

Introduced by Senator De LeónFebruary 21, 2012

An act to add Division 16.3 (commencing with Section 26200) to the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1130, as introduced, De León. Energy: energy assessment: commercial buildings: financing.

Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish programs to provide financial assistance to participating parties to purchase alternative source energy and to develop renewable energy projects. Existing law authorizes the authority to issue revenue bonds secured by revenues generated by a project to provide financing for those purposes.

This bill would enact the Commercial Building Energy Retrofit Financing Act of 2012 and would require the authority to establish the Commercial Building Energy Retrofit Financing Program to provide financial assistance, through the issuance of revenue bonds, to owners of eligible buildings for implementing energy efficiency retrofit measures for the buildings. The bill would provide that the bonds are secured by the recording of an energy remittance repayment agreement, as defined, on the deed of the building for which the energy efficiency retrofits are performed. The bill would require the State Board of Equalization to collect installment payments from owners of eligible buildings whose applications have been approved by the authority. This bill would authorize the authority and the State Board of Equalization to assess a fee to reimburse them for the administrative costs incurred in implementing the program.

This bill would require the authority to meet, on a semiannual basis, for the purpose of issuing the revenue bonds to generate moneys sufficient to finance energy efficiency retrofit measures specified on applications that have been approved prior to the meeting.

This bill would establish the Commercial Building Energy Retrofit Debt Servicing Fund, the Loan Loss Reserve Account, the Administration Account, and the Collection Administration Account within the fund. The bill would require the State Board of Equalization to deposit the installment payment received from the owners of eligible buildings into the fund and the fees collected by the authority and the State Board of Equalization into the specified accounts. The bill would continuously appropriate the moneys in the fund and the accounts to repay the principal and interest on the bonds, and to cover the administrative costs incurred by the authority and the State Board of Equalization, thereby making an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 16.3 (commencing with Section 26200)
2 is added to the Public Resources Code, to read:

3
4 DIVISION 16.3. COMMERCIAL BUILDING ASSESSMENT
5 FINANCING

6
7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

8
9 26200. This act shall be known, and may be cited, as the
10 Commercial Building Energy Retrofit Financing Act of 2012.

11 26201. The purpose of this division is to establish sustainable
12 financing to enable private commercial building owners to invest
13 in clean energy improvements, to incentivize private equity
14 managers to invest in clean energy improvements, to stimulate the
15 state economy by directly creating jobs for contractors and other
16 persons who complete new energy improvements, and to reinforce
17 the leadership role of the state in the new energy economy, thereby
18 attracting energy manufacturing facilities and related jobs to the
19 state.

20 26202. The Legislature finds and declares all of the following:

1 (a) Commercial buildings represent a huge opportunity to
2 significantly increase energy efficiency and reduce greenhouse
3 gas emissions. To do this, we need to address the design,
4 construction, and operation of these buildings.

5 (b) The lack of accessible and affordable financing for energy
6 efficiencies results in energy-inefficient buildings that are estimated
7 to consume up to 50 percent more energy than required to achieve
8 the same level of comfort. Energy use in the building sector
9 accounts for approximately 20 percent of global emissions of
10 carbon dioxide, or 10 billion tons, annually.

11 (c) It is possible to retrofit the California commercial building
12 stock to use, on average, at least 50 percent less energy by 2050
13 through the wide adoption of deep energy retrofits that save more
14 energy and increase profits for building owners.

15 (d) Investment in building performance upgrades is an intelligent
16 business decision. Building performance upgrades lower operating
17 costs, improve occupant comfort, hedge against utility price
18 increases, demonstrate commitment to tenant well-being, reduce
19 exposure to regulation, help the environment, and ultimately boost
20 property values.

21 (e) It is in the best interest of the state and its citizens to enable
22 and encourage the owners of eligible commercial property to invest
23 in new energy improvements, including energy efficiency
24 improvements and renewable energy improvements, by enacting
25 this division to establish, develop, finance, implement, and
26 administer a new energy improvement program that provides for
27 both energy efficiency improvements and renewable energy
28 improvements and to assist those owners who choose to participate
29 in the program to complete new energy improvements to their
30 properties because of the following:

31 (1) New energy improvements, including energy efficiency
32 improvements and renewable energy improvements, can provide
33 positive cashflow as the costs of the improvements are spread out
34 over a long enough time that the owners' utility bill cost savings
35 exceed amount of the liens recorded on the eligible buildings to
36 pay for the improvements.

37 (2) Many owners of eligible commercial buildings are unable
38 to fund a new energy improvement because the owners do not
39 have sufficient liquid assets to directly fund the improvement or
40 are unable or unwilling to incur the negative net cashflow likely

1 to result if the owner uses a typical existing loan program to fund
2 the improvement.

3 (f) Reduction in the amount of emissions of greenhouse gases
4 and environmental pollutants resulting from increased efficiencies
5 and the resulting decreased use of traditional nonrenewable fuels
6 will improve air quality and may help to mitigate climate change.

7 (g) The commercial building owners who participate in the
8 program established pursuant to this division to assist them in
9 completing new energy improvements, including energy efficiency
10 improvements and renewable energy improvements, to the property
11 shall do so voluntarily, and liens recorded on the commercial
12 buildings in the program shall not constitute a tax within the
13 meaning of Article XIII C of the California Constitution.

