Title 22. Public Property

Chapter XVII. Building Authority Division, Department of Transformation and Shared Services

Subchapter A. Generally

Part 100. Sustainable Building Design Program Procedures

Subpart 1. General

22 CAR § 21-101. Sustainable Building Design Revolving Loan Fund.

(a) The following are the stated processes for application, review, award, and monitoring of the Sustainable Building Design Revolving Loan Fund and applicable agreements between the Building Authority Division and loan recipients.

(b) These processes involve the revolving loan fund only.

(c) The processes involving the solicitation, award, or monitoring of contracts involving contractors, vendors, design professionals, and other consultants shall be performed pursuant to federal and state laws, rules, and regulations.

(d) The process associated with the Sustainable Energy-Efficient Buildings Program, Acts 2009, No. 1494, codified as Arkansas Code §§ 22-3-2001 — 22-3-2011, are under the jurisdiction of the Arkansas Energy Office of the Division of Environmental Quality.

22 CAR § 21-102. Definitions.

As used in this part:

(1) "Arkansas Energy Code for New Building Construction" means the most recent edition of the International Energy Conservation Code as adopted;

(2) "AEO" means the Arkansas Energy Office of the Division of Environmental Quality;

(3) "Agency" means any state agency, board, or commission;

(4) "BAD" means the Building Authority Division;

(5) "BADMSC" means the Building Authority Division Minimum Standards and Criteria, 22 CAR pt. 20;

(6)(A) "Committee" means the Sustainable Building Design Program Review Committee as appointed by the Director of the Building Authority Division.

(B) The Sustainable Building Design Program Review Committee shall consist of five (5) members:

(i) Two (2) members from the Legislative Task Force on Sustainable Building Design and Practices [abolished], or their designees, as long as the Legislative Task Force on Sustainable Building Design and Practices [abolished] is in effect;

(ii) One (1) agency staff member from the Arkansas Energy Office of the Division of Environmental Quality, or their designee;

(iii) One (1) member from the Building Authority Division Design Review Section, or their designee; and

(iv) One (1) member from the Department of Finance and Administration;

(7) "Director" means the Director of the Building Authority Division;

(8) "Energy" means electricity, natural gas, or other fuel such as methane, fuel oil, coal, or propane that is used to operate a state building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for operations;

(9)(A) "Energy cost savings" means the monetary value of the energy that is saved or the energy that is not consumed, as a result of an energy efficiency renovation project and is generally stated on an annualized basis for the term of the project.

(B) This value is measured and based upon the life cycle costs of a project using the current edition of the Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis or energy sources utilized by the building where the renovation occurs (www1.eere.energy.gov/femp/pdfs/ashb09.pdf);

(10)(A) "Energy efficient renovation" means any capital improvement project which consists of renovations, alterations, or repairs of existing buildings or building equipment.

(B) It does not mean:

(i) New construction, projects that save money solely through the switching of fuels, energy sources, or vendors, or any combination of these;

(ii) Projects or measures solely intended to save money by changing the time of day or year at which energy is consumed (i.e., thermal energy storage or other peak demand reduction systems); or

(iii) Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems;

(11)(A) "Energy savings" means the combined value, in British thermal units, also known as BTUs, of all energy sources saved or not consumed as a result of an energy efficiency project.

(B) For the purposes of this part, the following conversion factors are used in calculating the total energy savings:

Electricity	3,412 BTU/kwh;
Natural gas/methane	100,000 BTU/therm;
Natural gas/methane	1,030 BTU/cu. ft.;
Fuel oil	139,000 BTU/gallon;
Coal	12,000 BTU/lb;
Propane	91,600 BTU/gallon

(12) "Fund" means the Sustainable Building Design Revolving Loan Fund;

(13)(A) "Life cycle cost analysis", which shall be referred to as LCCA, means an economic method of project evaluation in which all costs arising from owning, operating, maintaining, and ultimately disposing of a project are considered to be important to that decision.

