AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1009

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

~~An act to amend Section 14030 of, and to add and repeal Section 14077 of, the Corporations Code, relating to small business, and making an appropriation therefor.~~ *An act to amend Sections 8869.82, 91501, 91502, 91502.1, 91503, 91504, 91527, 91530, 91531, 91533, 91538, 91539, 91541, 91555, 91559, 91571, and 91573 of the Government Code, relating to bonds, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1009, as amended, V. Manuel Perez. ~~Small business: Direct Loan Program.~~ *Bonds.*

(1) Existing law establishes in state government the California Debt Limit Allocation Committee, with duties that include annually determining a state ceiling on the aggregate amount of private activity bonds that may be issued, and allocating that amount among state and local agencies. Existing law defines the term "state ceiling" for those purposes with regard to an amount specified in federal law.

This bill would revise the definition of "state ceiling" for these purposes to also include certain amounts reserved to the state for qualified energy conservation bonds and recovery zone economic development bonds.

(2) Existing law, the California Industrial Development Financing Act, authorizes cities, counties, cities and counties, and redevelopment agencies to establish industrial development authorities that are authorized to issue industrial development bonds, the proceeds of which may be used to fund capital projects of private enterprise under terms and conditions specified in the act.

This bill would expand the scope of the act by including additional types of projects and costs authorized for financing under the act, including, but not limited to, projects qualified under the American Recovery and Reinvestment Act of 2009. This bill would also authorize financial assistance to businesses for certain costs of a bond issuance.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development and imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, a continuously appropriated fund, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations.~~

~~This bill would require the secretary to develop and implement, until January 1, 2015, a Direct Loan Program to provide loans to small businesses meeting certain requirements. The bill would require the maximum loan limit to be $500,000. The bill would establish the Direct Loan Account in the California Small Business Expansion Fund and would continuously appropriate all moneys in that account for purposes of implementing and administering the program. The bill would authorize a public entity, as defined, to deposit moneys in this account in order to capitalize the program. The bill would require the director, prior to distributing these funds to small businesses, to determine that the program is sufficiently capitalized. The bill would require the director to report annually on the activities of the program, as specified, and would also require the director, by a specified date, to submit to the Governor and the Legislature the results of an independent audit of~~

~~the program. The bill would make certain findings and declarations of the Legislature.~~

Vote: ~~majority~~ *⅔*. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 8869.82 of the Government Code is amended to read:

8869.82. *(a)* As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the following meanings:

~~(a)~~

(1) "Committee" means the California Debt Limit Allocation Committee established pursuant to Section 8869.83.

~~(b)~~

(2) "Fund" means the California Debt Limit Allocation Committee Fund created pursuant to Section 8869.90.

~~(c)~~

(3) "Internal Revenue Code" means the Internal Revenue Code of 1986 *(26 U.S.C. Sec. 1 et seq.)*, as amended from time to time.

~~(d)~~

(4) "Issuer" means any local agency or state agency authorized by the Constitution or laws of the state to issue private activity bonds.

~~(e)~~

(5) "Local agency" means any political subdivision of the state within the meaning of Section 103 of the Internal Revenue Code *(26 U.S.C. Sec. 103)*, or any entity that has the power to issue private activity bonds ~~"on behalf of" any such~~ *on behalf of that* political subdivision.

~~(f)~~

(6) "MBTCAC" means the ~~Mortgage Bond and~~ *California* Tax Credit Allocation Committee created by Section ~~50185~~ *50199.8* of the Health and Safety Code.

~~(g)~~

(7) "Private activity bond" means a part or all of any bond ~~(or,~~ *or* other ~~instrument)~~ *instrument*, required to obtain a portion of the state's volume cap pursuant to Section 146 of the Internal Revenue Code *(26 U.S.C. Sec. 146)* in order to be tax exempt, including,

generally, *all of* the following~~ (as such~~, *as* those bonds are defined in the Internal Revenue~~ Code)~~ *Code*:~~ (1) exempt~~

(A) Exempt facility bonds~~ (except~~, *except* bonds for airports, docks and wharves, and certain solid waste~~ facilities), (2) qualified~~ *facilities.*

(B) Qualified mortgage bonds~~, (3) qualified~~.

(C) Qualified small issue bonds~~, (4) qualified~~.

(D) Qualified student loan bonds~~, (5) qualified~~.

(E) Qualified redevelopment bonds~~, and (6) the~~.

(F) The nonqualified amount of an issue of governmental bonds (including advance refunds) exceeding fifteen million dollars ($15,000,000), as provided in Section 141(b)(5) of the Internal Revenue Code *(26 U.S.C. Sec. 141(b)(5))*.

~~(h)~~

(8) "Private activity bond limit" means any portion of the state ceiling allocated or transferred to a state agency or local agency pursuant to this chapter.

~~(i)~~

(9) "State" means the State of California.

