COUNCIL OF THE DISTRICT OF COLUMBIA
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20004

I. TRANSMITTAL OF ENROLLED LEGISLATION

Short Title: Energy Efficiency Financing Act of 2010

Bill #18-580

Act #

Date Transmitted to LSD:

cc: Councilmembers Evans & Cheh (with attachment)
cc: Codification Counsel (with attachment)

Please notify me of any error/comment within 24 hours.

II. CLEARANCE OF ENROLLED LEGISLATION

John Hoellen — 3-22-10
Legislative Counsel — Date

3-22-10
Codification Counsel — Date

Office of the Secretary — Date

III. CLEARANCE OF CORRESPONDENCE BY LSD

Letter(s) to the Mayor — Date

Letter(s) to Congress — Date

Rev. 1/10

Codification District of Columbia Official Code

2001 Edition

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AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize and provide for the issuance, sale, and delivery of District of Columbia revenue bonds in one or more series, payable from special assessment revenues and issued pursuant to section 490 of the District of Columbia Home Rule Act; to authorize the Mayor to use the bond proceeds to provide funding for the initial installation of energy efficiency and renewable energy retrofits and improvements; and to amend Chapter 8 of Title 47 of the District of Columbia Official Code to authorize special property tax assessments on participating property owners.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Energy Efficiency Financing Act of 2010".

TITLE I. DEFINITIONS AND PURPOSE.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Administrator" means the person retained pursuant to the authority granted in section 305 to administer the Energy Efficiency Loan program authorized by Title III.

(2) "Authorized Delegate" means:

(A) The City Administrator;

(B) The Chief Financial Officer;

(C) The District of Columbia Treasurer;

(D) The Deputy Mayor for Planning and Economic Development; or

(E) Any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act and who has been designated as an Authorized Delegate for purposes of this act.

(3) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(4) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this act.

(5) "Certification Standard" means a certification or accreditation standard for building energy retrofit installation, such as those provided by the Building Performance Institute, the Residential Energy Services Network, or a nationally recognized program approved by the United States Department of Energy or the Mayor.

(6) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia.

(7) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(8) "Debt Service" means payment of principal, premium, if any, and interest on the bonds.

(9) "Energy Efficiency Audit" means a formal evaluation by a certified contractor of the energy consumption of a residential, commercial, or other building for the purpose of identifying methods of improving energy efficiency and reducing energy waste.

(10) "Energy Efficiency Improvement" means an installation or modification that is designed to reduce energy utility costs of residential, commercial, or other building types. The term "Energy Efficiency Improvement" includes:

(A) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(B) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating, or air conditioning and distribution system modifications or replacement in buildings or central plants;

(E) Caulking or weather-stripping;

(F) Replacement or modifications of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a building unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(G) Energy recovery systems;

(H) Daylighting systems;

(I) Renewable energy systems; and

(J) Any other modification, installation, retrofit, or remodeling approved as an electric or gas utility cost-savings measure by the administrator.

(11) "Energy Efficiency Loan" means a loan to a property owner for the purpose of installing one of more Energy Efficiency Improvements.

(12) "Financing Documents" means the documents, other than Closing

Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the bonds, including any required collection agreement, offering document, and any required supplements to any such documents.

(13) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(14) "Indenture" means the trust indentures, including a master trust indenture and any supplemental trust indenture, pursuant to which one or more series of the bonds are issued.

(15) "Property owner" means an owner of real property in the District.

(16) "Qualified Apprenticeship Program" means an apprenticeship program registered with the District of Columbia Apprenticeship Council.

(17) "Quality Assurance Program" means a program that establishes energy benchmarks, monitors and verifies the quality of Energy Efficiency Improvements, and measures actual energy savings.

(18) "Special Assessment" means the special assessment authorized by Title IV.

(19) "Trustee" means the trustee under the indenture.

Sec. 102. Declaration of public purpose.

(a) Energy conservation efforts, including the promotion of Energy Efficiency Improvements to residential, commercial, and other real property, are necessary to address the issue of global climate change and to reduce the consumers' energy costs.

