

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 17, 2013

**To:** The Commission  
(Meeting of April 18, 2013)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) – Sacramento

**Subject:** **SB 37 (de Leon) – Energy efficiency and renewable energy upgrades: on-bill repayment program.**  
**As amended: April 9, 2013**

**RECOMMENDED POSITION:** SUPPORT IF AMENDED

**SUMMARY OF BILL**

This bill would authorize the California Public Utilities Commission (CPUC) to require the four largest investor-owned utilities (IOUs) to provide a financing mechanism called on-bill repayment (OBR) for energy efficiency (EE), demand response (DR), clean distributed generation (DG), and storage, for improvements made to customer premises. The OBR program would enable ratepayers to utilize financing from the capital markets and to repay the lender through a repayment obligation that would “run with” the utility meter, rather than attach to the real property. The benefits of OBR are expected to provide more favorable terms (e.g. interest rate, loan term or tenor, loan amounts, or qualifying credit eligibility) than the terms now offered for financing typically obtained as unsecured personal loans. SB 37 would amend the Public Utilities Code to allow the possibility of disconnection of utility service for non-payment of non-utility OBR obligations for residential customers (already permissible for non-residential customers), made consistent with specified finance origination protections, in the course of following all existing collection and notification procedures for utility bill delinquencies.

**CURRENT LAW**

California statutory law does not expressly provide for an OBR program, and currently precludes disconnection of service for non-payment of a third-party financial obligation collected via the utility bill.

**AUTHOR’S PURPOSE**

The bill proposes to solve the problem of widespread lack of access to affordable financing for energy efficiency and renewable technology improvements to finance their

costs beyond the limited existing ratepayer and taxpayer incentives. In addition, the bill proposes to attract a broader set of private lenders to originate clean energy financing on customer premises by imposing the repayment obligation on the meter and bill of the utility customer of record, with the associated higher repayment performance expected from both a) the anticipated lower utility bill energy charges and b) the track record of customer payments of utility bills. Finally, according to the sponsor, the ultimate risk of disconnection for non-payment will allow lenders to offer more affordable terms than for unsecured personal loans (such as credit cards). The bill proposes to stimulate clean jobs and related manufacturing as a co-benefit.

## **DIVISION ANALYSIS (ENERGY DIVISION)**

Currently, most debts are associated with an individual or a company, who may occupy a home or business for limited periods. OBR would impose a debt repayment obligation “on the meter,” hence on the utility customer of record owning or occupying the property on which the improvements are made. The provision authorizing the threat of disconnection for non-payment would leave the property without utility service in the case of complete loan default, a situation most owners and occupants will want to avoid. At this time, the CPUC tariffs allow non-residential customer disconnection for non-payment of ratepayer financed improvements offered through the on-bill finance (OBF) program. This bill would allow disconnection for residential customers for non-payment of energy improvement debts. This bill would also provide for the transfer of repayment obligations. OBR would involve the CPUC (in rules and tariffs) and IOUs (in billing) in the collection of finance payments on behalf of third-party financing of clean energy improvements on individual premises, which has not traditionally been in the purview of the CPUC or IOUs. (Of course the CPUC and IOUs have a long history of authorizing financing and payment arrangements for energy resource supplies.)

Pros of the OBR program: It will create a program with features (i.e., the risk of utility shut-off for nonpayment of the OBR repayment obligation) that will induce private capital providers to provide financing for energy improvement projects at better terms and lower interest rates. The bill would provide broader access to financing than the IOUs could offer through their limited ratepayer-funded non-residential program, which the CPUC hopes to eventually phase out with the expanded involvement of market capital. This broader access will put energy improvements within reach of those who don't have access to affordable capital but who want to reduce their energy use and energy bills. In this way, OBR would expand access to energy efficiency improvements to customers who until now have been underrepresented in the energy efficiency retrofit market, including business owners that do not want to carry debt on their balance sheets, homeowners without access to home equity loans, and any customer who cannot pay the upfront cost of a retrofit. This reduction will reduce the state's need for supply-side energy procurement, including at peak use times. With certain modifications, this bill would allow for deeper and more comprehensive retrofit projects that can be paid off beyond the length of an original owner's or tenant's tenure.

Cons of the OBR program: The bill enters into relatively new territory by authorizing mechanisms that would impose the debt repayment obligation on the customer of record whose meter is associated with the improvement, and by allowing the debt repayment obligation to transfer with change of ownership or occupancy. This would be accompanied by the potential outcome of utility service disconnection in the event of nonpayment of the debt repayment obligation. The bill recognizes and proposes solutions for implementing this mechanism with regard to managing customer risks through requirements for the transfer of the repayment obligation, notification/disclosure of the transfer and repayment obligation, and insuring use of quality-assuring criteria for participating lenders and energy retrofit contractors, including requirements for professional estimates of project cost and savings. The CPUC, in administering its authority to authorize specific financing programs and mechanisms, is expected to follow these requirements so as to ensure there is adequate disclosure to building owners of the anticipated benefits and costs of an energy improvement investment. Future tenants or owners would be notified in a timely manner of the repayment obligation associated with the meter in order to make a knowledgeable commitment to assume occupancy of the premises and the associated OBR obligation.

### **SAFETY IMPACT**

This bill would not have any direct impact on safety, although there could be safety co-benefits from improved lighting or HVAC performance.

### **RELIABILITY IMPACT**

This bill would enhance reliability of electric service by reducing energy demand, some of it at peak times, through energy improvements.

### **RATEPAYER IMPACT**

There is no explicit rate increase tied to authorizing such a program. The bill's intent is to leverage private financing for energy improvements, and reduce or eliminate the long-term need for ratepayer funding for direct utility financing and other financial incentives to promote individual ratepayers' clean energy investments. However, some administrative costs to the IOUs and the CPUC of running OBR programs will be covered by the existing collection of energy efficiency ratepayer funds, as well as fees that may be charged to participating financial partners or borrowers. The CPUC has already authorized such costs for its 2013-2014 program years, including initial overhead costs; however, these do not include any OBR mechanisms for residential customers.