~~(j)~~

(10) "State agency" means the state and all state entities, including joint powers authorities of which the state or agency or instrumentality thereof is a member, empowered to issue private activity bonds, the interest on which is exempt from income tax under Section 103(a) of the Internal Revenue Code *(26 U.S.C. Sec. 103(a))*, including nonprofit corporations described in Section 150(d) of the Internal Revenue Code *(26 U.S.C. Sec. 150(d))*, authorized to issue qualified scholarship funding bonds.

~~(k)~~

(11) "State ceiling"~~ shall be the~~ *includes both of the following:*

(A) The amount specified by Section 146(d) of the Internal Revenue Code *(26 U.S.C. Sec. 146(d))* for each calendar year commencing in 1986.

(B) The amount reserved to the state pursuant to Sections 1112 and 1401 of the American Recovery and Reinvestment Act of 2009 (26 U.S.C. Secs. 54a and 1400U-1).

~~Pursuant~~

(b) Pursuant to Section 146(e) of the Internal Revenue Code *(26 U.S.C. Sec. 146(e))*, this chapter~~ shall govern~~ *governs* the allocation of the state ceiling among the state agencies and local

agencies in this state having authority to issue private activity bonds. ~~Any~~

(c) Any portion of the state ceiling allocated or transferred by or under the authority of this chapter shall become the private activity bond limit for the issuer of which ~~such~~ *that* portion is allocated or transferred for any private activity bonds issued by that issuer.

SEC. 2. Section 91501 of the Government Code is amended to read:

91501. The Legislature hereby finds that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to promote and enhance economic development and increase opportunities for useful employment. The Legislature further finds the alternative method of financing provided in this title will benefit economically distressed communities with concentrated unemployment by employing a labor force from those communities and areas where persons are displaced due to industrial failures. The Legislature further finds that the alternative method of financing provided in this title will benefit economically distressed areas of the state and localities ~~which~~ *that* are making diligent efforts to maintain and provide services to existing companies and to prevent the loss of existing jobs. The Legislature further finds that the alternative method of financing provided in this title will benefit those projects ~~which~~ *that* would employ persons living within an economically distressed area, or projects ~~which~~ *that* are partially funded by ~~a job creation grant from~~ *the federal government, including, but not limited to,* the United States Department of Labor, the United States Department of Housing and Urban Development, or the Economic Development Administration of the United States Department of Commerce. The Legislature further finds and determines that ~~industry~~ *businesses* within this state ~~needs~~ *that create, produce, or manufacture tangible goods* and ~~requires~~ *require* new methods to finance the capital outlays required to acquire, construct, or rehabilitate facilities ~~which~~, *equipment, and furnishings that* will *result in an* increase *in* employment opportunities, *the retention of existing jobs,* or otherwise contribute to economic development, and the alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

The Legislature further finds that regional research and development facilities are beneficial to the state and the regions ~~in which~~ *where* they are located by providing jobs ~~in the facilities and in~~, *contributing to economic development in the state and* the surrounding community, and ~~by~~ being a source of ~~ideas and inventions~~ *intellectual capital and intangible assets* that ultimately aid California ~~manufacturers~~ *businesses* in *entering*, expanding, and ~~being competitive~~ *competing* in, world markets.

~~The Legislature also finds that although tax-exempt financing in the form of industrial development bonds is available for the startup and expansion of industrial and energy development facilities, such financing is not available for startup or expansion of research and development facilities, potentially as viable a source of job creation as industrial and energy development projects.~~

Therefore, the Legislature finds that research and development facilities should be designated "permitted activities" under the state's industrial development bond program.

SEC. 3. Section 91502 of the Government Code is amended to read:

91502. It is the purpose of this title to carry out and make effective the findings of the Legislature, and to that end, to provide ~~industry~~ *business* with an alternative method of financing in acquiring, constructing, or rehabilitating facilities, *including, but not limited to, equipment and furnishings,* in accordance with the criteria set forth in Section 91502.1, all to the mutual benefit of the people of the state and to protect their health, welfare, and safety.

SEC. 4. Section 91502.1 of the Government Code is amended to read:

91502.1. (a) The Legislature declares that it is the policy of this state, consistent with environmental, resource conservation, and other policies, to facilitate for and on behalf of private enterprise the acquisition of property, either suitable for or evidencing an obligation respecting any one or more of the activities or uses set forth in Section 91503, through the issuance of revenue bonds by authorities in accordance with the criteria set forth in subdivision (b), and that this additional method of financing when made available in accordance with that policy serves a public purpose and will promote the prosperity, health, safety, and welfare of the citizens of the State of California.

(b) The Legislature declares that the criteria to be utilized to determine whether this method of financing may be made available shall include the following:

(1) Whether employment benefits arising out of the use of the facilities may ensue by securing or increasing (A) the number of employees of the company and any other direct users of the facilities or (B) compensation for that employment, the value of which may be expressed in terms of aggregate direct employment earnings.

