties specified in this act:

14        1. Select the program administrator in accordance with the  
15 provisions of The Oklahoma Central Purchasing Act. In selecting the  
16 program administrator, the Office shall consider the extent to which  
17 a potential program administrator has demonstrated experience in  
18 recruiting, training, and certifying contractors or can otherwise  
19 establish that it will be able to perform such functions;

20        2. Directly market the program to the general public or  
21 contract with the program administrator for the marketing of the  
22 program to the general public;

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1           3. Develop and operate or contract with the program  
2 administrator for the development and operation of a quality  
3 assurance, measurement, and verification program to:

- 4           a. monitor the quality of clean energy improvement  
5                 installations, and
- 6           b. measure and report on energy, emissions, and gross and  
7                 net cost savings resulting from clean energy  
8                 improvements financed by clean energy loans;

9           4. Determine, in consultation with the State Treasurer, when  
10 the administrative and procedural framework for the program and the  
11 available administrative and financial resources for the program are  
12 sufficiently developed to allow the Office to effectively oversee  
13 the program. No clean energy loan shall be marketed to a potential  
14 qualified borrower, applied for by a potential qualified borrower,  
15 or made to a qualified borrower until the Office has determined that  
16 it is ready to effectively oversee the program and instructed  
17 certified contractors to begin marketing clean energy loans; and

18           5. Exercise such other powers and perform such other duties  
19 necessary or incidental to or implied from the specific powers and  
20 duties specified in this act.

21           C. The Clean Energy Program Fund is hereby created in the State  
22 Treasury, and the following accounts are hereby created in the fund:

- 23           1. The loan buy-down account; and
- 24           2. The loan loss reserve account.

1           SECTION 4.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1104 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. The program fund and the accounts of the program fund shall  
5 consist of such monies as the Legislature may appropriate thereto  
6 from the Clean Energy Fund and any gifts, grants, or donations that  
7 may be made to the program fund.

8           B. In accordance with requirements imposed upon the State  
9 Treasurer, in making investments, to use prudence and care to  
10 preserve the principal and to secure the maximum rate of interest  
11 consistent with safety and liquidity, if the Legislature chooses not  
12 to appropriate monies to the program fund or to the accounts of the  
13 program fund nothing in this act shall be deemed to require the  
14 State Treasurer to credit any monies to the program fund or the  
15 accounts of the program fund.

16           C. All interest and income earned on the deposit and investment  
17 of monies in the program fund and the accounts of the program fund  
18 shall be used for the loan buy-down account and the loan loss  
19 reserve account.

20           D. Monies in the loan buy-down account and loan loss reserve  
21 account of the program fund shall remain in the accounts and shall  
22 not be transferred to the general fund or any other fund at the end  
23 of any fiscal year.

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1 E. All monies in the program fund are continuously appropriated  
2 to the Office, and the Office shall make payments from the loan buy-  
3 down account of the program fund to participating public lenders and  
4 private lenders to compensate the lenders for the reduction in the  
5 amount of future interest payments resulting from the provision of  
6 clean energy loans to first-tier and second-tier qualified borrowers  
7 at the below-market interest rates specified by law.

8 F. The Office shall pay the compensation for each clean energy  
9 loan by paying to the lender a lump sum equal to the present value  
10 of the reduction in future interest payments on the date the loan  
11 closes.

12 SECTION 5. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1105 of Title 62, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The Office shall make payments from the loan loss reserve  
16 account of the program fund to compensate participating public  
17 lenders and private lenders for the uncollectible amount of clean  
18 energy loans any such lenders have written off. The Office shall  
19 pay the compensation for each uncollectible clean energy loan by  
20 paying to the lender a lump sum equal to the present value of the  
21 uncollectible portion of the loan on the date the lender wrote it  
22 off.

23 B. The State Treasurer shall periodically transfer monies from  
24 the loan buy-down account of the program fund to the loan loss



1 reserve account of the program fund to ensure that the balance of  
2 the loan loss reserve account is at least five percent (5%) of the  
3 total principal amount of outstanding clean energy loans made by  
4 participating public lenders and private lenders. The administrator  
5 shall update the State Treasurer regarding outstanding clean energy  
6 loans originated by such lenders as required by the State Treasurer  
7 so that the State Treasurer can accurately determine the appropriate  
8 amount and timing of transfers.

9 C. The State Treasurer may invest up to a total amount of  
10 \_\_\_\_\_ Dollars of state monies in bonds or notes issued by  
11 participating public or private lenders for the purpose of funding  
12 clean energy loans during the 2009-10 fiscal year.

