

## Chapter 31. Energy Improvement Program Statute

### 15.3101 PURPOSE

The purpose of this Statute is to layout the requirements for the Little Traverse Bay Bands (LTBB) of Odawa Indians Department of Commerce to administer the Energy Improvement Program for eligible property. The Energy Improvement Program, that includes energy efficiency and renewable energy, will enhance the value of the property and improve the environment of the community through conservation of energy.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section I)

### 18.3102 DEFINITIONS

- A. **"Assessment"** means a charge levied by the Tribe against eligible property benefited by energy improvement under the Energy Improvement Program.
- B. **"American Society of Heating, Refrigerating and Air-Conditioning Engineers" or "ASHRAE"** means the American professional association seeking to advance heating, ventilation, air conditioning and refrigeration (HVAC&R) systems design and construction.
- C. **"Commercial property"** means any property other than a residential building containing four (4) or fewer dwelling units that is used for manufacturing, hospitality, medical, industrial or government, and other businesses that are not for the intended purpose of human habitation, including the following: office buildings, medical centers, hotels, malls, retail/restaurant stores, retail buildings, multifamily housing buildings larger than a fourplex, gas stations/garages, warehouses, self-storage developments, and multi-use buildings.
- D. **"Department"** means the Department of Commerce.
- E. **"Eligible property"** means commercial property wholly owned by the Tribe, majority owned by the Tribe or located on land held in trust by the Secretary of Interior.
- F. **"Energy efficiency improvement"** means one or more installations or modifications to eligible property that are designed to reduce the energy consumption of the property and includes, but is not limited to, the following:

1. Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;
2. Storm windows and doors, multi-glazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, with additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
3. Automatic energy control systems;
4. Heating, ventilating, or air conditioning and distribution system modifications or replacements in a building;
5. Caulking and weather-stripping;
6. Replacement or modification of lighting fixtures to increase the energy efficiency of the system;
7. Energy recovery systems;
8. Daylighting systems;
9. Electric vehicle charging equipment added to the building or its associated parking area;
10. Any other modification, installation, or remodeling approved by the Department as a utility cost-savings measure, including water conservation fixtures, including both indoor and outdoor fixtures and for both hot and cold water.

**G. "Energy improvement"** means one or more on-site energy efficiency improvements or renewable energy improvements, or both, made to eligible property that will reduce the energy consumption of or add energy produced from renewable energy sources with regard to any portion of the eligible property.

**H.** “**Executive**” means the Executive Branch of government under Article VIII of the Constitution the power of which is vested in the Tribal Chairperson and the Vice- Chairperson.

**I.** “**Loan balance**” means the outstanding principal balance of loans secured by a mortgage or deed of trust with a first or second lien on eligible property.

**J.** “**Program**” means the Energy Improvement Program established by the Tribe.

**K.** “**Qualified applicant**” means a person who timely has submitted an application to the Department of Commerce and meets the requirements established by the Department.

**L.** “**Renewable energy improvement**” means one or more fixtures, products, systems, or devices, or an interacting group of fixtures, products, systems, or devices, that directly benefit eligible property or that are installed behind the meter of any eligible property and that produce energy from renewable resources, including but not limited to photovoltaic, solar thermal, wind, low-impact hydroelectric, biomass, fuel cell, or geothermal systems, such as ground source heat pumps.

**M.** “**Tribe**” or “**LTBB**” mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section II)

### **15.3103 PROGRAM**

The purpose of the program is to promote the benefits of energy improvements that includes energy efficiency improvement and/or renewal energy improvement to owners of eligible property who voluntarily join the Program. The Department of Commerce shall establish, develop, and administer the new energy improvements program that will enhance the value of the property and improve the environment of the community through conservation of energy.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section III)

### **15.3104 DEPARTMENT OF COMMERCE DUTIES AND AUTHORITY**

**A.** The Tribal Department of Commerce is hereby established and shall oversee implementation of the Energy Improvement Program for eligible property.