(b) The upfront cost of making residential, commercial, or other real property more energy efficient prevents many property owners from making Energy Efficient Improvements. To make Energy Efficient Improvements more accessible and to promote the installation of those improvements, it is necessary to authorize a procedure to provide funds for the initial cost of installing Energy Efficiency Improvements.

(c) The Council declares that a public purpose will be served by a voluntary assessment program that provides the authority and the means to provide funds for the initial installation of Energy Efficiency Improvements that are permanently attached to residential, commercial, industrial, or other real property.

(d) Section 490 of the Home Rule Act provides that the Council may, by act, authorize the issuance of District bonds to borrow money to finance, refinance, or reimburse, and to assist in the financing, refinancing, or reimbursing of, the cost of capital projects or undertakings that will contribute to the health, welfare, or safety of residents of the District as determined by the Council.

(e) The Council finds that authorization, issuance, sale, and delivery of bonds for the payment of costs of a program to provide funds for the initial installation of Energy Efficiency Improvements that are permanently attached to residential, commercial, or other real property will contribute to the health, welfare, and safety of residents of the District, are in the public interest, and will accomplish the purposes and intent of section 490 of the Home Rule Act.

TITLE II. BOND FINANCING.

Sec. 201. Establishment of the Special Energy Assessment Fund.

(a)(1) There is established as a nonlapsing fund the Special Energy Assessment Fund. The Chief Financial Officer shall establish additional accounts in the Special Energy Assessment Fund, consisting of a Special Energy Assessment Bond Debt Service Account for each series of bonds issued pursuant to this act and a single Special Energy Assessment Program Administrative Account. The Chief Financial Officer shall pay, or direct the payment of, all receipts of the principal and interest portion of each Special Assessment into the Special Energy Assessment Bond Debt Service Account applicable to the series of bonds secured by the payment of that Special Assessment, and the Chief Financial Officer shall pay, or direct the payment of, the receipt of the administrative costs portion of each Special Assessment into the Special Energy Assessment Program Administrative Account. The Mayor shall pledge and create a security interest in the Special Assessment revenues and all other funds deposited in each Special Energy Assessment Bonds Debt Service Account to pay the Debt Service on the applicable series of bonds issued by the District pursuant to this act without further action by the Council as permitted by section 490(f) of the Home Rule Act. The Chief Financial Officer shall pay from the Special Energy Assessment Program Administrative Account the annual costs of administering the collection and maintenance of the Special Assessment and the annual costs of administering the Energy Efficiency Loan program authorized by Title III. Except for any amounts specifically authorized by the Council, all Debt Service and administrative costs shall be paid only from receipts from the Special Assessments.

(2) Except as provided by subsection (c) of this section, all funds deposited into the Special Energy Assessment Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) Receipt of the principal and interest portion of the Special Assessment and all amounts deposited in each Special Energy Assessment Bond Debt Service Account, plus all investments or earnings on those amounts, shall be irrevocably dedicated and pledged to the payment of the principal of, and interest on, the applicable bonds as provided in this act. Any escrow or other agreement entered into by the District providing for holding funds for the benefit of the holders of the bonds shall be maintained as long as any of the bonds are outstanding under the applicable Financing Documents. The administrative costs portion of the Special Assessment deposited in the Special Energy Assessment Program Administrative Account, plus all investments or earnings on those amounts, shall be used only for the payment of the costs of administering the Energy Efficiency Loan program authorized by Title III.

(c) If, at the end of any fiscal year of the District following the issuance of bonds authorized by this act, the value of cash and investments in a Special Energy Assessment Bond

Debt Service Account exceeds the amount of all payments authorized by this act and the Financing Documents applicable to that series of bonds, including required deposits into reserve funds, amounts to be set aside for additional series of bonds issued under this act, and any coverage requirements associated with the sale of the bonds, during the upcoming fiscal year, the excess shall be transferred to the General Fund of the District of Columbia, unless the District elects to use the excess to redeem that series of bonds prior to maturity. Amounts deposited in the Special Energy Assessment Program Administrative Account shall remain in, and shall be used for the purposes of, that account.

Sec. 202. Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of bonds in an aggregate principal amount not to exceed $250 million. The bonds, which may be issued at any time and from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 203.