(2) Whether energy, mineral or natural or cultivated resource conservation benefits arising out of the use of the facilities may ensue by the reduction of waste, improvement of recovery or intensification of utilization of resources that otherwise would be less intensively utilized, or wasted, or not recovered, the value of which may be expressed in terms of the price and amount of the energy, minerals, or other resources saved or recovered, or the price and amount of equivalent energy, minerals, or other resources ~~which~~ *that* would be utilized were the resources not utilized as intensively.

(3) Whether consumer benefits arising out of the use of the facilities may ensue by any of the following:

(A) Improvement of the quantity or quality or reduction in the price of products, energy, or related services or facilities, the value of which may be expressed in terms of quantity and price differentials.

(B) Production of new or improved products, or related services or facilities, the value of which may be expressed in terms of quantity and price.

(C) The transfer of ownership of a business or place of work ~~which~~ *that* has closed or is in danger of closing, to its employees for the purpose of formation of an employee-owned corporation, as defined by subdivision (c).

(4) Whether economic benefits to the surrounding community or state may ensue.

(c) For purposes of this section, "employee-owned corporation" means a corporation ~~which~~ *that* is under employee ownership. "Employee ownership" means the majority ownership of a business in this state by a majority of its employees under either of the following methods:

(1) Establishment of an Employee Stock Ownership Plan (ESOP) pursuant to the federal Employee Retirement Income and Security Act (ERISA). All stock initially issued at the time of formation of the employee-owned corporation shall be allocated to the employees and become fully vested within five years of the date the employee-owned corporation begins operation. Voting rights of the employees are established in accordance with Section 409A(e) of the Internal Revenue Code as effective on January 1, 1983.

(2) Establishment of a worker-owned cooperative.

SEC. 5. Section 91503 of the Government Code is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Energy development, production, collection, or conversion from one form of energy to another.

(3) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(4) Commercial uses located within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 ~~or~~, commercial activities within an empowerment zone and enterprise community designated pursuant to Section 1391 of the Internal Revenue Code of 1986, in effect on January 1, 1998, *commercial uses located within a recovery zone designated pursuant to Section 1401 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or any amendments thereto, or other commercial needs*.

(5) Processing or manufacturing recycled or reused products and materials by manufacturing facilities.

(6) Business activities with the purpose of creating or producing intangible property.

(b) (1) Residential real property for family unit or other housing activities.

(2) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any ~~thereof~~ *of those activities, unless the property acquired is suitable for one or more of the activities described in paragraph (4) of subdivision (a)*.

(3) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, unless the property acquired is suitable for one or more of the activities described in paragraph (2) *or (4)* of subdivision (a) ~~and is not described in Section 142(f) of the Internal Revenue Code of 1986, as amended~~.

(4) Water furnishing activities, *unless the property acquired is suitable for one or more of the activities described in paragraph (4) of subdivision (a)*.

(5) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1986, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 6. Section 91504 of the Government Code is amended to read:

91504. Unless the context otherwise requires, the definitions in this article shall govern the construction of this title, as follows:

(a) "Acquire" and its variants means acquire, construct, improve, furnish, equip, repair, reconstruct, or rehabilitate.

(b) "Administration expenses" means the reasonable and necessary expenses incurred by an authority in the administration of this title, including, without limitation, fees and costs of paying agents, trustees, attorneys, consultants, and others.

(c) "Authority" means any industrial development authority established pursuant to this title.

(d) "Board" means the board of directors of an authority.

(e) "Bonds" means the revenue obligations, inclusive of principal (premium, if any) and interest authorized to be issued by any authority ~~under~~ *pursuant to* this title, including a single bond, a promissory note or notes, including bond anticipation notes, or other instruments evidencing an indebtedness or obligation.

(f) “Bond proceeds” means all amounts received by an authority upon sale or other disposition of any bonds.

(g) “Commission” means the California Industrial Development Financing Advisory Commission established pursuant to Article 3 (commencing with Section 91550).

(h) “Company” means a person, partnership, corporation, whether for profit or not, *limited liability company,* trust, or other private enterprise of whatever legal form, for which a project is undertaken or proposed to be undertaken pursuant to this title or which is in possession of property owned by an authority, and may include more than a single enterprise.

(i) “Cost” as applied to any project, may embrace:

(1) The cost of construction, improvement, repair, *rehabilitation,* and reconstruction.

(2) The cost of acquisition, including rights in land and other property, both real and personal and improved and unimproved, and franchises, and disposal rights.

(3) The cost of demolishing, removing, or relocating any building or structures on lands so acquired, including the cost of acquiring any lands to which ~~such~~ *the* buildings or structures may be moved or relocated.

(4) The cost of machinery, equipment and furnishings, of engineering and architectural surveys, plans, and specifications, and of transportation and storage until the facility is operational.