14 26203. Unless the context otherwise requires, for the purposes
15 of this division, the following terms have the following meanings:

16 (a) “Alternative sources of energy” or “alternative energy
17 sources” means energy from cogeneration technology, the
18 conservation of energy, or energy from solar, biomass, wind,
19 geothermal, or any other source of energy, the efficient use of
20 which will reduce the use of conventional energy fuels.

21 (b) “Authority” means the California Alternative Energy and
22 Advanced Transportation Financing Authority established pursuant
23 to Section 26004, and any board, commission, department, or
24 officer succeeding to the functions of the authority, or to which
25 the powers conferred upon the authority by this division shall be
26 given.

27 (c) “Commercial Building Energy Retrofit Bond” means a bond
28 issued pursuant to Section 26242 that is secured by an energy
29 remittance repayment agreement on property entered into
30 voluntarily to finance the installation of renewable energy sources,
31 or energy or water efficiency improvements.

32 (d) “Conventional energy fuel” means any of the following:

33 (1) A fuel derived from petroleum deposits, including, but not
34 limited to, oil, heating oil, gasoline, and fuel oil.

35 (2) Natural gas, including liquified natural gas.

36 (3) Nuclear fissionable materials.

37 (e) “Eligible building” means a commercial or industrial building
38 located within the boundaries of the state.

39 (f) “Energy efficiency improvement” means one or more
40 installations or modifications to eligible property that are designed

1 to reduce the energy consumption of the building and includes,
2 but is not limited to, the following:

3 (1) Insulation in walls, roofs, floors, and foundations and in
4 heating and cooling distribution systems.

5 (2) Storm windows and doors, multiglazed windows and doors,
6 heat-absorbing or heat-reflective glazed and coated window and
7 door systems, additional glazing, reductions in glass area, and
8 other window and door system modifications that reduce energy
9 consumption.

10 (3) Automatic energy control systems.

11 (4) Heating, ventilating, or air conditioning and distribution
12 system modifications or replacements.

13 (5) Caulking and weatherstripping.

14 (6) Replacement or modification of lighting fixtures to increase
15 the energy efficiency of the system.

16 (7) Energy recovery systems.

17 (8) Daylighting systems.

18 (9) A modification, installation, or remodeling approved as a
19 utility cost-savings measure by the State Energy Resources
20 Conservation and Development Commission.

21 (g) “Energy remittance repayment agreement” means a
22 contractual agreement between an eligible building owner and the
23 authority, secured by a lien recorded on an eligible building
24 specially benefited by a new energy improvement for which the
25 authority will make reimbursement or a direct payment to the party
26 financing the energy improvements, and “contractual energy
27 remittance” means that reimbursement or direct payment. The
28 amount to be repaid pursuant to the energy remittance repayment
29 agreement shall include the costs necessary to finance the energy
30 efficiency improvements less any rebates, grants, and other direct
31 financial assistance received by the owner pursuant to other law
32 and a loan loss reserve fee that is ____ percent of the financing
33 costs to insure against nonperformance of the loan and other losses
34 of the program.

35 (h) “Energy efficiency specialist” means an individual or
36 business certified by the State Energy Resources Conservation and
37 Development Commission, the Public Utilities Commission, an
38 investor-owned utility, or a municipally owned utility to analyze,
39 evaluate, or install clean energy improvements for eligible property.

40 (i) “Financial assistance” means either of the following:

1 (1) Loans, loan loss reserves, interest rate reductions, secondary
2 loan purchase, insurance, guarantees or other credit enhancements
3 or liquidity facilities, contributions of money, property, labor, or
4 other items of value, or any combination thereof, as determined
5 by, and approved by a resolution of, the authority.

6 (2) Other types of assistance the authority determines is
7 appropriate.

8 (j) “Loan balance” means the outstanding principal balance of
9 loans secured by a mortgage or deed of trust with a first or second
10 lien on eligible property.

11 (k) “Participating party” means a person, or an entity or group
12 of entities, engaged in business or operations in the state, whether
13 organized for profit or not for profit, that applies for financial
14 assistance from the authority for the purpose of implementing a
15 project in a manner prescribed by the authority.

16 (l) “Portfolio” means an aggregation of approved applications.

17 (m) “Program” means the Commercial Building Energy Retrofit
18 Financing Program established by the authority in accordance with
19 Section 26212.

20 (n) “Project” means a building, improvement to the land or
21 building, rehabilitation, work, property, or structure, real or
22 personal, stationary or mobile, including, but not limited to,
23 machinery and equipment, that utilizes alternative sources of
24 energy.

25 (o) “Qualified applicant” means a person or business entity who
26 does all of the following:

27 (1) Owns an eligible building that has a ratio of loan balance to
28 its actual value of _____ or less at the time the person’s program
29 application is approved, as shown in the records of the county
30 assessor, unless the holder of the deed of trust or mortgage recorded
31 against the eligible property that has priority over all other deeds
32 of trust or mortgages recorded against the eligible property has
33 consented in writing to the recording of an energy remittance
34 repayment agreement pursuant to this division against the eligible
35 property.

36 (2) Timely submits to the authority a complete application,
37 which notes the existence of any first priority mortgage or deed
38 of trust on the eligible property and the identity of the holder of
39 the mortgage or deed of trust, to join the program and consents to

1 the levying of a special assessment on the property pursuant to
2 this division.

3 (3) Meets any standard of credit worthiness that the authority
4 may establish.