**B.** The Department may exercise any of the powers granted to the Department through this Statute, including the following:

1. Establish a process and specify the information to be included in an Energy Improvement Program application that allows an owner of eligible property to become a qualified applicant by submitting an application to the Department and that may include one or more deadlines for the filing of an application.
2. To review and approve applications for the Program.
3. To levy and issue assessments.
4. To enter into contracts and agreements needed for its functions or operations.
5. To acquire, dispose of, and encumber eligible property within the Program.
6. To contract for professional services.
7. To establish assessment units, by the power to determine the method of calculating assessments, or the power to issue assessment.
8. To accept gifts and donations and apply for and accept grants; and establish, develop, and administer finances for the Program.
9. Retain a collection fee for each assessment and other allowable fees that it collects as part of the Program.
10. Market the Program to owners of eligible property, encourage such owners to obtain the benefits of completing energy efficiency or renewable energy improvements to their property and accept and process Program applications from any such owners who are qualified applicants.
11. To establish an escrow account for the deposit of any payments for transmittal to private third-party financing.

C. The Department shall prepare an assessment roll showing each unit of eligible property assessed, the total monetary amount of assessment, the amount of each installment of principal and interest if the assessment is payable in installments, and the date when each installment will become due. The Department shall deliver the assessment roll, to Tribal Council no later than December 31st of each year.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section IV)

### **15.3105 APPLICATION**

A. The Program shall be administered by the Department of Commerce within the Executive Branch.

B. The Department will publish the Energy Improvement Program application on the LTBB website.

C. Applications shall be deemed completed if they contain the following information:

1. A postal address or electronic mail address of the eligible property owner(s), the name and postal or electronic mailing address of any person holding a lien against the eligible property, and any information that the Department requires to verify that the owner will complete an energy efficiency improvement or renewable energy improvement, verification of the cost of completing, and an estimate the value of the benefit provided by the completed energy efficiency improvement or renewable energy improvement(s) to the applicant's eligible property.

2. Documentation that establishes credit-worthiness for qualification of Program applicants in accordance with such standards, guidelines, and procedures established by the Department, including but not limited to standards to ensure the financial stability of the applicant and other standards to prevent fraud and abuse.

3. Documentation of energy audit or other proof that ensures the efficient use of the energy as determined by the Department and as required by this Statute.

4. Verification that the Energy Improvement Program applicants have qualified for private third-party financing.

5. Verification that any mortgage or lien holder consents to the eligible property participating in the Program and will be a subordinate lienholder and consent to the levying of an assessment on the property.

6. Any other documentation that the Department requires, including, commercial building equity, appraisals and loan-to-value ratios.

D. Completed applications and electronic signatures shall be accepted by email or other forms of electronic transmission.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section V)

#### **15.3106 DEPARTMENT FUNDING**

A. The Department may collect a fee for each Program application submission.

B. The Department may collect a fee for each assessment that it collects as part of the Program.

C. The Department may also collect a fee for the remittance of funds to private third-party financing.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section VI)

#### **15.3107 ENERGY IMPROVEMENT PROJECT**

A. All work shall require a license under any applicable law to acquire, construct, install, or modify an energy project and shall be performed by a licensed contractor that has agreed to adhere to a set of terms and conditions through a process established by the Department or the Tribe's Planning Department.

B. The Department may require that the contractor or contractors sign a written acknowledgement issued by the Department that will not authorize final payment to the

contractor or contractors until the Department has received written confirmation from the owner that the energy project was properly acquired, constructed, installed or modified and is operating as intended; provided, however, that the contractor or contractors retain all legal rights and remedies in the event there is a disagreement with the owner.

**C.** Eligible expenses include improvements made for Energy efficiency improvement or Renewable energy improvement, or both, including but not limited to the following:

1. Commissioning costs
2. Construction costs related to an eligible improvement
3. Energy audit costs
4. Engineering and design expenses
5. Measurement & verification costs
6. Permit fees
7. Renewable energy feasibility study costs
8. Processing fees including but not limited to appraisals, lender fees, Department fees, legal fees.

**D.** Ineligible expenses include the following:

1. Any combination of measures that do not result in utility cost savings;
2. Measures that are not permanently attached to the subject property or building and which can be easily removed (not including certain lighting upgrades the Department determines are unlikely to be removed);
3. Any measure that is not commercially available;
4. Health and safety improvements not directly related to or otherwise incorporated

in the energy improvement; and

5. General construction costs, other than new construction projects.

**E. New Construction**

1. The applicant is required to provide total project construction costs by a trade component so that the Department can evaluate the Total Eligible Construction Cost (TECC). The TECC will include all hard and soft costs associated with construction and excludes the cost to purchase or lease the land itself as well as any components that are not permanently attached to the building.

2. The applicant will provide proof that the current or applicable International Energy Conservation Code is met or exceeded

**F.** Energy efficiency improvements will require an Energy Audit Report as defined by ASHRAE for projects that involve multiple energy efficiency improvements, include at a minimum building description, baseline consumption and cost, and measure-level descriptions, costs, and savings projections.

