

**Enrolled**

**Senate Bill 611**

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY

CHAPTER.....672.....

AN ACT

Relating to small scale local energy projects; appropriating money; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** As used in this Act, unless the context requires otherwise:

- (1) "Applicant" means an applicant for a small scale local energy project loan.
- (2) "Committee" means the Small Scale Local Energy Project Advisory Committee created under section 3 of this Act.
- (3) "Cooperative" means a cooperative corporation organized under ORS chapter 62.
- (4) "Department" means the Department of Energy created under ORS 469.030.
- (5) "Director" means the Director of the Department of Energy.
- (6) "Loan fund" means the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution.
- (7) "Municipal corporation" has the meaning given in ORS 297.405.
- (8) "Sinking fund" means the Small Scale Local Energy Project Administration and Bond Sinking Fund created in section 26 of this Act.
- (9) "Small business" means a sole proprietorship, partnership, cooperative or corporation domiciled in Oregon organized for profit and employing less than 100 persons. "Small business" does not include subsidiary firms of sole proprietorships, partnerships, cooperatives or corporations organized for profit and employing 100 or more persons.
- (10) "Small scale local energy project" means any system, mechanism or series of mechanisms located in Oregon that uses renewable resources including, but not limited to, solar, wind, geothermal, bio-mass, waste heat or water resources to supply energy including heat, electricity and substitute fuels to meet a local community or regional energy need in this state.

**SECTION 2.** (1) Any individual, small business, nonprofit cooperative or corporation, or municipal corporation may file with the department an application to obtain loan funds for a small scale local energy project as provided in this Act.

(2) Applications to obtain funds for a small scale local energy project shall be made in writing on a form prescribed by the department. Applications submitted to the department shall:

- (a) Describe the nature and purpose of the proposed small scale local energy project.
- (b) State whether any purposes other than energy production, but consistent therewith, will be served by the proposed small scale local energy project, and the nature of such other purposes, if any.

(c) Include an evaluation of the potential of the small scale local energy project to meet local community energy needs.

(d) Include an evaluation of the potential environmental impacts of the small scale local energy project.

(e) State whether any moneys other than those in the loan fund are proposed to be used for the development of the proposed small scale local energy project, and whether any other moneys are available or have been sought for the project.

(f) Describe the source of funds for repayment of the loan applied for.

(3) The department shall charge and collect from the applicant at the time the application is filed, a fee of \$100 or one percent of the amount of the loan applied for, whichever is less. In addition, the department shall charge the applicant the amount required to reimburse the department for costs that exceed the application fee incurred in connection with the application. Moneys referred to in this subsection shall be paid into the sinking fund.

**SECTION 3.** (1) The director shall appoint a Small Scale Local Energy Project Advisory Committee to review applications made under section 2 of this Act and rules adopted under section 4 of this Act, and make recommendations thereon to the director.

(2) Seven members shall be appointed to the Small Scale Local Energy Project Advisory Committee. Each member shall be appointed to serve a two-year term, commencing July 1 of the year 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 small scale energy technology, natural resource development, environmental protection, finance, agriculture, local government operations and utility operations. At least three members shall reside outside the Willamette Valley.

(3) The 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.

(4) Members of the Small Scale Local Energy Project Advisory Committee shall be entitled to expenses as provided by ORS 292.495.

**SECTION 4.** (1) After consultation with the committee, the director shall establish by rule standards and criteria for small scale local energy projects to be funded under the provisions of sections 2 to 5 of this Act. The standards and criteria shall operate to encourage diversity in projects funded, give preference to the maximum extent practical to projects proposed by individuals and small businesses, assure acceptability of environmental impacts and shall require consideration of the potential contribution of a project if developed at other suitable locations to meeting the energy needs of this state.

(2) All applications submitted under section 2 of this Act shall be reviewed by the department. The department may request that the applicant submit additional information or revise the application. The department shall:

(a) Determine whether the application meets the standards and criteria adopted under subsection (1) of this section; and

(b) Recommend approval or denial of the loan application, and if approval is recommended in what amount the loan should be made.

(3) After concluding its review, the department shall refer the application and its findings and recommendation to the committee for its review. The department shall notify the applicant of the date, time and place of any oral presentation to the committee on the application. The committee shall review the application and the department's findings and recommendations and advise the director whether the proposed small scale local energy project meets the criteria established by the director under subsection (1) of this section, whether the project should be financed with moneys from the loan fund and in what amount the loan should be made if approved.

