AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 7, 2012

AMENDED IN SENATE APRIL 19, 2012

SENATE BILL No. 1130

Introduced by Senator De León
(Principal coauthor: Assembly Member Skinner)

February 21, 2012

An act to add Chapter 13 (commencing with Section 25987.1) to Division 15 of the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1130, as amended, De León. Energy: energy assessment: nonresidential buildings: financing.

Existing law requires the State Energy Resources Conservation and Development Commission to implement a program to provide financial assistance for energy efficiency projects.

This bill would enact the Nonresidential Building Energy Retrofit Financing Act of 2012 and would require the commission to establish the Nonresidential Building Energy Retrofit Financing Program and to hire a third-party administrator by July 1, 2013, to develop and operate the program to provide financial assistance, through authorizing the issuance of, among other things, revenue bonds, to owners of eligible nonresidential buildings for implementing energy improvements for their properties. 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 property for which the improvements are performed.

The bill would require the State Board of Equalization to collect installment payments from owners of eligible properties whose applications have been approved by the commission.

This bill would require the commission to meet~~,~~ for the purpose of approving applicants to participate in the program~~ and authorizing the issuance of, among other things, negotiable bonds to generate moneys sufficient to finance energy efficiency retrofit measures specified on applications that have been approved prior to the meeting~~. The bill would authorize the California Alternative Energy and Advanced Transportation Financing Authority, on behalf of the commission, to issue and renew the negotiable *revenue* bonds *to generate moneys to finance energy improvements for approved applicants*.

This bill would establish the Nonresidential Building Energy Retrofit Debt Servicing Fund, the Loan Loss Reserve Account, and the 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 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, the commission, and the State Board of Equalization, thereby making an appropriation.

The bill would require the Director of Finance to transfer, as a loan, up to $1,000,000, to the authority, and up to $7,000,000, to the commission, from the General Fund for the purposes of implementing the program. The bill would require the loans to be repaid on or before January 1, 2023.

Existing law establishes incentives in the form of grants and loans to low-income residents, small businesses, and residential property owners for constructing and retrofitting buildings to be more energy efficient.

The bill would also require the State Energy Resources Conservation and Development Commission to analyze and evaluate standards for nonresidential energy building.

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

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

SECTION 1. Chapter 13 (commencing with Section 25987.1) is added to Division 15 of the Public Resources Code, to read:

Chapter 13. Nonresidential Building Assessment Financing

Article 1. General Provisions and Definitions

25987.1. This act shall be known, and may be cited, as the Nonresidential Building Energy Retrofit Financing Act of 2012.

25987.2. The purpose of this chapter is to facilitate private financing to enable private nonresidential building owners and eligible public entities to invest in clean energy improvements, renewable energy, and conservation, to incentivize private equity managers to invest in clean energy improvements, integrate the smart energy economy, and ~~to~~ stimulate the state economy by directly creating jobs for contractors and other persons who complete new energy improvements, and to reinforce the leadership role of the state in the new energy economy, thereby attracting energy manufacturing facilities and related jobs to the state.

25987.3. The Legislature finds and declares all of the following:

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

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

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

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

(e) It is in the best interest of the state and its citizens to enable and encourage the owners of eligible nonresidential property to invest in new energy improvements, including energy efficiency improvements that qualify for investor-owned utility or publicly-owned utility programs, water efficiency improvements, and renewable energy improvements, by enacting this division to establish, develop, finance, implement, and administer a new energy improvement program that provides for both energy efficiency improvements and renewable energy improvements and to assist those owners who choose to participate in the program to complete new energy improvements to their properties because of the following:

(1) New energy improvements, including energy efficiency improvements and renewable energy improvements, can provide positive cashflow when the costs of the improvements are spread out over a long enough time that *a* building's cumulative utility bill cost savings exceed the amount of the liens recorded on the eligible ~~buildings~~ *building* to ensure payment for the improvements.

(2) Many owners of eligible nonresidential buildings are unable to fund a new energy improvement because the owners do not have sufficient liquid assets to directly fund the improvement or are unable or unwilling to incur the negative net cashflow likely to result if the owner uses a typical existing loan program to fund the improvement.

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

(g) The nonresidential building owners who participate in the program established pursuant to this division to assist them in completing new energy improvements, including energy efficiency improvements and renewable energy improvements, to the ~~property~~ *building* shall do so voluntarily.

