



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ANALYSIS**

DRAFT

Date:	06/27/12	Bill No:	<u>Senate Bill 1130</u>
Tax:	Nonresidential Building Energy Retrofit Financing Program	Author:	De Leon
Sponsor:	State Controller	Code Sections:	PRC 25987.1, et al
Related Bills:		Effective Date:	01/01/13

This analysis will only address the bill's provisions that impact the BOE.

BILL SUMMARY

This bill enacts the Nonresidential Building Energy Retrofit Financing Act of 2012 and requires the Board of Equalization (BOE) to collect installment payments from owners of eligible properties whose applications have been approved by the State Energy Resources Conservation and Development Commission (California Energy Commission - CEC).

Summary of Amendments

Since the previous analysis, this bill was amended to, among other things, (1) allow, rather than require, the BOE to commence foreclosure procedures for delinquent payments by nonresidential building owners and (2) provide the BOE with up to \$1 million loan from the General Fund for start up costs.

ANALYSIS

CURRENT LAW

Currently, the BOE administers and collects 34 separate tax and fee programs, in addition to its duty to administer the state sales and use tax taxes. The BOE does not presently perform any collection duty associated with installment payment collections from private property owners related to improvements that are financed nor does it service loans.

PROPOSED LAW

This bill requires the BOE to collect “energy remittance repayments” and service the loans to nonresidential building owners that use financing received from the Nonresidential Building Energy Retrofit Financing Program (Program) created by this bill. The Program would provide financing to an owner of an eligible nonresidential building to fund and install renewable energy systems, make energy or water efficiency improvements or retrofits to the buildings, as specified.

Nonresidential Building Energy Retrofit Financing Program. This bill adds Chapter 13 (commencing with Section 25987.1) to Division 15 of the Public Resources Code to establish the Program. The Program is intended to help nonresidential building owners finance certain energy-efficient improvements to their buildings. A building owner’s project would be approved by the CEC in conjunction with a third party administrator; the California Alternative Energy and Advanced Transportation Financing Authority (Authority), on behalf of the CEC, would sell revenue bonds backed by the energy

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remittance repayment agreements, and the BOE would collect the repayments from building owners.

Third-Party Administrator - RFP. The CEC is required to develop a Request for Proposal (RFP) by July 1, 2013 for a third party to develop and administer the Program and establish underwriting guidelines. (§ 25987.9)

Energy Remittance Repayment Agreements. This is defined to mean a contractual agreement between an eligible building owner and the CEC, 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 CEC will make reimbursement or a direct payment to the party financing the energy improvements, and “contractual energy remittance” means that reimbursement or direct payment. (§ 25987.4 (i)) The agreement is to be secured by a lien that is recorded. The lien has the force, effect, and priority of a judgement lien, and is subordinate to any and all secured mortgage liens recorded against the deed of the eligible property at the time of recording of the energy remittance repayment agreement. The energy remittance repayment agreement lien is superior in priority to all subsequent liens recorded on the deed of the eligible property except where the first mortgage is refinanced, in which case the energy remittance repayment agreement shall remain secondary to the primary mortgage. (§ 25987.21)

Collection Function and Loan Servicing. The bill requires the BOE to collect the repayment installments (loan payments) from participants. The amounts of the installment payments to be collected by the BOE are unspecified. Instead, they would be established according to an “annualized schedule” established and mutually agreed to by the third party administrator and the participating building owner, and specified by a resolution adopted by the CEC. The payment installments must be submitted by an electronic funds transfer to the BOE. If a participant fails to pay any installment or fails to remit payment by electronic funds transfer, the BOE is to assess a penalty on the delinquent payment of 10%. Within 60 days of a missed installment payment, the BOE is to issue a demand letter to the participant with notice to the CEC and provide 30 days to cure the default. If the participant does not cure the default within the 30 days allotted, the BOE may declare the entire outstanding agreement balance immediately due and owing and may begin foreclosure proceedings on the property using either judicial or nonjudicial foreclosure proceedings. Revenue generated from the sale of the building to satisfy the liens on the building in accordance with the priority of the liens as provided by law. (§§ 256987.16 and 25987.17)

Record Agreement. Following adoption of the resolution by the CEC approving the application and specifying the amount to be paid, the BOE is required file a lien and record the energy remittance repayment agreement entered into between the CEC and the property owner with the county in which the building is located. Upon the full repayment the BOE is to release the lien. (§§ 25987.16 and 25987.23)

Funds. The BOE is to deposit the EFT remittances into the Nonresidential Building Energy Retrofit Debt Servicing Fund that this bill establishes in the State Treasury, as specified. (§§ 25987.38 - .40)

Regulations and MOUs. Related to the administration of the Program, this bill:

Authorizes the BOE to prescribe, adopt, and enforce regulations relating to the collection of the installment repayment. (§ 25987.17(d))

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Authorizes the BOE, CEC and the Authority to promulgate necessary regulations to implement and administer this chapter. (§ 25987.42)

Requires the BOE, the CEC, and the Authority to enter into a memorandum of understanding providing for the transfer of energy remittance payments between the three agencies in furtherance of this chapter. (§ 25987.31(g))

Requires the BOE to continue to collect the energy remittance payments and service the loans (accept payments, release liens, etc) even if the Authority is unable to sell the revenue bonds. (§ 25987.31(h))

Start-up Cost Loan. Loans up to \$1,000,000 to the BOE from the General Fund for implementation to be repaid by January 1, 2023. Provides that if fees are not sufficient to support the loans that the Director of Finance discuss alternative repayment provisions with the agencies. (§ 25987.41)