**SECTION 5.** (1) After consideration of the recommendation of the committee the director may approve or reject the financing of a small scale local energy project described in an application filed

as provided in section 2 of this Act using moneys in the Small Scale Local Energy Project Loan Fund.

(2) Approval of a loan by the director shall include a certification of the amount of the loan. The director's approval shall be based on a finding that:

(a) The proposed small scale local energy project meets established standards and criteria under section 4 of this Act;

(b) The proposed project is consistent with the preservation and enhancement of environmental quality;

(c) The proposed project is feasible and a reasonable risk from practical and economic standpoints;

(d) The plan for development of the project is satisfactory;

(e) The applicant is qualified, credit-worthy and responsible and is willing and able to enter into a contract with the director for development and repayment as provided in section 7 of this Act;

(f) There is a need for the proposed small scale local energy project and the applicant's financial resources are adequate to provide the working capital to maintain the project after completion; and

(g) Moneys in the loan fund are or will be available for the development of the proposed small scale local energy project.

(3) The director shall notify the applicant and the presiding officer of the committee of his action and of the reasons for that action. The director shall inform the applicant of the review procedure established in section 6 of this Act.

**SECTION 6.** (1) If the director rejects a loan application or approves a loan amount different than that requested by the applicant, the applicant may request that the committee review the director's action.

(2) The committee may review the director's action on its own motion or at the request of the applicant. A majority of the members of the committee may authorize the presiding officer of the committee to appeal the director's action to the Governor.

(3) An appeal of the director's action may be initiated by the presiding officer of the committee no later than 45 days after the date the applicant receives notice of the director's action under section 5 of this Act.

(4) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal shall be considered to be denied.

(5) Notwithstanding ORS 183.310 to 183.500, a decision of the director or the Governor on an application for loan funds under section 5 or 6 of this Act is not subject to judicial review.

**SECTION 7.** If the director approves the financing of a small scale local energy project, the director, on behalf of the state, and the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient collateral in the manner provided in sections 9 and 10 of this Act, which shall set forth, among other matters:

(1) That the director, on behalf of the state, must approve the arrangements made by the applicant for the development, operation and maintenance of the small scale local energy project, using moneys in the loan fund for the project development.

(2) A plan for repayment by the applicant to the sinking fund of moneys borrowed from the loan fund used for the development of the small scale local energy project and interest on those moneys used at a rate of interest the director determines is necessary to provide adequate funds to recover the administrative expenses incurred under this Act. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for project development and interest thereon not later than two years after the date of the loan contract or at any other time as the director may provide.

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the director.

(c) Shall provide for evidence of debt assurance of and security for repayment by the applicant considered necessary or proper by the director.

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the completed project, or 30 years from the date of the loan contract, whichever is

less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of the accrued interest.

(e) Shall set forth a procedure for formal declaration of default of payment by the director, including formal notification of all relevant federal, state and local agencies; and further, a procedure for notification of all relevant federal, state and local agencies that declaration of default has been rescinded when appropriate.

(3) Provisions satisfactory to the director for field inspection, the director to be the final judge of completion of the project.

(4) That the liability of the state under the contract is contingent upon the availability of moneys in the loan fund for use in the planning and development of the project.

(5) Any further provisions the director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application.

(6) That the director may institute an appropriate action or suit to prevent use of the project financed by the loan fund by any person who is delinquent in the repayment of any moneys due the sinking fund.

**SECTION 8.** If the director approves a loan for a small scale local energy project, the State Treasurer shall pay moneys for such project from the loan fund in accordance with the terms of the loan contract, as prescribed by the director.

**SECTION 9.** (1) (a) When a loan is made to a nonprofit cooperative or corporation for the development of a small scale local energy project under this Act, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property of the applicant, and to any income realized by the applicant from the project.

(b) The existence or foreclosure of the lien created by this subsection shall not cause the acceleration of payments on affected real property. Such payments shall continue to be made as they become due.

(2) (a) When a loan is made under this Act to an applicant other than a nonprofit cooperative or corporation or a municipal corporation the loan shall be secured by a mortgage or security agreement in the full amount of the loan which mortgage or security agreement shall be a lien upon such real property of the applicant as the director shall require for adequate security.

(b) The existence or foreclosure of the lien created by this subsection shall not require the acceleration of payments on affected real property. Such payments may continue to be made as they become due.

(3) (a) When a loan is made to a municipal corporation for the development of a small scale local energy project under this Act, the director shall obtain adequate and sufficient security for the amount of the unpaid balance of the loan. The security may be in the form of a lien, mortgage or other form of security acceptable to the director and the municipal corporation.