25987.4. Unless the context otherwise requires, for the purposes of this chapter, the following terms have the following meanings:

(a) (1) "Alternative sources of energy" or "alternative energy sources" means energy from renewable cogeneration or gas-fired cogeneration technology that meets the greenhouse gas emissions and efficiency standards applicable to the Self-Generation Incentive Program in effect at the time of the application, energy storage technologies, or energy from solar, biomass, wind, or geothermal systems, or fuel cells~~, or any other source of energy that reduces~~

~~greenhouse gas emissions,~~ the efficient use of which will reduce the use of conventional energy fuels.

(2) The system shall be sized appropriately to offset part or all of the applicant's own electricity demand and shall be located on the same premises of the application where the applicant's own electrical demand is located.

(b) "Applicant" means a person, or an entity or group of entities, engaged in business or operations in the state, whether organized for profit or not for profit that owns a nonresidential building and applies for financial assistance from the commission for the purpose of implementing a project in a manner prescribed by the commission.

(c) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004.

(d) "Board" means the State Board of Equalization.

(e) "Conventional energy fuel" means any of the following:

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

(2) Natural gas, including liquefied natural gas.

(3) Nuclear fissionable materials.

(4) Coal.

(f) "Demand response" means reductions or shifts in electricity consumption by customers in response to either economic or reliability signals.

(g) "Eligible building" means a nonresidential building that completed construction on or before January 1, 2013, and located within the boundaries of the state.

(h) "Energy efficiency improvement" means one or more installations or modifications*, for which a building permit is issued after January 1, 2013,* to an eligible building ~~for which a building permit was not obtained before January 1, 2013 and~~ that is designed to reduce the energy consumption of the building and that qualifies for investor-owned utility or ~~publicly-owned~~ *publicly owned* utility energy efficiency programs that may include, but is not limited to, all of the following to the extent they qualify:

(1) High-efficiency mechanical equipment.

(2) High-efficiency electrical equipment.

(3) Capturing or reducing heat gain or solar shading, including the roof and south and west walls, and not just glazing.

(4) High-efficiency water heating.

(5) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems.

(6) Fenestration and door replacement, reductions in glass area, and other fenestration and door modifications that reduce energy consumption.

(7) Automatic energy control systems.

(8) Heating, ventilating, or air conditioning and distribution system modifications or replacements.

(9) Caulking and weather stripping.

(10) Replacement or modification of luminaries to increase the energy efficiency of the system, or additional lighting controls to reduce electric lighting during period of vacancy.

(11) Energy recovery systems.

(12) Daylighting systems and associated lighting controls for daylight harvesting.

(13) A modification, installation, or remodeling approved as a utility cost-savings measure by the commission, and which may include measures described in the Database for Energy Efficient Resources overseen by the Public Utilities Commission and utilized by investor-owned utilities and energy efficiency specialists participating in their Energy Efficiency programs.

(14) Plug load solutions.

(15) Building commissioning or retrocommissioning.

(i) "Energy remittance repayment agreement" means a contractual agreement between an eligible building owner and the commission, secured by a lien, as described in Section 25987.21, recorded in the county where the property is situated and on an eligible building specially benefited by a new energy improvement for which the commission will make reimbursement or a direct payment to the party financing the energy improvements, and "contractual energy remittance" means that reimbursement or direct payment. The amount to be repaid pursuant to the energy remittance repayment agreement shall include the costs necessary to finance the energy efficiency improvements less any rebates, grants, and other direct financial assistance received by the owner pursuant to other law and a loan loss reserve fee in an amount to be established by the program administrator in consultation with the commission and the warehouse financier under contract entered into pursuant to paragraph (8) of subdivision (a) of Section

25987.25 to insure against nonperformance of the loan and other losses of the program, and a program administrative cost fee.

(j) “Energy efficiency specialist” means an individual or business certified by rules of the commission to analyze, evaluate, or install a renewable energy source, energy efficiency improvement, or water efficiency improvement for eligible property.

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

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

(2) Other types of assistance the commission determines is appropriate.

(*l*) “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.

(m) “Loan loss reserve fee” means a fee that serves as collateral in the event of a loan default.

(n) “Nonresidential Building Energy Retrofit Bond” means a bond issued pursuant to Section 25987.31 that is secured by an energy remittance repayment agreement on property entered into voluntarily to finance the installation of renewable energy sources, energy efficiency improvement or retrofits, or water efficiency improvements.

(o) “Participant” means a person, or an entity or group of entities, engaged in business or operations in the state, whether organized for profit or not for profit, that, as a qualified applicant is approved for financial assistance pursuant to Article 2 (commencing with Section 25987.5) of this chapter and has entered into an energy remittance repayment agreement with the commission for the purpose of implementing a project in a manner prescribed by the commission.

