APPENDIX D: SENATE BILL 73: PROPOSITION 39 IMPLIMENTATION LEGISLATION

Senate Bill No. 73

CHAPTER 29

An act to amend Section 25415 of, and to add Chapter 5 (commencing with Section 26225) to Division 16.3 of, the Public Resources Code, relating to energy, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 27, 2013. Filed with Secretary of State June 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 73, Committee on Budget and Fiscal Review. Energy: Proposition 39 implementation.

(1) Existing law, the Energy Conservation Assistance Act of 1979, establishes the State Energy Conservation Assistance Account, a continuously appropriated account, for the purposes of funding loans to schools, hospitals, public care institutions, and units of local government to maximize energy savings. Existing law requires each eligible institution to which an allocation has been made under the act to repay the principal amount of the allocation, plus interest, in not more than 30 equal semiannual payments, as determined by the State Energy Resources Conservation and Development Commission, or the Energy Commission. Existing law requires the Energy Commission, except as specified, to periodically set interest rates on the loans based on surveys of existing financial markets and at rates not less than 1 % per annum.

This bill would permit not more than 40 equal semiannual payments and authorization of no-interest loans.

(2) The California Clean Energy Jobs Act, an initiative approved by the voters as Proposition 39 at the November 6, 2012, statewide general election, made changes to corporate income taxes and, except as specified, provides for the transfer of $550,000,000 annually from the General Fund to the Clean Energy Job Creation Fund, or the Job Creation Fund, for 5 fiscal years beginning with the 2013–14 fiscal year. Moneys in the Job Creation Fund are available, upon appropriation by the Legislature, for purposes of funding eligible projects that create jobs in California improving energy efficiency and expanding clean energy generation. Existing law provides for the allocation of available funds to public school facilities, university and college facilities, and other public buildings and facilities, as well as job training and workforce development and public-private partnerships for eligible projects, as specified. Existing law establishes prescribed criteria that apply to all expenditures from the Job Creation Fund.

This bill would appropriate $3,000,000 from the Job Creation Fund to the California Workforce Investment Board to develop and implement a competitive grant program, in consultation with the Energy Commission and the Public Utilities Commission, for eligible community-based and other training workforce organizations preparing disadvantaged youth or veterans for employment, as specified.

This bill would, for the 2013–14 fiscal year, transfer $28,000,000 from the Job Creation Fund to the Education Subaccount, which this bill would create in the State Energy Conservation Assistance Account. This bill would appropriate moneys in the Education Subaccount to the Energy Commission for the purpose of low-interest and no-interest revolving loans and loan loss reserves for eligible projects and technical assistance, as prescribed. This bill would require funds remaining in the Education Subaccount after the 2017–18 fiscal year to continue to be available in future years for loans to local education agencies, as defined, and community college districts, as specified. This bill would require the funds deposited annually in the Job Creation Fund and remaining in the fund, as prescribed, to be allocated, to the extent consistent with the act, to local education agencies by the Superintendent of Public Instruction, as specified, and to community college districts by the Chancellor of the California Community Colleges at his or her discretion. This bill would require the Energy Commission to maintain information on the local education agencies and community college districts that receive grants, loans, or other financial assistance pursuant to these provisions.

This bill would require the Energy Commission, in consultation with the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, and the Public Utilities Commission, to establish specified guidelines. This bill would require the Energy Commission to adopt these guidelines at a publicly noticed meeting and provide an opportunity for public comment, as prescribed. This bill would require the Superintendent of Public Instruction and the Chancellor of the California Community Colleges to require that funds be paid back if they are not used in accordance with prescribed provisions.

(3) The California Clean Energy Jobs Act creates the Citizens Oversight Board with specified responsibilities relative to the review of expenditures from the Job Creation Fund, including the submission of an evaluation to the Legislature.

This bill would require an entity, as a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after the entity completes its first eligible project with a grant, loan, or other assistance from the Job Creation Fund, to submit a report of its project expenditures to the Citizens Oversight Board, as specified. This bill would require the California Workforce Investment Board, in consultation with the Energy Commission, to utilize reports filed with the Citizens Oversight Board to quantify total employment affiliated with funded projects, as well as to estimate new trainee, apprentice, or full-time jobs resulting from Job Creation Fund activity, and would require the California Workforce Investment Board to prepare a report with this information annually and to submit it to the Citizens Oversight Board. This bill would require the Citizens

Oversight Board to report specified information it receives to the Legislature annually as part of its responsibility to submit an evaluation to the Legislature and to post this report on a publicly accessible Internet Web site.

