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OVERSIGHT HEARING

The California Clean Energy Jobs Act (Proposition 39): Progress to Date

Voters approve Clean Energy Jobs Act to fund energy efficiency and clean energy projects. In November 2012, California voters approved Proposition 39 – *The Clean Energy Jobs Act*. The Act modified California tax law so that a multistate corporation could no longer determine its California tax liability according to the method that minimized the corporation's California tax liability. Rather, the Act requires a corporation to calculate its California tax liability based on a percentage of the corporation's sales in California. This change results in ongoing additional revenue to the State General Fund, estimated, at the time of the Act's passage, by the Legislative Analyst's Office (LAO) at $1 billion annually.

The Act directs half of this additional revenue – up to $550 million annually for each of years 2013-14 through 2017-18 – to the Clean Energy Job Creation Fund. Monies in the Fund are to support projects that create jobs in California improving energy efficiency and expanding clean energy generation. The Act specifies eligible projects, as follows:

- Energy efficiency retrofits and alternative energy projects in public schools, colleges, universities, and other public facilities.
- Job training and workforce development programs related to energy efficiency and alternative energy.
- Financial and technical assistance to local governments for cost-effective energy efficiency retrofit loan programs.

Legislature directs Proposition 39 funds to schools and workforce training. Statute enacted subsequent to passage of Proposition 39 allocates monies in the Clean Energy Job Creation Fund and established administrative responsibilities according to the priorities of the Legislature (Committee on Budget and Fiscal Review, Chapter 29, Statutes of 2013). The statute directs the bulk of the revenue in the fund (89 percent) in each fiscal year 2013-14 through 2017-18 to K-12 education. The statute ensures that each school district, county office of education, charter school and state special school (collectively known as "local education agencies" or "LEAs") in the state receives revenue from the fund to undertake energy efficiency and clean energy projects. Statute generally bases the amount of funding to be received by each LEA on the

LEA's average daily attendance, with a portion of the funds (15 percent) to be disbursed based on number of students in the LEA who receive free and reduced-price lunches. (The figure below summarizes the statutory disbursement parameters for Clean Energy Job Creation Fund awards to LEAs.)

Clean Energy Job Creation Fund Disbursement Parameters to LEAs[1]

Statute directs the Superintendent of Public Instruction, for each of the fiscal years 2013-14 through 2017-18, to allocate 89 percent of monies in the Clean Energy Job Creation Fund to school districts, county offices of education, charter schools and state special schools (known collectively as "LEAs") according to the parameters shown below.

- 85 percent of money in fund – allocated annually based on average daily attendance (ADA).
  - ADA of 100 or less – $15,000.
  - ADA greater than 100 but 1,000 or less – greater of the LEA's ADA-based award or $50,000.
  - ADA greater than 1,000 but less than 2,000 – greater of the LEA's award or $100,000.
  - ADA of 2,000 or more is awarded its proportional award.
- 15 percent of money in the fund – allocated annually based on the number of students in an LEA eligible for free and reduced-price meals in the prior year.

1) See Public Resources Code Section 26233.

In addition, statute specifies that an LEA that receives more than $1 million from the fund must use at least 50 percent of the monies for energy efficiency and clean energy projects larger than $250,000. Statute also dedicates 11 percent of monies in the fund for each fiscal year 2013-14 through 2017-18 to California Community Colleges, to be allocated by the Chancellor at his or her discretion.

The Legislature has also made several one-time awards from the Clean Energy Job Creation Fund. In each budget for the years 2013-14 through 2015-16, the Legislature dedicated $5 million to the California Conservation Corps to provide technical assistance to LEAs ($15 over three budget years) and $3 million ($9 million total over the three budget years) to the Workforce Development Board (WDB) to provide grants to programs providing energy efficiency and clean energy workforce training to disadvantaged youth and veterans. In addition, in 2013-14 and 2014-15, the Legislature dedicated $28 million a year ($56 million total) to the Energy Conservation Assistance Account, administered by the California Energy Commission (CEC), for low-interest and no-interest revolving loans and loan loss reserves for eligible energy efficiency and clean energy projects and technical assistance.