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

(q) “Program” means the Nonresidential Building Energy Retrofit Financing Program established by the commission in accordance with Section 25987.7.

(r) "Program administration cost fee" means a fee imposed for the costs incurred by the commission, the authority, and the State Board of Equalization to administer the program.

(s) "Project" means an improvement to an eligible building that constitutes a water efficiency improvement, alternative source of energy, or energy efficiency improvement.

(t) "Qualified applicant" means a person or business entity who does all of the following:

(1) Owns an eligible building that has a ratio of loan balance to its appraised value not to exceed 85 percent and subject to adjustment by the program administrator at the time the person's program application is approved, as shown in the records of the county assessor, unless the holder of the deed of trust or mortgage recorded against the eligible property that has priority over all other deeds of trust or mortgages recorded against the eligible property has consented in writing to the recording of an energy remittance repayment agreement pursuant to this division against the eligible property.

(2) Timely submits to the commission a complete application, which notes the existence of any first priority mortgage or deed of trust on the eligible property and the identity of the holder of the mortgage or deed of trust, to join the program and consents to the levying of a special assessment on the property pursuant to this chapter.

(3) Meets standard of credit worthiness that the commission may establish.

(u) "Renewable energy" means heat, processed heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, fuel cells, or energy in any form convertible to these uses, and including energy storage technologies, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

(1) Biomass.

(2) Solar thermal.

(3) Photovoltaic.

(4) Wind.

(5) Geothermal.

(v) "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 an eligible building or that are installed on the customer side of a meter of an eligible building and that produce renewable energy from renewable resources, including, but not limited to, photovoltaic, solar thermal, small wind, biomass, fuel cells, or geothermal systems such as ground source heat pumps, as may be approved by the commission.

Article 2. Nonresidential Building Energy Retrofit Financing Program

25987.5. The purpose of the Nonresidential Building Energy Retrofit Financing Program is to help provide the special benefits of water efficiency improvements, alternative energy, and energy efficiency improvements to owners of eligible buildings who voluntarily participate in the program by establishing, developing, financing, and administering a program to assist those owners in completing improvements.

25987.6. The commission shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the commission by this chapter. Those specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

25987.7. (a) The commission shall establish, develop, finance, and administer pursuant to Section 25987.9 the Nonresidential Building Energy Retrofit Financing Program. The program shall be designed to provide financial assistance for an owner of an eligible building to use one or more energy efficiency specialists to retrofit the property with one or more alternative energy sources or renewable energy improvements, energy efficiency improvements, or water efficiency improvements, by applying to the commission for inclusion of the owner's project in a portfolio that will be financed through the use of the revenue bonds issued pursuant to this chapter. These bonds shall be secured by revenues generated through energy remittance repayment agreements recorded on the buildings benefited by the projects in the portfolio.

(b) (1) The program shall provide financial assistance for improvements when the total energy and water cost savings realized by the property owner, and any successor or successors to the property owner, during the useful life of the improvements, as determined by an analysis required pursuant to subdivision (i) of Section 25987.13 are expected to equal or exceed the total costs incurred by the owner pursuant to the program.

(2) The commission may waive the requirements of paragraph (1) by adopting a specific finding that additional improvements may be undertaken that significantly increase energy efficiency and ~~increase~~ *improve* public health.

(c) In developing rules to certify an energy efficiency specialist, the commission shall consult with the Public Utilities Commission, the investor-owned utilities, the contractor community, and other entities the commission deems appropriate and consider existing trade certifications or licensing requirements applicable to occupations that perform work contemplated pursuant to this chapter.

25987.8. To receive financial assistance pursuant to this chapter, a qualified applicant shall contractually agree to the recording of an energy remittance repayment agreement on the eligible building that is being retrofitted.

25987.9. By July 1, 2013, the commission shall develop a request for proposal to develop the program by a third-party administrator and for the third-party administrator to administer the program and establish an automated, asset-based underwriting system for all eligible buildings in the state. The party selected as the third-party administrator shall only be selected if the program submitted by the party requires all costs, including startup costs of the program, to be covered by the loan recipients, the administrator, the bond purchasers, or some combination thereof. The program selected shall not include General Fund costs or liabilities, with the exception of loans from the General Fund pursuant to Section 25987.41 utilized for startup costs.