(5) The cost of agents or consultants, including, without limitation, legal, financial, engineering, accounting, and auditing, necessary or incident to a project and of the determination as to the feasibility or practicability of undertaking ~~such~~ *the* project.

(6) The cost of issuance of any bonds and of financing, interest prior to, during, and for a reasonable period after completion of a project, and reserves for principal and interest and for extensions, enlargements, additions, repairs, replacements, renovations, *rehabilitations,* and improvements.

(7) The cost of acquiring or refinancing existing obligations incident to the undertaking and carrying out, including the financing, of a project, and the reimbursement to any governmental entity or agency, or any company, of expenditures made by or on behalf of ~~such~~ *the* entity, agency, or company that are costs of ~~such~~

the project hereunder, without regard to whether or not ~~such~~ *the* expenditures may have been made before or after the adoption of a resolution of intention with respect to that project by an authority.

(8) The cost of making relocation assistance payments as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(9) In the case only of taxable bonds, the cost of refunding or refinancing any outstanding debt or obligations with respect to any facilities, or the cost of any other working capital.

~~Except~~

(10) Except as provided in paragraph (9), "cost" does not otherwise include working capital.

(j) "Facilities" ~~means~~ *mean* property suitable for any one or more of the activities or uses described in Section 91503 and includes incidental facilities.

(k) "Governing body" means the board of supervisors, ~~or~~ city council, or board of directors of a redevelopment agency, as the case may be.

(*l*) "Indenture" means any mortgage, deed of trust, trust indenture, security agreement, or other instrument relating to establishing a lien or security interest in, or on, property, any pledge or other instrument relating to the possession of property, and any assignment or other instrument relating to establishing any right, title, or interest in, or related to, property, including the revenues therefrom, given by an authority to a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or bondholder or agent, for the security of its bonds and the benefit of the bondholders.

(m) "Proceedings" means the actions taken by an authority in undertaking, carrying out, and completing a project, including, without limitation, the project agreements, indenture, bonds, and resolutions.

(n) "Project" means the acquisition, *construction, improvement, repair, rehabilitation, and reconstruction* of facilities *and the acquisition and rehabilitation of machinery, equipment, and furnishings, and the acquisition of engineering and architectural surveys, plans, and specifications, and all other necessary and related capital expenditures* by the issuance of bonds upon the application of and to be repaid by payments from a company for the purposes of this title.

(o) "Project agreements" means the agreements between an authority and a company respecting a project, and may include, without limitation, leases, subleases, options, and installment or other contracts of purchase or sale, loan, or guaranty agreements, notes, mortgages, deeds of trust, and security agreements.

(p) "Property" means any land, air rights, water rights, disposal rights, improvements, buildings or other structures, and any personal property, *tangible or intangible,* and includes, but is not limited to, machinery and equipment, whether or not in existence or under construction, and interests in any of the foregoing, or promissory notes or other obligations of any kind respecting such interests.

(q) "Public agency" means any county, city and county, city, or redevelopment agency.

(r) "Revenues" means all rents, purchase payments, and other income derived by an authority from, or with respect to, the sale, lease, or other voluntary or involuntary disposition of, or repayment of loans with respect to, property, bond proceeds, and any receipts derived from the deposit or investment of any such income or proceeds in any fund or account of an authority, but does not include receipts designated to cover administration expenses.

(s) "Tax-exempt" means, with respect to any bonds, that the interest on the bonds is excluded from gross income of the holders thereof for federal-income-tax purposes.

(t) "Taxable" means, with respect to any bonds, that the bonds are not tax-exempt.

SEC. 7. Section 91527 of the Government Code is amended to read:

91527. Authorities shall have all powers necessary or appropriate for carrying out the purposes of this title including, without limitation, the following powers, together with all powers incidental thereto:

(a) To acquire property by purchase, exchange, gift, lease, contract, or otherwise, except by eminent domain. The power to acquire real property shall not be exercised for other than authority use except pursuant to project agreement or indenture.

(b) To maintain property.

(c) To dispose of property by lease, sale, exchange, donation, release, relinquishment, or otherwise.

(d) With respect to property, to: (1) charge and collect rent under any lease; (2) sell at public or private sale, with or without public notice; (3) sell at a discount or below appraised value or for a nominal consideration, only; (4) sell on an installment payment or a conditional sales basis; (5) convey, or provide for the transfer of, property without further act of the authority, upon exercise of an option; (6) sell at a fixed or formula price, and receive for any such sale the note or notes of a company and mortgages, deeds of trust, or other security agreements respecting ~~such~~ *the* property.

(e) To acquire and hold property, including funds, project agreements and other obligations of any kind, and pledge, encumber or assign the same, or the revenues therefrom or any portion of such revenues, or other rights, whether then owned or possessed, or thereafter acquired, for the benefit of the bondholders, and as security or additional security for any bonds or the performance of obligations under an indenture.

