

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rule making related to the alternate energy revolving loan program
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to adopt new Chapter 405, “Alternate Energy Revolving Loan Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.120.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 15.120 and 476.46.

Purpose and Summary

2017 Iowa Acts, chapter 169, amended Iowa Code section 476.46 and transferred the administration of the Alternate Energy Revolving Loan Program (AERLP) to the Iowa Energy Center created under Iowa Code section 15.120. Iowa Code section 15.120 requires the Iowa Energy Center Board to adopt rules for the administration of the Center’s programs.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on December 26, 2018. Comments should be directed to:

Kristin Hanks-Bents
Iowa Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Email: kristin.hanks-bents@iowaEDA.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 261—Chapter 405:

CHAPTER 405
ALTERNATE ENERGY REVOLVING LOAN PROGRAM

261—405.1(15) Definitions.

“Authority” means the economic development authority created in Iowa Code section 15.105.

“Board” means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

“Iowa energy center” or *“IEC”* means the Iowa energy center created within the economic development authority pursuant to Iowa Code section 15.120.

“Project” means an alternate energy production facility as defined in Iowa Code section 476.42 or a small hydro facility as defined in Iowa Code section 476.42.

261—405.2(15) Loan amounts and terms.

405.2(1) The minimum loan amount is \$25,000 per project.

405.2(2) The board shall not lend more than 50 percent of eligible project costs as defined in rule 261—405.5(15).

405.2(3) A project shall be eligible for not more than \$1 million in loans outstanding at any time under this program.

405.2(4) A borrower shall be eligible for not more than \$1 million in loans outstanding at any time under this program.

405.2(5) The board shall not issue a loan that exceeds the value of the collateral provided.

405.2(6) Security for loans. The board will accept security for a loan. The following forms of collateral will be accepted:

- a. Real property;
- b. Dedicated certificate of deposit;
- c. Irrevocable letter of credit;
- d. Corporate guarantee;
- e. Other forms of collateral if approved by the board, and only if the forms of collateral listed in paragraphs 405.2(6) “a” to “d” are inadequate.

405.2(7) Term. The duration of the loan shall be for 20 years, the estimated useful life of the project that is financed by the loan, the terms of any other loans used to finance the project, or the estimated return on investment for the project, whichever is shortest.

261—405.3(15) Borrowers.

405.3(1) *Eligible borrowers.* The project shall be wholly owned by the borrower. Eligible borrowers include:

- a. Persons whose primary residence is in Iowa.
- b. Businesses registered and domiciled in Iowa. For businesses organized as limited liability companies, each member of the limited liability company must be domiciled in Iowa and be an eligible borrower.
- c. Water and wastewater utilities subject to Iowa Code chapter 388, rural water districts subject to Iowa Code chapters 357A and 504, and sanitary districts subject to Iowa Code chapter 358.

405.3(2) Ineligible borrowers. Ineligible borrowers include:

- a. An organization that is lending to a project and also owns the project or is a member of an organization that owns the project.
- b. An individual or an organization with a history of defaulted loans or compliance violations with other state programs or rules.
- c. Regents institutions.
- d. Community colleges.
- e. State agencies.
- f. Cities, but not water or wastewater utilities subject to Iowa Code chapter 388.
- g. Counties.
- h. School districts.
- i. Nonprofit organizations.
- j. Gas and electric utilities subject to Iowa Code chapter 388 or rural electric cooperatives subject to Iowa Code chapter 476.

261—405.4(15) Eligible projects. A proposed project must meet the following criteria to be eligible for a loan under this program:

405.4(1) The project shall be located in Iowa.

405.4(2) The project shall be an alternate energy production facility as defined in Iowa Code section 476.42 or a small hydro facility as defined in Iowa Code section 476.42.

405.4(3) The project shall be wholly owned by the borrower.

405.4(4) The borrower shall be the owner, contract purchaser or lessee of the real property where the project is located.

261—405.5(15) Eligible and ineligible costs.

405.5(1) Eligible costs. Examples of eligible costs include:

- a. Real and personal property comprising a project;
- b. Materials and equipment required for necessary site preparation, construction and installation of a project;
- c. Labor for site preparation, construction and installation of a project. Only labor that is performed by a third party such as an independent contractor will be considered an eligible cost.