(b) The Mayor is authorized to pay from the proceeds of the bonds the financing costs and expenses of issuing and delivering the bonds, including underwriting fees, legal fees, accounting fees, financial advisory fees, bond insurance or other credit enhancement, expenses of marketing and selling the bonds, printing costs and expenses, and the costs of funding capitalized interest and required reserves.

(c) The remaining proceeds of the bonds shall be paid into the National Capital Energy Fund established by section 301 and used to provide funds for the initial installation of Energy Efficiency Improvements that are permanently attached to residential, commercial, industrial, or other real property as authorized under Title III.

Sec. 203. Payment and security.

(a) Except as may be otherwise provided in this act, Debt Service on each series of bonds shall be payable solely and only from proceeds received from the sale of that series of bonds, income realized from the temporary investment of those proceeds, Special Assessment revenues allocated to the applicable Special Energy Assessment Bond Debt Service Account, amounts received from prepayments of any loans made pursuant to this act, income realized from the temporary investment of those Special Assessment revenues prior to payment to the bond holders, and other moneys that, as provided in the Financing Documents, may be made available to the District for payment of the bonds from sources other than the District, all as provided for in the Financing Documents.

(b) Payment of the bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the bondholders of certain of its rights under the Financing Documents and Closing Documents to the trustee for the bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 204. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the bonds, including a determination that the bonds may be issued in certificated or book-entry form;

(2) The principal amount of the bonds to be issued and denominations of the bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the bonds and the maturity date or dates of the bonds;

(5) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;

(8) The time and place of payment of the bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend, which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Special Assessment), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of an indenture to be entered into by the District and a trustee to be selected by the Mayor, and may be subject

to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, the income therefrom, and all funds pledged or available to pay or secure the payment of the bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District does pledge and covenant and agree with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the basis on which the revenues pledged to secure the bonds are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds, and will not in any way impair the rights or remedies of the holders of the bonds, until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection constitutes a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Chapter 9 of Title 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 205. Sale of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the sale of the bonds.

(c) The Mayor is authorized to deliver the executed and sealed bonds, on behalf of the District, for authentication, and, after the bonds have been authenticated, to deliver the bonds to the original purchasers of the bonds upon payment of the purchase price.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the bonds of such series and, if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the bonds for the purposes of federal income taxation.

(e) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and Subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract that the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for purposes of this title.

Sec. 206. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 207. Limited liability.

(a) The bonds shall be special obligations of the District payable solely and only from the amounts deposited in the respective Special Energy Assessment Bond Debt Service Accounts and Bond Proceeds Account of the National Capital Energy Fund established by section 301. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Special Assessment), shall not constitute a debt of

the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the bonds.

(c) No person, including, but not limited to, any bond holder, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 208. District officials.

(a) Except as otherwise provided in section 207(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the bonds, the Financing Documents, or the Closing Documents.

Sec. 209. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 210. Clarification regarding the debt cap.

For purposes of calculating the District's level of debt, the Special Assessments do not constitute revenues derived from taxes, fees, or other general revenues of the District, or its agencies or authorities, pursuant to the District's power to tax or impose fees within the definition of District Bonds in D.C. Official Code § 47-334(2).

TITLE III. ESTABLISHMENT OF THE NATIONAL CAPITAL ENERGY FUND AND ENERGY EFFICIENCY LOAN PROGRAM.

Sec. 301. Establishment of the National Capital Energy Fund.

(a) There is established as a nonlapsing fund the National Capital Energy Fund. The Chief Financial Officer shall create 2 accounts within the National Capital Energy Fund: the

Bond Proceeds Account and the Federal Grant Account. The Chief Financial Officer shall deposit the proceeds from each sale of the bonds into the Bond Proceeds Account and shall deposit all Energy Efficiency Conservation Block Grant Retrofit Ramp-Up funds received from the United States Government as Energy Efficiency and Conservation Block Grants into the Federal Grant Account.

(b) All funds deposited into the National Capital Energy Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Mayor may use the funds in the National Capital Energy Fund to make Energy Efficiency Loans to property owners for the initial costs of the installation of Energy Efficiency Improvements. Each Energy Efficiency Loan shall be repaid by the revenues generated by the Special Assessment. Each Energy Efficiency Loan shall be evidenced by a loan, or other, agreement that obligates the property owner and all successor property owners to pay the Special Assessment and such other terms and conditions as the Mayor shall determine to be necessary or appropriate to carry out the provisions of this act.