(B) LCCA is particularly suitable for the evaluation of building design alternatives that may have:

(i) Different initial investment costs;

(ii) Different operating, maintenance, and repair costs (including energy and water usage); and

(iii) Possible different lives;

(14) "Manager" means the Sustainable Building Design Revolving Loan Fund Manager; and

(15) "Quarter" means the three-month period within the state fiscal year beginning with the following dates:

(A) July 1;

(B) October 1;

(C) January 1; and

(D) April 1.

22 CAR § 21-103. Fund Corpus.

(a) Funds will be collected and deposited pursuant to Acts 2009, Nos. 754 and 1363, for the purposes as stated in Acts 2009, No. 1372, as codified in Arkansas Code §§ 22-3-1901 — 22-3-1904.

(b) The Sustainable Building Design Revolving Loan Fund is a miscellaneous fund which consists of:

(1) Funds transferred to it from the General Improvement Fund or other funds;

(2) Gifts;

(3) Bequests;

(4) Foundation grants and gifts;

(5) Governor's or other emergency funds;

(6) Federal grants and matching funds;

(7) Proceeds from bond issues;

(8) Service charges or fees;

(9) Interagency transfers of funds; and

(10) Other funds as may be appropriated by the General Assembly.

(c) The fund shall consist of funds:

(1) Received from agencies, boards, and commissions to repay loans for the Sustainable Building Design Program for State Agencies; and

(2) Made available by the General Assembly from time to time and other authorized revenues.

22 CAR § 21-104. Initial process overview.

(a)(1) Any agency which does not have sufficient appropriation and/or funding to complete desired energy efficient upgrades for state-owned facilities may participate in the Sustainable Building Design Program for State Agencies for renovations which exceed two hundred fifty thousand dollars ($250,000) upon Building Authority Division approval.

(2) After project approval is provided, the agency may request a transfer from the program appropriation authorized with the Sustainable Building Design Program for State Agencies, Arkansas Code § 22-3-1901 et seq., from the Chief Fiscal Officer of the State.

(3) The request shall clearly state the amount required and such other information as may be required by the Chief Fiscal Officer of the State necessary to make a decision regarding the request.

(4) Upon approval of the Chief Fiscal Officer of the State, and prior review by the Legislative Council or Joint Budget Committee, the Auditor of State shall be notified of the amount and the purposes for which the appropriation and/or funding is to be transferred, and shall be established upon the books of the Department of Finance and Administration and the Auditor of State.

(5) If desired, the appropriation may be supplemental to those regularly appropriated for like purposes by the General Assembly for that agency.

(b)(1) The program is intended to provide additional appropriation authority for the program.

(2) Funding for the program may be made available by:

(A) The Chief Fiscal Officer of the State in the form of a loan;

(B) From a transfer from the fund after the required review by the Legislative Council or Joint Budget Committee;

(C) Approval by the Chief Fiscal Officer of the State; and

(D) Approval through rules established and administered by the division.

(3) Moneys made available for the repayment of a loan shall be deposited to the credit of the fund as a refund to expenditure for the year in which the deposit is made.

(4) In the event that the funds for the repayment of a loan are held in depositories other than the State Treasury, the administrative head of the affected agency shall issue a check drawn against the funds, which shall be deposited in the fund.

(c)(1) Agencies that receive loan funds shall be required to file a financial report annually for expenditures.

(2) The report shall be filed with the Chief Fiscal Officer of the State and the Director of the Building Authority Division as directed by the Manager.

Subpart 2. Loan Programs

22 CAR § 21-201. Fund.

There shall be established within the Building Authority Division a separate and segregated account for the purpose of ensuring the viability of the Sustainable Building Design Program for State Agencies through the creation of an inviolate corpus (principal account).

22 CAR § 21-202. Annual loans.

(a) **Projects funded during a regular fiscal annual loan period.** These loans are submitted through the regular annual loan cycle with projects and expenditures occurring between July 1 and June 30 of each year.

(b)(1) No loan shall be made for two hundred fifty thousand dollars ($250,000) or less.

(2) While loans may be made which exceed five hundred thousand dollars ($500,000), the self-sustaining aspect of the funding of the program through origination

fees shall be reviewed and justified by the Director of the Building Authority Division prior to awards exceeding five hundred thousand dollars ($500,000).

