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SB-110 Clean Energy Job Creation Program and citizen oversight board. (2017-2018)

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Senate Bill No. 110

CHAPTER 55

An act to amend Sections 26211, 26212, 26213, 26214, 26215, 26216, 26217, 26227, 26233, and 26240 of, and to add Sections 26205.5 and 26227.2 to, the Public Resources Code, relating to energy, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 10, 2017. Filed with Secretary of State July 10, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 110, Committee on Budget and Fiscal Review. Clean Energy Job Creation Program and citizen oversight board.

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 for 5 fiscal years beginning with the 2013–14 fiscal year. Moneys in the 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, until fiscal year 2017–18, provides for the allocation of moneys in the Clean Energy Job Creation Fund to local educational agencies and community college districts, as specified, and requires that funds remaining after the 2017–18 fiscal year continue to be available in future years for loans to local educational agencies and community college districts. Existing law, until July 1, 2019, prescribes the operation of the Citizens Oversight Board and establishes the authority and duties of the board, which relate to assessing the effectiveness of the expenditures from the fund in meeting the act's objectives.

This bill would appropriate available remaining funds in the Job Creation Fund, as determined by the State Energy Resources Conservation and Development Commission as of March 1, 2018, for purposes relating to improving energy efficiency at local educational agencies, as specified.

This bill would, commencing with the 2018–19 fiscal year, establish the Clean Energy Job Creation Program with the purpose of funding specified projects in public schools and community colleges that create jobs in California improving energy efficiency and expanding clean energy generation and would subject these projects to requirements similar to those imposed on projects under the California Clean Energy Jobs Act. The bill would extend the operation of the board and of its authority and duties indefinitely.

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

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26205.5 is added to the Public Resources Code, to read:

26205.5. (a) Of the moneys provided to the Job Creation Fund for purposes of paragraph (1) of subdivision (a) of Section 26205, the available remaining funds, which are the funds allocated to a local educational agency that has not submitted an energy expenditure plan, as determined by the Energy Commission as of March 1, 2018, shall be appropriated as follows:

(1) The first seventy-five million dollars (\$75,000,000) shall be provided to school districts and county offices of education for grants or loans for schoolbus retrofit or replacement through a program administered by the Energy Commission, in consultation with the State Air Resources Board.

(A) Priority shall be given to school districts and county offices of education operating the oldest schoolbuses or schoolbuses operating in disadvantaged communities, as identified pursuant to Section 39711 of the Health and Safety Code, as determined by the State Air Resources Board, and to school districts or county offices of education with a majority of students eligible for free or reduced-price meals in the prior year.

(B) Any schoolbuses that have been replaced pursuant to this paragraph shall be scrapped.

(C) A local air district may administer funding provided pursuant to this paragraph, if authorized by the Energy Commission.

(2) The next one hundred million dollars (\$100,000,000) shall be deposited into the Education Subaccount, created pursuant to Section 26227, for the purpose of low-interest and no-interest revolving loans and loan loss reserves for eligible projects and technical assistance on a competitive basis. Priority shall be given to local educational agencies based on the percentage of students eligible for free or reduced-price meals in the prior year, energy savings, geographic diversity, and diversity in the size of the local educational agencies' student populations. If a local educational agency has a project eligible for a loan under this paragraph, the maximum loan amount for the project shall be the project cost reduced by both of the following, as applicable:

(A) The amount of any grant awarded for the project pursuant to paragraph (3).

(B) Any state, federal, or local incentives that have been provided for the project.

(3) (A) (i) The remaining moneys, if any, shall be provided to local educational agencies in accordance with subdivision (b) of Section 26227.2, as implemented by the Energy Commission, in consultation with the State Department of Education, as follows:

(I) Ten percent shall be for local educational agencies with an average daily attendance of not more than 1,000.

(II) Ten percent shall be for local educational agencies with an average daily attendance of more than 1,000 and not more than 2,000.

(III) Eighty percent shall be for local educational agencies with an average daily attendance of more than 2,000.

(ii) The Energy Commission may adjust the funding allocations specified in clause (i) and may add additional categories based on average daily attendance to further the purposes of Section 26227.2.

(B) The Energy Commission shall facilitate local educational agency pursuit of funding under this paragraph and from the State Energy Conservation Assistance Account through coordinated information, documentation, and review processes regarding the project.

(C) For purposes of this paragraph, average daily attendance shall be those numbers as reported in the prior year, as determined by the State Department of Education.

(b) A local educational agency that receives moneys pursuant to this section shall encumber those moneys within nine months of allocation.

(c) The Energy Commission may adopt implementing guidelines that are consistent with the requirements of Chapter 3 (commencing with Section 26210).

(d) For purposes of this section, the following definitions apply:

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

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

SEC. 2. Section 26211 of the Public Resources Code is amended to read:

26211. Funding for the board shall be available, upon appropriation by the Legislature, in the annual Budget Act.

SEC. 3. Section 26212 of the Public Resources Code is amended to read:

26212. (a) Members of the board shall serve for a term of four years and may be reappointed for up to two additional terms.