(d) Prior to the 1st issuance of bonds, each Energy Efficiency Loan funded from grant proceeds shall bear interest at a rate equal to the interest rate on 10-Year United States Treasury Notes on the date of the execution of the loan, or other, agreement evidencing an Energy Efficiency Loan of the 1st series of Energy Efficiency Loans to be issued, plus 250 basis points. Upon the 1st issuance of bonds, the interest rate on the outstanding Energy Efficiency Loans used to secure payment of that issue of bonds shall convert automatically, and without action by either the District or the property owner, to the interest rate on the first series of bond, plus an amount determined by the Mayor to be sufficient to pay all administrative costs specified in section 201. Thereafter, all Energy Efficiency Loans shall bear interest at the rate of interest on the series of bonds issued immediately preceding the date of execution of the Energy Efficiency Loan, plus an amount determined by the Mayor to be sufficient to pay all administrative costs specified in section 201. The principal, interest, and administrative costs of the loans shall be separately stated to permit the allocation thereof as provided in this act.

(e) If the 1st source of funds deposited in the National Capital Energy Fund is not a grant but an obligation which requires the District to repay principal and interest thereon, the Energy Efficiency Loan loan, or other, agreement shall be structured to repay the funding source, plus administrative costs. Special Assessment payments shall be deposited in the same manner specified in section 201.

(f) A Special Assessment payment received prior to the issue of bonds secured by the Special Assessment payments may be used to provide a debt service reserve fund for the bonds.

Sec. 302. Qualification for loans.

(a) To qualify for a loan from the National Capital Energy Fund, the property owner shall file with the administrator a loan application including the following:

(1) The amount of loan requested;

(2) The agreement of the property owner to pay the full amount of the Special Assessment;

(3) A description of the Energy Efficiency Improvements that the property owner proposes to install and an estimate of the cost of the installation;

(4) An Energy Efficiency Audit from an auditor approved by the administrator stating the amount of energy used by the subject property and the amount of the energy to be saved by the installation of the Energy Efficiency Improvements;

(5) A statement establishing that the value of the energy saved by the installation of the Energy Efficiency Improvement is reasonably expected to equal or exceed the amount of the principal of, and interest on, the Energy Efficiency Loan and, if the property owner requests financing under section 303(b), the cost of the Energy Efficiency Audit;

(6) Credit information and information regarding the subject property as determined by the administrator; and

(7) Property owner certification that the Special Assessment will not violate any agreements with any other lender or provision of applicable lender consents.

(b) The property owner shall pay a fee at the time of filing the application in an amount to be determined by the administrator to be sufficient to cover the cost of processing the application and making the Energy Efficiency Loan.

Sec. 303. Approval of application.

(a) The administrator shall review the property owner's application and, if it finds that the application satisfies all requirements, shall enter into a loan, or other, agreement with the property owner.

(b) The property owner may request in the loan application that the Energy Efficiency Loan include an amount equal to all or part of the cost of the Energy Efficiency Audit. If the amount requested is reasonable, the administrator shall include the amount in the Energy Efficiency Loan.

(c) Before entering into a loan, or other, agreement with a property owner, the administrator shall verify, based upon information provided in the property owner's application, that the value of the energy saved by the installation of the Energy Efficiency Improvements is reasonably expected to exceed the amount of the principal of, and interest on, the Energy Efficiency Loan, including any cost of the Energy Efficiency Audit included pursuant to subsection (b) of this section.

Sec. 304. Duties of administrator.