### **FISCAL IMPACT**

SB 37 as currently written would require an incremental increase in work for three divisions, with a total one-time fiscal impact of \$75,286 and ongoing costs of \$115,198 for the following reasons:

- The bill requires at PU Code 2833.2(a) that the CPUC shall establish a method to determine bill neutrality. We expect this to require additional work under an existing proceeding or other formal process. This bill will cause the CPUC to incur a one-time cost of \$42,586 for .25 PY of an Administrative Law Judge I for one year.
- The bill involves complex procedures for disclosure, transfer of repayment obligation, etc. which Legal Division would need to advise on, possibly after meeting with attorneys for the utilities, financial institutions, etc. This would cause the CPUC to incur a one-time cost of \$32,700 for two months of time from a Public Utilities Counsel III.
- The bill would create a new financing mechanism for solar and distributed generation projects. This would create a cost of \$115,198 for one permanent PURA V position to oversee new OBR programs.

## **ECONOMIC IMPACT**

There are tens of billions of dollars of building energy improvements waiting to be made in California. This bill is expected to cause the CPUC to consider and authorize new financing mechanisms consistent with the requirements of the statute. These financing mechanisms can be expected to result in expanded levels of investment in energy improvements that will create demand for greater local employment among building contractors and material and equipment suppliers. By making cost-effective clean energy improvements, building occupants and residents can expect to reduce their energy bills, freeing up greater disposable income to be spent in the local economy, causing secondary or indirect local economic benefits. Indirectly this greater energy investment activity could support the expansion of clean energy industries and manufacturing through increased uptake of technologies.

## **LEGAL IMPACT**

SB 37 does not raise any federal or state constitutional issues. The bill proposes to exempt the IOUs, “to the extent they are carrying out the required activities pursuant to an [OBR] repayment program,” from certain state laws applicable to financial institutions and debt collectors (e.g., the Rosenthal Fair Debt Collection Practices Act). (Proposed Pub. Util. Code section 2833.7(c).) The bill does not, however, exempt the IOUs from federal laws applicable to financial institutions and debt collectors (e.g., the federal Fair Debt Collection Practice Act). Legal Division does not view this limited exemption from laws that might otherwise be applicable as preventing the realization of OBR or the bill.

As discussed in this bill analysis, the Assigned Commissioner in the utilities’ consolidated 2013-2014 Energy Efficiency program proceedings is presently finalizing an OBR pilot program. To the extent the Assigned Commissioner’s ruling conflicts with SB 37, the bill, if enacted, would supersede the Assigned Commissioner’s OBR pilot program. Every attempt should be made to avoid a conflict between the bill and the

anticipated content of the Assigned Commissioner's ruling. At the same time, the bill's affirmation of transferability and notice requirements under OBR would quiet utility protests on these matters and enable OBR to proceed on schedule.

Specific legal concerns are as follows:

1. Section 2(7) of the bill says that OBR "does not rely on public funding." This is not fully true since ratepayers are going to fund the administrative costs, cover legal liabilities, and pay for credit enhancements, which the bill contemplates.
2. Civil Code 1940.10(a) contemplates that a property owner authorizes OBR, but PU Code 2833(g) indicates that "occupants" (i.e., tenants) may enter into a financing arrangement subject to OBR. The bill should require that an occupant that enters into a financing arrangement subject to OBR get the express written consent of the property owner. The CPUC should be allowed by the bill to add this requirement, or to amend the bill to do so.
3. Civil Code 1940.10(a) also requires that a property owner provide an existing tenant only with notice. The bill allows the owner to act unilaterally, even to the detriment of the existing tenant. This should be a minimum requirement that the CPUC can enhance in a future bill amendment – or in its own rules.
4. Civil Code 1940.10(b) gives the owner a free pass for failing to provide correct notice to a new tenant. (See also Civil Code 1940.10(c).) This should be a minimum requirement that the CPUC can enhance in a future amendment, or through its own pilot rules.
5. Civil Code 2079.10b(a) requires delivery of disclosure to a buyer, but does not specify how and when - such as the buyer signing an acknowledgement of receipt of disclosure from a real estate disclosure packet. This lack of clarity could lead to litigation. This should be a minimum requirement that the CPUC can add to through its program rules, or via an amendment to this bill.
6. Pub. Resources Code 25402.9(d) says the CEC may charge a fee for the informational booklet. It does not say to whom it may charge a fee. See also PU Code 2833.3(b) and (c), which provide that the disclosure should be provided "free of charge" to the seller and lessor with property subject to OBR.
7. PU Code 2833(a) - "bill neutrality" does not mean the same thing for a new tenant that it meant for a prior tenant. E.g., different businesses have different energy requirements, subsequent tenants may have higher or lower energy consumption levels relative to the EE financing repayment portion. This could be noted as part of the standard disclosure form.

8. PU Code 2833(c) - Why must the OBR agreement be between the customer, financial institution, and the IOU? The written agreement should be between the customer and FI, and another agreement (tariff) between the customer and utility.
9. PU Code 2833(d) - should specify that "eligible energy improvement" is to be determined by the CPUC.
10. PU Code 2833(i)(1) says than an OBR obligation runs with the meter "for so long as any portion of the OBR obligation remains." There should be further legislative guidance to fill out this thought. Will compounding be allowed, which would extend the OBR obligation indefinitely? Should the bill specify that so long as any portion of principle of the OBR obligation remains there is an obligation to pay?
11. PU Code 2833(i)(2) refers to the utility customer of record. The bill needs to specifically include instances of bankruptcy, a property tax sale, and condemnation. The bill must clarify who the customer of record will be in these cases (the bank holding the mortgage, the county or city, etc.).
12. PU Code 2833(i)(4) would apply the exemption from Section 2833.11 only to subsequent utility customers. This needs to include "incurring utility customer" as well.
13. PU Code 2833.2(c)(3) mentions a loan loss reserve. It would be helpful to also mention "debt service reserve or other vehicle approved by the commission."
14. PU Code 2833.2(c)(4) should be expanded to require that OBR partners implement and comply with all consumer protections, loan eligibility, and credit determinations established by the commission and otherwise required by federal, state, and local laws.
15. PU Code 2833.2(c)(5) – The requirement that the OBR partner provide the utility or its agent with a copy of all financing documents associated with an OBR obligation seems excessive and costly.
16. PU Code 2833.4(c) This enables a customer to continually make partial payments and never be subject to disconnection.
17. PU Code 2833.5(b) - The language "following submission of an application for that service" is vague and needs clarification. A customer normally does not submit an application to a utility for utility service; a customer just phones up a utility.
18. PU Code 2833.7(b) This gives a utility total immunity, even for improperly or negligently "carrying out the required activities under an OBR program." This should be amended to allow utility recovery of costs, judgments, etc., for "correctly carrying out the requirement activities under an OBR program, in accordance with the commission's rules and decisions."

