

Sustainable Energy Financing Proposal to Accelerate Solar and Energy Efficiency

Issue Summary

Cities and counties in California and Colorado are launching innovative public/private partnerships through new tax district financing programs for renewable energy and energy efficiency projects. With a number of other states planning these types of ventures, these programs can generate billions of dollars in short-term economic stimulus, create thousands of long-term green jobs, and dramatically reduce energy use – all with little or no government subsidy.

The Problem: Current Internal Revenue Code (IRC) provisions make these types of programs less cost-effective and may penalize property owners who choose to participate by limiting their access to the federal renewable energy tax credit.

Overview of Sustainable Energy Financing Program

Perhaps the single greatest impediment to widespread solar and energy efficiency adoption is the high upfront cost. To address that barrier, California and Colorado passed laws enabling local government programs that allow property owners to voluntarily install renewable energy systems and make energy efficiency upgrades with no upfront cost. The project costs are paid through the issuance of a revenue bond, which is repaid through a new line item on participating property owners' property tax bills over a number of years.

The program is 100% "opt-in" and property tax expenses remain unchanged for those who choose not to participate. Property owners are free to hire any certified contractor or installer. Property owners do not need to access their own capital or credit to participate and, if sold, the repayment obligation transfers along with the property to the new owner.

Initial Programs a Success. UC Berkeley Study Shows \$280 Billion Potential

The City of Berkeley's pilot program sold out its initial \$1.5 million within nine minutes of accepting applications. Palm Desert, CA (population 47,000) approved over \$4.5 million in projects in three months. Efforts are underway to authorize similar programs in Arizona, New Mexico, Washington, New York, Vermont, Texas, and other states. San Diego, San Francisco, and Boulder are among the many cities planning programs.

A UC Berkeley study to be published in the journal *Environment* found that a nationwide program could finance \$280 billion in solar and energy efficiency improvements and eliminate a gigaton of CO₂ emissions annually with *no additional cost to local, state, or federal governments* beyond existing incentives.

Rationale for Inclusion in Stimulus Package

This remarkable new program is a true public/private partnership. With policy changes at the federal, state, and local level, the private sector can deliver billions of dollars in bond financing for energy projects across the country. With a number of large cities, counties and states planning programs, Congressional action to assist this initiative could spur billions in private project financing over the next 24 months.

This financing program provides homeowners and small businesses with immediate access to financing for solar and other energy improvements, without tapping their home equity or personal credit. It can provide a lifeline for renewable energy companies struggling with the economic downturn.

Proposal for Congressional Action

Congress can take a number of steps to move this program forward quickly.

First, eliminate the barrier to utilizing the Federal Energy Tax Credit. The federal government now provides a 30% Energy Tax Credit for the installation of specified energy projects. Expenditures are not considered eligible for purposes of calculating the Energy Tax Credit if the related improvements were financed by “subsidized energy financing” or tax-exempt bonds. Legislation can clarify that this type of renewable and energy efficiency financing program does not adversely impact the availability of the Energy Tax Credit regardless of its structure.

Second, allow the use of federally tax-exempt bonds to finance the program. The revenue bonds supporting this program cannot take advantage of the federal tax exemption normally available to local government because the renewable energy and energy efficiency projects financed by bonds are made to private property and the bonds are payable from private loan payments made by participating property owners. This makes the program much less cost-effective for property owners. Given the requirement that we quickly address energy security and climate change, Congress can amend the code to recognize that bonds issued to finance renewable energy and energy efficiency improvements to private property are governmental bonds the interest on which may be tax-exempt.

Draft language amending the Internal Revenue Code to address the Tax Credit and tax-exempt bond issues is provided below.

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LEGISLATIVE HISTORY

A loan described in section 141(c)(2)(D) includes any loan that is primarily repayable by the borrower through payments of local property taxes or assessments even if a state or local government guarantees the payment of the borrower¹'s local property tax or assessment or guarantees repayment of the debt service on the bonds if (i) the state or local government does not reasonably expect to pay the borrower¹'s local property tax or assessment or to pay debt service on the bonds and (ii) if any such payment is made by the state or local government, (A) the state or local government is entitled to be reimbursed by the borrower and (B) the state or local government is entitled to pursue legal remedies against the borrower or the improved property to ensure reimbursement of the amount paid by the state or local government, including, but not limited to, foreclosure on the improved property.

A BILL

To amend the Internal Revenue Code of 1986 to provide tax-exempt financing for distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to real property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

(a) Exception to Credit Reductions – Section 45(b)(3) of the Internal Revenue Code of 1986 is amended –

(1) by adding at the end of that paragraph the following sentence:

‘Subparagraph (A) shall not include any loan, or the proceeds thereof, described in section 141(c)(2)(D).’

SECTION 2. ENERGY CREDIT

(a) Exception to Subsidized Energy Financing Limitation – Section 48(a)(4)(C) of the Internal Revenue Code of 1986 is amended –

(1) by adding at the end of that subparagraph the following sentence:

‘A loan described in section 141(c)(2)(D) is not subsidized energy financing.’

SECTION 3. TAX-EXEMPT FINANCING OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY IMPROVEMENTS

(a) Private Business Use – Section 141(b)(6) of the Internal Revenue Code of 1986 is amended –

(1) by adding at the end the following new subparagraph:

‘(C) Renewable energy sources, etc. Distributed generation renewable energy sources and energy efficiency improvements that are permanently affixed to real property shall not be treated as used for a trade or business.’

(b) Exception to Private Loan Financing Test – Section 141(c)(2) of the Internal Revenue Code of 1986 (relating to exception for tax assessment, etc., loans) is amended –

(1) by striking ‘or’ at the end of subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting ‘,or’, and

(3) by adding at the end the following new subparagraph:

‘(D) enables the borrower to finance the acquisition, construction and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to real property.’