25987.10. The third-party administrator shall establish underwriting guidelines that consider an applicant's ~~qualification,~~ *qualifications,* and other appropriate factors, including, but not limited to, credit reports and loan-to-value ratios, consistent with good and customary lending practices, necessary for the authority to obtain a bond rating for bonds issued pursuant to Article 3 (commencing with Section ~~25987.28)~~ *25987.29)* for a successful bond sale.

25987.11. The third-party administrator shall disclose to an owner of a nonresidential building all fees imposed pursuant to this chapter, including the loan loss reserve fee, the program administration cost fee, and the interest rate charged, prior to the submission of an application by the building owner.

25987.12. (a) An owner of an eligible building who wishes to undertake an improvement shall submit to the third-party administrator an application to participate in the program.

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

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

SUBMISSION OF THIS APPLICATION CONSTITUTES THE VOLUNTARY CONSENT OF THE APPLICANT FOR THE RECORDATION OF THE ENERGY REMITTANCE REPAYMENT AGREEMENT ON THE DEED OF THE ELIGIBLE PROPERTY. UPON THE APPROVAL BY THE COMMISSION OF THE APPLICATION AND THE RECORDATION OF THE ENERGY REMITTANCE REPAYMENT AGREEMENT, A LIEN IN THE AMOUNT SPECIFIED IN THE ENERGY REMITTANCE REPAYMENT AGREEMENT SHALL BE SECURED BY THE PROPERTY.

25987.13. The owner of an eligible building shall include all of the following information in the application:

(a) The name, business address, and email address of the owners of the eligible building.

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

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

(d) An appraisal of the value of the eligible building that has been conducted within the past six months or during an appropriate timeframe consistent with industry practices for underwriting of nonresidential buildings.

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

(f) The name of the financial institution providing interim financing for the improvements or the warehouse facility developed pursuant to Section 25987.26.

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

(h) Any information that the commission or third-party administrator requires to verify that the owner will complete the project.

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

(j) Copies of an application that have been made for energy efficiency incentives identified pursuant to subdivision (d) of Section 25987.19 for any applicable retrofits.

(k) Other information deemed necessary by the commission or the third-party administrator.

25987.14. (a) In addition to the information required under Section 25987.13, an applicant shall provide in the application a detailed description of all of the following:

(1) The eligible building.

(2) The transactional activities associated with the eligible improvements, including the transactional costs.

(3) Other information deemed necessary by the commission or the third-party administrator.

(b) An applicant shall agree in the application to remit repayment installments due by an electronic funds transfer under procedures prescribed by the board.

25987.15. (a) The third-party administrator shall recommend to the commission on the approval or disapproval of an application.

(b) The commission may approve and accept an applicant into the program when both of the following conditions are met:

(1) The applicant is a qualified applicant.

(2) Prior to receiving funding for renewable energy improvement or alternative energy sources the applicant shall show both of the following:

(A) Evidence of intent to make feasible energy efficiency upgrades recommended by the analysis required pursuant to subdivision (i) of Section 25987.13.

(B) Evidence of intent to enroll in eligible demand response programs, if appropriate.

(c) The commission shall determine appropriate guarantees necessary to ensure cost neutrality of the improvements that may include the requirement that the owner of the eligible building obtaining insurance issued by an A.M. Best “A” or better rated insurance carrier or a similar product as approved by the commission.

25987.16. (a) Upon the mutual agreement of the participant and the third-party administrator, the third-party administrator shall establish an annualized schedule for the repayment required by the energy remittance repayment agreement, including the interest charged, administrative cost fee, and loan loss fee.

(b) The board shall collect the repayment installments that become due and payable.

(c) (1) The period for repayment of the energy remittance repayment agreement shall not exceed the effective useful life of the improvements or 20 years, whichever is shorter.

(2) The calculated effective useful life of the energy efficiency improvements shall be calculated using methodologies adopted by the commission, in consultation with the Public Utilities Commission. The commission shall adopt the methodologies at a publicly noticed meeting offering all interested parties an opportunity to comment. The commission shall provide a public notice at least 30 days prior to the meeting at which the methodology is scheduled for adoption. The commission shall provide a public notice at least 10 days prior to a meeting at which a substantive change is proposed to the methodology. Notwithstanding other laws, the methodologies adopted pursuant to this paragraph shall be exempted from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Upon the failure of the participant to pay any installment toward the repayment of the energy remittance repayment agreement when the installment becomes due and owing pursuant to the schedule for repayment, the board shall assess a penalty on the delinquent payment of 10 percent of the unpaid installment.