(4) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) With the passage of Proposition 39 at the November 6, 2012, statewide general election, the people of California declared their intent to have multistate businesses treated equally under the Revenue and Taxation Code and to establish a path forward for schools and clean energy jobs.

(b) Between the 2013–14 and 2017–18 fiscal years, Proposition 39 will dedicate up to $550,000,000 annually to the Clean Energy Job Creation Fund.

(c) Proposition 39 establishes objectives for clean energy job creation, including funding energy efficiency projects and renewable energy installations in public schools, universities, and other public facilities.

(d) Proposition 39 identifies energy efficiency retrofits and clean energy installations at public schools as ways to promote private sector jobs to save energy and money.

(e) The United States Environmental Protection Agency estimates that schools waste 30 percent of their energy unnecessarily through inefficiencies. The financial savings from more efficient buildings would provide schools with the flexibility to pay for other upgrades and programs that enhance student learning.

(f) With the passage of Proposition 39, the state will be able to reduce energy demand at public schools and provide long-term savings and budgetary flexibility so schools can concentrate their limited resources on education and not utility bills.

(g) Proposition 39 also establishes a Citizens Oversight Board to review expenditures, audit the Clean Energy Job Creation Fund, and maintain accountability of the fund.

(h) It is the intent of the Legislature to establish guidelines for clean energy expenditures from the Clean Energy Job Creation Fund.

(i) It is further the intent of the Legislature to ensure that schools receive and prioritize high-quality facility retrofits and installations that lead to persistent energy savings.

(j) It is further the intent of the Legislature to quickly increase the number of jobs in California supporting energy retrofit improvements, and to accomplish this, to direct the State Energy Resources Conservation and Development Commission to proceed quickly to develop necessary guidelines and procedures for project identification and investment.

(k) In addition to energy efficiency retrofits and clean energy installations, it is the intent of the Legislature that funds be available for allocation to local educational agencies to develop expertise in energy management capability. Energy managers can provide schools, particularly the smallest and neediest, with resources and best practices to implement energy efficiency and clean energy installations across California's more than 1,000 school districts with schools having kindergarten or grades 1 to 12, inclusive, as well as oversight to ensure proper reporting and data analysis for eligible projects.

SEC. 2. Chapter 5 (commencing with Section 26225) is added to Division 16.3 of the Public Resources Code, to read:

Chapter 5. Proposition 39 Implementation

26225. For the purposes of this chapter, the following terms have the following meanings:

(a) "Chancellor" means the Chancellor of the California Community Colleges.

(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(c) "Local education agency" or "LEA" means a school district, county office of education, charter school, or state special school.

(d) "Job Creation Fund" means the Clean Energy Job Creation Fund established in Section 26205.

26227. (a) (1) For the 2013–14 fiscal year, twenty-eight million dollars ($28,000,000) shall be transferred from the Job Creation Fund to the Education Subaccount, which is hereby created in the State Energy Conservation Assistance Account created pursuant to Section 25416. The moneys in the Education Subaccount are appropriated to the Energy Commission for the purpose of low-interest and no-interest revolving loans and loan loss reserves for eligible projects and technical assistance.

(2) For the 2013–14 fiscal year, funds in the Education Subaccount shall be available for local education agencies and community college districts. If a local education agency or community college district has an eligible project, the amount of the funding resources gap that is to be considered a reasonable loan value from the Education Subaccount is the project cost less the amount of any grant awarded pursuant to Section 26233 and less any state, federal, or local incentives. A local education agency or community college district may need to meet additional credit or other financial qualifying criteria applicable pursuant to the Energy Conservation Assistance Act of 1979 (Chapter 5.2 (commencing with Section 25410) of Division 15). The Energy Commission shall facilitate a local education agency or community college district's participation in both the Job Creation Fund and Energy Conservation Assistance Account programs through coordinated information, documentation, and review processes regarding the project and the borrowing entity.

(b) For the 2014–15 through 2017–18 fiscal years, inclusive, the amount transferred from the Job Creation Fund to the Energy Conservation Assistance Account shall be determined in the annual budget.

(c) Funds remaining in the Education Subaccount after the 2017–18 fiscal year shall continue to be available in future years for loans to local education agencies and community college districts pursuant to this section.

26230. (a) The sum of three million dollars ($3,000,000) is hereby appropriated from the Job Creation Fund to the California Workforce Investment Board to develop and implement a competitive grant program for eligible community-based and other training workforce organizations preparing disadvantaged youth or veterans for employment.