5 (p) “Renewable energy” means heat, processed heat, space
6 heating, water heating, steam, space cooling, refrigeration,
7 mechanical energy, electricity, or energy in any form convertible
8 to these uses, whether produced or conserved, that does not expend
9 or use conventional energy fuels, and that uses any of the following
10 electrical generation technologies:

- 11 (1) Biomass.
- 12 (2) Solar thermal.
- 13 (3) Photovoltaic.
- 14 (4) Wind.
- 15 (5) Geothermal.

16 (q) “Renewable energy improvement” means one or more
17 fixtures, products, systems, or devices, or an interacting group of
18 fixtures, products, systems, or devices, that directly benefit an
19 eligible property or that are installed on the user side of an electric
20 meter of an eligible property and that produce energy from
21 renewable resources, including, but not limited to, photovoltaic,
22 solar thermal, small wind, low-impact hydroelectric, biomass, or
23 geothermal systems such as ground source heat pumps, as may be
24 approved by the State Energy Resources Conservation and
25 Development Commission.

26

27 CHAPTER 2. COMMERCIAL BUILDING ENERGY RETROFIT
28 FINANCING PROGRAM

29

30 26210. The purpose of the Commercial Building Energy
31 Retrofit Financing Program is to help provide the special benefits
32 of alternative energy and energy efficiency improvements to
33 owners of eligible property who voluntarily participate in the
34 program by establishing, developing, financing, and administering
35 a program to assist those owners in completing new energy
36 improvements.

37 26211. The authority shall have and exercise all rights and
38 powers necessary or incidental to or implied from the specific
39 powers granted to the authority by this division and Division 16.
40 Those specific powers shall not be considered as a limitation upon

1 any power necessary or appropriate to carry out the purposes and
2 intent of this division.

3 26212. The authority shall establish, develop, finance, and
4 administer the Commercial Building Energy Retrofit Financing
5 Program. The program shall be designed to provide financial
6 assistance for an owner of an eligible building to use one or more
7 energy efficiency specialists to retrofit the property with one or
8 more alternative energy sources or renewable energy improvements
9 by applying to the authority for inclusion of the owner's energy
10 project in a portfolio that will be financed through the use of the
11 revenue bonds issued pursuant to this division. These bonds shall
12 be secured by revenues generated through energy remittance
13 repayment agreements recorded on the buildings benefited by the
14 projects in the portfolio. The program shall provide financial
15 assistance for energy efficiency improvements on terms such that
16 the total energy and water cost savings realized by the property
17 owner, and any successor or successors to the property owner,
18 during the useful life of the improvements, as determined by an
19 analysis required pursuant to subdivision (i) of Section 26218, are
20 expected to exceed the total costs incurred by the owner pursuant
21 to the program.

22 26213. To receive financial assistance pursuant to this division,
23 a qualified applicant shall contractually agree to the recording of
24 an energy remittance repayment agreement on the eligible building
25 that is being retrofitted.

26 26214. The authority shall establish an application process for
27 the program that allows an owner of an eligible building to become
28 a qualified applicant by submitting an application to the authority
29 and that may include one or more deadlines for filing the
30 application. The authority may charge an application fee to
31 reimburse the authority for the costs incurred in reviewing the
32 application.

33 26215. The authority shall establish underwriting guidelines
34 that consider an applicant's qualification, and other appropriate
35 factors, including, but not limited to, credit reports and
36 loan-to-value ratios, consistent with good and customary lending
37 practices, necessary for the authority to obtain a bond rating for
38 bonds issued pursuant to Chapter 3 (commencing with Section
39 26240) for a successful bond sale.

1 26216. The authority shall disclose to an owner of a commercial
2 building all fees imposed pursuant to this division, including the
3 loan loss reserve fee and the interest rate charged, prior to the
4 submitting of an application.

5 26217. (a) An owner of an eligible building who wishes to
6 undertake an energy efficiency project may submit to the authority
7 an application to participate in the program.

8 (b) The submission of an application is deemed to be a voluntary
9 agreement by the owner for the authority to record the energy
10 remittance repayment agreement on the deed of the eligible
11 building upon the approval of the application.

12 (c) The application form developed by the authority shall include
13 a statement in no less than 12-point type stating the following:
14

15 SUBMISSION OF THIS APPLICATION CONSTITUTES THE
16 VOLUNTARY CONSENT OF THE APPLICANT FOR THE
17 RECORDATION OF THE ENERGY REMITTANCE
18 REPAYMENT AGREEMENT ON THE DEED OF THE
19 ELIGIBLE BUILDING. UPON THE APPROVAL BY THE
20 AUTHORITY OF THE APPLICATION AND THE
21 RECORDATION OF THE ENERGY REMITTANCE
22 REPAYMENT AGREEMENT, A LIEN IN THE AMOUNT
23 SPECIFIED IN THE ENERGY REMITTANCE REPAYMENT
24 AGREEMENT SHALL BE SECURED BY THE BUILDING.
25

26 26218. The owner of an eligible building shall include all of
27 the following information in the application:

28 (a) The name, business address, and e-mail address of the owners
29 of the eligible building.

30 (b) The names of all entities that hold a secured lien on the
31 eligible building and their contact information.

32 (c) The total dollar amount of liens that have been recorded on
33 the eligible building.

34 (d) An appraisal of the value of the eligible building.

35 (e) A detailed description of the energy efficiency improvements
36 being funded.

37 (f) The name of the financial institution providing financing for
38 the energy efficiency improvements.

39 (g) The structure of the loan financing the energy efficiency
40 improvements.

1 (h) Information that the authority requires to verify that the
2 owner will complete the energy efficiency improvement.