13 SECTION 6. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1106 of Title 62, unless there  
15 is created a duplication in numbering, reads as follows:

16 In accordance with terms contractually agreed to by the program  
17 administrator and the Office, acting on behalf of the state, the  
18 program administrator shall implement and administer the program by:

19 1. Recruiting, selecting, screening, training, and certifying  
20 contractors, including but not limited to general, heating, air  
21 conditioning, and lighting contractors, to be certified contractors  
22 capable of marketing the program and completing clean energy  
23 improvements. The program administrator may charge contractors a  
24 reasonable fee for training and certification, and the recruiting,

1 selection, screening, training, and certification process shall  
2 include, at a minimum:

- 3 a. direct marketing of the program to contractors,
- 4 b. financial and business practices background checks of  
5 contractors seeking to become certified contractors,  
6 and

7 c. initial training that includes:

- 8 (1) education regarding the elements of the program,  
9 the financial and environmental benefits of clean  
10 energy improvements, including but not limited to  
11 specific education regarding products qualified  
12 to bear the federal energy star label, and  
13 recommended means of marketing the program to  
14 potential program customers, and

- 15 (2) the provision of information regarding additional  
16 required training and other requirements for  
17 contractors who may wish to become preferred  
18 contractors under the federal home performance  
19 with energy star program; and

20 2. Issuing annual reports regarding the administration of the  
21 program as specified in Section 8 of this act.

22 SECTION 7. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1107 of Title 62, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. A potential qualified borrower shall apply for a clean  
2 energy loan by completing an initial loan application. The Office  
3 or, at the discretion of the Office, the program administrator or  
4 participating public lenders and private lenders shall prescribe the  
5 form of the loan application and shall determine, based on the  
6 application and such other information as the administrator may  
7 reasonably require from the applicant, whether the applicant is a  
8 qualified borrower and, if so, whether the qualified borrower is a  
9 first-tier, second-tier, or third-tier qualified borrower.

10       B. A participating public lender may only originate clean  
11 energy loans for first-tier and second-tier qualified borrowers. A  
12 qualified borrower may choose a loan term of up to ten (10) years.  
13 The State Treasurer shall, using a formula tied to a regularly  
14 published interest rate index selected by the State Treasurer,  
15 determine a base annual rate of interest to be charged on loans made  
16 to third-tier qualified borrowers.

17       C. The State Treasurer shall set an annual rate of interest for  
18 loans to second-tier qualified borrowers by subtracting a number of  
19 basis points selected by the State Treasurer from the base annual  
20 rate and shall set an annual rate of interest for loans to first-  
21 tier qualified borrowers by subtracting a number of basis points  
22 selected by the State Treasurer from the annual rate of interest for  
23 loans to second-tier qualified borrowers.

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1 D. The interest rate charged to a qualified borrower that is a  
2 nonprofit corporation or a housing authority shall be the interest  
3 rate charged to second-tier qualified borrowers; except that the  
4 interest rate charged to a nonprofit corporation or housing  
5 authority shall be the interest rate charged to first-tier qualified  
6 buyers if the nonprofit corporation or housing authority only  
7 provides the housing for which the loan will finance clean energy  
8 improvements to individuals or families who are first-tier qualified  
9 borrowers.

10 SECTION 8. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 1108 of Title 62, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. No later than one (1) year from the date of issuance of the  
14 first clean energy loan by a participating public lender or private  
15 lender pursuant to this act, and no later than the same date each  
16 subsequent year, the program administrator shall provide to the  
17 Office a report detailing its administration of the program since  
18 its inception and for the prior fiscal year. The report shall  
19 include, at a minimum:

20 1. A detailed accounting of the financial status of the  
21 program, including statements regarding:

22 a. the total number and principal amount of clean energy  
23 loans originated and the number and principal amount  
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1 of clean energy loans originated to first-tier,  
2 second-tier, and third-tier qualified borrowers,

3 b. the total amount of outstanding principal and interest  
4 on clean energy loans owed by qualified borrowers and  
5 the amount of such principal and interest owed by  
6 first-tier, second-tier, and third-tier qualified  
7 borrowers,

8 c. the total number and principal and interest amounts of  
9 any uncollectible clean energy loans written off by  
10 participating public lenders and private lenders and  
11 the number and principal amounts of such loans issued  
12 to first-tier, second-tier, and third-tier qualified  
13 borrowers,

14 d. the total amount of bonds or other notes in which the  
15 State Treasurer has invested as authorized by law, the  
16 payments made on such bonds or other notes, and the  
17 payments to be made in the future on such bonds or  
18 other notes, and

19 e. the amounts paid to the administrator by the state  
20 pursuant to law and any contracts entered into by the  
21 state and the administrator as authorized by this act;

22 2. Estimates of the total energy, emissions, and gross and net  
23 cost savings resulting from clean energy improvements financed by  
24 clean energy loans; and

1 3. Any recommended program improvements.