To date, the changes in corporate tax treatment made by the Act have brought over $2.3 billion in otherwise forgone revenue. The following table illustrates, by fiscal year, the additional revenue, through fiscal year 2015-16, resulting from passage of the Act, as well as the allocation of those revenues to the General Fund and the Act and its various programs.

Clean Energy Jobs Act Revenue – Over $2.3 Billion, as of 2015-16

To date, the changes made by Proposition 39 to the methodology by which a corporation calculates its California tax liability has resulted in over $2.3 billion in additional revenue to the State of California. This revenue have accrued to the General Fund, as well as the various Clean Energy Jobs Act programs.

Additional Revenue[1]	Fiscal Year 2013-14	2014-15	2015-16
General Fund	**$464**	**$353**	**$361**
Clean Energy Jobs Act Programs	**464**	**353**	**361**
LEAs[2] (K-12 schools)	*381*	*279*	*313*
Community Colleges	*47*	*38*	*39*
ECAA[3] Loans	*28*	*28*	*--*
California Conservation Corps	*5*	*5*	*5*
Workforce Development Board	*3*	*3*	*3*
Totals	**$928**	**$706**	**$722**

1) Dollar amounts rounded and in millions
2) Local Education Agencies – school districts, county offices of education, charter schools and state special schools.
3) Energy Conservation Assistance Account – low-interest and no-interest revolving loans and loan loss reserves for eligible energy efficiency and clean energy projects and technical assistance.

Planning and oversight required. The Act provides for review and publication of the use of monies in the Clean Energy Jobs Fund, as well as the projects funded from it. Specifically, the Act calls for creation of the Citizens Oversight Board (COB), the nine members of which need to meet specific criteria and be appointed, in equal numbers, by the Attorney General, the State Controller and the State Treasurer. (The Act also directs the California Public Utilities Commission (CPUC) and the CEC to each appoint an *ex officio* member to the COB.) The Act lays out the responsibilities of the COB as follows:

- Annually review all expenditures from the Job Creation Fund.
- Commission and review an annual independent audit of the Job Creation Fund and of a selection of projects completed to assess the effectiveness of the expenditures in meeting the objectives of the Act.
- Publish a complete accounting of all expenditures each year, posting the information on a publicly accessible Internet Website.
- Submit an evaluation of the program to the Legislature identifying any changes needed to meet the objectives of this division.

The statewide elected officials each named their appointees to the COB, and the COB has met several times since the fall of 2015.

In contrast, the Act did not explicitly provide for upfront review of projects paid for by monies in the Fund. The Legislature, however, has provided for such review. Statute to guide implementation of the Act requires the CEC, in consultation with the Superintendent of Public Instruction, the Chancellor of the Community Colleges and the CPUC, to develop extensive guidelines governing implementation of the Act, including:

- Standard methods for estimating energy benefits of eligible projects.
- Project evaluation.
- Use of adequate energy audit, measurement, and verification procedures to ensure energy savings and greenhouse gas emissions reductions occur.
- Achievement of the maximum feasible energy efficiency or clean energy benefits, as well as job creation benefits for Californians.

Significantly, statute explicitly prohibits the Superintendent from distributing Proposition 39 funds to an LEA unless the CEC has approved an energy expenditure plan consistent with the requirements of the Act. In this way, the CEC acts as a gatekeeper to LEAs' Clean Energy Jobs Act funding, helping to ensure LEAs plan for and develop energy efficiency and clean energy projects that achieve the objectives of the Act. The COB, on the other hand, stands at the end of the Act, annually reviewing both expenditures from the fund and completed projects, and making programmatic information available to the Legislature and the public.

Implementation and progress to date. California voters approved the Act three years ago. It is appropriate now to check in with the entities administering the Act to ensure that California is achieving its public policy objectives – installation of energy efficiency measures and clean energy generation to benefit California's public schools and, not least of all, job creation. The purpose of this oversight hearing is to better understand the roles and activities of the various administrative agencies and their interrelations; to assess progress in developing energy expenditure plans, disbursing revenue to LEAs and community colleges, and implementing energy efficiency projects and clean energy generation; as well as the adequacy of up-front project assessment and after-the-fact review to ensure achievement of project goals, and the goals of the Act. It is the intent of this committee to recognize the successes in implementation the Proposition 39 program, as well any shortcomings, so that legislative remedies may be developed, as appropriate.