(e) Within 60 days of a failure to pay the scheduled energy remittance, the board shall issue a demand letter to the participant with notice provided to the commission and provide the participant with 30 days to cure the default.

(f) (1) If the participant fails to cure the default within the time allotted, the board may declare the entire outstanding energy remittance repayment agreement balance, including any interest due, penalties assessed, and costs of collection incurred, immediately due and owing and foreclose on the energy remittance repayment agreement by either judicial or nonjudicial foreclosure.

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

(g) Upon the full repayment of the balance of the energy remittance repayment agreement, and interest and penalties that had accrued, the board shall notify the commission of that repayment. Within 30 days of the receipt of the notice, the board shall record with the county in which the eligible building is located a release of the energy remittance repayment agreement.

25987.17. (a) A participant shall remit repayment installments due by an electronic funds transfer to the board under procedures prescribed by the board.

(b) Any participant remitting amounts due pursuant to subdivision (a) shall perform electronic funds transfers in compliance with the due dates prescribed in the schedule for repayment. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) Any participant who remits a repayment installment by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the repayment installment incorrectly remitted.

(d) The board may prescribe, adopt, and enforce regulations relating to the collection of the installment repayment pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code) for purposes of collecting energy remittance repayment installments.

25987.18. (a) Prior to approving an application for inclusion into a loan portfolio and the recordation of the energy remittance repayment agreement, or a modification of an approved application, the commission shall conduct a public hearing on the application or modification.

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

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

(1) The name of the qualified applicant.

(2) The address of the eligible building.

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

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

(5) The schedule for repayment of the contractual energy remittance and associated costs as agreed upon between the qualified applicant and the commission.

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

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

(d) The notice shall inform the lienholder that any complaints or objections to either the approval of the application and the recordation of the energy remittance repayment agreement on the eligible building or the modification of an approved application shall be submitted, in writing, to the commission not less than 10 days prior to the hearing.

25987.19. In evaluating the eligibility of an applicant, the commission shall consider the creditworthiness of the applicant and the effectiveness of the improvements applying the following criteria, including, but not limited to, all of the following:

(a) Whether applicants are legal owners of the underlying property.

(b) Whether applicants are current on any outstanding mortgage and property tax payments.

(c) Whether applicants are in default or in bankruptcy proceedings.

(d) Whether applicants have applied for incentives available through the energy efficiency programs offered by an electrical or gas corporation.

(e) Whether improvements financed by the program follow applicable standards including any guidelines adopted by the commission.

25987.20. (a) The commission shall approve an application through the adoption of a resolution approving the application and authorizing the recording of the energy remittance repayment agreement on the deed of the eligible ~~property~~ *building*.

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

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

25987.21. (a) The energy remittance repayment agreement that is secured by a lien recorded pursuant to this section, shall have the force, effect, and priority of a judgment lien, and shall be subordinate to any and all secured mortgage liens recorded against the deed of the eligible ~~property~~ *building* at the time of recording of the energy remittance repayment agreement.

(b) Except as otherwise required by law, the energy remittance repayment agreement shall be superior in priority to all subsequent liens recorded on the deed of the eligible ~~property~~ *building* except where the first mortgage is refinanced, in which case the energy remittance repayment agreement shall remain secondary to the primary mortgage.

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

(d) In the event of foreclosure, the energy remittance repayment agreement *installments* shall not be due and owing during such time when the ~~property~~ *building* is owned by a financial institution taking title by way of foreclosure. The ~~amounts~~ *installments* owing pursuant to the energy remittance repayment agreement shall, however, continue to accrue and shall become due 60 days after a new, nonfinancial owner ~~shall take~~ *takes* title.

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

25987.22. (a) Thirty days after the adoption of the resolution, the commission shall forward the resolution, the agreement, and any other information necessary to collect the installment repayments to the board which shall record with the county in which the eligible building is located the energy remittance repayment agreement on the deed of the eligible ~~property~~ *building*. The board shall notify the commission upon the recordation of the energy remittance agreement.

(b) Upon 60 days of the notice of recording of the energy remittance repayment agreement, the commission shall include the approved application in a portfolio posted on the commission's Internet Web site.

25987.23. (a) The board shall deposit into the Nonresidential Building Energy Retrofit Debt Servicing Fund established pursuant to Section 25987.38 any moneys collected pursuant to this chapter.

(b) The board may charge a program administration cost fee on the owner of an eligible building to cover its costs as well as the authority's and the commission's costs in implementing this chapter.