(f) To provide for the advance of bond proceeds and other funds pursuant to project agreements as necessary to pay or reimburse for project costs.

(g) To exercise all rights and to perform all obligations of the authority under the project agreements and indenture, including the right, upon any event of default by or the failure to comply with any of the obligations thereof by the lessee, purchaser, or other company thereunder, to dispose of all or part of the property to the extent authorized by the project agreements or indenture.

(h) To borrow money and issue its bonds for the purpose of paying all or any part of the costs of a project, and for any other authorized purpose, as provided in this title.

(i) To contract and pay compensation for professional, financial, and other services.

(j) To refund outstanding bonds of the authority without regard to the purposes of this title when the board determines that ~~such~~ *the* refunding will be of benefit to a company or holders of ~~such~~ *the* bonds, subject to the provisions of the proceedings.

(k) To invest, deposit, and reinvest funds under the control of an authority and bond proceeds in the types of securities or obligations authorized, pending application thereof to the purposes authorized by, subject to the provisions of, the proceedings.

(*l*) To acquire insurance against any liability or loss in connection with property, in such amounts as it deems desirable.

(m) To expressly waive any immunity of the political subdivisions of this state provided by the Constitution or laws of the United States of America to taxation by the United States of interest on bonds issued by an authority, in obtaining federal benefits.

(n) To fund administration *and cost of issuance* expenses (1) by the establishment and collection of reasonable fees in amounts as may be determined by the board, but in no event shall the fees exceed 1 percent of the estimated maximum amount of bonds proposed by an application to be issued, (2) by the acceptance of funds and other aid from the public agency and from other governmental sources authorized to provide such funds or aid, (3) by the acceptance of contributions from business, trade, labor, community, and other associations, and (4) by other authorized means.

SEC. 8. Section 91530 of the Government Code is amended to read:

91530. (a) Applications for projects or companies not in accordance with the reasonable priorities and criteria ~~which~~ *that* an authority may establish need not be accepted and further processed by an authority.

(b) Acceptance of any application in no way obligates an authority to adopt a resolution of intention or undertake the project proposed.

(c) Upon acceptance of any application and request of a company, the board shall determine whether it is likely that the undertaking of the project by the authority will be a substantial factor in the accrual of one or more of the public benefits from the use of the facilities, *including equipment,* as proposed in the application, whether the activities or uses are in accord with Section 91503, and whether the project is otherwise in accord with the purposes and requirements of this title.

(d) Upon affirmative determinations under subdivision (c), the board may express the present intention of the authority to issue bonds in connection with the project and shall evidence the same by the adoption of a resolution of intention to undertake the project. The resolution of intention shall briefly describe the facilities, state the estimated principal amount of the bond issue (which estimate shall not limit the amount of bonds which may be issued), indicate whether it is expected that the bonds will be tax-exempt or taxable, and identify the company that is the applicant, and may include other provisions as the board shall prescribe.

(e) A notice of the filing of an application, naming the company that is the applicant, briefly describing the facilities, stating the estimated principal amount of the bond issue and referring to the application for further particulars, shall be published by the secretary of the authority pursuant to Section 6061, and in the event the facilities are proposed to be located in a city and the project is proposed to be undertaken by an authority the jurisdiction of which is countywide, a copy of the notice shall be mailed by the secretary of the authority to the governing body of ~~such~~ *the* city. Any amendment, supplement or clarification of an application ~~which~~ *that* changes the company that is the applicant, the description of the facilities, or the estimated principal amount of the bond issue, as previously noticed, shall be noticed in the same manner.

(f) A copy of the application shall be filed with the public agency. The authority shall not issue bonds with respect to any project unless the public agency shall approve, conditionally or unconditionally, the project, including the issuance of bonds therefor. Action to approve or disapprove a project shall be taken within 45 days of the filing with the public agency. Certification of approval or disapproval shall be made by the clerk of the public agency to the authority. If the governing body has declared itself to be the board pursuant to Section 91523, the approvals and other actions required of the authority or the public agency by this section may be taken and performed on a joint and consolidated basis, as may be deemed practicable in the discretion of the public agency.

(g) A resolution of intention may be revoked, amended, supplemented or clarified by the board, at any time prior to entry into the project agreements. The project agreements, indenture, bonds and other proceedings shall be consistent with the resolution of intention, and shall supersede it except to the extent otherwise expressed.

SEC. 9. Section 91531 of the Government Code is amended to read:

91531. (a) At any time following adoption of the resolution of intention, the board shall request that the commission make the determinations authorized by this section and shall provide for transmission to the commission of the fee required by the commission and such information as may be required by the commission.

(b) The commission shall review the submission and shall, by express findings on the basis of the submission, determine compliance with the following criteria:

(1) Public benefits, determined in accordance with the policy stated in Section 91502.1, from the use of the facilities, *including equipment,* likely will substantially exceed any public detriment from issuance of bonds in the estimated principal amount proposed in the application.