The administrator shall provide general management, oversight, and coordination of the Energy Efficiency Loan program and its related services, including performing the following duties:

(1) Outreach and marketing to eligible property owners to inform them of the existence and benefits of the Energy Efficiency Loan program in conjunction with the brand name established pursuant to section 206 of the Clean and Affordable Energy Act of 2008, effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.06);

(2) Establishing loan and credit standards and processes;

(3) Underwriting and servicing all Energy Efficiency Loan applications;

(4) Identifying market opportunities and funding leverage opportunities;

(5) Collecting appropriate documents and recording the tax liens;

(6) Sending sufficient information to the Office of Tax and Revenue to enable the Office of Tax and Revenue to collect the Special Assessments, including the allocations of Debt Service and administrative costs;

(7) Evaluating, retaining, and overseeing firms to perform energy audits, (including maintaining a list of approved auditors for use by property owners), energy benchmarking, and energy savings verification;

(8) Implementing the Quality Assurance Program;

(9) Certifying and pre-qualifying all contractors authorized to provide Energy Efficiency Improvements or other work under this act;

(10) Approving forms and quality standards to perform installation of Energy Efficiency Improvements;

(11) Maintaining a list of pre-qualified contractors authorized to provide Energy Efficiency Improvements under this act; and

(12) Reporting to the Mayor and the Council on the progress of the Energy Efficiency Loan program.

Sec. 305. Authority to retain administrator.

(a) The Mayor may contract with an administrator to administer the Energy Efficiency Loan program created by this title.

(b) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), shall not apply to the contract authorized by subsection (a) of this section until 3 years after the effective date of this act.

Sec. 306. Establishment of Quality Assurance Program.

The Mayor shall establish a Quality Assurance Program to promote transparency, assure the competence of contractors and individuals performing retrofits, analyze energy savings, and achieve the following goals:

(1) Establishment and publication of the Certification Standards required of

contractors and subcontractors to be eligible to receive contracts or subcontracts under this act, which at a minimum shall require contractors to comply with:

(A) All applicable business licensing, insurance, tax, and bonding laws and regulations of the District; and

(B) All applicable federal and District wage and hour, employment, workplace health and safety, equal employment opportunity, and other standards of labor and employment law, including proper classification of workers;

(2) Providing private investors, lenders, and property owners with the certification and performance standards required of auditors, inspectors, contractors, subcontractors, maintenance companies, and other entities that provide construction, installation, repairs, and maintenance of Energy Efficiency Improvements as a result of an Energy Efficiency Loan;

(3) Conducting quality control inspections of services rendered by contractors and subcontractors; and

(4) Verifying and analyzing energy savings following the installation of Energy Efficiency Improvements.

Sec. 307. Workforce development and employment plan.

In an effort to maximize employment opportunities to District residents, the Mayor shall establish a workforce development and employment plan that shall incorporate the first source hiring requirements of section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), with priority given to employment of:

(1) Residents of economically distressed neighborhoods;

(2) Low-income individuals; and

(3) Unemployed and underemployed residents.

Sec. 308. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

TITLE IV. SPECIAL ENERGY ASSESSMENT.

Sec. 401. Chapter 8 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new subchapter IX to read as follows:

"Subchapter IX. Special Energy Assessment.

"47-895.31. Definitions.

"47-895.32. Levy of Special Assessment.

"47-895.33. Notices; collection; penalties.

"47-895.34. Termination of Special Assessment.

"47-895.35. Application of assessment.".

(b) A new subchapter IX is added to read as follows:

"Subchapter IX. Special Energy Assessment.

"§ 47-895.31. Definitions. New § 47-895.31

"For the purposes of this subchapter, the term:

"(1) "Bonds" means the bonds, notes, or other obligations issued by the District pursuant to the Energy Efficiency Financing Act.

"(2) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia.

"(3) "Debt Service" means the principal and interest on the Energy Efficiency Loan.

"(4) "Energy Efficiency Financing Act" means the Energy Efficiency Financing Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-580).

"(5) "Energy Efficiency Loan" means an energy efficiency loan to a property owner under the Energy Efficiency Financing Act.

"(6) "Energy Efficiency Loan Agreement" means a loan, or other agreement, entered into pursuant to section 303(a) of the Energy Efficiency Financing Act, to make the Energy Efficiency Loan.

"(7) "Indenture of Trust" means the indenture relating to the bonds, as modified, amended, or supplemented from time to time.

"(8) "Lot" means real property as defined in § 47-802(1).

"(9) "Tax year" has the same meaning as provided in § 47-802(7).

"(10) "Special Assessment" means the special assessment levied by the District each fiscal year to fund the amount necessary to pay the debt service on the Energy Efficiency Loan.