3 (i) An analysis performed by an energy efficiency specialist to
4 quantify the costs of the energy efficiency improvements, and total
5 energy and water cost savings realized by the owner, or his or her
6 successor, during the useful life of, and estimated carbon impacts
7 of, the energy efficiency improvements, including an annual
8 cashflow analysis.

9 (j) Other information deemed necessary by the authority.

10 26219. In addition to the information required under Section
11 26218, an applicant shall provide in the application a detailed
12 description of the property and a detailed description of the
13 transactional activities associated with the retrofits, including all
14 transactional costs and other information deemed necessary by the
15 authority.

16 26219.5. (a) The costs of the energy efficiency improvements
17 shall not exceed 10 percent of the estimated value of the
18 commercial building.

19 (b) At the time of submission of the application, the total amount
20 of liens recorded on the building shall not exceed 85 percent of
21 the estimated value of the building.

22 (c) For energy efficiency improvements that exceed five hundred
23 thousand dollars (\$500,000), the contractor installing the
24 improvements or the property owner shall obtain a guarantee on
25 the energy and water cost savings as quantified by the analysis
26 required pursuant to subdivision (i) of Section 26218 by obtaining
27 a security in the full amount of the cost savings. The security shall
28 be in any of the following forms, which shall be further specified
29 in regulation:

30 (1) Energy savings insurance issued by an A.M. Best “A” or
31 better rated carrier.

32 (2) Investment grade guarantee.

33 (3) Energy efficiency bond.

34 (4) Letter of credit or cash collateral.

35 26220. (a) Upon the mutual agreement of the applicant and
36 the authority, the authority shall establish a schedule for the
37 repayment required by the energy remittance repayment agreement,
38 including the interest charged.

39 (b) Each repayment installment shall become due and owing
40 30 days after the prior installment, with the first installment due

1 and owing within 30 days of the recording of the energy remittance
2 repayment agreement. The State Board of Equalization shall collect
3 the repayment installments that become due and owing.

4 (c) (1) The period for repayment of the energy remittance
5 repayment agreement shall not exceed the expected useful life of
6 the energy efficiency improvements or 20 years, whichever is
7 shorter.

8 (2) The calculated expected useful life of the energy efficiency
9 improvements shall be consistent with methodologies approved
10 by the State Energy Resources Conservation and Development
11 Commission for performing those calculations.

12 (d) Upon the failure of the applicant to pay any installment
13 toward the repayment of the energy remittance repayment
14 agreement when the installment becomes due and owing pursuant
15 to the schedule for repayment, the authority or the State Board of
16 Equalization may do either of the following:

17 (1) Assess a penalty on the delinquent payment that is a
18 percentage of the delinquent payment.

19 (2) Declare the entire outstanding energy remittance repayment
20 agreement balance, including any interest due, penalties assessed,
21 and costs of collection incurred, immediately due and owing and
22 foreclose on the energy remittance repayment agreement.

23 (e) Within __ days of a default, the State Board of Equalization
24 shall provide to the authority and applicant a notice of default and
25 provide the applicant with __ days to cure the default.

26 (f) (1) If the applicant fails to cure the default, the authority
27 shall notify the tax collector of the county in which the eligible
28 building is located and the eligible building shall be sold in
29 accordance with Part 6 (commencing with Section 3351) of
30 Division 1 of the Revenue and Taxation Code.

31 (2) Revenue generated from the sale of the eligible building
32 shall be distributed to satisfy liens on the eligible building in
33 accordance with the priority of the liens as provided by law.

34 (g) An applicant that is not in default may pay the entire unpaid
35 balance of the energy remittance repayment agreement plus any
36 interest accruing to the maturity of the next installment payment
37 without prepayment penalty.

38 (h) Upon the full repayment of the balance of the energy
39 remittance repayment agreement, and interest and penalties that
40 had accrued, the State Board of Equalization shall notify the

1 authority of that repayment. Within ____ days of the receipt of the
2 notice, the authority shall record with the county in which the
3 eligible building is located a release of the energy remittance
4 repayment agreement.

5 26221. (a) Prior to approving an application for inclusion into
6 a loan portfolio and the recordation of the energy remittance
7 repayment agreement, or a modification of an approved application,
8 the authority shall conduct a public hearing on the application or
9 modification.

10 (b) The authority shall post a notice of the hearing on the
11 authority's Internet Web site and provide the notice, in writing, to
12 all lienholders of the eligible building no later than 30 days prior
13 to the hearing.

14 (c) The notice shall specify all of the following:

15 (1) The name of the applicant.

16 (2) The address of the eligible building.

17 (3) The amount required to be repaid by the energy remittance
18 repayment agreement proposed to be recorded on the eligible
19 building.

20 (4) The date and place of the public hearing.

21 (5) The schedule for repayment of the contractual energy
22 remittance and associated costs as agreed upon between the
23 applicant and the authority.

24 (6) The interest rate assessed pursuant to the energy remittance
25 repayment agreement.

26 (7) A detailed description of the proposed modification, if
27 applicable.

28 (d) The notice shall inform the lienholder that any complaints
29 or objections to either the approval of the application and the
30 recordation of the energy remittance repayment agreement on the
31 eligible building or the modification of an approved application
32 shall be submitted, in writing, to the authority prior to the hearing.

33 26222. At the public hearing, the authority shall consider and
34 resolve all complaints and objections made.