(2) Neither the completion of the project nor the operation of the facilities will have the proximate effect of relocation of any substantial operations of the company from one area of the state to another or in the abandonment of any substantial operations of the company within other areas of the state, or, if the completion or operation will have either of the effects, then the completion or operation is reasonably necessary to prevent the relocation of any substantial operations of the company from an area within the state to an area outside the state.

(3) The proposed issuance of bonds qualifies for issuance under the provisions of Article 5 (commencing with Section 91570).

(c) For those projects qualified under Section 1401 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or any amendments thereto, the commission shall review the submission and shall, by express findings on the basis of the submission, determine compliance with criteria contained in that act.

~~(c)~~

(d) Written notification of the determinations of the commission shall be given *to* the authority.

~~(d)~~

(e) Upon failure of the commission to make determinations as to compliance with the criteria within 60 days of the receipt of the submission, unless the time is extended by written consent of the authority, the commission shall lose jurisdiction to make the determinations, and the authority shall determine compliance with the criteria.

~~(e)~~

(f) A proposed issuance of refunding bonds shall be evaluated solely under the requirement of paragraph (3) of subdivision (b),

upon request of the board following the determination provided for in subdivision (j) of Section 91527.

~~(f)~~

(g) Determinations of the commission or of an authority as provided in subdivision (j) of Section 91527, Section 91530, and this section shall be final and conclusive.

~~(g)~~

(h) The authority shall not deliver bonds for the project until this section has been complied with.

~~(h)~~

(i) It is the intention of the Legislature that submissions be reviewed by the commission individually and not comparatively and that determinations be made generally in the order of receipt of the submissions. To the extent consistent with accomplishment of the public purposes as provided in Section 91502, priority consideration shall be given submissions on behalf of small and medium-size companies. To the extent that the public benefits finding under paragraph (1) of subdivision (b) of this section is based on employment benefits under paragraph (1) of subdivision (b) of Section 91502.1, the following considerations, as alternatives to each other, may in accordance with the submission, additionally be considered in making such finding:

(1) The willingness of the company to provide for the screening for employment of (i) individuals affected by industrial relocations or abandonments, (ii) new entrants or reentrants to the work force, (iii) unemployed or partially unemployed individuals who are registered for work at a public employment office or other approved place pursuant to Section 1253 of the Unemployment Insurance Code, or (iv) individuals participating in job training or placement programs directly calculated to increase employability or improve the employment of these individuals.

(2) The location of the facilities in or conveniently accessible to a portion of the work force residing within an economically distressed area of the state or an area of the state affected by industrial depression or decline.

An adverse finding shall not be made merely because each of such alternative considerations is inapplicable if the facilities are located in or are conveniently accessible to a portion of the work force residing within a pocket of economic distress or an area of the state largely rural in character.

SEC. 10. Section 91533 of the Government Code is amended to read:

91533. Authorities shall undertake projects by entry into project agreements in substance not inconsistent with the following:

(a) The company shall comply with (or cause to be complied with) all legal requirements relating to the project and the operation, repair, and maintenance of the facilities, including (1) obtaining any rezonings or variances, building, development, and other permits and approvals, and licenses and other entitlements for use, without regard to any exemption for public projects; and (2) securing the issuance of any certificates of need, convenience, and necessity or other certificates or franchises; and shall provide satisfactory evidence of compliance.

(b) The company shall comply with all conditions imposed by the public agency in its approval of the project pursuant to subdivision (f) of Section 91530.

(c) The company shall provide, or cause to be provided by others, all amounts required for the project and all property relating to the project that are not to be provided as or by expenditure of bond proceeds, and in the case of any amounts and property that the company proposes to cause to be provided by others, as by contract, grant, subsidy, loan, or other form of assistance, shall provide satisfactory evidence that those amounts and property will be provided when required.

(d) Expenditure of bond proceeds shall be supervised to assure proper application to the project.

(e) The company shall at its own expense insure, repair, and maintain the facilities, pay taxes with respect to its interests in the property relating to the project as Division 1 (commencing with Section 101) of the Revenue and Taxation Code requires, and pay assessments and other public charges secured by liens, upon those interests as constitute the tax base for property taxation on the same basis as other property, or shall cause the same to be provided by others to the satisfaction of the authority.

(f) The amounts payable ~~under~~ *pursuant to* the project agreements to or for the benefit of an authority shall in the aggregate not be less than amounts sufficient (1) to pay any bonds that shall be issued by the authority to pay the cost of the project, (2) to maintain any required reserves, (3) to make payments as may be required into any sinking fund or other similar fund, and

(4) to pay those administration expenses that relate to the administration of the project agreements, the indenture, and the bonds.