405.5(2) Ineligible costs. Examples of ineligible costs include:

- a. Feasibility studies;
- b. Permits;
- c. Administrative costs not associated with site preparation, construction and installation of a project;
- d. Costs incurred prior to the board's approval of a loan;
- e. Interconnection costs;
- f. Costs associated with maintenance, operation or repair of a project; and
- g. Other costs that the board determines to be ineligible.

261—405.6(15) Application process.

405.6(1) Application forms shall be available at iowagrants.gov.

405.6(2) Applications will be accepted during an established application period, as determined by the board from time to time and as funds are available.

405.6(3) If an applicant intends to finance more than one project, the applicant shall include all proposed projects in a single loan application.

405.6(4) Authority staff will review applications for completeness, eligibility, and whether the proposed project meets the financial and technical requirements of the Iowa energy center. The board may engage an outside technical review panel to complete technical reviews of applications.

405.6(5) Authority staff will recommend applications to the loan committee. The Iowa energy center may request additional information from applicants to process the loan application. The loan committee

will review the applications and staff recommendations and then make recommendations to the board. The board will approve, defer, or deny applications for loans. Authority staff may negotiate the amount, term, and other conditions of the loan prior to award.

405.6(6) The board will accept loan applications on a rolling basis. The board will make funding decisions at least once each quarter.

405.6(7) If, during any application period determined by the board, the demand for loans exceeds the funding available, the following competitive scoring criteria will be used:

a. Applications for projects that employ novel, emerging or underutilized technology will be scored favorably.

b. Applications for projects that increase geographic diversity for the loan program portfolio will be scored favorably.

c. Applications for projects that provide a quicker return on investment and a shorter loan term will be scored favorably.

d. Applications for projects that produce more renewable energy relative to the amount of the loan will be scored favorably.

261—405.7(15) Administration.

405.7(1) *Notice of approval.* The authority will notify successful applicants in writing of an approved request for funding. Such a notification may include the terms or conditions under which approval is granted.

405.7(2) *Contract.* After notifying the borrower of an award, the authority will offer a contract to the borrower. The contract shall be between the Iowa energy center and the borrower. An award shall not constitute a binding contract.

405.7(3) *Transmittal.* The borrower must execute and return the contract to the authority within 45 days of the transmittal of the final contract from the authority. Failure to do so may be cause for the board to terminate the award.

405.7(4) *Disbursement of funds.* Borrowers shall submit requests for disbursement of funds on the forms provided by the authority.

405.7(5) *Amendment.* Any substantive change to a project shall require an amendment to the contract. A substantive change to a project includes but is not limited to a change in the loan amount, loan term, or scope of work. The borrower shall request the amendment in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.

405.7(6) *Closeout.* Upon contract expiration or project completion, the authority shall initiate project closeout procedures.

405.7(7) *Record keeping and retention.* Borrowers shall retain all financial records, supporting documents and all other records pertinent to the loan for three years after the contract is closed or the loan is put in default and is not cured.

405.7(8) *Reporting and compliance.* A start-up report is due to the authority within 30 days of the date that the project is placed in service. The report shall include but is not limited to documentation of installed costs of the project, one or more photographs, a sample invoice, and a description of any unexpected problems encountered during construction or installation of the project. The authority reserves the right to conduct a site visit of all awarded projects to ensure the projects were built as proposed and to provide verification of ongoing operation. The authority will monitor all loans to ensure that loan proceeds have been spent as identified in the contract and that all other sources of financing have been committed to the project. Borrowers shall be required to notify the authority of any change in ownership. Any loan made pursuant to this program shall become due for payment upon sale of the project for which the loan was made.

405.7(9) *Default.*

a. At any time during the construction of a project or the repayment of the loan, the authority may find that a borrower is in default under the terms of the loan contract. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by borrowers.

b. If the authority determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties as authorized pursuant to Iowa Code section 476.46, negotiate alternative payment schedules, suspend or discontinue collection efforts and take action as the authority deems necessary.

c. The authority shall attempt to collect the amount owed. Any negotiated settlement, write-off, or discontinuance of collection efforts is subject to final review by and approval of the board.

d. If the authority refers a defaulted contract to outside counsel for collection, then the terms of the contract between the authority and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

These rules are intended to implement Iowa Code sections 15.120 and 476.46.