2 B. No later than each January 30, the Office shall report to  
3 the relevant committee of the House of Representatives and the  
4 relevant committee of the State Senate regarding the program. The  
5 report shall include the information provided to the Office in the  
6 program administrator's annual report and whatever additional  
7 information the Office deems relevant to fully apprise the  
8 committees regarding the status of the program.

9 SECTION 9. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1201 of Title 62, unless there  
11 is created a duplication in numbering, reads as follows:

12 Sections 9 through 11 of this act shall be known and may be  
13 cited as the "Rural Clean Energy Project Finance Program Act".

14 SECTION 10. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1202 of Title 62, unless there  
16 is created a duplication in numbering, reads as follows:

17 As used in Sections 10 through 11 of this act, unless the  
18 context otherwise requires:

19 1. "Board" means the board of county commissioners of a county  
20 or the governing board of a city;

21 2. "Clean energy" means energy derived from biomass, geothermal  
22 energy, solar energy, small hydroelectricity, and wind energy, as  
23 well as any hydrogen derived from any of the foregoing;

1           3. "Eligible applicant" means an individual property owner or a  
2 group of property owners that do not own the entirety of a  
3 cooperative electric association and that seek to construct, expand,  
4 or upgrade an eligible clean energy project located or to be located  
5 on the applicant's property; and

6           4. "Eligible clean energy project" means a project owned by an  
7 eligible applicant that produces or transmits clean energy for  
8 public benefit only, has a nameplate rating of no more than fifty  
9 (50) megawatts and is not a part of a larger project with a  
10 nameplate rating of more than fifty (50) megawatts, and is located  
11 within the certificated service area of a cooperative electric  
12 association. "Eligible clean energy project" includes transmission  
13 lines to the point of entry to the power grid of a cooperative  
14 electric association, a generation and transmission electric  
15 corporation or association, or any federal agency and any other  
16 equipment or facility, including, but not limited to, substation  
17 upgrades needed to deliver the clean energy produced by an eligible  
18 clean energy project to a market.

19           SECTION 11.           NEW LAW           A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1203 of Title 62, unless there  
21 is created a duplication in numbering, reads as follows:

22           A. An eligible applicant may apply to the board of the county  
23 or city and county in which it proposes to construct, expand, or  
24 upgrade an eligible clean energy project for assistance in the

1 financing of the project. Subject to the requirements and  
2 limitations specified in federal law, the Oklahoma Private Activity  
3 Bond Allocation Act and subsection B of this section, if the board  
4 approves the application, it may provide financing assistance by  
5 issuing tax-exempt private activity bonds in a minimum amount of One  
6 Million Dollars (\$1,000,000.00) on behalf of the eligible applicant.

7 B. A board shall issue tax-exempt private activity bonds on  
8 behalf of an eligible applicant to finance an eligible clean energy  
9 project subject to the following requirements and limitations:

10 1. The board shall enter into agreements with the eligible  
11 applicant under which:

12 a. the board agrees to loan to the eligible applicant the  
13 net proceeds of the bonds issued so that the eligible  
14 applicant can finance all or a portion of the eligible  
15 clean energy project, and

16 b. the eligible applicant agrees that it has the sole  
17 responsibility to pay, either directly or indirectly  
18 through the board or a bond trustee, all financial  
19 obligations owed to bondholders and that it shall  
20 provide and maintain any reserve deemed necessary by  
21 the board to ensure that the financial obligations are  
22 paid;

23 2. The bonds issued shall specify that bondholders may not look  
24 to any county or city and county revenues for repayment of the



1 bonds. The bonds shall further specify that the only sources of  
2 repayment for the bonds are revenues provided by the eligible  
3 applicant, property of the eligible applicant, or credit enhancement  
4 obtained by the eligible applicant that may be pledged to the  
5 payment of the bonds; and

6 3. The repayment term for the bonds issued shall not exceed ten  
7 (10) years.

8 C. Because private activity bonds are payable only from the  
9 sources specified in this act, such bonds shall not be deemed to  
10 create county or city and county indebtedness or a multiple-fiscal-  
11 year obligation within the meaning of any provision of the state  
12 constitution or the laws of this state, and a board may issue such  
13 bonds without voter approval.

14 D. The rates charged by an eligible applicant for the delivery  
15 of clean energy produced by an eligible clean energy project shall  
16 be set to allow recovery of all costs necessarily incurred to  
17 deliver the clean energy to a market, including, but not limited to,  
18 the costs of substation upgrades, transmission lines to the point of  
19 entry to the power grid of a cooperative electric association, and  
20 any wheeling charges imposed by a cooperative electric association.

21 SECTION 12. This act shall become effective July 1, 2009.

22 SECTION 13. It being immediately necessary for the preservation  
23 of the public peace, health and safety, an emergency is hereby

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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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