(b) The existence or foreclosure of a lien, mortgage or other form of security created by this subsection shall not cause the acceleration of payments on affected real property. Such payments shall continue to be made as they become due.

(4) When a loan made under this Act is secured by a lien on the real property of the applicant, the director shall file notice of the loan with the recording officer of each county in which is situated real property of the applicant. The notice shall contain a description of the real property of the applicant, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1), (2) or (3) of this section.

(5) Upon payment of all amounts loaned to an applicant pursuant to this Act, the director shall file with each recording officer referred to in subsection (4) of this section a satisfaction notice that indicates repayment of the loan.

(6) The director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less his expenses incurred in foreclosing, into the sinking fund.

**SECTION 10.** In addition to any other remedy available to the department, if a municipal corporation entitled by law to share in the apportionment of any state revenues or funds defaults on any payments due to the State of Oregon under a loan contract entered into under section 7 of this Act, the department shall certify that fact to the Executive Department and the Executive Department shall withhold payment of any revenues or funds in the State Treasury to which the municipal corporation is entitled until the department certifies that the default has been remedied.

**SECTION 11.** If an applicant fails to comply with a contract entered into with the director for development and repayment as provided in section 7 of this Act, the director, in addition to remedies provided in sections 9 and 10 of this Act, may seek other appropriate legal remedies to secure the loan and may contract as provided in section 7 of this Act with any other person for continuance of development and for repayment of moneys from the loan fund used therefor and interest thereon.

**SECTION 12.** The director may accept gifts of money or other property from any source, given for the purposes of sections 1 to 15 of this Act. Money so received shall be paid into the loan fund. Money or other property so received shall be used for the purposes for which received.

**SECTION 13.** In accordance with the applicable provisions of ORS 183.310 to 183.500, the director may adopt rules considered necessary to carry out the purposes of this Act.

**SECTION 14.** If any small scale local energy project is refinanced or financial assistance is obtained from other sources after the execution of the loan from the state, all such funds shall be first used to repay the state.

**SECTION 15.** If the applicant receives from any source other than the loan fund any funds to assist in the development of the project, the amount of the loan to the applicant from the loan fund shall be limited to that amount necessary for the development of those portions of the project not funded by other sources.

**SECTION 16.** All moneys in the loan fund created by the constitutional amendment proposed by Senate Joint Resolution 24 (1979 regular session) hereby are appropriated continuously to the director and shall be used for the purposes provided in this Act.

**SECTION 17.** After consultation with the State Treasurer, the director shall issue and sell such general obligation bonds of the State of Oregon of the kind and character and within the limits prescribed by Article XI-J of the Oregon Constitution as are necessary to carry out the provisions of sections 1 to 15 of this Act.

**SECTION 18.** Except as provided in section 22 of this Act, all moneys obtained from the sale of bonds under sections 17 to 25 of this Act shall be credited by the State Treasurer to the loan fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution and sections 1 to 15 of this Act. Those moneys may be used to make payments of interest of bonds issued pursuant to the provisions of sections 17 to 25 of this Act if there are insufficient funds in the sinking fund to make the payments referred to in subsection (1) of section 26 of this Act. Pending the use of the moneys for the proper purposes, the moneys may be invested in the manner provided by law.

**SECTION 19.** All bonds issued under sections 17 to 25 of this Act shall contain a direct promise of the State of Oregon to pay the face value thereof, with interest thereon at a rate or rates, payable semiannually, as the director, with the approval of the State Treasurer considers appropriate. The principal of and the interest upon the bonds, when due, shall be paid at the fiscal agency of the State of Oregon, in the City and State of New York. The charges imposed by that agency for its services shall be paid, upon approval by the State Treasurer, from the sinking fund.

**SECTION 20.** Each issue of bonds under sections 17 to 25 of this Act shall be payable in principal instalments and upon a maturity date or dates to be determined by the director, with the approval of the State Treasurer, provided that the first principal instalment shall fall due not later than four years after the date of the bonds and that the earliest maturity date of any of the bonds of an issue shall be not less than two years and the final maturity date not more than 30 years from the date of the bonds. In his discretion, the director, with the approval of the State Treasurer, may issue the bonds, as provided in ORS 286.040, with reservation of the right to redeem the bonds for retirement or refunding purposes prior to the final date or dates of maturity thereof. The bonds and