Subpart 3. Application for Funds Process

22 CAR § 21-301. Eligibility to apply.

(a) Applicants for funding from the Sustainable Building Design Revolving Loan Fund shall be agencies, boards, and commissions of the State of Arkansas which:

(1) Receive general revenue funding; and

(2) Are authorized by law to make renovations for state-owned facilities which:

(A) Exceed the amount of two hundred fifty thousand dollars ($250,000); and

(B) Require approval by the Building Authority Division.

(b) Applicants for projects to be funded by the American Recovery and Reinvestment Act of 2009 (ARRA) monies shall submit applications no later than December 12, 2011.

(c) Applicants for projects to be funded by the General Improvement Fund monies may submit applications on an as-needed basis.

22 CAR § 21-302. Loan review criteria.

(a)(1) The Building Authority Division shall only approve those projects which exceed two hundred fifty thousand dollars ($250,000) for the renovations of existing state-owned facilities which the division determines to be of value for sustainable design building purposes.

(2) Projects shall be selected for funding on the basis of their conformity with these purposes, pursuant to Arkansas laws.

(3)(A) Projects may be bundled to meet the minimum threshold amount of exceeding two hundred fifty thousand dollars ($250,000).

(B) However, all contracting of these projects shall be made pursuant to federal and state laws, regulations, and rules.

(4) To qualify for funding in whole or in part as a sustainable building design project, the state-owned facility shall be:

(A) A facility of an agency; and

(B) Designed, renovated, and certified pursuant to the Arkansas Energy Office of the Division of Environmental Quality's requirements of the Sustainable Energy-Efficient Buildings Program, which currently states a reduction of at least ten percent (10%) below the baseline energy consumption determined in accordance with the Performance Rating Method of Appendix G of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Standard 90.1-2007, as it existed on January 1, 2009.

(5) The Sustainable Building Design Program Review Committee shall:

(A) Review the applications forwarded from the Manager; and

(B) Make recommendations to the Director of the Building Authority Division for project loan approval.

(b) Other review criteria include:

(1) Agency has completed its Strategic Energy Plan (StEP) and was approved by the StEP Energy Workgroup, and plan includes specific sustainable renovation projects within the Capital Projects section of the plan;

(2) Agency has contracted or will be contracting for a measurement and verification (M&V) of the project;

(3)(A) Agency has completed a life cycle cost analysis.

(B) Should an agency determine an analysis is not needed, the director may waive this requirement upon proper written justification presented by the agency;

(4) A statement from the agency director as to the agency's method of repayment of the loan;

(5) Renovations which may include:

(A) Building exterior weatherization, air sealing, or thermal efficiency;

(B) Increase or improvement in building insulation;

(C) Door, window, or skylight replacement;

(D) Lighting technology upgrades, or reduction of the number of fixtures;

(E) Heating, ventilation, heat recovery, steam system, and air conditioning (HVACR) replacements;

(F) Improvements to energy control systems/sensors; and

(G) Other energy efficiency projects such as VFD motors that will result in a significant reduction in the consumption of energy within a building;

(6) The following direct costs are eligible:

(A) Building materials;

(B) Doors, windows, and skylights;

(C) Mechanical systems and components including HVACR and hot water;

(D) Electrical systems and components including lighting and energy management systems;

(E) Labor necessary for the installation of the energy efficient project;

(F) Design and planning of the energy efficient project which include, but are not limited to:

(i) Design professionals;

(ii) Consultants; and

(iii) Energy service companies (ESCO); and

(G) Costs associated with energy audits, recommissioning, or retro-commissioning, or any combination thereof, which include, but are not limited to:

(i) Design professionals;

(ii) Consultants; and

(iii) ESCOs;

(7) The following are not eligible costs:

(A) The costs of the project which are not directly related to energy efficiency measures;

(B) Any costs incurred for the financing of the project;

(C)(i) Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

(ii) However, nothing in this section shall be deemed to prohibit costs associated with renewable energy or geothermal projects; and

(D) Loan funds cannot be used to pay for consultants to write loan applications, reports, or manage the loaned funds;

(8) Energy efficient projects undertaken as a part of a renovation project that are covered by the prescriptive requirements of the Arkansas Energy Code for New Building Construction must exceed the minimum Arkansas Energy Code for New Building Construction requirements in order for their costs to be eligible for a loan from the Sustainable Building Design Revolving Loan Fund; and

(9) **Conformity with other plans.** Conformity with plans, laws, and/or regulations currently existing, developed, and/or administered by other state or federal agencies.