(g) The term shall extend at least until the date on which all those bonds and all other obligations incurred by an authority in connection with a project shall have been paid in full or adequate funds for that payment shall have been otherwise provided.

(h) ~~Such~~ *The* additional provisions as in the determination of the board are necessary or appropriate to effectuate the purposes of this article, including provisions for the following:

(1) For payments ~~under~~ *pursuant to* the project agreements that include amounts for administration expenses in addition to the amounts that the agreement is required to obligate the company or others to pay.

(2) For payment before a facility exists or becomes functional, or after a facility has ceased to exist or be functional to any extent and from any cause.

(3) For payment whether or not the company is in possession or is entitled to be in possession of the facilities or for payment in the event of sale or other transfer of ownership of or the encumbering of the facilities.

(4) Relating to the carrying out and completion of the project, including the allocation of responsibility between the authority and the company regarding *the payment of administrative expenses and costs of issuance,* the acquisition of property, the making of other purchases, the contracting for construction of the facilities, with or without competitive bidding, and the payment therefor and the designation of particular deposits or investments otherwise authorized for the deposit, investment, and reinvestment of revenues.

(5) That some or all of the obligations of a company shall be unconditional and shall be binding and enforceable in all circumstances whatsoever notwithstanding any other ~~provision of~~ law.

(6) Relating to the use, maintenance, repair, insurance, and replacement of property relating to the project, such as the authority and the company deem necessary for the protection of themselves or others, including, but not limited to, liability insurance, and indemnification in the event of default.

(7) Defining events of default and providing remedies therefor, which may include an acceleration of future payments thereunder.

(i) The company shall provide for the payment of relocation assistance as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, and shall reimburse the authority or the public agency, as the case may be, for relocation assistance services, and notwithstanding any other provision of this title, the authority shall determine that those services are provided and that relocation assistance payments are made.

(j) Notwithstanding any other provision of this title, projects undertaken and carried out pursuant to this title shall be consistent with the requirements of the general plan as contained in Article 5 (commencing with Section 65300) of Chapter 3 of Title 7 at the time of entry into the project agreement, or in the event inconsistent at that time, then at the time of delivery of any bonds.

(k) The company may, pursuant to project agreements, provide or cause to be provided other security, such as, but not limited to, an agreement of guaranty, either of itself or another person, or other consideration directly to the bondholders, their agent or the trustee under an indenture, and neither the company nor any such other person, shall be precluded by the project agreements from having other contractual relationships with those bondholders, agent or trustee.

(*l*) Authorities shall require, whether or not authorities, companies, or others are the contract awarding bodies, that on any construction, improvement, reconstruction, or rehabilitation financed in whole or in part by means of bonds issued pursuant to this title, the resolution of intention for which is adopted on or after January 1, 1983, all workers employed in that work, exclusive of maintenance work, shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Those rates shall be determined by the Director of the Department of Industrial Relations in accordance with the standards set forth in Section 1773 of the Labor Code. The director's determination shall be final, and Sections 1773.1, 1773.5, 1774, and 1776 (excepting subdivision ~~(f))~~ *(f) of Section 1776)* of the Labor Code shall apply.

SEC. 11. Section 91538 of the Government Code is amended to read:

91538. ~~(a)~~ Bonds may be sold at the prices ~~which~~ *that* the board directs, at public or private sale, subject to subdivision (b) of Section 91535.

~~(b) The aggregate principal amount of tax-exempt bonds of an issue pursuant to this article for any project shall not exceed ten million dollars ($10,000,000).~~

~~(c) The aggregate principal amount of taxable bonds of an issue pursuant to this article for any project shall not exceed fifty million dollars ($50,000,000).~~

SEC. 12. Section 91539 of the Government Code is amended to read:

91539. Notwithstanding any other provision of law:

(a) Authorities and their revenues, amounts for administration *or costs of issuance* expenses, and any other income shall be exempt from all taxes on, or measured by, income.

(b) Bonds issued by authorities shall be exempt from all property taxation and the interest on such bonds shall be exempt from all taxes on income.

(c) All property owned by authorities shall be exempt from property taxes, assessments, and other public charges secured by liens.

(d) All interests of companies in the property of projects shall, for purposes of property taxation, be subject to the provisions of Division 1 (commencing with Section 101) of the Revenue and Taxation Code, and such interests as constitute the tax base for property taxation shall be subject to such assessments and charges on the same basis as other property.

(e) "Sale" and "purchase," for the purposes of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, do not include any lease or transfer of title of tangible *or intangible* personal property constituting any project or facility to an authority by a company, nor any lease or transfer of title of tangible *or intangible* personal property constituting any project or facility by such authority to any company, when the transfer or lease is made pursuant to this title.

SEC. 13. Section 91541 of the Government Code is amended to read:

91541. (a) None of the bonds of an authority or any other obligations of an authority shall be deemed to constitute a debt or liability of the state or any public agency, or a pledge of the faith and credit of the state or any public agency, but shall be payable solely from the funds provided therefor in the proceedings.