the appurtenant coupons shall be negotiable in form and shall embody an absolute and unconditional promise of the State of Oregon to pay the principal of and the interest upon the bonds, when due, in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States of America. The bonds shall be executed with the facsimile signatures of two of the three officers designated in ORS 286.050, and with the manual signature of the other of such officers, as agreed upon among them. The bonds shall bear coupons evidencing the interest to become due thereon for each instalment thereof. The first coupon of each issue of bonds may be for a period of more or less than six months but of not more than one year, if, in the judgment of the State Treasurer, the issuance of the bonds with such coupons is advisable. The coupons shall be executed with the facsimile signature, with the title of his office thereunder, of each of the officers designated in ORS 286.050. Bonds issued under sections 17 to 25 of this Act and the interest coupons annexed thereto, bearing the signatures of officers in office on the date of execution of the bonds shall be valid and legally binding obligations, notwithstanding that before delivery of the bonds to the purchasers thereof any or all of the officers have ceased to be such.

**SECTION 21.** The State Treasurer shall make payment of the principal of and the interest on any bond issued under sections 17 to 25 of this Act from the sinking fund.

**SECTION 22.** After consultation with the State Treasurer, the director may issue refunding bonds for the purpose of refunding outstanding bonds issued under sections 17 to 25 of this Act. The refunding bonds may be sold in the same manner as other bonds are sold under sections 17 to 25 of this Act. All moneys obtained from the sale of refunding bonds shall be credited by the State Treasurer to the sinking fund. The issuance of the refunding bonds, the maturity date, and other details thereof, the rights of the holders thereof, and the duties of the Governor, Secretary of State and State Treasurer with respect thereto, shall be governed by the other provisions of sections 17 to 25 of this Act, in so far as those provisions are applicable. The refunding bonds may be issued to refund bonds previously issued for refunding purposes. Pending the use of moneys obtained from the sale of refunding bonds for proper purposes, such moneys may be invested in the manner provided by law.

**SECTION 23.** The director, with the approval of the State Treasurer, shall provide such method as he considers appropriate for the advertisement by newspaper of each issue of bonds under sections 17 to 25 of this Act before the issue is sold and shall require such deposit with each bid therefor as he considers adequate to insure the fulfillment thereof. Prior to advertisement of any of the bonds for sale, the State Treasurer, in his discretion may publish in one or more financial newspapers in the City and State of New York a statement showing the current financial condition of the State of Oregon. The advertisement of the proposed sale of the bonds shall be published for a period not less than 10 days and shall contain a provision to the effect that the director, has the discretion to reject any or all bids received in pursuance of such advertisement. In the event of rejection, the director may readvertise for bids for the bonds in the form and manner set forth in this section, as many times as, in the judgment of the director, may be necessary to effect a satisfactory sale. The bonds, including refunding bonds, may be sold to any bidder or to the state at a price of not less than 98 percent of par value and the full amount of the accrued interest thereon.

**SECTION 24.** The State Treasurer shall compute and determine in January of each year, after the sale of bonds under sections 17 to 25 of this Act, the amount of principal and interest which will fall due during the year on bonds then outstanding and unpaid and shall maintain or hold in the sinking fund sufficient moneys to pay such maturing obligations.

**SECTION 25.** No bonds shall be issued or sold under sections 17 to 25 of this Act nor indebtedness incurred thereunder, which singly, or in the aggregate with previous debts or liabilities incurred for small scale local energy projects, shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under sections 17 to 25 of this Act exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under sections 17 to 25 of this Act in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution.

**SECTION 26.** (1) There hereby is created the Small Scale Local Energy Project Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the department and the director in processing applications and investigating proposed small scale local energy projects under this Act.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by this Act.

(c) Principal and interest of all bonds issued pursuant to the provisions of sections 17 to 25 of this Act.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees required by section 2 of this Act.

(b) Repayment of moneys loaned to applicants from the loan fund, including interest on such moneys.

(c) Such moneys as may be appropriated to the fund by the Legislative Assembly.

(d) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(e) Moneys received from ad valorem taxes levied pursuant to Article XI-J of the Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(f) Interest earned on cash balances invested by the State Treasurer.

**SECTION 27.** The director shall submit to the Legislative Assembly and the Governor a biennial report of the transactions of the loan fund and the sinking fund in such detail as will accurately indicate the condition of the funds.

**SECTION 28.** (1) If there are insufficient funds in the sinking fund to make the payments referred to in subsection (1) of section 26 of this Act, the director may request the funds necessary for such payments from the Legislative Assembly or the Emergency Board.

(2) When the director determines that moneys in sufficient amount are available in the sinking fund, the State Treasurer shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys.

**SECTION 29.** This Act becomes effective on the date that the amendment to the Oregon Constitution proposed by Senate Joint Resolution 24 (1979) becomes effective.