"(11) "Special Energy Assessment Fund" means the nonlapsing fund established by section 201 of the Energy Efficiency Financing Act.

"§ 47-895.32. Levy of Special Assessment. New § 47-895.32

"(a) A Special Assessment is levied and shall be collected with respect to each lot for which an Energy Efficiency Loan Agreement has been entered into by a property owner. The Special Assessment shall begin at the commencement of the half tax year immediately following the date on which the Energy Efficiency Loan Agreement is entered into and continue until the end of the half tax year in which the Energy Efficiency Loan is fully repaid pursuant to the Energy Efficiency Loan Agreement. At the time the Energy Efficiency Loan Agreement is executed, a memorandum of the Special Assessment shall be recorded in the land records of the District. The memoranda of the Special Assessment shall be exempt from the recordation tax levied pursuant to § 42-1103 and the transfer tax levied pursuant to § 47-903.

"(b) The annual amount of the Special Assessment on each lot shall be an amount equal to the annual principal, interest, and administrative costs on the Energy Efficiency Loan

applicable to that lot as described in section 301 of the Energy Efficiency Financing Act. The Special Assessment to be collected from any lot shall not be increased as a result of a default in the payment of the Special Assessment levied on any other lot. The Special Assessment shall not be increased by any means other than those prescribed in the Energy Efficiency Loan Agreement.

"(c) If a property owner agrees to a Special Assessment to reduce energy costs and increases rents to tenants in that property to pay the costs of the Special Assessment, the property owner shall pass through the energy savings to the tenants so charged.

New § 47-895.33

"§ 47-895.33. Notices; collection; penalties.

"(a) The Energy Efficiency Loan Agreement shall require the property owner to consent to the levy of the Special Assessment on the lots, following which consent, all actions by any owner of the lot to challenge the levy of the Special Assessment shall be forever barred. The property owner that enters into an Energy Efficiency Loan Agreement and each subsequent owner of the lot shall provide notice to the buyer of the lot of the levy of the Special Assessment; provided, that the notice shall not apply to lots sold under Chapter 13A. Failure to receive disclosure of the Special Assessment by a subsequent owner shall not relieve the subsequent owner of the obligation to pay the Special Assessment.

"(b) Special Assessments shall be collected in the same manner and at the same time as real property taxes are collected; provided, that the Special Assessments may be collected at a different time and in a different manner as determined by the Chief Financial Officer.

"(c)(1) Except as provided in paragraph (2) of this subsection, an unpaid Special Assessment shall be subject to the same penalty and interest provisions as a delinquent real property tax under this chapter. A lien for an unpaid Special Assessment, including penalty and interest, shall attach to the real property in the same manner as, and with a priority immediately junior to, a lien for delinquent real property tax under Chapter 13A and senior to all other liens. Real property sold at a tax sale for the failure to pay real property taxes shall remain subject to the obligation to pay Special Assessments in subsequent years as provided in this subchapter. The unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalties as for unpaid real property taxes.

"(2) If an interest in or use of a lot is subject to the Special Assessment because it is subject to taxation under § 47-1005.01, an unpaid Special Assessment on such an interest or use shall be subject to the same penalty and interest provisions as a delinquent tax imposed under § 47-1005.01, and the unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalty as for an unpaid tax imposed under § 47-1005.01.

New § 47-895.34

"§ 47-895.34. Termination of Special Assessment.

"(a) The authority to levy Special Assessments under this subchapter shall terminate on the day after all the bonds secured by that Special Assessment and issued pursuant to the authority granted in Title II of the Energy Efficiency Financing Act are paid for and are no longer outstanding pursuant to their terms. Notwithstanding the preceding sentence, any

delinquent Special Assessments and related penalties and interest shall remain due as provided herein until fully paid.

"(b) If a property owner elects to pay in full, prior to maturity, all principal and outstanding interest on the Energy Efficiency Loan Agreement, the repayment amount shall be deposited into the applicable Special Energy Assessment Bond Debt Service Account of the Special Energy Assessment Fund.

New § 47-895.35

"§ 47-895.35. Application of Special Assessment.

"The Chief Financial Officer shall deposit the Special Assessment revenues collected under this subchapter in the Special Energy Assessment Fund.".

TITLE V. FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 501. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 502. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia