

AMENDED IN SENATE JULY 27, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2120

Introduced by Committee on Budget (Steinberg (Chair), Bermudez, Chan, Diaz, Dymally, Goldberg, Hancock, Jackson, Levine, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)

February 18, 2004

~~An act relating to the Budget Act of 2004.~~ *An act to amend Sections 16920 and 16929 of, and to add Chapter 8 (commencing with Section 16940) to Part 3 of Division 4 of Title 2 of, the Government Code, relating to public pension obligations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2120, as amended, Committee on Budget. ~~Budget Act of 2004~~
Public pension obligations: bond financing.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2004.~~

Under existing law, the state is required to make specified employer contributions to the Public Employees' Retirement Fund on behalf of state employee members of the Public Employees' Retirement System. Existing law establishes the Pension Obligation Bond Committee, which is authorized to issue bonds and take other specific actions under the California Pension Obligation Financing Act.

This bill would enact the California Pension Restructuring Bond Act of 2004, that would authorize the issuance, during any 2 fiscal years after June 30, 2004, of up to \$2 billion of bonds and the creation of

ancillary obligations, as defined, for the purpose of funding or refunding the state's obligations to the Public Employees' Retirement Fund. The bill would authorize the issuance of the bonds only after the Department of Finance determines that those obligations are anticipated to be reduced as a result of changes to the Public Employees' Retirement Law, as specified. The bill would continuously appropriate from the General Fund, without regard to fiscal year, the amount necessary to pay the principal and interest on the bonds and other obligations incurred in connection with the bonds, subject to certain limits.

The bill would authorize the Pension Obligation Bond Committee to bring an action to determine the validity of the bonds issued pursuant to the act. The bill would also authorize the Department of Finance to pay, on behalf of the committee, from funds previously appropriated to the department, specified attorneys' fees and costs in connection with the prior validation action under the California Pension Obligation Financing Act, there by making an appropriation.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: majority ²/₃. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
 2 ~~statutory changes relating to the Budget Act of 2004.~~

3 SECTION 1. It is the intent of the Legislature and the
 4 Governor that a purpose of selling pension obligation bonds
 5 pursuant to this act is to avoid tax increases and further reductions
 6 in critical state programs for the 2004–05 fiscal year.

7 SEC. 2. Section 16920 of the Government Code is amended to
 8 read:

9 16920. (a) Solely for the purpose of the issuance and sale of
 10 the bonds and ancillary obligations authorized by this chapter and
 11 by Chapter 8 (commencing with Section 16940), the Pension
 12 Obligation Bond Committee is hereby created. The committee
 13 consists of the Governor or his or her designee, the Director of
 14 Finance, the Controller, the ~~treasurer~~ Treasurer, the Secretary of
 15 ~~the Business, Transportation and Housing Agency,~~ the Director of
 16 General Services, and the Director of Transportation.



1 Notwithstanding Section 7.5 or other provisions of law, any
 2 member may designate a deputy to act as the member in his or her
 3 place and stead for all purposes, as though the member were
 4 personally present. The Legislature hereby finds and declares that
 5 each member of the committee has previously acted as a member
 6 of a similar finance committee, and has duties in relation to the
 7 payment of pension obligations relating to employees under
 8 supervision of the member.

9 (b) A majority of the committee shall constitute a quorum of
 10 the committee and may act for the committee. The Director of
 11 Finance shall serve as chairperson of the committee.

12 (c) No member, officer, or agent of the committee is subject to
 13 personal liability on any bonds or ancillary obligations or other
 14 obligations issued or entered into under this chapter *or Chapter 8*
 15 *(commencing with Section 16940)* or for any acts or omissions of
 16 members, officers, or agents in carrying out the powers and duties
 17 conferred by this chapter *or Chapter 8 (commencing with Section*
 18 *16940)*.

19 *SEC. 3. Section 16929 of the Government Code is amended to*
 20 *read:*

21 16929. There is hereby created in the State Treasury the
 22 Pension Obligation Bond Fund. The net proceeds of bonds issued
 23 and sold pursuant to this chapter *and bonds issued and sold*
 24 *pursuant to Chapter 8 (commencing with Section 16940)* shall be
 25 deposited in the Pension Obligation Bond Fund. Notwithstanding
 26 Section 13340, the Pension Obligation Bond Fund is hereby
 27 continuously appropriated for the purposes specified in this
 28 chapter *and Chapter 8 (commencing with Section 16940)*.

29 *SEC. 4. Chapter 8 (commencing with Section 16940) is added*
 30 *to Part 3 of Division 4 of Title 2 of the Government Code, to read:*

31

32 *CHAPTER 8. THE CALIFORNIA PENSION RESTRUCTURING BOND ACT*
 33 *OF 2004*

34

35

Article 1. General Provisions

36

37 16940. *This chapter shall be known and may be cited as the*
 38 *California Pension Restructuring Bond Act of 2004.*

39 16941. *It is the intent of the Legislature, in enacting this*
 40 *chapter, to provide for an efficient, equitable, and economical*



1 means of satisfying certain pension obligations of the state. Bonds
2 shall be issued pursuant to this chapter only when the Director of
3 Finance determines that the state's pension obligations are
4 anticipated to be reduced as a result of changes in the Public
5 Employees' Retirement Law that reduce contributions to the
6 Public Employees' Retirement System, and it is in the best interest
7 of the state to issue bonds pursuant to this chapter to accelerate a
8 portion of the state's anticipated lower pension obligations.

9 16942. The Legislature hereby finds and declares that the
10 state's obligation to pay its pension obligations to the Public
11 Employees' Retirement System in the amounts established by the
12 Board of Administration of the Public Employees' Retirement
13 System, cannot be deferred by the state; that the state's pension
14 obligations are due and payable at predetermined times; and that
15 the Controller is required to pay those pension obligations when
16 they are due. The Legislature further finds that the state's pension
17 obligations cannot be included in an accumulated state budget
18 deficit, as defined in Section 1.3 of Article XVI of the California
19 Constitution. Further, the Legislature finds that its pension
20 obligations are imposed by law, and not subject to Section 1 of
21 Article XVI of the California Constitution and that the bonds
22 authorized to be issued under this chapter have the same character
23 under the Constitution as the pension obligations funded or
24 refunded.

25 16943. Unless the context otherwise requires, the following
26 definitions shall govern the construction of this chapter:

27 (a) "Ancillary obligation" means the obligation of the state
28 under any credit enhancement or liquidity agreement, including
29 any of the following:

30 (1) An obligation in the form of bond insurance, a letter of
31 credit, standby bond purchase agreement, reimbursement
32 agreement, liquidity facility, or other similar arrangement.

33 (2) An obligation under any remarketing agreement, auction
34 agent agreement, broker-dealer agreement, or other agreement
35 relating to the marketing of the bonds, interest rate or other type
36 of swap or hedging contract.

37 (3) An obligation under any investment agreement, forward
38 purchase agreement, or similar structured investment contract,
39 entered into by the committee in connection with any bonds issued
40 under this chapter.



1 (b) “Bonds” means any bonds, notes, bond anticipation notes,
2 interim certificates, debentures, or other obligations or forms of
3 indebtedness issued pursuant to this chapter.

4 (c) “Committee” means the Pension Obligation Bond
5 Committee established pursuant to Section 16920.

6 (d) “Pension obligations” means the obligations of the state or
7 any state agency to the retirement system imposed by the retirement
8 laws in the amounts determined by the board of administration of
9 the retirement system.

10 (e) “Program” means the program established by this chapter
11 under which the committee shall issue bonds for the purpose of
12 funding or refunding pension obligations.

13 (f) “Retirement laws” means Section 17 of Article XVI of the
14 California Constitution and the Public Employees’ Retirement
15 Law (Part 3 (commencing with Section 20000) of Division 5) and
16 any other laws providing for payment to be made by the state or
17 any state agency to the retirement system to provide retirement
18 benefits to employees of the state or any other individuals for
19 which the state has an obligation to pay all or a portion of the
20 contributions to the retirement system to ensure the payment of
21 retirement benefits to those individuals.

22 (g) “Retirement system” means the Public Employees’
23 Retirement System established pursuant to the Public Employees’
24 Retirement Law (Part 3 (commencing with Section 20000) of
25 Division 5).

26

27 Article 2. Issuance of Bonds to Finance the Program

28

29 16945. The committee is authorized and empowered, for and
30 in the name and on behalf of the state, to do all of the following:

31 (a) Upon the request of the Director of Finance, and following
32 receipt of the determination of the Director of Finance pursuant to
33 Section 16941, issue taxable or tax-exempt bonds for the purpose
34 of funding or refunding pension obligations, paying related costs
35 and ancillary obligations, or refunding any bonds previously
36 issued pursuant to this chapter.

37 (b) Execute debentures or other instruments evidencing the
38 pension obligations.



1 (c) Enter into ancillary obligations and other contracts deemed
2 necessary by the committee in connection with any bonds issued
3 under this chapter.

4 (d) Establish the terms and conditions for the program
5 undertaken pursuant to this chapter.

6 (e) Employ or contract for legal, consulting, underwriting, or
7 other services in connection with the program as may be necessary
8 in the judgment of the committee, as approved by the Treasurer, as
9 agent for sale of the bonds, for the successful financing of the
10 program and the issuance and sale of bonds.

11 (f) In addition to the powers specifically granted in this chapter,
12 do all things necessary or convenient, including delegation of
13 necessary duties to the Director of Finance, as chairperson, and
14 to the Treasurer, as agent for sale of the bonds, to carry out the
15 purposes of this chapter.

16 16946. Every issue of bonds, and any ancillary obligation
17 entered into with respect to those bonds, shall be a debt and
18 liability of the state payable from the General Fund of the state or,
19 in the case of bond anticipation notes, payable from the proceeds
20 of bonds to be issued pursuant to this chapter.

21 16947. (a) The cumulative amount of outstanding bonds
22 issued pursuant to this chapter may not exceed the lesser of (1) the
23 sum of two billion dollars (\$2,000,000,000); or (2) the amount
24 which, when added to all anticipated interest and related costs of
25 the bonds, does not exceed the anticipated reduction of the state's
26 pension obligations as a result of changes in the retirement law
27 that reduce contributions to the retirement system, as determined
28 by the Director of Finance.

29 (b) Notwithstanding subdivision (a), the cumulative amount of
30 bonds issued pursuant to this chapter in any one fiscal year may
31 not exceed the total unpaid amount of the state's pension
32 obligations for that fiscal year.

33 (c) Bonds may be issued pursuant to this chapter in any two
34 fiscal years after June 30, 2004, but may not be issued in any more
35 than two fiscal years.

36 16948. (a) The resolution, certificate, or other instrument of
37 the committee authorizing the issuance of the bonds may provide,
38 or the committee may delegate to the Treasurer, as agent for sale
39 of the bonds, responsibility to determine, any or all of the following
40 for the bonds:



1 (1) *The form of the bonds, which may be issued as serial bonds,*
2 *term bonds, or installment bonds, or any combination of those.*

3 (2) *The date to be borne by any bonds.*

4 (3) *The time of maturity of any bonds, which maturities may be*
5 *before or after the term of the related pension obligation to be*
6 *funded or refunded.*

7 (4) *The interest, fixed or variable, to be borne by the bonds.*

8 (5) *The time that the bonds shall be payable.*

9 (6) *The denominations, form, and registration privileges of the*
10 *bonds.*

11 (7) *The manner of execution of the bonds.*

12 (8) *The place the bonds are payable, which may include any*
13 *paying agent within or outside of the state.*

14 (9) *The terms of redemption of the bonds.*

15 (10) *The establishment of funds and accounts to be held by a*
16 *trustee to provide for payment or security for the bonds or ancillary*
17 *obligations or related costs.*

18 (11) *Any other terms and conditions deemed necessary by the*
19 *committee.*

20 (b) *Pursuant to Section 5702, the Treasurer shall serve as agent*
21 *for the offer and sale of the bonds. The bonds may be sold at either*
22 *a competitive or negotiated sale, at times and at prices, for*
23 *consideration, and with all other terms and conditions as the*
24 *Treasurer, in his or her capacity as agent for sale of the bonds, shall*
25 *determine.*

26 (c) *The Treasurer is authorized to invest or direct the*
27 *investment of any amounts held in trust for payment of the bonds*
28 *in any securities or obligations authorized pursuant to Chapter 3*
29 *(commencing with Section 16430) of Part 2, as amended from time*
30 *to time.*

31 16949. *The proceeds of the bonds shall be applied to the*
32 *funding or refunding of pension obligations, or refunding of bonds*
33 *previously issued under this chapter, together with all costs of*
34 *issuing the bonds and refunding pension obligations or prior*
35 *bonds and the costs of any ancillary obligation. Notwithstanding*
36 *Sections 20822 and 20824, or any other provision of law, the*
37 *proceeds of the bonds may be applied to the prepayment of pension*
38 *obligations.*

39 16950. *When proceeds of bonds issued pursuant to this*
40 *chapter are used to pay the state's pension obligations to the*



1 retirement system for members whose compensation is paid from
2 a fund other than the General Fund, the Controller shall,
3 notwithstanding any other provision of law, transfer quarterly
4 from the special fund or nongovernmental cost fund to the General
5 Fund an amount equal to the quarterly pension obligations paid
6 from bond proceeds with respect to those members, as certified by
7 the Director of Finance and authorized in any appropriation item
8 or in any category thereof.

9 16951. When proceeds of bonds issued pursuant to this
10 chapter are used to pay the state's pension obligations to the
11 retirement system for members whose compensation is paid from
12 the General Fund, the Controller shall, notwithstanding any other
13 provision of law, abate quarterly to the General Fund an amount
14 equal to the quarterly pension obligations paid from bond
15 proceeds with respect to those members, as certified by the
16 Director of Finance and authorized in any General Fund
17 appropriation item or in any category thereof.

18 16952. In the discretion of the committee, any bonds issued
19 under this chapter may be secured by a trust agreement, indenture,
20 or resolution between the state and any trustee, which may be the
21 Treasurer or any trust company or bank having the powers of a
22 trust company chartered under the laws of any state or the United
23 States and designated by the Treasurer. The trust agreement,
24 indenture, or resolution may contain provisions for protecting and
25 enforcing the rights and remedies of the bond owners as may be
26 reasonable and not in violation of law. Any trust agreement,
27 indenture, or resolution may set forth the rights and remedies of the
28 bond owners and of the trustee and may restrict the individual right
29 of action by bond owners. In addition to the foregoing, any trust
30 agreement, indenture, or resolution may contain other provisions
31 as the committee may deem reasonable for the security of the bond
32 owners, including, but not limited to, provisions specifying the
33 date or dates on which debt service payments on the bonds shall
34 be transferred to the trustee. Any trust accounts created by the trust
35 agreement, indenture, or resolution may be held outside the State
36 Treasury.

37 16953. The committee may provide for the issuance of bonds
38 any portion of which is to be used for the purpose of refunding
39 outstanding bonds issued to fund or refund pension obligations,
40 including the payment of the principal thereof and interest and



1 redemption premiums, if any. The proceeds of bonds issued to
2 refund any outstanding bonds may be applied to the retirement of
3 those outstanding bonds at maturity, or the redemption, on any
4 redemption date, or purchase of those outstanding bonds prior to
5 maturity, subject to the terms and conditions as the committee
6 deems advisable.

7 16954. The net proceeds of bonds issued and sold pursuant to
8 this chapter shall be deposited in the Pension Obligation Bond
9 Fund established pursuant to Section 16929.

10
11 Article 3. Miscellaneous Provisions
12

13 16955. This chapter, being necessary for the health, welfare,
14 and safety of the state and its residents, shall be liberally construed
15 to effect its purposes.

16 16956. This chapter shall be deemed to provide a complete
17 and alternative authorization to take the actions necessary to
18 implement this chapter, and shall be regarded as supplemental and
19 additional to the powers conferred by other laws. The issuance of
20 the bonds and their terms, the application of proceeds to the
21 funding or refunding of pension obligations or prior bonds, and the
22 entering into of any ancillary obligation under this chapter need
23 not comply with the requirements of any other law applicable to the
24 issuance of bonds or ancillary obligations, including, but not
25 limited to, the State General Obligation Bond Law (Chapter 4
26 commencing with Section 16720)). The purposes authorized by
27 this chapter may be effectuated and bonds are authorized to be
28 issued for any purposes under this chapter notwithstanding that
29 any other law may provide for those purposes or for the issuance
30 of bonds for like purposes and without regard to the requirements,
31 restrictions, limitations, or other provisions contained in any other
32 law.

33 16957. Section 10295 of the Public Contract Code and Article
34 4 (commencing with Section 10335) of Chapter 2 of Part 2 of
35 Division 2 of the Public Contract Code do not apply to agreements
36 entered into by the committee, or any individual to whom the
37 committee delegates contracting authority, in connection with the
38 sale of bonds or other matters authorized under this chapter.

39 16958. Bonds issued pursuant to this chapter are a legal
40 investment for any state special fund or trust fund, notwithstanding

1 any provision of law limiting the investments that may be made by
2 the fund. The bonds shall be legal investments in which all public
3 officers and public bodies of the state, its political subdivisions, all
4 municipalities and municipal subdivisions, all insurance
5 companies and associations and other persons carrying on an
6 insurance business, all banks, bankers, banking institutions,
7 including savings and loan associations, building and loan
8 associations, trust companies, savings banks and savings
9 associations, investment companies, and other persons carrying
10 on banking business, all administrators, guardians, executors,
11 trustees, and other fiduciaries, and all persons authorized to invest
12 in bonds or other obligations of the state, may properly and legally
13 invest funds, including capital, in their control or belonging to
14 them. The bonds may be used by any private financial institution,
15 person, or association as security for public officers and bodies of
16 the state or any agency or political subdivision of the state and all
17 municipalities and public corporations for any purpose for which
18 the deposit of bonds or other obligations of the state is authorized
19 by law, including deposits to secure public funds.

20 16959. The committee may bring an action to determine the
21 validity of any bonds to be issued, or any ancillary obligations and
22 other contracts to be entered into, under this chapter pursuant to
23 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
24 the Code of Civil Procedure. For the purposes of Section 860 of the
25 Code of Civil Procedure, any action initiated pursuant to this
26 section shall be brought in the Superior Court of the County of
27 Sacramento.

28 16960. Notwithstanding Section 13340, there is hereby
29 continuously appropriated, without regard to fiscal year, from the
30 General Fund for the purposes of this chapter, an amount, subject
31 to the limitations of this chapter, that equals the sum annually that
32 is necessary to pay all obligations, including principal, interest,
33 costs, expenses, rebate, legal, commitment, or other fees, and all
34 other amounts incurred by the state under or in connection with
35 bonds and any ancillary obligations payable entered into by the
36 state. The amount hereby appropriated each fiscal year to pay
37 principal on any bonds issued pursuant to this chapter and any
38 ancillary obligations associated therewith may not exceed the
39 outstanding principal amount of all bonds issued pursuant to this
40 chapter. The amount appropriated each fiscal year to pay interest



1 on any bonds issued pursuant to this chapter and any ancillary
2 obligations associated therewith may not exceed 15 percent per
3 annum of the outstanding amount of all bonds issued pursuant to
4 this chapter. The amount hereby appropriated each year to pay
5 costs, expenses, rebate, legal, commitment, or other fees and other
6 amounts of any ancillary obligations may not exceed 5 percent per
7 annum of the outstanding amount of all bonds issued pursuant to
8 this chapter. Expenditures pursuant to this section shall reflect the
9 efforts of the state to secure financing that results in the least cost
10 to the state after considering both short-term and long-term
11 financing costs.

12 SEC. 5. The Department of Finance, on behalf of the
13 committee, may pay, from the items of appropriation in the Budget
14 Act of 2003 that support the operations of the department,
15 attorneys' fees and costs included in the agreement to dismiss the
16 appeal in the matter of Pension Obligation Bond Committee, etc.
17 v. Howard Jarvis Taxpayers Assn. (Case. No. C045240).

18 SEC. 6. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety
20 within the meaning of Article IV of the Constitution and shall go
21 into immediate effect. The facts constituting the necessity are:

22 In order to enact the statutory changes necessary to implement
23 the Budget Act of 2004, it is necessary that this act take effect
24 immediately.