19. PU Code 2833.11 – The new section seems to propose to remove disconnect provisions and instead require the CPUC to offer a loan loss reserve to guarantee residential loans. This would undercut the purpose of the bill, put ratepayer funds at risk, and remove the incentive to repay the loan. Any references to credit enhancements such as loan loss reserves should apply only to energy efficiency measures – and not renewables, storage or the other eligible measures, unless the CPUC chooses.

## LEGISLATIVE HISTORY

This bill is similar in intent to SB 998, which Senator de Leon introduced in 2012. This bill corrects issues that the CPUC raised in 2012, but it also adds a bill neutrality requirement (counter to CPUC dicta in 2012 on this issue), and detailed specifications for technical aspects of OBR that the CPUC believes may be better addressed outside of statute through the evidentiary and stakeholder and public comment procedures that accompany the adoption of new programs and tariffs involving regulated utilities and their program partners, as well as any associated ratepayer funding commitments.

## BACKGROUND INFORMATION

### Regarding EE:

Beginning with the 2006-2009 program cycle and extending into 2010-2012, the CPUC authorized and oversaw a popular and successful OBF program offered initially by SDG&E, and subsequently also by PG&E, SCE, and SCG. This stayed within boundaries permitted by the then Department of Corporations, granting the utilities a waiver from State banking laws to operate an on bill financing program that used exclusively ratepayer funds for zero percent interest loans to non-residential customers for (bill neutral) energy efficiency projects. Debt repayments were collected through the utility bill. The bill neutrality provision and loan tenors (limited to five years for non-governmental borrowers), accepted by the CPUC, capped the financed project size and depth so that monthly energy savings were estimated to meet or exceed the monthly loan payment, while protecting the exposure of ratepayer funds being used for direct loan capital. Because of the conservative terms applied, projects weighted heavily toward lighting-only retrofits (sometimes called the “low hanging fruit”). The CPUC initially set the 2010-2012 loan pool at some \$40 million statewide. When demand for loan funds quickly exceeded supply, the CPUC approved substantial additional energy efficiency portfolio funding specifically for SCE, while SDG&E and SCG established their loan pools in a flexible way that could draw on utility working capital outside of the EE portfolios. The payment default rate in the 2010-2012 program cycle was roughly 1%. This program has continued in the 2013-2014 program cycle pending launch and findings from pilot programs intended to attract market capital and financial players; however, the CPUC hopes to phase out OBF by 2015 in order to use EE portfolio funding to leverage large scale EE improvements.

On November 8, 2012, the CPUC authorized \$214 million in finance programs for the 2013-2014 program years, including \$75 million for statewide pilots, including OBR for the non-residential sector, a limited multi-family OBR pilot, and credit enhancements without on-bill payments for residential loans, where payments would be made to the originating lenders or finance service entities, and not via utility bills. The CPUC decided not to pursue plans to require OBR for residential customers due to legal hurdles including service disconnection for non-payment – which this bill is intended to address. The current features of these pilots include:

- The CPUC is finalizing the design of the OBR pilots for non-residential customers, including tariffs that would provide for the transfer of the repayment obligation to subsequent property owners or occupants who assume responsibility for the meter, and necessary notification for a potential purchaser, or tenant. Related requirements the CPUC is now addressing include IOU bill collection, IOU handling of partial bill payments, and related disconnection of service.
- The OBR pilots are envisioned to use the securitization provided by the tariff's transferring debt obligation with the meter, and the associated disconnect provision, to attract affordable private financing for non-residential customers who do not have access to other types of loans. Building owners would have to approve any projects initiated by tenants.
- OBR with ratepayer funded credit enhancement – One of the OBR pilots will allow for private financing of energy efficiency measures with affordable terms and borrower eligibility facilitated by a credit enhancement offered to small businesses. A fraction of the financing will be allowed to cover any other improvements required to install the efficient measures. (This conflicts with the bill language that allows only measures that decrease greenhouse gas (GHG) emissions.)
- OBR without credit enhancement – Because this non-residential pilot does not include a ratepayer-subsidized credit enhancement, the CPUC expects to allow private financing of solar and demand response technologies, as well as efficiency measures.

The \$214 million for 2013-2014 financing programs will also fund:

- \$114 million in continuing non-residential OBF pending pilot outcomes;
- \$14 million to continue certain ARRA-funded finance programs, leveraging private loan funds;
- \$25 million in residential loan programs, leveraging private loan funds; and
- Roughly \$8 million for finance programs run by local and regional governments.

Regarding Renewable Technologies & Finance:

Unlike EE, some forms of renewable DG already have a robust market mechanism that provides upfront financing and in many cases offers the systems at no cost to the customer generator through a third party owner (TPO). The TPO model has been successful for firms such as SolarCity, SunRun, Sungevity, etc. These firms offer long term lease or purchased power deals to utility customers. Smaller, independent contractors who currently sell systems on a cash basis could potentially benefit if a mechanism like OBR were to expand the market by offering financing for systems owned by the property owner, and not via these third-party entities where ownership, sale, or removal issues remain at the end of the agreement period.

SB 37 does not require reports or other administrative action, though it does require CPUC oversight and evaluation of any OBR programs.

### **OTHER STATES' INFORMATION**

This emerging finance mechanism has been used in a handful of other states, sometimes with small programs, or using foundation or utility funds. The state of New York has a statutory OBR program, and the state of Hawaii has a regulatory OBR equivalent.

