

## Key Provisions of Energy Revolving Loan Fund Program Authorization under S.L. 2009-522 (H1389)

- **Although a local government may set the terms of its energy RLF program, the loan repayment period may not exceed 15 years and the annual interest rate charged for use of the funds may not exceed 8 percent.**

As a practical matter, a local unit likely will determine the maximum repayment period in relation to the useful life of the project being funded. Likewise, the interest rate charged will be a product both of the administrative and other costs to the local government and the market for these types of loans. Note that the 8 percent interest rate limit does not include fees for loan application review and origination. A local government may impose additional loan terms in its discretion.

- **A local government may use only the following revenue sources to fund its energy RLF program: federal Energy Efficiency Conservation Block Grant (EECBG)<sup>1</sup> proceeds and other unrestricted revenue.**

There are some important restrictions on using the EECBG funds to establish a revolving loan fund for this purpose. For example, for formula awards made to large units of government (formula eligible communities) no more than 20 percent of a unit's grant allotment, or \$250,000, whichever is greater, may be used to establish the loan funds. And, the grant proceeds must be committed within 18 months from the effective date of the award, and spent within 36 months. The U.S. Department of Energy has put out fairly detailed guidance on establishing energy RLFs.<sup>2</sup>

The other source of funds—unrestricted revenue—is not statutorily defined. It likely includes a unit's sales and use tax revenue (to the extent it is not otherwise earmarked for another purpose) and other revenue that is not statutorily or contractually designated for a specific purpose. But, does it include property tax revenue? It is not entirely clear. In order to use property tax revenue to fund a particular program or service, without receiving explicit voter approval, the program or service must be listed in G.S. 160A-209 (municipalities) or G.S. 153A-149 (counties).<sup>3</sup> These statutes explicitly authorize

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<sup>1</sup> For information on the federal Energy Efficiency Conservation Block Grant Program, including competitive funding opportunities, see <http://www.eecbg.energy.gov/> (last visited Nov. 18, 2009).

<sup>2</sup> The federal RLF guidance is available at [www.eecbg.energy.gov/Downloads/Revolving\\_Loan\\_Funds\\_070609.pdf](http://www.eecbg.energy.gov/Downloads/Revolving_Loan_Funds_070609.pdf) (last visited Nov. 18, 2009).

<sup>3</sup> Property taxes levied for certain purposes are subject to rate limitations and, in a very few cases, must be approved by the voters. These restrictions are pursuant to Article V, section 2(5) of the state constitution. To implement Article V, section 2(5), the General Assembly has enacted G.S. 153A-149, for counties, and G.S. 160A-209, for cities. These two statutes place functions that counties and cities are authorized to undertake in three groups. The governments may levy property taxes for Group I functions without restriction on tax rate or amount. For cities, this group includes only debt service on general obligation debt, but for counties the group includes the most important state-mandated functions: schools and social services. Counties and cities may levy property taxes for Group II functions without a vote, to a maximum rate of \$1.50 per \$100.00 valuation of taxable property. A local government

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expenditure of property tax revenue to fund “air pollution control programs.” Thus, if a local government determines that its loan fund is part of an air pollution control program, it may fund it with property tax dollars. If not, property tax proceeds likely may not be used to finance the loan funds without specific voter approval.

- **A local government may not issue debt (borrow money) to fund its energy RLF program.**

Governments in other states have partnered with local financial institutions to borrow the money to seed their energy RLFs. This type of arrangement is not authorized under S.L. 2009-522 (H1389). A local unit also may not issue revenue bonds, general obligation bonds, or other types of debt to fund an energy RLF program.

- **A local government may not impose special assessments, taxes, or other special charges to ensure repayment of the loan funds.**

Unlike several of the energy loan programs in other states, S.L. 2009-522 (H 1389) does not authorize property-backed assessments. It also does not authorize a local unit to include charges associated with the loan on a property owner’s utility bill in order to take advantage of ordering partial payments and discontinuing utility services for non-payment of the entire bill.

- **A local government may, in its discretion, acquire a mortgage interest in the real property to which an energy project will be affixed as collateral for the loan.**

Unlike special assessments and property tax liens, however, the mortgage interest (lien) will not have priority status; instead, it will have the same status as a “private” lien.<sup>4</sup> If a loan is not repaid according to the loan contract terms, a local government may foreclose on the underlying real property according to the statutory procedures set forth in G.S. Ch. 45. But, the lien will be inferior to most statutory liens and other private liens (including home mortgages) that were secured before the energy RLF lien. And, liens with priority status over the energy RLF lien will be satisfied first.

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may hold a referendum on the levy of property taxes for any Group II function. If such a referendum passes, the tax levied under it does not count against the \$1.50 limitation. A local government may also hold a referendum to raise the \$1.50 limitation. Group III functions include all authorized activities that the General Assembly has not specified as either Group I or Group II functions. The statute does not identify Group III functions. If the voters approve the levy of property taxes for a Group III function, any tax levied for that function does not count against the \$1.50 rate limitation.

<sup>4</sup> For a detailed analysis of liens and lien status see Christopher B. McLaughlin, *The Property Tax Lien*, PROPERTY TAX BULLETIN NO. 150 (Oct. 2009), available at [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf) (last visited Nov. 17, 2009).