22 CAR § 21-303. Loans.

(a) There is only one (1) category of loans for which application may be made.

(b) **Annual loans.** Projects funded during a regular annual loan cycle with projects and expenditures occurring between July 1 and the following June 30.

(c) **Origination fees.**

(1) The Building Authority Division shall credit an origination fee to the Building Authority Division Maintenance Fund for expenses associated with the administration of the Sustainable Building Design Program for State Agencies.

(2)(A) Applicant agencies shall remit an origination fee of one-half percent (.5%) of the requested amount of the loan.

(B) However, no origination fee may exceed two thousand five hundred dollars ($2,500) per loan application.

(d) The term for repayment of the loan shall not exceed ten (10) years.

(e) A state agency shall certify that it will not make additional requests from general revenue for funding to be used for repayment of the project loan.

22 CAR § 21-304. What is and is not funded.

(a) Only those projects which conform to the purposes defined in the legislation, rules, and loan application procedures will be considered.

(b) No loan funds shall be used to fund any other project or in any manner not defined within this part.

(c) Loans shall be for a project renovation which exceeds two hundred fifty thousand dollars ($250,000) on a state-owned facility.

22 CAR § 21-305. Loan elements.

(a) **Design professional, consultant, and ESCO contracts.**

(1) Licensed design professionals shall prepare plans and specifications for sustainable projects funded with the funds.

(2)(A) Contracts for such professionals, consultants, and ESCOs shall follow the processes pursuant to federal and state laws, regulations, and rules.

(B) However, agencies do not have to contract for such services if they have licensed design professionals on staff.

(C) The design professional shall prepare and certify plans, specifications, a work-cost breakdown, and other required contract documents for submission and will observe the project work.

(b) **Contractors/vendors.**

(1) Contractors/vendors shall be selected pursuant to applicable laws.

(2) The requirement for a contractor may be waived if the agency has staff expertise within the applicant agency.

(c) **Project preparation/plans and specifications.** All projects funded, in whole or in part, with the loan must be in accordance with the federal and state laws, regulations, and rules.

(d) **Project.** The project in its entirety, including amendments for design services and change orders to the project contract, shall adhere to all applicable laws and rules, including but not limited to the BADMSC for the entities under the jurisdiction of the Building Authority Division.

(e) **Maintenance and administration.**

(1) Agencies who own the properties assisted by the revolving loan funds must agree that the property shall be maintained to every extent possible in accordance to applicable laws, codes, and rules.

(2) Additionally, the agency must agree to give the division the right to observe the project at all reasonable times throughout the loan period to ascertain the agency's compliance with the loan agreement.

(f) **Site visits.**

(1) As work on the project progresses, in addition to regular visits by the Construction Section staff, other state staff representatives may make periodic site visits:

(A) To observe the work in progress;

(B) After the completion of the project to observe how the project is functioning or operating; or

(C) Both.

(2) Once work has begun on the project, the site visits may be made without notification to the agency.

22 CAR § 21-306. Application instructions.

(a) **Application form.**

(1) Each loan application must include a completed loan application form.

(2) Loan applications may include more than one (1) like project.

(b) **Approval by the agency’s chief executive officer and other approval.**

(1) Each agency applicant must certify that the loan proposal has been previously submitted to and approved by its respective executive office and its board or commission as applicable.

(2) The name, email address, and telephone number of the applicant's fiscal officer who will be handling the finances of the loan project are also required.

(c) **Acquisition project requirements.** Agencies applying for acquisition funds must submit or have on file with the Building Authority Division verification that such procedures have been met.

(d) **Application obligations.**

(1) Parties to a loan agreement specifically recognize that loan assistance from the division creates an obligation to maintain the property described in the project agreement consistent within this part and the Sustainable Building Design Program for State Agencies, Arkansas Code § 22-3-1901 et seq.

(2) The applicant agrees that the project:

(A) Is being renovated and maintained with loan funds (or that such funds are integral to the project); and

(B) Shall not be converted to a use that would compromise the integrity of the original loan project.

(3) By the acceptance of a loan, the agency will give division staff and other state officials the right to inspect the property at all reasonable times to ascertain the agency's compliance with the loan agreement.

(e) **Returned funds.**

(1) If, for some reason, a project is terminated or if actual costs are less than anticipated or if the loan contract date has expired, all remaining unobligated funds will be returned to the division.

(2) All such funds shall be reclaimed by the chief fiscal officer and returned back to the Sustainable Building Design Revolving Loan Fund.

(f) **Loan extensions.**

(1) If a loan project is delayed due to conditions beyond the applicant's control, the applicant may request in writing an extension of the project period.

(2) No more than one (1) extension of up to one (1) year shall be approved per loan.

(g) **Loan submittal.**

(1) One (1) original and one (1) electronic copy of the loan application will be required, however, only one (1) copy is to be submitted by the stated deadline.

(2)(A) Applicants will be encouraged to contact the Manager for assistance in preparing an application prior to its submittal to lessen the chance for errors.

(B)(i) After the Manager reviews the application for completeness and accuracy, the applicant will be notified.

(ii) Applications which are not completed or where more information is warranted may result in delay of the application process.

(C) After the Manager receives all application documents, they will be forwarded to the Director of the Building Authority Division.

(D)(i) The completed application will be sent to the Sustainable Building Design Program Review Committee by the Manager.

(ii) The committee will review and make a recommendation to the director regarding approval of the award.

(E) Upon receipt of the committee's recommendation, the director shall make a determination of the loan award.

(F)(i) The director may request the applicant make a presentation to explain the loan proposal.

(ii) The presentation will be limited to fifteen (15) minutes per application.

(G) If a proposal is approved, all forms needed to implement the loan will be prepared.

22 CAR § 21-307. Review committee meetings.

(a) A meeting with the Sustainable Building Design Program Review Committee shall be held at the Director of the Building Authority Division's discretion, but no less than once a year.

(b) At that meeting, a report of the funds collected, donations, returned funds, all other funds available for loaning for the next loan period, and other pertinent information may be topics of discussion and review.

(c) Actions include, but are not limited to the following:

(1) The Manager shall recommend to the director regarding the funding to be placed in the Sustainable Building Design Program Revolving Loan Fund for the year; and

(2) Review of the status of the current project and loans.

22 CAR § 21-308. Legal, financial, and reporting requirements for loan recipients.

(a) **Contracts.**

(1)(A) After award decisions are made, award letters, contracts, final budget forms, and instructions shall be mailed to recipients.

(B) All documents are to be completed, signed, and returned to the Manager by the stated deadline.

(C) Failure to return the completed forms by the deadline may result in a delay of funding or forfeiture of the loan.

(2)(A) Once the terms of the loan are finalized, no substantive changes which affect the scope or completion of the project may be made in the program or budget as described in the original loan application unless the agency submits a written request for a change in advance.

(B) This request is to be submitted to the Manager who shall provide it to the Director of the Building Authority Division for approval or denial.

(C) Nothing shall prohibit the director from requesting additional information from the agency.

(3)(A) Once fully executed, the loan contract is a legal document.

(B)(i) The Manager will:

(a) Provide instruction to the loan recipient on requisite submittals for the loan process; and

(b) Work with the loan recipient to make corrections.

(ii) However, repeated failure to abide by the terms of the loan contract will result in:

(a) Immediate suspension of outstanding payments; and

(b) Recall of allocated funds.

(4) The forfeiture of a loan under such conditions:

(A) Will be reported to the:

(i) Governor;

(ii) Legislative Task Force on Sustainable Building Design and Practices [abolished]; and

(iii) Legislative Council; and

(B) May result in the Building Authority Division no longer accepting loan applications from the forfeiting agency.