(c) Nothing in this chapter shall be construed to require investor owned utilities or municipal utilities to serve in the role as a third-party private guarantor or loan servicer or otherwise provide credit support for the loan program.

25987.24. (a) A local government that has issued revenue bonds pursuant to a program providing financial assistance to nonresidential buildings owners undertaking a renewable energy, water efficiency, or energy efficiency retrofit improvement on the buildings may apply to the commission for participation in the program.

(b) Upon the approval of an application submitted by the local government for the building or buildings in which that jurisdiction is located, the commission may purchase all those outstanding revenue bonds issued by the local government.

(c) Upon the purchase of the revenue bonds issued by the local government by the commission, the commission succeeds to all rights conferred upon the bondholder by those revenue bonds and the local government shall remit revenue that is used to secure those revenue bonds to the board.

25987.25. (a) The commission may do all of the following:

(1) (A) On or before July 1, 2013, analyze and evaluate standards for nonresidential energy building retrofits previously developed by various national and international organizations to provide uniformity and transparency for financial institutions evaluating loan proposals for energy improvements to nonresidential ~~properties~~ *buildings*.

(B) The evaluation shall review existing protocols or combination of elements of existing measurement protocols and shall be made available in an electronic format to financial institutions and local governments initiating loans pursuant to this chapter.

(2) Establish those standards, guidelines, and procedures, through regulation, including, but not limited to, standards of credit worthiness for qualification of program applicants, that are necessary to ensure the financial stability of the program and otherwise prevent fraud and abuse.

(3) Establish those measurement and verification standards necessary to ensure that the energy efficiency improvements financed pursuant to this chapter are realized at a level specified by the commission.

(4) Consider reliance on existing trade certifications or licensing requirements applicable to occupations that perform the work contemplated under this chapter.

(5) Establish qualifications for the certification of contractors to construct or install energy efficiency improvements.

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

(A) Ensure that appropriate and reasonable steps are taken to monitor and verify the quality and longevity of energy efficiency improvements financed pursuant to this division and measure the total energy savings achieved by the program.

(B) Monitor the total number of program participants.

(C) Determine the average amount, in aggregate, paid to contractors and financial institutions pursuant to the program.

Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), upon a finding pursuant to Section 6255 of the Government Code that the public interest is served by not disclosing information clearly outweighs the public interest served by disclosing information, the commission shall not disclose payments made by an applicant or a program participant to individual contractors or financial institutions.

(D) Calculate the number of jobs created by the program, the number of defaults by program participants, and the total losses from the defaults, and calculate the total dollar amount of bonds issued by the commission to reimburse program participants.

(7) Develop a model energy aligned lease provision that modifies, upon the agreement between the owner and tenants of an eligible building, a commercial lease agreement allowing the owners to recover the costs of the renewable energy, water efficiency, or energy efficiency retrofit improvements that result in operational savings based on the useful life of the retrofit while protecting tenants from underperformance of the energy efficiency improvements.

(8) Develop a request for proposal to contract with one or more financial institutions to secure a short-term, revolving credit facility (warehouse line of credit) for the purpose of creating an interim financing mechanism for the loans that would be aggregated for the purposes of issuance of a revenue bond pursuant to Section 25987.29. The warehouse line of credit shall be drawn by the third-party administrator for origination of direct loans to qualified applicants.

(9) Adopt a standard notice and disclosure form for the purposes of Section 25987.27.

(b) In implementing this chapter, the commission shall do all of the following:

(1) Consult with the Public Utilities Commission, representatives from the investor-owned and publicly owned utilities, local governments, real estate licensees, commercial builders, commercial property owners, small businesses, financial institutions, commercial property appraisers, energy rating organizations, and other entities the commission deems appropriate.

(2) Hold at least one public hearing.

(3) Adopt regulations and standards for the purposes of implementing this chapter at a publicly noticed meeting offering all interested parties an opportunity to comment. For the initial adoption of the regulations and standards, the commission shall provide a written public notice at least 30 days prior to the meeting. For the adoption of any substantive change to the regulations and standards, the commission shall provide a written public notice at least 10 days prior to the meeting. Notwithstanding any other law, a regulation or standard adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25987.26. Credit issued under the warehouse line of credit shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, or a pledge of the full faith and credit of the state or of any political subdivision, but shall be payable solely from the funds provided therefor. All credit instruments shall contain a statement to the following effect:

"Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of principal and interest on this credit instrument."