(b) In developing and implementing the program, the board shall do all of the following:

(1) In consultation with the Energy Commission and the Public Utilities Commission, develop a competitive process to award grants to eligible entities and evaluate and select applications for grants.

(2) Administer grants to eligible entities for the purposes of work experience and job training on energy efficiency and clean energy projects.

(c) In awarding the grants, the California Workforce Investment Board shall give priority to projects that include the following elements:

(1) Specific skills gained through hands-on application related to energy efficiency and clean energy that is embedded in, or linked to, a broader occupational training program.

(2) Actual work experience gained through hands-on clean energy project implementation.

(3) Industry-recognized credentials and certificates.

(4) Training that demonstrates a high probability of placement of trainees into career track jobs.

(5) A partnership with state-approved apprenticeship programs that promote industry-recognized skills and credentials through work experience and lead to placement in a state-approved apprenticeship programs.

26233. (a) Commencing with the 2013–14 fiscal year and through the 2017–18 fiscal year, inclusive, the funds deposited annually in the Job Creation Fund and remaining after the transfer pursuant to Section 26227 and the appropriation pursuant to Section 26230 shall be allocated, to the extent consistent with this division, as follows:

(1) Eighty-nine percent of the funds shall be available to local educational agencies and allocated by the Superintendent of Public Instruction pursuant to subdivision (b).

(2) Eleven percent of the funds shall be available to community college districts and allocated by the Chancellor of the California Community Colleges at his or her discretion.

(b) The Superintendent of Public Instruction shall allocate the funds provided in paragraph (1) of subdivision (a) as follows:

(1) Eighty-five percent on the basis of average daily attendance reported as of the second principal apportionment for the prior fiscal year.

(A) For every local education agency with average daily attendance as reported pursuant to this subdivision of 100 or less, the amount awarded shall be fifteen thousand dollars ($15,000).

(B) For every local education agency with average daily attendance as reported pursuant to this subdivision in excess of 100, but 1,000 or less, the amount awarded shall be either that local educational agency's proportional award on the basis of average daily attendance or fifty thousand dollars ($50,000), whichever amount is larger.

(C) For every local education agency with average daily attendance as reported pursuant to this subdivision in excess of 1,000, but less than 2,000, the amount awarded shall be either that local education agency's proportional award on the basis of average daily attendance or one hundred thousand dollars ($100,000), whichever amount is larger.

(D) For every local education agency with average daily attendance as reported pursuant to this subdivision of 2,000 or more, the amount awarded shall be the local education agency's proportional award on the basis of average daily attendance.

(2) Fifteen percent on the basis of students eligible for free and reduced-price meals in the prior year.

(3) For every local education agency that receives over one million dollars ($1,000,000) pursuant to this subdivision, not less than 50 percent of the funds shall be used for projects larger than two hundred fifty thousand dollars ($250,000) that achieve substantial energy efficiency, clean energy, and jobs benefits.

(c) A local education agency subject to subparagraph (A) or (B) of paragraph (1) of subdivision (b) may submit a written request to the Superintendent of Public Instruction, by August 1 of each year, to receive in the current year its funding allocation for both the current year and the following year, both of which would be based on the average daily attendance used in the current year for determining funding pursuant to the applicable subparagraph. A local education agency requesting funding pursuant to this subdivision shall not receive a funding allocation in the year following the request.

(d) A local education agency shall encumber funds received pursuant to this section by June 30, 2018.

26235. (a) The Energy Commission, in consultation with the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, and the Public Utilities Commission, shall establish guidelines for the following:

(1) Standard methods for estimating energy benefits, including reasonable assumptions for current and future costs of energy, and guidelines to compute the cost of energy saved as a result of implementing eligible projects funded by this chapter.

(2) Contractor qualifications, licensing, and certifications appropriate for the work to be performed, provided that the Energy Commission shall not create any new qualification, license, or certification pursuant to this subparagraph.

(3) Project evaluation, including the following:

(A) Benchmarks or energy rating systems to select best candidate facilities.

(B) Use of energy surveys or audits to inform project opportunities, costs, and savings.

(C) Sequencing of facility improvements.

(D) Methodologies for cost-effectiveness determination.

(4) To ensure that adequate energy audit, measurement, and verification procedures are employed to ensure that energy savings and greenhouse gas emissions reductions occur as a result of any funding provided pursuant to this section. The Energy Commission shall develop a simple preinstallation verification form that includes project description, estimated energy savings, expected number of jobs created, current energy usage, and costs. The Energy Commission may develop benchmarking and other innovative facility evaluation systems in coordination with the University of California.

(5) Achievement of the maximum feasible energy efficiency or clean energy benefits, as well as job creation benefits for Californians, resulting from projects implemented pursuant to this chapter.

(6) Where applicable, ensuring LEAs assist classified school employees with training and information to better understand how they can support and maximize the achievement of energy savings envisioned by the funded project.

(b) The Energy Commission shall allow the use of data analytics of energy usage data, where possible, in the energy auditing, evaluation, inventorying, measuring, and verification of projects. To ensure quality of results, data analytics providers shall have received prior technical validation by the Energy Commission, a local utility, or the Public Utilities Commission.

(c) A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college district or LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter.

(d) The Energy Commission shall adopt the guidelines in accordance with this section at a publicly noticed meeting and provide an opportunity for public comment. The Energy Commission shall provide written public notice of a meeting at least 30 days prior to the meeting.

(1) For substantive revision of the guidelines, the Energy Commission shall provide written notice of a meeting at least 15 days prior to the meeting at which the revision is to be considered or adopted.

(2) The adoption or revision of guidelines pursuant to this subdivision is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Each participating LEA shall prioritize the eligible projects within its jurisdiction taking into consideration, as applicable, at least the following factors:

(1) The age of the school facilities, as well as any plans to close or demolish the facilities.

(2) The proportion of pupils eligible for funds under Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) at particular schoolsites.

(3) Whether the facilities have been recently modernized.

(4) The facilities' hours of operation, including whether the facilities are operated on a year-round basis.

(5) The school's energy intensity as determined from an energy rating or benchmark system such as the United States Environmental Protection Agency's Energy Star system or other acceptable benchmarking approach that may be available from local utilities, the American Society for Heating, Refrigerating, and Air-Conditioning Engineers, Inc., or reputable building analysis software as is appropriate to the size, budget, and expertise available to the school.

(6) The estimated financial return of each project's investment over the expected lifecycle of the project, in terms of net present value and return on investment.

(7) Each project's potential for energy demand reduction.

(8) The anticipated health and safety improvements or other nonenergy benefits for each project.

(9) The individual or collective project's ability to facilitate matriculation of local residents into state-certified apprenticeship programs.

(10) The expected number of trainees and direct full-time employees likely to be engaged for each LEA's annual funding commitments based upon a formula to be made available by the Energy Commission or California Workforce Investment Board. The formula shall be stated as labor-intensities per total project dollar expended, and may differentiate by type of improvement, equipment, or building trade involved.

(11) The ability of the project to enhance workforce development and employment opportunities, utilize members of the California Conservation Corps, certified local conservation corps, Youth Build, veterans, Green Partnership Academies, nonprofit organizations, high school career technical academies, high school regional occupational programs, or state-certified apprenticeship programs, or to accommodate learning opportunities for school pupils or at-risk youth in the community.

(f) The Superintendent of Public Instruction shall not distribute funds to an LEA unless the LEA has submitted to the Energy Commission, and the Energy Commission has approved, an expenditure plan that outlines the energy projects to be funded. An LEA shall utilize a simple form expenditure plan developed by the Energy Commission. The Energy Commission shall promptly review the plan to ensure that it meets the criteria specified in this section and in the guidelines developed by the Energy Commission. A portion of the funds may be distributed to an LEA upon request for energy audits and other plan development activities prior to submission of the plan.

(g) This section shall not affect the eligibility of any eligible entity awarded a grant pursuant to this section to receive other incentives available from federal, state, and local government, or from public utilities or other sources, or to leverage the grant from this section with any other incentive.

(h) Any limitation of funds awarded to individual projects pursuant to this chapter shall not preclude or otherwise limit the total amount of funds that a recipient LEA or community college may otherwise be eligible to receive as a result of identifying multiple projects that meet the overall objectives and criteria described in this chapter.

(i) For a school facility that is not publicly owned, a school district receiving moneys pursuant to this chapter for a project for that facility shall require that the school repay to the state all moneys received from the Job Creation Fund for the project if the school voluntarily vacates the facility within five years of project completion. The facility owner shall repay to the state all moneys received from the Job Creation Fund for the project if the school was forced to vacate the facility within the life of the project completion. All benefits of these public funds should be received by the school utilizing the facility.

(j) It is the intent of the Legislature that monetary savings at eligible institutions from retrofit and installation projects pursuant to this section be used to benefit students and learning at those institutions.

26237. The Energy Commission shall maintain information on the local education agencies and community college districts that receive grants, loans, or other financial assistance under this chapter. The publicly available and searchable database shall include relevant metrics, to be determined by the Energy Commission, for electric, gas, and cost savings of the projects.

26240. (a) In order to later quantify the costs and benefits of funded projects, an entity that receives funds from the Job Creation Fund shall authorize its local electric and gas utilities to provide 12 months of past and ongoing usage and billing records at the school facility site level to the Energy Commission.

(b) As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with a grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board created pursuant to Chapter 3 (commencing with Section 26210). To the extent practical, this report shall also contain information on any of the following:

(1) The total final gross project cost before deducting any incentives or other grants and the percentage of total project cost derived from the Job Creation Fund.

(2) The estimated amount of energy saved, accompanied by specified energy consumption and utility bill cost data for the individual facility where the project is located, in a format to be specified by the Energy Commission.

(3) The nameplate rating of new clean energy generation installed.

(4) The number of trainees.

(5) The number of direct full-time equivalent employees and the average number of months or years of utilization of each of these employees.

(6) The amount of time between awarding of the financial assistance and the completion of the project or training activities.

(7) The entity's energy intensity before and after project completion, as determined from an energy rating or benchmark system, to be determined by the Energy Commission, such as the United States Environmental Protection Agency's Energy Star system or other acceptable benchmarking approach that may be available from local utilities, the American Society for Heating, Refrigerating, and Air-Conditioning Engineers, Inc., or a publicly available building analysis software as is appropriate to the size, budget, and expertise available to the school.

(c) If an LEA completes more than one project, the required information for a second and any subsequent project shall be submitted no later than the first full quarter following project completion.

(d) To minimize the calculation burden on LEAs, the Energy Commission shall develop a method to utilize the data submitted by each recipient LEA in its project reports, such as utility consumption data, building operating characteristics, and other information, to calculate for each project, LEA, or the state as a whole the actual or estimated energy and cost savings. This method shall include a means to combine gas and electric savings into a combined cost of saved energy factor and to report on other economic and investment performance metrics. The Energy Commission shall prepare an annual summary of the expenditures, energy savings, effective cost of saved energy or return on investment, and employment effects of each year's completed projects, and shall provide this report to the Citizens Oversight Board.

(e) The California Workforce Investment Board, in consultation with the Energy Commission, shall utilize the reports filed with the Citizens Oversight Board to quantify total employment affiliated with funded projects, as well as to estimate new trainee, apprentice, or full-time jobs resulting from Job Creation Fund activity. The California Workforce Investment Board shall prepare a report with this information annually and submit it to the Citizens Oversight Board.

(f) The Citizens Oversight Board shall report the information it receives pursuant to subdivisions (a) to (e), inclusive, to the Legislature as part of its responsibilities pursuant to subdivision (d) of Section 26210. The Citizens Oversight Board's report shall be submitted annually and posted on a publicly accessible Internet Web site.

(g) Funding provided to LEAs pursuant to this chapter is subject to annual audits required by Section 41020 of the Education Code. Funding provided to community college districts pursuant to this chapter is subject to annual audits required by Section 84040 of the Education Code.

(h) (1) The Superintendent of Public Instruction shall require local education agencies to pay back funds if they are not used in accordance with state statute or regulations, if a project is torn down or remodeled, or if the property is deemed to be surplus and sold prior to the payback of the project.

(2) The Chancellor of the California Community Colleges shall require a community college to pay back funds if they are not used in accordance with state statute or regulations, if a project is torn down or remodeled, or if the property is deemed to be surplus and sold prior to the payback of the project.

SEC. 3. Section 25415 of the Public Resources Code is amended to read:

25415. (a) Each eligible institution to which an allocation has been made under this chapter shall repay the principal amount of the allocation, plus interest, in not more than 40 equal semiannual payments, as determined by the commission. Loan repayments shall be made in accordance with a schedule established by the commission. The repayment period may not exceed the life of the equipment, as determined by the commission or the lease term of the building in which the energy conservation measures will be installed.

(b) Notwithstanding any other law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and may authorize no-interest loans.

(c) The governing body of each eligible institution shall annually budget an amount at least sufficient to make the semiannual payments required in this section. The amount shall not be raised by the levy of additional taxes but shall instead be obtained by a savings in energy costs or other sources.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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