(b) **Distribution/redistribution of loan payments.**

(1)(A) When a loan award is made, the agency receiving the loan is given a new state appropriation and funding specific to the loan.

(B) The Department of Finance and Administration will establish an appropriation code and a fund code for each loan.

(2) Monies are transferred to the agency's new fund account according to the schedule as established by the Manager.

(3) Reimbursement of the loan shall be in accordance with the schedule as established by the Manager.

(4) All expenditures are subject to the State of Arkansas accounting procedures and purchasing laws and rules and state public works laws, and the accounting and budgetary procedures for capital improvements.

(c) **Audit requirement.**

(1) For accounting purposes, financial records shall reflect all obligations and disbursements of the loan and matching monies.

(2) The financial accounts shall be subjected to audit by the agencies of the Department of Finance and Administration, the division, State of Arkansas, and/or the federal government as applicable.

(3) The agency shall be responsible for the safekeeping and identification of records maintained to account for funds awarded.

(4) Said records must be kept in the agency's file pursuant to the State Record Retention Schedule, 25 CAR pt. 60.

(d) **Compliance with state and federal laws.** Each loan project will comply with all applicable state and federal laws relating to the nature and purposes of the loan project (i.e., BADMSC, the Davis-Bacon Act, as Amended, 40 U.S.C. § 3141, American Recovery and Reinvestment Act, Pub. L. No. 111–5, Public Works, retention of records, the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and SHPO, 54 U.S.C. § 3023 et seq., etc.).

(e) **Reports.**

(1) Loan recipients are required to submit reports during the year to the Manager.

(2) For all loans, a final financial summary of the official state financial report for all expenses, final narrative/activity reports (final report), and photographs of the completed project as applicable are due no later than thirty (30) calendar days after the project's completion, or earlier as stated if ARRA funds are used as directed by the Manager.

(3)(A) Loan recipients shall submit complete monthly progress reports as directed by the Manager.

(B) Reports shall include:

(i) Detailed narratives identifying the accomplishments associated with each project element;

(ii) Financial information for the specified time period with an outline of expenditures related to each project element and appropriate Arkansas Administrative Statewide Information System reports;

(iii) Appropriate photographs or other documentation to give a clear impression of the project's progress through the specified date;

(iv) Difficulties, as well as the ease, the project encountered with sustainable issues shall be discussed;

(v) Copies of articles from newspapers, magazines, or other publications related to the project; and

(vi) Agencies shall submit appropriate reports as outlined in the schedule provided by the Manager.

(C) A deadline extension shall be requested in writing if the agency is unable to submit the reports on time.

(D) Failure to submit reports as agreed shall be reported to the Chief Fiscal Officer of the State.

(f) **Project directors' meeting.**

(1) After loan awards are made, a mandatory meeting will be held with loan recipient agency directors or their designees.

(2) Any agency who does not send appropriate personnel to review the procedures at this meeting shall not receive funds until the agency has made arrangements to meet with the Manager.

(g) **Personnel.**

(1)(A) Each loan recipient shall specify in writing:

(i) One (1) project contact; and

(ii) One (1) fiscal officer.

(B) It is the responsibility of the loan recipient to keep the Manager informed of any changes in the designated contacts.

(C) The project contact must be employed by the agency.

(2)(A) Loan funds cannot be used to pay for consultants to:

(i) Write loan applications or loan reports; or

(ii) Manage the loaned funds.

(B) The agency applying for a loan shall be responsible for providing personnel to:

(i) Write and manage the loan;

(ii) Focus the project on the scope of the contract;

(iii) Respond to questions;

(iv) Submit reports in a timely manner;

(v) Provide appropriate financial documents and reports; and

(vi) Monitor the work of:

(a) Architects;

(b) Contractors;

(c) Consultants; and

(d) Extra help workers.

(h)(1) The required forms shall be made available to the agencies by the Manager.

(2) Forms may include, but are not limited to, the:

(A) Application:

(B) Agreement;

(C) Budget;

(D) Agency progress report or reports; and

(E) Final report.