### **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION**

OBR could remove the up-front cost barrier for many residential and non-residential building owners who do not have access to other financing options. The CPUC has authorized utilities to operate a solely-ratepayer-capitalized OBF program for non-residential customers for more than six years, at a limited scale. This program has not been able to meet demand in the commercial building sector. The demands of reaching California's demand-side clean energy goals and associated GHG emission reductions dictate the need for far greater capital resources to support financing energy improvements on millions of CA homes, businesses, and institutional buildings. The CPUC has not authorized ratepayer funded loans through the IOUs in the residential sector due to the complexity of applying state and federal consumer lending laws to utilities.

Most significantly, this bill would remove a key barrier to offering an OBR program to residential customers and also would clarify the CPUC's authority to proceed with non-residential OBR financing on a long-term basis if pilots it has been planning for more than a year prove successful.

The CPUC is the appropriate agency to lead in designing a solution to address this problem.

This bill should be supported if amended for the following reasons:

1. It will remove legal barriers to allowing residential customers to participate in an OBR program, which is designed to attract lenders to offer private capital at affordable terms;
2. It will provide broader access for utility customer financing of clean energy improvements than the CPUC has been able to authorize under existing statute and with its limited ratepayer-funded non-residential on bill finance program. This will put energy improvements within reach of greater numbers of customers who do not have upfront cash or access to affordable capital, but who want to reduce their energy use, and energy bills, and need to replace aging or broken measures;
3. This reduction will reduce the state's need for supply-side energy procurement, including at peak use times, and support the state's GHG reduction goals, and the Energy Action Plan, which calls for reliance on EE and DR energy procurement before more traditional generation.
4. It will allow for deeper and more comprehensive retrofit projects that can be paid off beyond the length of an initial owner or tenant's tenure;
5. It will expand demand for and economic investment in building energy retrofits and associated equipment sales, increasing employment and CA economic activity among building trades and their equipment and materials suppliers; and
6. It should increase employment opportunities for many graduates of recent clean energy job training programs.

## **SUMMARY OF SUGGESTED AMENDMENTS**

This bill should be amended in the following ways:

1. Address all concerns enumerated by the Legal Division in the Legal Impact section pertaining to the Civil Code and Public Resources Code.
2. Proposed Section 2833: Amend subdivision (g) to read as follows: "“On-bill repayment program” or “OBR program” means a program approved by the commission that enables financing of eligible energy improvements to be repaid to an OBR partner through charges on a utility bill that run with the meter unless otherwise specified by the commission.” Amend subdivision (i)(4) to reference Section 2833.1 instead of Section 2833.11.
3. Proposed Section 2833.1: Amend subdivision (a) to read as follows: “Notwithstanding subdivision (e) of Section 777.1 or subdivision (a) of Section 779.2, the commission may require an electrical corporation or gas corporation with 250,000 or more service connections in the state to develop and implement one or more on-bill repayment programs for eligible energy efficiency, renewable energy, distributed generation, energy storage, or demand response improvements.”
4. Proposed Section 2833.2: Strike entirely and replace with language that reads as follows: “It is the intent of the Legislature that any OBR program authorized by the commission consider all the following:
  - a. Eligibility criteria for types of improvements and projects, requirements that could prevent increases in expected disconnection rates, prepayment options, rules that prohibit the unauthorized removal from the property of

- an OBR improvement, a methodology to determine bill neutrality (if used), and project inspection services or other requirements to address investment quality and performance issues;
- b. Whether the OBR program shall limit technologies eligible to be financed through OBR obligations to (a) those that will achieve reductions of greenhouse gases as defined in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) and/or (b) related but non-energy or non-GHG reducing improvements;
  - c. Consumer protections for low-income residential customers, including protections that could prevent increases in the expected number of service terminations, such as targeted use of a commission-approved loan loss reserve mechanism in lieu of service termination, and, including, at all times, a requirement for anticipated bill neutrality for lower income households.
5. Proposed Section 2833.4 to Proposed Section 2833.12: Strike entirely.
  6. Proposed Section 2833.13: Amend subdivision (a) to read as follows: "This chapter does not require that the on-bill repayment programs be identical. The commission may vary program elements for each utility based upon each utility's individual circumstances." Re-number the Section as appropriate.

Absent the ability to amend the bill in the way specified above, the language should, at a minimum, be amended as follows:

Exempt all non-residential customers, including tenants, from the two-year bill neutrality requirement (a permanent requirement for tenants in all sectors).

1. PU Code 2833.2(1)(A) – Amend this section of the bill so that only residential customers are covered: "For two years from the initial approval of the program by the commission, all **residential** on-bill repayment programs shall require bill neutrality."
2. PU Code 2833.2(1) (C) – Amend the permanent extension of the above requirement so that it applies only to residential tenants. "Notwithstanding subparagraph (b), the bill neutrality requirement shall apply, at all times, in cases where a portion of the OBR repayment charges are expected to be paid by one or more **residential** tenants on the property, whether directly or indirectly."

Bill neutrality, according to the CPUC's May 18, 2012 decision guiding the 2013-2014 portfolio, refers to the situation in which the combined monthly or annual cost of energy efficiency loan repayments and the post-project utility bill do not exceed the amount of the original utility bill prior to the project being undertaken. The decision expressly rejected bill neutrality for non-residential customers, and while understanding the attraction of bill neutrality in the residential sector does not embrace this as a requirement because of a number of practical factors that could affect the merits of executing such a requirement. For instance, the decision when discussing residential

sector retrofits, points out some of the many factors besides the EE project that could determine if bill neutrality is achieved. Those factors include the length of the loan term (i.e., how quickly or slowly the loan is paid back), the behavior of the customer utilizing the new equipment (e.g., whether a customer elects to enjoy more heat or cooling comfort once monthly bills go down), and changes in building occupancy that could affect energy use. Project-related factors influencing bill neutrality could, according to the decision, include weather variations, quality of the contractor installation, and whether a building owner elects to incur somewhat higher costs to make parallel improvements that also benefit comfort, environmental footprint, sound management, etc.

Ultimately, a bill neutrality requirement could eliminate the opportunity for some building owners to perform the deeper, more comprehensive energy saving projects that the CPUC most endorses, such as those that include replacement of HVAC systems, and other more capital-intensive improvements.

Certain ratepayer advocates and others see bill neutrality as a critical means of protecting present and future building owners, and tenants, from risks associated with investing in EE projects. However, professional estimates of the cost of a retrofit project and projected energy savings could give customers the necessary information to weigh the benefits and costs. This is especially true for non-residential customers, which Energy Division sees as relatively more sophisticated decision-makers that routinely make business decisions regarding investments. Non-residential customers should have the flexibility, Energy Division believes, to arrange a repayment schedule that is not bill neutral – allowing for example for the business to pay off the loan before the end of a lease, or at some other time horizon of importance to them.

3. PU Code 2833.2(2) – Added to this section should be a requirement for disclosure of the retrofit cost, and associated energy savings estimates referenced just above, and on Page 132 of the May 18 guidance decision. “A requirement that an OBR obligation shall not be put in place without authorization by all owners of the fee interest in the property where the premises served by the OBR improvement is located. ***The customer (building owner or tenant with owner approval) must be presented with an estimate of the expected energy savings and bill impacts of the energy efficiency project at the time the customer agrees to the project.***”
4. 13. PU Code 2833.2(b) should be amended: “The Commission shall limit technologies eligible to be financed through OBR obligations to those that will achieve reductions of greenhouse gases, ***or are associated with energy-using systems and are necessary due to health, safety and other factors***, as defined in the California Global Warming Solutions Act of 2006. . . .”

There are many detailed and technical requirements in the bill that may be overly specific to resolve in statute, as opposed to regulations. The CPUC is already in the process of deciding - with advice from its in-house attorneys – exactly how to address these in tariffs, pilot implementation requirements, etc. Those solutions of course are

subject to the CPUC's customary public comment processes. In many cases these bill provisions are poorly written or incomplete, and could result in overly constraining implementation features of the CPUC's OBR pilots and programs, many carefully negotiated across financial institutions, utilities, EE service providers, and parties representing customers. We have listed most of these bill passages in the Legal Impact section so they can be amended.

## **SUPPORT/OPPOSITION**

### Support:

Environmental Defense Fund (Sponsor)  
Abundant Power  
Green Campus Partners  
American Lung Association  
Groom Energy Solutions  
Asian Pacific Environmental Network  
International Council of Shopping Centers  
Beutler Corporation  
Matadors Community Credit Union  
Blue Earth  
MaxLite  
BOMA California  
Metrus Energy  
CalCEF  
Mission Valley Bank  
California Apartment Association  
Natural Resources Defense Council  
California Business Properties Association  
Nularis, Inc.  
Renewable Funding  
California Environmental Justice Alliance  
SClenergy  
Shorenstein Properties  
California Housing Partnership Corporation  
Sierra Club California  
Small Business California  
Carbon Lighthouse  
SolarCity  
Clean Fund  
The Greenlining Institute  
Coalition for Clean Air  
DBL Investors  
Efficiency First California  
The Utility Reform Network  
The Vote Solar Initiative  
Tioga Energy

Energi Insurance Services, Inc.  
USGBC California  
Enlighted Inc.  
Environmental Health Coalition  
Facility Solutions Group  
Global Green USA

Opposition:

Division of Ratepayer Advocates  
Pacific Gas & Electric  
Southern California Edison  
Sempra Energy Utilities  
San Diego Gas & Electric  
Southern California Gas Company

**VOTES**

SB 37 was voted on at the April 16, 2013, hearing of the Senate Energy, Utilities and Communications Committee but failed to garner sufficient votes for passage. It was granted reconsideration and will be presented again at the April 30, 2013, committee hearing.

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## BILL LANGUAGE

BILL NUMBER: SB 37        AMENDED  
BILL TEXT

AMENDED IN SENATE    APRIL 9, 2013  
AMENDED IN SENATE    MARCH 19, 2013

INTRODUCED BY    Senator De León  
                  (Principal coauthor: Assembly Member Eggman)  
                  (Coauthor: Assembly Member Muratsuchi)

DECEMBER 5, 2012

An act to add Sections 1940.10 and 2079.10b to the Civil Code, to amend Section 25402.9 of the Public Resources Code, and to add Chapter 7.6 (commencing with Section 2833) to Part 2 of Division 1 of the Public Utilities Code, relating to electricity.

### LEGISLATIVE COUNSEL'S DIGEST

SB 37, as amended, De León. Energy efficiency and renewable energy upgrades: on-bill repayment program.

(1) Under existing law the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the ~~commission~~ *Public Utilities Commission* to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable.

This bill would enact the California Clean Energy Consumer Access Act of 2013 and would authorize the commission to require an electrical or gas corporation with 250,000 or more service connections to develop and implement an on-bill repayment program providing financial assistance for energy efficiency, renewable energy, distributed generation, or demand response improvements by allowing for the repayment of the financial assistance to be included in the utility customer's utility bill (on-bill repayment). The bill would provide that the on-bill repayment obligation would run with the meter, as defined. Because a violation of any part of any order, decision, rule, direction, demand, or requirement of the ~~commission~~ *Public Utilities Commission* is a crime, this bill would impose a state-mandated local program.

(2) Existing law requires sellers of property or landlords to provide specified disclosure, to prospective buyers or prospective or existing tenants, regarding the property.

This bill would additionally require sellers of property or landlords to provide to prospective buyers or prospective or existing tenants a disclosure indicating that a portion of the utility bill is subject to an on-bill repayment obligation.

(3) Existing law requires the State Energy Resources Conservation and Development Commission ~~(Energy Commission)~~ to develop, adopt, and publish an informational booklet to educate and

inform homeowners, rental property owners, renters, ~~seller~~ sellers, brokers, and the general public about the statewide home energy rating program. Existing law requires the State Energy Resources Conservation and Development Commission to charge a fee for the booklet.

This bill would require the State Energy Resources Conservation and Development Commission to update the booklet to include information about home energy conservation and on-bill repayment program developed pursuant to (1) above. This bill would instead authorize the State Energy Resources Conservation and Development Commission to charge a fee for the booklet.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. This act shall be known, and may be cited, as the California Clean Energy Consumer Access Act of 2013.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Currently, many Californians lack access to affordable financing for onsite energy efficiency and clean energy projects.

(2) Existing clean energy programs and incentives are important but limited in that they are funded by insufficient amounts of ratepayer or taxpayer moneys, and in that existing programs reach only a small number of Californians due to restrictions in income level, credit score, project size, or property and technology specific eligibility criteria.

(3) California's current economic condition necessitates that the Legislature engineer pioneering ways to create sustainable, green collar jobs.

(4) Since the recession began in late 2007, California has lost nearly 1.4 million jobs, including 400,000 in the construction industry alone. Investing in clean energy projects will maximize job creation and will help the state regain a sense of economic security and sustainability at a time when unemployment remains high. The state can further stimulate its economy by putting the industry segment back to work that is most in need, the construction trades.

(5) Allowing the repayment of financing ~~of~~ obligations for clean energy projects through the use of utility ~~bill~~ bills has the cobenefit of allowing for a more affordable interest rate than would be otherwise available due to the security of utility bill payments and allowing for ratepayers to see the benefits and costs of clean energy projects on the same document.

(6) By tying repayment to the utility bill, ratepayers will make payments for their upgrades on the same bill where savings are realized from the investment, resulting in a new bill that can be

equal to or even less than their utility bill prior to energy upgrades.

(7) On-bill repayment is a unique clean energy incentive program because it does not rely on public funding and expands access to energy efficiency and clean technology upgrades.

(8) On-bill repayment will incentivize private investors to invest in clean energy improvements in California, will stimulate the state's economy by creating jobs for contractors and other persons who complete new energy improvements, and will reinforce the leadership role of the state in the new energy economy, thereby attracting clean energy manufacturing facilities and related jobs to the state.

(b) It is the intent of the Legislature, in enacting this act, to allow greater access to onsite clean energy projects ~~by allowing consumers to finance clean energy projects through their utility bills in a financing mechanism~~ *using third party capital to repay their obligations through their utility bill using a tool called "on-bill repayment."*

SEC. 3. Section 1940.10 is added to the Civil Code, to read:

1940.10. (a) A property owner that authorizes a project financed by the OBR program pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code shall provide to an existing tenant who is responsible, directly or indirectly through the provisions of the applicable lease, for paying all or a portion of the cost of utility service that is subject to an OBR obligation, the disclosure made available to the property owner pursuant to Section 2833.3 of the Public Utilities Code.

(b) Prior to the signing of a lease or rental agreement, an owner, or the agent of an owner of any premises with respect to which utility service is subject to an OBR obligation that will be paid by the tenant, whether directly or indirectly through the provisions of the applicable lease, shall provide a prospective tenant with the disclosure that was provided to the owner pursuant to Section 2833.3 of the Public Utilities Code.

(c) A lease shall not be invalidated solely because of the failure to comply with this section.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "OBR program" has the same meaning as that set forth in Section 2833 of the Public Utilities Code.

(2) "OBR obligation" has the same meaning as that set forth in Section 2833 of the Public Utilities Code.

SEC. 4. Section 2079.10b is added to the Civil Code, to read:

2079.10b. (a) Every seller of real property subject to an OBR obligation that runs with the meter, pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code, shall deliver to the buyer of the property the disclosure that was provided to the seller *pursuant to* Section 2833.3 of the Public Utilities Code.

(b) Upon delivery of the disclosure form to the buyer of real property, the seller or agent is not required to provide additional information relative to the OBR obligation and the information in the disclosure form is deemed adequate to inform the buyer about the existence of the OBR obligation and the OBR repayment charge that will run with the meter pursuant to Section 2833.3 of the Public Utilities Code.

(c) *The notice shall further state that unless fully satisfied*

*prior to the sale or transfer of the property, the OBR obligation survives changes in ownership, tenancy, or meter account responsibility and, until fully satisfied, constitutes an obligation of the person responsible for the meter account pursuant to Section 2833.8 of the Public Utilities Code.*

~~—(e)~~

(d) For the purposes of this section, the following terms have the following meanings:

(1) "OBR obligation" has the same meaning as that set forth in Section 2833 of the Public Utilities Code.

(2) "OBR repayment charge" has the same meaning as that set forth in Section 2833 of the Public Utilities Code.

(3) "Runs with meter" has the same meaning as that set forth in Section 2833 of the Public Utilities Code.

SEC. 5. Section 25402.9 of the Public Resources Code is amended to read:

25402.9. (a) On or before July 1, 1996, the commission shall develop, adopt, and publish an informational booklet to educate and inform homeowners, rental property owners, renters, sellers, brokers, and the general public about the statewide home energy rating program adopted pursuant to Section 25942.

(b) In the development of the booklet, the commission shall consult with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.

(c) The commission shall update the booklet developed pursuant to subdivision (a) to include information about home energy conservation and on-bill repayment programs developed and implemented pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code.

(d) The commission may charge a fee for the informational booklet to recover its costs under subdivision (a).

SEC. 6. Chapter 7.6 (commencing with Section 2833) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 7.6. CALIFORNIA CLEAN ENERGY CONSUMERS ACCESS ACT OF 2013

2833. For the purposes of this chapter, the following the terms have the following meanings:

(a) "Bill neutrality" means a utility customer's annual payments of OBR repayment charges set at an amount that is less than or equal to the projected annual electric and gas energy savings arising from the OBR improvements in a methodology to be determined by the commission pursuant to Section 2833.1.

(b) "Incurring customer" means the utility customer of record during the billing period during which any OBR repayment charge becomes due and payable.

(c) "OBR agreement" means a written agreement executed by, and among, a utility customer, an OBR partner or its agent, and a utility or its agent, governing the terms of an OBR obligation.

(d) "OBR improvement" means an eligible energy improvement

financed through an OBR obligation.

(e) "OBR obligation" means an obligation to repay a financing provided to a utility customer *by an OBR partner pursuant to an on-bill repayment program approved by the commission*

(f) "OBR partner" means a person or entity providing financing for eligible energy improvements pursuant to an on-bill repayment program. OBR partners include, but are not limited to, banks, savings and loan institutions, credit unions, project developers, or independent solar energy producers, as defined in Section 2868. Financing may be provided in the form of a loan, lease, power purchase agreement, energy service agreement, or other financing structure approved by the commission.

(g) "On-bill repayment program" or "OBR program" means a program, which may include one or more pilot test programs, approved by the commission that enables ~~building owners or occupants to arrange, by an OBR agreement, for the financing of eligible energy improvements that is repaid through charges to be included as a portion of utility bills for utility service to the premises served by the improvements~~ *financing of eligible energy improvements to be repaid through charges to be associated with the same utility account or accounts where savings are anticipated to be realized as a result of the improvements*

(h) "OBR repayment charge" means a charge, constituting repayment of all or a portion of any OBR obligation, that is included on a utility bill in accordance with a commission-approved utility tariff.

(i) "Run with the meter" means all of the following:

(1) The OBR obligation, for so long as any portion of the OBR obligation remains outstanding prior to the sale or transfer of the applicable real property, survives a change in ownership, tenancy, or meter account responsibility.

(2) The OBR obligation, for so long as any portion of the OBR obligation remains outstanding, at all times constitutes an obligation of the utility customer of record with respect to the premises served by the OBR improvements to repay.

(3) Arrears in OBR repayment charges outstanding prior to the sale or transfer of the applicable real property remain the responsibility of the incurring customer, unless expressly assumed by a subsequent customer or third party.

(4) The exemption from restrictions on a utility's right to terminate service pursuant to Section 2833.11 applies to the subsequent utility customer for as long as any portion of the OBR obligation remains outstanding.

(j) "Utility" means an electrical corporation or gas corporation that develops, or is required to develop, an on-bill repayment program.

2833.1. (a) The commission may require an electrical corporation or gas corporation with 250,000 or more service connections in the state to develop and implement one or more on-bill repayment programs for eligible energy efficiency, renewable energy, distributed generation, *energy storage*, or demand response improvements.

(b) A utility shall not implement the on-bill repayment program without the express approval of the commission.

(c) The commission shall supervise on-bill repayment programs to

ensure that the programs are administered in compliance with the terms approved by the commission.

2833.2. (a) The commission shall establish requirements to be met by each utility in the utility's on-bill repayment programs that are submitted to the commission for approval, including, but not limited to, eligibility criteria for types of improvements and projects, the establishment of energy and cost savings evaluation standards, requirements that prevent increases in expected disconnection rates, prepayment options, rules that prohibit the unauthorized removal from the property of an OBR improvement, a methodology to determine bill neutrality, and project inspection services or requirements.

(b) The commission shall limit technologies eligible to be financed through OBR obligations to those that will achieve reductions of greenhouse gases as defined in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(c) The commission shall ensure the on-bill repayment program includes all of the following program elements:

(1) (A) For two years from the initial approval of the program by the commission, all on-bill repayment programs shall require bill neutrality.

(B) Two years after the initial approval, the commission shall evaluate the success of projects financed through on-bill repayment to date. If the commission determines that the requirement for bill neutrality has unnecessarily limited the types of projects that may be financed through the program, the commission may limit the application of the bill neutrality requirement.

(C) Notwithstanding subparagraph (B), the bill neutrality requirement shall apply, at all times, in cases where a portion of the OBR repayment charges are expected to be paid by one or more tenants on the property, whether directly or indirectly.

*(D) The commission may include changes in the expected operating and maintenance costs in calculating bill neutrality.*

(2) A requirement that an OBR obligation shall not be put in place without authorization by all owners of the fee interest in the property where the premises served by the OBR improvements is located.

(3) (A) Consumer protections for ~~low income~~ residential customers, including protections to prevent increases in the expected number of service terminations, such as targeted use of a commission-approved loan loss reserve in lieu of service termination, and, including, at all times, a requirement for bill neutrality for lower income households.

*(B) The commission may include changes in the expected operating and maintenance costs in calculating bill neutrality.*

(4) A requirement that the OBR partner implement consumer protections, loan eligibility, and credit determinations.

(5) A requirement that the OBR partner provide the utility or its agent with a copy of all financing documents associated with an OBR obligation.

(6) A requirement that the OBR repayment charge be listed by the utility as a separate line item on the customer's bill from the utility.

(7) A requirement that the on-bill repayment charge collected by the utility or its agents be remitted to the OBR partner pursuant to a timeframe determined by the commission.

(d) *The commission shall consider, before the next energy efficiency program cycle, opportunities to coordinate OBR with ongoing efforts with participants in existing programs to support careers in energy efficiency, particularly for minorities, women, and other disadvantaged communities. This includes coordination with efforts to improve workforce diversity, job quality, and the collection of data on workforce outcomes.*

2833.3. The OBR program shall develop all of the following:

(a) A description of OBR programs and OBR obligations that would be included in the informational booklet developed pursuant to Section 25402.9 of the Public Resources Code.

(b) A standard disclosure required by Section 2079.10b of the Civil Code to be available for use by a seller of real property that is served by OBR improvements that is provided *by the OBR partners or its agent* free of charge to the seller upon request.

(c) A standard disclosure required by Section 1940.10 of the Civil Code to be available for use by a lessor of real property that is served by OBR improvements that is provided *by the OBR partners or its agent* free of charge to the lessor upon request.

2833.4. (a) If the amount paid by the utility customer is less than the amount billed to the customer on the utility bill, for a utility customer account to which an OBR obligation is in effect, the commission shall adopt one of the following methods for allocation of the payment:

(1) Allocate the payment in the following order of priority:

(A) Beginning with the earliest billing period in which an arrearage exists, allocate to the utility in respect of the outstanding arrearage in all charges other than OBR repayment charges (such charges, the non-OBR charges) accrued during that billing period. Upon the satisfaction of that arrearage, allocation to the OBR partner in respect of the outstanding arrearage in the OBR repayment charges accrued during that billing period.

(B) Upon the satisfaction of arrearage pursuant to subparagraph (A), the remaining amount of the payment, if any, shall be allocated to the arrearages accrued in subsequent billing periods pursuant to subparagraph (A), with the arrearage accruing from any earlier billing period being satisfied before the arrearages accruing from subsequent billing ~~period~~ periods .  
With respect to any billing period, allocation shall be made first to the utility in respect of all non-OBR charges, and, after satisfaction of the arrearage in non-OBR charges accruing in such billing period, to the OBR partner in respect of the arrearage in OBR repayment charges accruing in such billing period.

(C) Upon the satisfaction of all prior arrearages accruing from prior billing periods, the remaining payment, if any, shall be allocated first to the utility in respect of the non-OBR charge in the current billing period. Upon the satisfaction of that charge, allocation shall be made to the OBR partner in respect of the OBR repayment charge in the current billing period.

(2) Allocate the payment to the utility and the OBR partner on a pro rata basis, in proportion to the non-OBR charge and OBR repayment charge due and owing during the applicable billing period, with arrearages from the earlier billing period being satisfied first, followed by arrearages from subsequent billing periods, which shall be addressed in chronological order, followed by charges that are due

and owing during the current billing period.

(b) Any arrearage in payment for a billing period shall be included in subsequent billing periods until it is paid in full.

(c) In the event of an arrearage in payment, the full amount of the arrearage constitutes a failure to pay for electric or gas service and shall be treated consistent with the rules established by the commission for a customer's failure to pay for service.

2833.5. With respect to a utility account that has been closed and in which an arrearage ~~exists~~ exists, including an arrearage with respect to OBR repayment charges, the commission ~~may~~ shall adopt rules providing that after a reasonable period of time to be determined by the commission, the share of total arrearage that is attributable to the OBR obligation ~~may~~ shall be deemed, as of a date certain that is no later than 90 days after the closing of the account, to be an obligation owed directly to the OBR partner and not to the utility.

2833.6. (a) An OBR obligation shall run with the meter unless the commission has determined that it is not reasonable for the applicable category of OBR obligation to run with the meter.

(b) Acceptance of electric or gas service to premises that are served by OBR improvements, and to which an OBR obligation is outstanding, following submission of an application for that service, operates as an acceptance of the OBR obligation associated with electric or gas service, as applicable, to the extent that OBR repayment charges accrue during the period of electric or gas service and an assumption of the contractual rights and obligations of the OBR agreement for the duration of receipt of that service.

(c) Acceptance of electric or gas service does not operate as an assumption of any past due OBR repayment charges incurred prior to the commencement of that service by the person or entity that subsequently becomes the customer of record.

2833.7. (a) The commission shall authorize a utility to recover all prudently incurred actual costs, net of any fees charged to a customer, OBR partner, contractor, or other third party, of establishing and administering the on-bill repayment program.

(b) The commission shall approve a utility's request for cost recovery of actual costs for all judgments, settlements, costs, and expenses, including attorney's fees, and other liabilities paid or incurred by or imposed upon the utility in carrying out required activities under an OBR program pursuant to public or private enforcement of federal laws governing consumer lending, credit, debt collection, and servicing.

(c) Utilities, to the extent they are carrying out required activities pursuant to an on-bill repayment program, shall not be responsible for lending, underwriting, and credit determinations, and are not subject to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050) of the Financial Code), or the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788) of Part 2 of Division 3 of the Civil Code).

2833.8. (a) For each OBR obligation, the OBR partner or its agent shall record in the county recorder's office of a county in which the property is located, a ~~notice, with respect to the real~~

~~property on which the premises served by the OBR improvements are situated, of the existence of the OBR obligation and stating the~~  
"Notice of On-Bill Repayment Obligation" with a prominent header on the document that reads "On-Bill Repayment Obligation" in 14-point type and contains the assessor's parcel number, owners of record of the affected property, the legal description of the affected property, the street address of the affected property, total amount of the OBR obligation, the term of the OBR obligation, and that the OBR obligation is being repaid through a charge on an electric or gas service provided to the property. The notice shall further state that it is being ~~filed~~ recorded pursuant to this section and, unless fully satisfied prior to the sale or transfer of the property, the OBR obligation shall survive changes in ownership, tenancy, or meter account responsibility and, until fully satisfied, shall constitute the obligation of the person responsible for the meter account. The notice ~~shall~~ does not constitute a ~~mortgage or deed of trust and shall not create any security interest or lien~~ title defect, lien, or encumbrance on the property. ~~Upon~~

(b) Upon satisfaction of the OBR obligation, the OBR partner or its agent shall ~~promptly~~ record a ~~notice of repayment or a termination of notice~~ "Termination of Notice of On-Bill Repayment Obligation" within 10 days of receipt of full payment

~~(b) The county recorder shall record the notices in the same book in which the deeds are recorded.~~

2833.9. The commission and the utility shall not provide a forum to adjudicate disputes arising from this chapter. If a dispute arises between the customer and the OBR partner regarding the customer's obligation to pay the OBR obligation, the utility shall not be responsible in any respect relating to the disputes and shall handle funds collected from the customer in accordance with the program rules.

2833.10. The commission shall , with public notice and an opportunity for public comment, periodically evaluate on-bill repayment programs and may suspend or modify part or all of a program if it finds that the program does not meet commission requirements or goals. Suspension or modification of part or all of the program shall not affect the OBR obligations that exist at the time of the suspension or modification .

2833.11. Subdivision (e) of Section 777.1 and subdivision (a) of Section 779.2 do not apply to delinquency in OBR repayment charges.

2833.12. (a) In lieu of waiving disconnect protections for third-party financing as provided in Section 2833.11, the commission shall develop, to the extent feasible and cost effective, a loan-loss reserve program or loan guarantee program as part of the on-bill repayment program for providing energy efficiency programs to residential customers. The program shall be directed to residential customers who experience disproportionate bill impacts from summer cooling and other demands on the electrical system that cause excessive usage and potentially significant bill impacts.

(b) Notwithstanding subdivision (a), but consistent with paragraph (3) of subdivision (c) of Section 2833.2, the commission may

determine that Section 2833.11 applies in either of the following circumstances:

- (1) A customer or project is not covered by a loan-loss reserve program or a loan guarantee program established in subdivision (a).
- (2) A customer elects to waive the provisions of subdivision (a).

~~2833.12.~~ 2833.13. (a) This chapter does not require that the on-bill repayment programs be identical and the commission may vary program elements for each utility based upon each utility's individual circumstances.

(b) This chapter does not limit the authority of the commission to approve and supervise separate on-bill repayment programs with different features for different categories of customers, including single-family residential, multifamily residential, industrial, governmental, commercial, and other categories of customers that the commission determines to be appropriate. Utilities shall not implement on-bill repayment programs without the express approval of the commission.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition

of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.