**G.** For like-for-like replacement projects, an Energy Audit Report are not required; instead for each like-for-like improvement, the applicant shall submit proof one or more of the following:

1. Measure-level descriptions, costs, and savings projections;
2. Spreadsheets or dynamic building simulation input files and output reports; or
3. Energy Performance Improvement Calculator report, based on level of project complexity simulation (building drawings, audit forms or notes, equipment cut sheets, pictures, etc.)

**H.** Renewable energy projects must submit a renewable energy feasibility study.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section VII)

**15.3108 ELIGIBLE PROPERTY**



- A.** In order for a property to be eligible for the Energy Improvement Program it must be “Commercial Property” that is wholly owned by the Tribe, majority owned by the Tribe by at least fifty-one (51) percent, or held in trust by the Secretary of Interior.
- B.** The approval of an application for the Program by the Department constitutes the consent of the property owner to the levying of an assessment on the eligible property in an amount that:
- 1.** Does not exceed the value of the benefit provided to the eligible property by the energy improvement or renewable energy improvement; and
  - 2.** Up to 100 percent financing for existing building retrofit projects and up to thirty (30) percent financing for new construction projects, with terms that extend up to twenty-five (25) years. The value of the property shall be determined by an appraisal conducted by a licensed appraiser.
- C.** The application for the Program must be made no later than three (3) years from the date of the completion of the energy efficiency improvement or renewable energy improvement evidenced by appropriately issued and closed out permits or Occupancy Permit for new construction.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section VIII)

### **15.3109 CREDIT REVIEW OF APPLICANT**

In order for an applicant to be eligible, the following criteria shall be met:

- A.** There are no involuntary liens on the property, including, but not limited to, construction or mechanics liens, liens pending or judgments against the record owner, environmental proceedings, or eminent domain proceedings.
- B.** There are no notices of default or other evidence of property-based debt delinquency have been recorded and not cured.

C. The owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last two (2) years, and the property is not an asset in a current bankruptcy proceeding.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section IX)

### **15.3110 DELINQUENT AND DEFAULT PAYMENTS**

A. The Department shall declare the installments payment delinquent, when either of the following occur:

1. Notice is provided to the Department by a private third party that financed the energy improvement of the failure of payment of either installment or interest.
2. The Department fails to receive the payment of either installment or interest.

B. The Department shall provide notice to the eligible property owner of the delinquency. If the owner's location or address is not available, the Department shall post the notice on the Tribal website.

C. At any time prior to default, the owner may pay the amount of the delinquent installments, with interest at the penalty rate set by the Department, and all costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not occurred.

D. Before the Department declares a default of the assessment payment, the Department shall notify Tribal Council of the pending default. Tribal Council shall have the option of taking over the installment payment with any outstanding interest, paying off the total amount of the assessment, or allowing the default to occur.

E. After providing notice to the property owner and Tribal Council, the Department may declare a default of the assessment payment. The Department shall issue a lien against the eligible property and any enhancements contained therein. The default lien shall include the delinquent installment amount, interest and any associated costs of collection accrued.

F. The lien shall be filed with the Tribal Clerk, Enrollment Office.

**G.** After the lien is filed, the Department shall advertise and sell the assessed eligible property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal, interest and any associated costs of collection accrued. Advertisements and sales shall be posted to the Tribal website by the Department.

**H.** The assessment lien shall remain on the entire property, including property enhancements, until the entire assessment is paid.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section X)

### **15.3111 PRIORITY DISTRIBUTION**

**A.** The assessment, together with all interest and penalties for default in payment and associated collection costs constitutes, from the date of the declared default and has priority over all other liens.

**B.** Any revenue from the sale of the eligible property shall be distributed in the following manner:

- 1.** Department expenses for securing deeds and taking proceedings for the default, sale or foreclosure.
- 2.** Private third party that financed the new energy improvements.
- 3.** Holders of a loan balance secured by a mortgage or deed of trust with a first or second lien on eligible property.
- 4.** Property owner.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section XI)

### **15.3112 REGULATIONS REQUIRED**

The Department shall develop Regulations for this statute for Tribal Council approval; however, the implementation of the statute shall not be delayed by approval of Regulations.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section XII)

**15.3113        EFFECTIVE DATE**

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2021-014, deemed enacted August 25, 2021, Section XIII)