(b) A majority of board members shall constitute a quorum.

(c) The board's principal office shall be located in the State Energy Resources Conservation and Development Commission's office in Sacramento.

(d) Each board member shall be entitled to one vote. All votes shall be recorded and reported in the minutes of the board.

(e) The board shall select from among its members a chair and a vice chair, as provided in Section 26214.

(f) Members of the board shall not be compensated for their service, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(g) Requests for reimbursement for actual and necessary expenses shall be submitted to the chair for approval and may be paid in accordance with Section 26217.

SEC. 4. Section 26213 of the Public Resources Code is amended to read:

26213. (a) The board shall meet at least four times per year or as often as the chair or the board deems necessary to conduct its business.

(b) The chair shall, with the assistance of staff, prepare the agenda for each board meeting. Meeting agendas shall be prepared in advance of each meeting based on input from board members, staff, and the public.

(c) The board and any committees established by the board shall comply with, and be subject to, the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(d) The board shall comply with, and be subject to, the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 5. Section 26214 of the Public Resources Code is amended to read:

26214. (a) The first meeting of the board, at which a chair shall be selected, may be held upon appointment of all nine members of the board and shall be called jointly by the Treasurer, the Controller, and the Attorney General.

(b) The board shall elect a chair and vice chair at the first meeting of the board each year and each such individual shall hold office for one year commencing on the following July 1 and ending when his or her successor takes office. If there is a vacancy during the year in the office of the chair or vice chair, a majority of the active members of the board shall elect a replacement chair or vice chair to serve the remainder of the year. If the interim vacancy is in the office of the chair, then the vice chair shall perform the duties of the chair until a successor is elected.

(c) The board shall establish rules of operation for the board that are consistent with the rules and practices applicable to other state boards.

(d) In the absence of the chair during a meeting, the vice chair shall perform all of the functions of the chair.

(e) The chair shall oversee meetings, serve as an ex officio member of all committees, work in partnership with staff to ensure board resolutions are carried out, call special meetings if necessary, appoint all committee chairs and recommend who will serve on committees, prepare agendas for meetings, coordinate the hiring and evaluations of staff and consultants, act as spokesperson for the board, periodically consult with board members on their roles, and ensure that the rules of procedure and decorum contained in this chapter are observed and enforced.

(f) The vice chair shall carry out special assignments as requested by the chair, understand the responsibilities of the chair, and be able to perform the duties of the chair in the chair's absence.

(g) Board staff activities shall not be duplicative of ongoing efforts by other state agencies, including, but not limited to, the State Department of Education and the State Energy Resources Conservation and Development Commission.

SEC. 6. Section 26215 of the Public Resources Code is amended to read:

26215. (a) The board may establish committees as it deems necessary and appropriate. The chair may, with board approval, define and limit a committee's scope and authority, and establish rules of operation for the committees.

(b) Each committee shall meet and shall make recommendations and reports as deemed necessary or appropriate by the chair or the board.

(c) In the absence of the committee chair, the vice chair shall conduct routine business matters and meetings of the committee.

(d) The status, purpose, and authority of a committee shall be determined by the chair and approved by the board at the time the committee is established by the board. The board may modify a committee's status, purpose, or authority at any time.

(e) A committee may act within its delegated authority without further approval of the board. Committees and committee members shall not make or issue policy statements, recommendations, or media releases without prior approval of the board. A committee activity that implies action by the board or is outside the committee's delegated authority is prohibited without specific board approval.

SEC. 7. Section 26216 of the Public Resources Code is amended to read:

26216. (a) The board shall review and evaluate the progress and status of projects and shall prepare, approve, and distribute annual reports of its activities, findings, and recommendations to the Governor, the Legislature, and the public, to the extent these actions are consistent with subdivision (d) of Section 26210. Each annual report shall concern the activities of the board and its committees during the preceding calendar year and shall be distributed within 90 days of the end of the calendar year to which it pertains.

(b) The process for preparing, approving, and distributing the annual reports shall be as follows:

(1) The chair shall be responsible for preparing a draft annual report that shall be presented at a regularly scheduled meeting of the board.

(2) The draft annual report shall be discussed and considered by the board at the meeting and shall be approved as presented or with amendments or changes following the opportunity for, and receipt of, any public comment.

(3) After the meeting, the annual report shall be put into its final approved form and shall be distributed and published on the board's Internet Web site.

(c) The annual report distributed pursuant to this section shall be submitted to the Legislature in accordance with Section 9795 of the Government Code.

SEC. 8. Section 26217 of the Public Resources Code is amended to read:

26217. (a) Expenses of the board shall be accounted for and paid in a manner that is consistent with the State Administrative Manual and any related processes and procedures. The board may delegate to the chair or staff the authority to approve expenses, pay expenses, or both.

(b) Expenditure items exceeding the board's budget, or expenditure items the chair deems worthy of further consideration, shall be brought before the board for consideration at the next meeting.

(c) The chair shall be responsible for tracking the board's budget and regularly reporting to the board if expenditures are within the amounts planned and what steps have been taken or are proposed to be taken to ensure that the board has sufficient funds to accomplish its annual mission.

(d) The chair may testify before a state authority and his or her actual and necessary travel, meal, and lodging expenses shall be reimbursed.

(e) The expenses of the board shall be published in the board's annual report required by Section 26216.

SEC. 9. Section 26227 of the Public Resources Code is amended to read:

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 educational agencies and community college districts. If a local educational 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 educational

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 educational 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 pursuant to Section 26205.5.

SEC. 10. Section 26227.2 is added to the Public Resources Code, to read:

26227.2. (a) Commencing with the 2018–19 fiscal year, the Clean Energy Job Creation Program is hereby established for the purpose of funding projects described in paragraph (1) or (2) of subdivision (a) of Section 26205 that create jobs in California improving energy efficiency and expanding clean energy generation.

(b) All of the following criteria shall apply to the Clean Energy Job Creation Program:

(1) Project selection and oversight shall be managed by, and funds shall be appropriated only to, existing state and local government agencies with established expertise in managing energy projects and programs.

(2) All projects shall be selected based on in-state job creation and energy benefits for each project type.

(3) All projects shall be cost effective with the total benefits being greater than the costs of the project over time. Project selection may, in addition to energy benefits, include consideration of nonenergy benefits, such as health and safety.

(4) All projects shall require contracts that identify the project specifications, costs, and projected energy savings.

(5) All projects shall be subject to audit.

(6) Program overhead costs, including administrative costs incurred by the Energy Commission, shall not exceed 4 percent of the total funding.

(7) Agencies administering the program shall coordinate with the Energy Commission and the Public Utilities Commission to avoid duplication and to maximize leverage of existing energy efficiency and clean energy efforts.

(8) Eligible expenditures include expenditures associated with technical assistance and with reducing project costs and delays, including the development and implementation of processes that reduce the costs of design, permitting or financing, or other barriers to project completion and job creation.

(c) Commencing with the 2018–19 fiscal year, funds appropriated in the annual Budget Act or another statute for the Clean Energy Job Creation Program shall be available as follows:

(1) Eleven percent of the funds shall be available to community college districts, to be allocated by the Chancellor of the California Community Colleges at his or her discretion for program purposes.

(2) (A) The remaining moneys shall be allocated to local educational agencies as follows:

(i) Ten percent shall be for local educational agencies with an average daily attendance of not more than 1,000.

(ii) Ten percent shall be for local educational agencies with an average daily attendance of more than 1,000 and not more than 2,000.

(iii) Eighty percent shall be for local educational agencies with an average daily attendance of more than 2,000.

(B) The Energy Commission may adjust the funding allocations specified in subparagraph (A) and may add additional categories based on average daily attendance to further the purposes of this section.

(C) The Energy Commission in allocating grants to local educational agencies pursuant to this section shall give priority based on the following:

(i) The local educational agency's percentage of students eligible for free or reduced-price meals in the prior year.

(ii) Geographic diversity that ensures urban, suburban, and rural local educational agencies receive grants and ensures the awarding of grant funding in all regions of the state.

(iii) Workforce needs of the areas in which the local educational agencies are located, as determined by the California Workforce Investment Board and the local workforce investment boards.

(d) A local educational agency that receives moneys pursuant to this section shall encumber those moneys within nine months of allocation.

(e) The Energy Commission may adopt implementing guidelines that are consistent with the requirements of Chapter 3 (commencing with Section 26210).

(f) For purposes of this section, a "local educational agency" means a school district, county office of education, charter school, or state special school.

SEC. 11. Section 26233 of the Public Resources Code is amended to read:

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. For purposes of this section, average daily attendance for the state special schools shall be deemed to be 97 percent of the prior year enrollment as reported in the California Longitudinal Pupil Achievement Data System.

(A) For every local educational 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 educational 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 educational 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 educational 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 educational agency with average daily attendance as reported pursuant to this subdivision of 2,000 or more, the amount awarded shall be the local educational 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 educational 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 educational 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 September 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 educational agency requesting funding pursuant to this subdivision shall not receive a funding allocation in the year following the request. This election applies to the funding available pursuant to paragraphs (1) and (2) of subdivision (b).

(d) A local educational agency shall encumber funds received pursuant to this section by June 30, 2019.

SEC. 12. Section 26240 of the Public Resources Code is amended to read:

26240. (a) To later quantify the costs and benefits of funded projects, an entity that receives funds from the Job Creation Fund or pursuant to subdivision (c) of Section 26227.2 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 or pursuant to subdivision (c) of Section 26227.2, 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 or pursuant to subdivision (c) of Section 26227.2, 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 or pursuant to subdivision (c) of Section 26227.2.

(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 or from funds appropriated pursuant to subdivision (c) of Section 26227.2. 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 educational 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. 13. 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.