25987.27. (a) From the date upon which financial assistance is approved by a resolution of the commission pursuant to Section 25987.20 and for all subsequent transactions entered into pursuant to this chapter, a seller of real property subject to an energy remittance repayment agreement shall deliver to the buyer an energy remittance repayment agreement notice and disclosure as adopted by the commission pursuant to paragraph (9) of subdivision (a) of Section 25987.25.

(b) (1) Upon the delivery of the completed notice and disclosure form to the buyer of real property, the seller and his or her agent is not required to provide additional information relative to the energy remittance repayment agreement.

(2) The information in the notice and disclosure form is deemed sufficient to provide notice to the buyer of the existence of the energy improvements, the energy remittance repayment agreement, and the repayment obligation that will be assigned to, and assumed by, the buyer upon taking title.

25987.28. No later than June 30, 2014, and no later than June 30 of every fifth year thereafter, the State Auditor shall conduct, or cause to be conducted, a performance audit of the program. The State Auditor shall prepare a report and recommendations on each audit conducted and present the report and recommendations to the President pro Tempore of the Senate and the Speaker of the Assembly.

Article 3. Nonresidential Building Energy Retrofit Bond

25987.29. The authority, on behalf of the commission, may incur indebtedness and issue and renew negotiable bonds, notes, debentures, or other securities of any kind or class. All indebtedness, however evidenced, shall be payable solely from moneys received pursuant to this chapter and the proceeds of its negotiable bonds, notes, debentures, or other securities and shall not exceed the sum of two billion dollars ($2,000,000,000).

25987.30. The Legislature may, by statute, authorize the authority to issue bonds, as defined in Section 25987.31 in excess of the amount provided in Section 25987.29.

25987.31. (a) On a semiannual basis, the authority shall conduct a meeting for the purpose of authorizing the issuance of, by the adoption of a resolution, negotiable bonds, notes, debenture, or other securities (collectively called "bonds") for the purposes of generating sufficient moneys to fund the approved applications in the portfolio at the time of the meeting or to repay an outstanding balance of the participant on whose behalf the commission has provided funds through the warehouse line of credit. In anticipation of the sale of bonds as authorized by Section 25987.29, or as may be authorized pursuant to Section 25987.30, the authority, on behalf of the commission, may issue negotiable bond anticipation notes and may renew the notes from time to time. The bond anticipation notes may be paid from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Notes and agreements relating to the notes and bond anticipation notes (collectively called "notes") and the resolution or resolutions authorizing the notes may contain any provisions, conditions, or limitations that a bond, agreement relating to the bond, and bond resolution of the authority may contain. However, a note or renewal of the note shall mature at a time not exceeding two years from the date of issue of the original note.

(b) Every issue of its bonds, notes, or other obligations shall be general obligations of the authority or commission payable from revenues or moneys received pursuant to this chapter. Notwithstanding that the bonds, notes, or other obligations may be payable from a special fund, that are for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) Subject to the limitations in Sections 25987.29 and 25987.30, the bonds may be issued as serial bonds or as term bonds, or the authority in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority or commission and shall bear the date or dates, mature at the time or times, not exceeding 30 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to terms of redemption, as the resolution or resolutions may provide. The sales may be a public or private sale, and for the price or prices and on the terms and conditions, as the authority shall determine after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes. Pending preparation of the definitive bonds, the authority may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The authority may sell bonds, notes, or other evidence of indebtedness at a price below their par value. However, the discount on a security sold pursuant to this section shall not exceed 6 percent of the par value.

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

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

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

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

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

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

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

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

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

(e) Neither the authority, the commission, or a person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to personal liability or accountability by reason of the issuance of the bond or note.

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

(g) The commission, the authority, and the board may enter into a memorandum of understanding providing for the transfer of energy remittance payments between the three agencies in furtherance of this chapter.

(h) Should there be insufficient project valuation or insufficient demand for the revenue bonds authorized by this chapter, the board shall continue to collect the energy remittance payments and service the loans. Failure to sell the revenue bonds shall not create any liability for the state.

25987.32. In the discretion of the authority, any bonds issued under the provisions of this article may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be the authority or any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received pursuant to this chapter, to be financed out of the proceeds of such bonds. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have herein above been specifically authorized to be included in any resolution or resolutions of the commission authorizing bonds thereof. Any bank or trust company doing business under the laws of this state which may act as depositary of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. Notwithstanding any other law, the authority shall not be deemed to have a conflict of interest by reason of acting as trustee pursuant to this chapter.