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Controller to make energy efficiency upgrades cost-effective for nonresidential property owners while putting California's construction labor workforce back to work.
2. **The June 27, 2012 amendments,** among other things, (1) allow, rather than require, the BOE to commence foreclosure procedures for delinquent payments by nonresidential building owners, (2) provide the BOE with up to a one million dollar loan from the general fund for start up costs, (3) eliminate language related to prepayments without penalty, and (4) replace the Treasurer with the California Alternative Energy and Advanced Transportation Financing Authority.
3. **Foreclosure in the case of delinquency would be optional.** Previously, this bill required such action. Consequently, this could have required the BOE to foreclose when the property owner was otherwise current on its mortgage and property taxes. Further, it directed foreclosure without regard to whether there would be sufficient funds from the sale to repay the remittance repayment agreement since the remittance repayment agreement is subordinate to superior liens. (§ 25987.21) While the BOE does have authority to seize and sell property to collect delinquent taxes and fees it is not a common or routine practice. The amendments also delete reference to early payoffs without penalty, as such the bill is now silent with respect to early payoffs.
4. **The BOE's collection duties would commence in the future at an unknown date.** The CEC is required to develop the RFP to develop the Program by July 1, 2013. Presumably, the third party selected would then need time to develop the loan criteria and lending process to be used for this Program. Further, property owners would then need to apply and be approved for the Program by the CEC.
5. **Loan servicing.** The BOE does not presently perform any collection duty associated with installment payment collections from private property owners nor does it service loans.

The mission of the BOE is to serve the public through fair, effective, and efficient tax administration. The provisions in this bill represent a departure from our traditional "tax collection" functions.

6. **The bill is silent as to the payment frequency.** The bill specifies that the third party administrator is to establish an "annualized schedule" for the repayment

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required by the energy remittance repayment agreement. (§ 25987.16) The CEC is to provide the BOE with the resolution specifying the amount required to be paid to the BOE, the schedule of payment, and the interest rate charged. (§25987.20) Is the repayment to the BOE on an annual, quarterly, monthly, or some other basis? Would the repayment schedules and due dates vary by participant? The greater the variation in the repayment agreements, the more costly the repayment collection would be for the BOE to administer. The period for repayment is 20 years or the effective useful life of the improvements, whichever is shorter.

7. **This bill should be amended to authorize the provisions of the Fee Collection Procedures Law, Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code to provide additional collection tools.** These provisions of law outline the BOE's routine procedures and tools to seek collection of delinquent monies.
8. **This bill allows the BOE to foreclose on delinquent energy remittance agreements (i.e., on the eligible building).** In approving participants, the bill requires the CEC to "consider" but does not appear to require that the applicants are the legal owners of the underlying land. Thus, the BOE could be foreclosing on buildings located on land owned by another.
9. **Foreclosure by other parties.** The payments are not due while the property is in foreclosure and owned by a financial institution. For example, if the mortgage holder commenced the foreclosure process. The bill is silent as to who would be responsible for monitoring this situation and the special accounting procedures and revised payment schedule for the suspended payments. The new owner is required to make the payments within 60 days after a new nonfinancial owner takes title. Who would notify the BOE of the new owner? The role and responsibilities of the multiple parties is unclear.
10. **The BOE's administrative start-up costs.** To implement the proposed collection program, the BOE would need to develop computer programs and hire appropriate staff. These administrative start-up costs would be addressed through a loan from the General Fund of up to one million dollars to be repaid from the energy remittance repayment collections. However, demand for the Program is unknown thereby making it unclear when, or if, there would be sufficient monies collected to repay the GF loan. Furthermore, the BOE's costs are unknown at this time.
11. **The BOE's ongoing costs.** A "program administration cost fee" levied on the participants is intended to cover the costs incurred by the CEC, the Authority, and the BOE to administer the Program. The Authority is to deposit fees and penalties (collected by the BOE) into the "Administration Account," which would be continuously appropriated to the Authority, CEC, and BOE for costs of implementing the Nonresidential Building Assessment Financing Act. The provisions in the bill about establishing, setting and collecting this fee lack clarity. Additionally, since demand for the Program is unknown would the fees levied on participants be sufficient to continuously cover the costs of administering the program. (§ 25987.9, § 25987.11, 25987.16 and § 25987.24)

In addition to clarifying the BOE's reimbursement for ongoing administrative costs, provisions should be added to authorize the payment of refunds for energy remittance repayment overpayments from the accounts into which the overpaid amounts were deposited.

12. Roles and responsibilities. Given the number of agencies that would be assigned various functions under the Program, in addition to a third party administrator, clear roles and responsibilities are vital.

COST ESTIMATE

The BOE would incur non-absorbable costs to adequately develop and administer this new collection and loan servicing function. These costs would include developing computer programs, processing remittance payments, creating accounts for payees based on information provided by the third party administrator and the CEC, recording liens and agreements, pursuing collection, and foreclosing on property, training staff, and answering participant inquiries. Due to the number of unknowns as noted previously, including the potential demand from participants, it is not possible to determine the cost of developing such a program at this time. The bill currently provides up to a \$1,000,000 loan to the BOE for these costs. However, the BOEs costs are unknown at this time to evaluate whether or this this amount would be sufficient.

REVENUE ESTIMATE

This bill does not enact or otherwise affect a tax or a fee so there is no revenue impact.

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