35 26223. In evaluating the eligibility of an applicant, the authority
36 shall consider all of the following:

37 (a) Whether loan recipients are legal owners of the underlying
38 property.

39 (b) Whether loan recipients are current on any outstanding
40 mortgage and property tax payments.

1 (c) Whether loan recipients are in default or in bankruptcy
2 proceedings.

3 (d) Whether retrofits financed by the program follow applicable
4 standards of energy efficiency retrofit work, including any
5 guidelines adopted by the State Energy Resources Conservation
6 and Development Commission.

7 26224. (a) The authority shall approve an application through
8 the adoption of a resolution approving the application and
9 authorizing the recording of the energy remittance repayment
10 agreement on the deed of the eligible building.

11 (b) The resolution shall specify the amount required to be paid
12 to the authority pursuant to the energy remittance repayment
13 agreement, the schedule of repayment, and the interest rate charged.

14 (c) The authority shall approve the modification of an approved
15 application through the adoption of a resolution.

16 26225. (a) The energy remittance repayment agreement shall
17 be subordinate to any and all secured liens recorded against the
18 deed of the eligible building at the time of recording of the energy
19 remittance repayment agreement.

20 (b) Except as otherwise required by law, the energy remittance
21 repayment agreement shall be superior in priority to all subsequent
22 liens recorded on the deed of the eligible building.

23 (c) The sale of the eligible building to enforce the payment of
24 general ad valorem taxes shall not extinguish the energy remittance
25 repayment agreement recorded on the eligible building.

26 (d) Notwithstanding any other law, in the event of a foreclosure
27 of the building, the energy remittance repayment agreement shall
28 not be extinguished, unless the outstanding balance of the energy
29 remittance repayment agreement, including the interest accrued
30 and all penalties and fees assessed prior to the foreclosure, is fully
31 paid through the foreclosure proceeding.

32 26226. (a) Within 30 days of the adoption of a resolution
33 approving the application and authorizing the recordation of the
34 energy remittance repayment agreement or the approval of the
35 modification to an approved application, a lienholder that has
36 submitted a complaint or objection may file an action or proceeding
37 challenging the adoption of the resolution with the superior court
38 with jurisdiction over the eligible building.

1 (b) The owner of the eligible building shall be named as the real
2 party in interest in an action or proceeding filed pursuant to
3 subdivision (a).

4 26227. (a) Thirty days after the adoption of the resolution or
5 the date of a final, nonappealable judgment if an action or
6 proceeding is filed pursuant to Section 26226, the authority shall
7 forward the resolution to the State Board of Equalization and shall
8 record with the county in which the eligible building is located the
9 energy remittance repayment agreement on the deed of the eligible
10 building.

11 (b) Upon the recording of the energy remittance repayment
12 agreement, the authority shall include the approved application in
13 a portfolio.

14 26228. (a) The State Board of Equalization shall deposit into
15 the Commercial Building Energy Retrofit Debt Servicing Fund
16 established pursuant to Section 26250 any moneys, including
17 repayment installments and penalties, received pursuant to this
18 division.

19 (b) The State Board of Equalization may charge a fee on the
20 owner of eligible buildings to cover its costs in implementing this
21 division.

22 26229. (a) A local government that has issued revenue bonds
23 pursuant to a program providing financial assistance to commercial
24 and residential buildings owners undertaking an energy efficiency
25 retrofit on the buildings may apply to the authority for participation
26 in the program.

27 (b) Upon the approval of an application submitted by the local
28 government and the issuance of the Commercial Building Energy
29 Retrofit Bond for the portfolio in which that application is located,
30 the authority shall purchase all those outstanding revenue bonds
31 issued by the local government.

32 (c) Upon the purchase of the revenue bonds issued by the local
33 government by the authority, the authority succeeds to all rights
34 conferred upon the bondholder by those revenue bonds and the
35 local government shall remit revenue that is used to secure those
36 revenue bonds to the State Board of Equalization.

37 26230. To administer the program, the authority shall do all
38 of the following:

39 (a) Market the program to owners of eligible property, encourage
40 those owners to obtain the special benefits of completing new

1 energy improvements to their property by providing more attractive
2 and accessible means of funding the completion of new energy
3 improvements, and accept and process program applications from
4 any such owners who are qualified applicants.

5 (b) Establish those standards, guidelines, and procedures,
6 including, but not limited to, standards of credit worthiness for
7 qualification of program applicants, that are necessary to ensure
8 the financial stability of the program and otherwise prevent fraud
9 and abuse.

10 (c) Collaborate with the State Energy Resources Conservation
11 and Development Commission to establish qualifications for the
12 certification of contractors to construct or install energy efficiency
13 improvements.

14 (d) Contract with a party, public or private, to do any of the
15 following:

16 (1) Ensure that appropriate steps are taken to monitor the quality
17 of energy efficiency improvements financed pursuant to this
18 division and measure the total energy savings achieved by the
19 program.

20 (2) Monitor the total number of program participants.

21 (3) Determine the total amount paid to contractors and financial
22 institutions pursuant to the program.

23 (4) Calculate the number of jobs created by the program, the
24 number of defaults by program participants, and the total losses
25 from the defaults, and calculate the total dollar amount of bonds
26 issued by the authority to reimburse program participants.

27 (e) Develop a model energy aligned lease provision that
28 modifies, upon the agreement between the owner and tenants of
29 an eligible building, a commercial lease agreement allowing the
30 owners to recover the costs of the energy efficiency improvements
31 that result in operational savings based on the useful life of the
32 retrofit while protecting tenants from underperformance of the
33 energy efficiency improvements.