25987.33. Bonds issued under the provisions of this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the authority, or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds shall contain on the face thereof a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond." The issuance of bonds under the provisions of this article shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

Nothing contained in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this chapter.

25987.34. (a) The authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds, notes, or other securities of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of such bonds.

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

(c) Pending such use, any such escrowed proceeds may be invested and reinvested by the authority in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States of America, maturing at such time or times as shall be appropriate to ensure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

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

25987.35. Bonds issued by the authority are legal investments for all trust funds, the funds of all insurance companies, banks, both commercial and savings, trust companies, savings and loan associations, and investment companies, for executors, administrators, trustees, and other fiduciaries, for state school funds, and for any funds which may be invested in county, municipal, or school district bonds, and such bonds are securities which may properly and legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state, is now, or may hereafter be, authorized by law, including deposits to secure public funds if, and only to the extent that, evidence of indebtedness or debt securities of the participating party receiving financing through the issuance of such bonds qualify or are eligible for such purposes and uses.

25987.36. The state hereby pledges and agrees with the holders of the bonds and with a participant with an approved application that the state will not limit, alter, restrict, or impair the rights vested in the authority or the commission or the rights or obligations of a person or entity with which the commission contracts to fulfill the terms of an agreement made pursuant to this chapter. The state further agrees that it will not in any way impair the rights or remedies of the holder of the bonds until the bonds have been paid or until adequate provision for payment has been made. The authority may include this provision and undertaking for the authority in its bonds.

25987.37. (a) Bonds issued pursuant to this division shall be exempt from all taxation and assessment imposed pursuant to state law.

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

Article 4. Nonresidential Building Energy Retrofit Debt Servicing Fund

25987.38. (a) The Nonresidential Building Energy Retrofit Debt Servicing Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the fund are hereby continuously appropriated to the authority without regard to fiscal year for the purposes of paying the principal and interest on bonds issued by the authority pursuant to Section 25987.29, servicing the warehouse line of credit, and defraying any direct and indirect costs incurred by the Treasurer in executing duties required by this chapter.

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

25987.39. The Loan Loss Reserve Account is hereby established in the Nonresidential Building Energy Retrofit Debt Servicing Fund. The board shall deposit the portion of the contractual energy remittance that is the loan loss reserve fee into the account. Notwithstanding Section 13340 of the Government Code, the moneys in the account are hereby continuously appropriated to the authority without regard to fiscal year for the purposes of paying outstanding balances due under an energy remittance repayment agreement on a building that has been foreclosed upon if the proceeds generated from the foreclosure proceedings are insufficient to pay any past due payments past due under the energy remittance repayment agreement, including accrued interest, penalties, and fees. All interest and income derived from the deposit and investment of moneys in the account shall be credited to the account, and all unexpended and unencumbered moneys in the account at the end of any fiscal year shall remain in the account.

25987.40. The Administration Account is hereby established in the Nonresidential Building Energy Retrofit Debt Servicing Fund. The authority shall deposit into the account the program administration fee collected pursuant to subdivision (b) of Section 25987.23 and penalties collected pursuant to Section 25987.16. Notwithstanding Section 13340 of the Government Code, moneys in the account shall be continuously appropriated to the authority, the commission, and the board for the costs of implementing this chapter.

25987.41. (a) The Director of Finance shall transfer, as a loan, up to one million dollars ($1,000,000) from the General Fund to the board to implement this chapter.

(b) The Director of Finance shall transfer, as a loan, up to seven million dollars ($7,000,000) from the General Fund to the commission to implement this chapter.

(c) Any loan made pursuant to this section shall be repaid on or before January 1, 2023, with interest at the pooled money investment rate, from energy remittance repayment collected pursuant to this chapter.

(d) If the fees authorizes for collection pursuant to subdivision (b) of Section 25987 are not sufficient to support the loans made pursuant to this section, the Director of Finance shall discuss alternative repayment terms with the borrowing agencies.

25987.42. (a) The commission, the board, and the authority shall be authorized to promulgate necessary regulations to implement and administer this chapter.

(b) Regulations for the purposes of implementing this chapter shall be adopted by the commission, board, or authority at a publicly noticed meeting offering all interested parties an opportunity to comment. For the initial adoption of the regulations and standards, the commission shall provide a written public notice at least 30 days prior to the meeting. For the adoption of any substantive change to the regulations and standards, the commission shall provide a written public notice at least 10 days prior to the meeting. Notwithstanding any other law, a regulation or standard adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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