34 (f) Develop a request for proposal to contract with one or more
35 financial institutions to secure a short-term, revolving credit facility
36 (warehouse line of credit) for the purpose of creating an interim
37 financing mechanism for the loans that would be aggregated for
38 the purposes of issuance of a revenue bond pursuant to Section
39 26242. The warehouse line of credit shall be drawn by the
40 authority, based on adherence to predetermined underwriting

1 criteria and standards of credit-worthiness established by the
2 authority, to fund either of the following:

- 3 (1) Origination of direct loans to qualified applicants.
- 4 (2) Purchase or acquisition of secondary market loans from
5 financial institutions.

6 (g) To facilitate the management of the program and the use of
7 the warehouse line of credit, the authority shall develop a request
8 for proposal to contract with an outside program administrator that
9 will work with the authority and private financial institutions in
10 identifying the appropriate underwriting criteria, loan processing
11 procedures, loan servicing and monitoring guidelines, and bond
12 financing parameters.

13 26231. No later than June 30, 2014, and no later than June 30
14 of every fifth year thereafter, the State Auditor shall conduct, or
15 cause to be conducted, a performance audit of the program. The
16 State Auditor shall prepare a report and recommendations on each
17 audit conducted and present the report and recommendations to
18 the President pro Tempore of the Senate and the Speaker of the
19 Assembly.

20

21 CHAPTER 3. COMMERCIAL BUILDING ENERGY RETROFIT BOND

22

23 26240. The authority may incur indebtedness and issue and
24 renew negotiable bonds, notes, debentures, or other securities of
25 any kind or class. All indebtedness, however evidenced, shall be
26 payable solely from moneys received pursuant to this division and
27 the proceeds of its negotiable bonds, notes, debentures, or other
28 securities and shall not exceed the sum of ____ dollars (\$____).

29 26241. The Legislature may, by statute, authorize the authority
30 to issue bonds, as defined in Section 26242, in excess of the amount
31 provided in Section 26240.

32 26242. (a) On a semiannual basis, the authority shall conduct
33 a meeting for the purposes of issuing, by the adoption of a
34 resolution, negotiable bonds, notes, debenture, or other securities
35 (collectively called “bonds”) for the purposes of generating
36 sufficient moneys to fund the approved applications in the portfolio
37 at the time of the meeting or to repay an outstanding balance of a
38 qualified applicant on whose behalf the authority has provided
39 funds through the warehouse line of credit pursuant to subdivision
40 (f) of Section 26230. In anticipation of the sale of bonds as

1 authorized by Section 26240, or as may be authorized pursuant to
2 Section 26241, the authority may issue negotiable bond anticipation
3 notes and may renew the notes from time to time. The bond
4 anticipation notes may be paid from the proceeds of sale of the
5 bonds of the authority in anticipation of which they were issued.
6 Notes and agreements relating to the notes and bond anticipation
7 notes (collectively called “notes”) and the resolution or resolutions
8 authorizing the notes may contain any provisions, conditions, or
9 limitations that a bond, agreement relating to the bond, and bond
10 resolution of the authority may contain. However, a note or renewal
11 of the note shall mature at a time not exceeding two years from
12 the date of issue of the original note.

13 (b) Except as may otherwise be expressly provided by the
14 authority, every issue of its bonds, notes, or other obligations shall
15 be general obligations of the authority payable from revenues or
16 moneys received pursuant to this division, subject only to any
17 agreements with the holders of particular bonds, notes, or other
18 obligations pledging any particular revenues or moneys and subject
19 to any agreements with any participating party. Notwithstanding
20 that the bonds, notes, or other obligations may be payable from a
21 special fund, they are for all purposes negotiable instruments,
22 subject only to the provisions of the bonds, notes, or other
23 obligations for registration.

24 (c) Subject to the limitations in Sections 26240 and 26241, the
25 bonds may be issued as serial bonds or as term bonds, or the
26 authority, in its discretion, may issue bonds of both types. The
27 bonds shall be authorized by resolution of the authority and shall
28 bear the date or dates, mature at the time or times, not exceeding
29 ___ years from their respective dates, bear interest at the rate or
30 rates, be payable at the time or times, be in the denominations, be
31 in the form, either coupon or registered, carry the registration
32 privileges, be executed in a manner, be payable in lawful money
33 of the United States of America at a place or places, and be subject
34 to terms of redemption, as the resolution or resolutions may
35 provide. The bonds or notes shall be sold by the Treasurer within
36 60 days of receipt of a certified copy of the authority’s resolution
37 authorizing the sale of the bonds. However, the authority, at its
38 discretion, may adopt a resolution extending the 60-day period.
39 The sales may be a public or private sale, and for the price or prices
40 and on the terms and conditions, as the authority shall determine

1 after giving due consideration to the recommendations of any
2 participating party to be assisted from the proceeds of the bonds
3 or notes. Pending preparation of the definitive bonds, the Treasurer
4 may issue interim receipts, certificates, or temporary bonds that
5 shall be exchanged for the definitive bonds. The Treasurer may
6 sell bonds, notes, or other evidence of indebtedness at a price below
7 their par value. However, the discount on a security sold pursuant
8 to this section shall not exceed 6 percent of the par value.

9 (d) A resolution or resolutions authorizing bonds or an issue of
10 bonds may contain provisions that shall be a part of the contract
11 with the holders of the bonds to be authorized, as to all of the
12 following:

13 (1) Pledging the moneys collected pursuant to this division from
14 the portfolio of approved applications that are funded by the bonds,
15 to secure the payment of the bonds or of any particular issue of
16 bonds, subject to the agreements with bondholders as may then
17 exist.

18 (2) The setting aside of reserves or sinking funds, and the
19 regulation and disposition of the reserves or sinking funds.

20 (3) Limitations on the right of the authority or its agent to restrict
21 and regulate the use of the project or projects to be financed out
22 of the proceeds of the bonds or any particular issue of bonds.

23 (4) Limitations on the purpose to which the proceeds of sale of
24 an issue of bonds then or thereafter to be issued may be applied
25 and pledging those proceeds to secure the payment of the bonds
26 or the issue of the bonds.

27 (5) Limitations on the issuance of additional bonds, the terms
28 upon which additional bonds may be issued and secured, and the
29 refunding of outstanding bonds.

30 (6) The procedure, if any, by which the terms of a contract with
31 bondholders may be amended or abrogated, the amount of bonds
32 the holders of which must consent to the amendment or abrogation,
33 and the manner in which that consent may be given.

34 (7) Limitations on expenditures for operating, administrative,
35 or other expenses of the authority.

36 (8) Defining the acts or omissions to act that constitute a default
37 in the duties of the authority to holders of its obligations and
38 providing the rights and remedies of the holders in the event of a
39 default.

1 (e) Neither the members of the authority nor a person executing
2 the bonds or notes shall be liable personally on the bonds or notes
3 or be subject to personal liability or accountability by reason of
4 the issuance of the bond or note.

5 (f) The authority shall have power out of any funds available
6 for these purposes to purchase its bonds or notes. The authority
7 may hold, pledge, cancel, or resell those bonds, subject to and in
8 accordance with agreements with bondholders.

9 26243. In the discretion of the authority, any bonds issued
10 under the provisions of this division may be secured by a trust
11 agreement by and between the authority and a corporate trustee
12 or trustees, which may be the Treasurer or any trust company or
13 bank having the powers of a trust company within or without the
14 state. Such trust agreement or the resolution providing for the
15 issuance of such bonds may pledge or assign the revenues to be
16 received pursuant to this division, to be financed out of the
17 proceeds of such bonds. Such trust agreement or resolution
18 providing for the issuance of such bonds may contain such
19 provisions for protecting and enforcing the rights and remedies of
20 the bondholders as may be reasonable and proper and not in
21 violation of law, including particularly such provisions as have
22 herein above been specifically authorized to be included in any
23 resolution or resolutions of the authority authorizing bonds thereof.
24 Any bank or trust company doing business under the laws of this
25 state which may act as depository of the proceeds of bonds or of
26 revenues or other moneys may furnish such indemnifying bonds
27 or pledge such securities as may be required by the authority. Any
28 such trust agreement may set forth the rights and remedies of the
29 bondholders and of the trustee or trustees, and may restrict the
30 individual right of action by bondholders. In addition to the
31 foregoing, any such trust agreement or resolution may contain
32 such other provisions as the authority may deem reasonable and
33 proper for the security of the bondholders. Notwithstanding any
34 other law, the Treasurer shall not be deemed to have a conflict of
35 interest by reason of acting as trustee pursuant to this division.

36 26244. Bonds issued under the provisions of this division shall
37 not be deemed to constitute a debt or liability of the state or of any
38 political subdivision thereof, other than the authority, or a pledge
39 of the faith and credit of the state or of any such political
40 subdivision, other than the authority, but shall be payable solely

1 from the funds herein provided therefor. All such bonds shall
2 contain on the face thereof a statement to the following effect:

3 “Neither the faith and credit nor the taxing power of the State
4 of California is pledged to the payment of the principal of or
5 interest on this bond.”

6 The issuance of bonds under the provisions of this division shall
7 not directly or indirectly or contingently obligate the state or any
8 political subdivision thereof to levy or to pledge any form of
9 taxation whatever therefor or to make any appropriation for their
10 payment. Nothing contained in this section shall prevent or be
11 construed to prevent the authority from pledging its full faith and
12 credit to the payment of bonds or issue of bonds authorized
13 pursuant to this division.

14 26245. (a) The authority is hereby authorized to provide for
15 the issuance of bonds of the authority for the purpose of refunding
16 any bonds, notes, or other securities of the authority then
17 outstanding, including the payment of any redemption premium
18 thereon and any interest accrued or to accrue to the earliest or
19 subsequent date of redemption, purchase, or maturity of such
20 bonds.

21 (b) The proceeds of any such bonds issued for the purpose of
22 refunding outstanding bonds, notes, or other securities may, in the
23 discretion of the authority, be applied to the purchase or retirement
24 at maturity or redemption of such outstanding bonds either on their
25 earliest or any subsequent redemption date or upon the purchase
26 or retirement at the maturity thereof and may, pending such
27 application, be placed in escrow to be applied to such purchase or
28 retirement at maturity or redemption on such date as may be
29 determined by the authority.

30 (c) Pending such use, any such escrowed proceeds may be
31 invested and reinvested by the Treasurer in obligations of, or
32 guaranteed by, the United States of America, or in certificates of
33 deposit or time deposits secured by obligations of, or guaranteed
34 by, the United States of America, maturing at such time or times
35 as shall be appropriate to ensure the prompt payment, as to
36 principal, interest, and redemption premium, if any, of the
37 outstanding bonds to be so refunded. The interest, income, and
38 profits, if any, earned or realized on any such investment may also
39 be applied to the payment of the outstanding bonds to be so
40 refunded. After the terms of the escrow have been fully satisfied

1 and carried out, any balance of such proceeds and interest, income,
2 and profits, if any, earned or realized on the investments thereof
3 may be returned to the authority for use by it in any lawful manner.

4 (d) All such bonds shall be subject to the provisions of this
5 division in the same manner and to the same extent as other bonds
6 issued pursuant to this division.

7 26246. Bonds issued by the authority are legal investments for
8 all trust funds, the funds of all insurance companies, banks, both
9 commercial and savings, trust companies, savings and loan
10 associations, and investment companies, for executors,
11 administrators, trustees, and other fiduciaries, for state school
12 funds, and for any funds which may be invested in county,
13 municipal, or school district bonds, and such bonds are securities
14 which may properly and legally be deposited with, and received
15 by, any state or municipal officer or agency or political subdivision
16 of the state for any purpose for which the deposit of bonds or
17 obligations of the state, is now, or may hereafter be, authorized by
18 law, including deposits to secure public funds if, and only to the
19 extent that, evidence of indebtedness or debt securities of the
20 participating party receiving financing through the issuance of
21 such bonds qualify or are eligible for such purposes and uses.

22 26247. The state hereby pledges and agrees with the holders
23 of the bonds and with an applicant of an approved application that
24 the state will not limit, alter, restrict, or impair the rights vested in
25 the authority or the rights or obligations of a person or entity with
26 which the authority contracts to fulfill the terms of an agreement
27 made pursuant to this division. The state further agrees that it will
28 not in any way impair the rights or remedies of the holder of the
29 bonds until the bonds have been paid or until adequate provision
30 for payment has been made. The authority may include this
31 provision and undertaking for the authority in its bonds.

32 26248. No liability shall be incurred by the authority beyond
33 the extent to which moneys have been provided under this division;
34 except that for the purposes of meeting the necessary expenses of
35 initial organization and operation until such date as the authority
36 derives revenues or proceeds from bonds or notes as provided
37 under this division, the authority may borrow money as needed
38 for such expenses from the State Energy Resources Conservation
39 and Development Special Account in the General Fund in the State
40 Treasury. Such borrowed moneys shall be repaid with interest

1 within a reasonable time after the authority receives revenues or
2 proceeds from bonds or notes as provided under this division.

3 26249. (a) Bonds issued pursuant to this division shall be
4 exempt from all taxation and assessment imposed pursuant to state
5 law.

6 (b) No later than February 1, 2013, the authority shall apply to
7 the United States Department of the Treasury under the Energy
8 Tax Incentive Act of 2005 (Title XIII of Public Law 109-58) for
9 the authority to issue tax advantage bonds under the federal Clean
10 Renewable Energy Bonds program or any other applicable
11 programs.

12
13 CHAPTER 4. COMMERCIAL BUILDING ENERGY RETROFIT DEBT
14 SERVICING FUND
15

16 26250. (a) The Commercial Building Energy Retrofit Debt
17 Servicing Fund is hereby established in the Treasury.
18 Notwithstanding Section 13340 of the Government Code, the
19 moneys in the fund are hereby continuously appropriated to the
20 Treasurer without regard to fiscal year for the purposes of paying
21 the principal and interest on bonds issued by the authority pursuant
22 to Section 26242 and defraying any direct and indirect costs
23 incurred by the Treasurer in executing duties required by this
24 division.

25 (b) All interest and income derived from the deposit and
26 investment of moneys in the fund shall be credited to the fund,
27 and all unexpended and unencumbered moneys in the fund at the
28 end of any fiscal year shall remain in the fund.

29 26250.5. (a) The Loan Loss Reserve Account is hereby
30 established in the Commercial Building Energy Retrofit Debt
31 Servicing Fund. The State Board of Equalization shall deposit the
32 portion of the contractual energy remittance that is the loan loss
33 reserve fee into the account. Notwithstanding Section 13340 of
34 the Government Code, the moneys in the account are hereby
35 continuously appropriated to the Treasurer without regard to fiscal
36 year for the purposes of paying outstanding balances due under
37 an energy remittance repayment agreement on a building that has
38 been foreclosed upon if the proceeds generated from the foreclosure
39 proceedings are insufficient to pay any past due payments past due

1 under the energy remittance repayment agreement, including
2 accrued interest, penalties, and fees.

3 (b) All interest and income derived from the deposit and
4 investment of moneys in the account shall be credited to the
5 account, and all unexpended and unencumbered moneys in the
6 account at the end of any fiscal year shall remain in the account.

7 26251. The Administration Account is hereby established in
8 the Commercial Building Energy Retrofit Debt Servicing Fund.
9 The authority shall deposit into the account any fees collected
10 pursuant to Section 26214. Notwithstanding Section 13340 of the
11 Government Code, moneys in the account shall be continuously
12 appropriated to the authority for the costs of implementing this
13 division.

14 26252. The Collection Administration Account is hereby
15 established in the Commercial Building Energy Retrofit Debt
16 Servicing Fund. The State Board of Equalization shall deposit into
17 the account fees collected pursuant to subdivision (b) of Section
18 26228. Notwithstanding Section 13340 of the Government Code,
19 moneys in the account shall be continuously appropriated to the
20 State Board of Equalization for the costs of implementing this
21 division.

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