(b) The issuance of bonds shall not directly or indirectly or contingently obligate the state or any public agency to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

(c) All bonds shall contain on the face thereof a statement to the following effect:

"Neither the faith and credit nor the taxing power of the State of California or the (insert name of public agency) is pledged to the payment of the principal of, premium, if any, or interest on any bond, nor is the state or such (insert "city," "county," or "city and county" as appropriate) in any manner obligated to make any appropriation for payment."

~~(d) Neither~~

(d) Neither the members of governing bodies or of boards nor any persons executing the bonds shall in any event be subject to any personal liability or accountability by reason of the issuance of ~~such~~ *those* bonds.

(e) The bonds shall be only a special obligation of an authority as provided by subdivision (a) of Section 91535, and an authority shall under no circumstances be obligated to pay bonds or project costs (other than administration expenses), except from revenues and other funds received under the project agreements for ~~such~~ *those* purposes, nor to pay administration *and costs of issuance* expenses except from funds received under project agreements for ~~such~~ *those* purposes or from funds ~~which~~ *that* are made available as otherwise authorized by the proceeding or by law. All bonds shall contain on the face thereof a statement of their special obligation nature.

SEC. 14. Section 91555 of the Government Code is amended to read:

91555. The commission may *do the following*:

(a) Assist authorities *and state agencies* in the planning, preparation, marketing, and sale of ~~industrial development revenue~~ bonds, *pursuant to this chapter,* to reduce cost, protect the issuer's credit, and determine public benefits and detriments.

(b) Collect, maintain, and provide financial, economic, governmental, and social data on local government units pertinent to their ability to administer industrial development revenue bonds.

(c) Prepare guidelines or assist in preparation of informational documents necessary for such offerings.

(d) Collect, maintain, and provide information on debt authorized, sold and outstanding, and serve as a clearinghouse for local issues of industrial development revenue bonds.

(e) Maintain contact with municipal bond underwriters, credit rating agencies, investors, and others to improve the market for local government debt issues.

(f) Undertake or commission studies on methods to reduce the costs of state and local issues.

(g) Recommend changes in state law and local practices to improve the sale and servicing of such local bonds.

SEC. 15. Section 91559 of the Government Code is amended to read:

91559. (a) The commission is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities, collectively called "bonds," in order to provide funds for financing projects or achieving any of its other purposes, except that the commission is not authorized to issue industrial development bonds. Without limiting the generality of the foregoing, the bonds may be authorized to finance a single project for a single company, a series of projects for a single company, or several projects for several participating parties. In anticipation of the sale of these bonds, the commission may issue negotiable bond anticipation notes and may renew the notes from time to time. The notes shall be paid from any revenues of the commission or other moneys available therefor and not otherwise pledged, or from the proceeds of the sale of the bonds of the commission in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. The notes and agreements relating to notes and bond anticipation notes, collectively called "notes," and the resolution or resolutions authorizing the notes may contain any provisions, conditions, or limitations which a bond, agreement relating to the bond, and bond resolution of the commission may contain.

(b) Except as may otherwise be expressly provided by the commission, every issue of its bonds or notes shall be general obligations of the commission payable from any revenues or moneys of the commission available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys and subject to any agreements with any company. Notwithstanding that the bonds, notes, or obligations may be payable from a special fund, they shall be, and shall be deemed to be, for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the commission, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the commission and shall bear the date or dates, mature at the time or times, not exceeding 40 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States at the place or places, and be subject to the terms of redemption, as the resolution or resolutions may provide. The bonds or notes may be sold by the Treasurer at public or private sale, for the price or prices and on the terms and conditions as the commission shall determine, after giving due consideration to the recommendations of any company to be assisted from the proceeds of the bonds or notes. Pending preparation of definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The Treasurer may sell any bonds, notes, or other evidence of indebtedness at a price below the par value thereof.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to the following:

(1) Pledging the full faith and credit of the commission or pledging all or any part of the revenues of any project or any revenue-producing contract or contracts made by the commission with any individual, partnership, corporation, or association or other body, public or private, or other moneys of the commission, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof.

(4) Limitations on the right of the commission or its agent to restrict or regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(5) Limitations on the purpose to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied, and pledging those proceeds to secure the payment of the bonds or any issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bond that the holders of which are required to consent thereto, and the manner in which the consent may be given.

(8) Limitations on expenditures for operating, administrative, *cost of issuance,* or other expenses of the commission.

(9) Defining the acts or omissions to act ~~which~~ *that* constitute a default in the duties of the commission to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of any project and the site of the project for the purpose of securing the bondholders.

(11) The mortgaging of land, improvements, or other assets owned by a company for the purpose of securing the bondholders.

(12) Procedures for the selection of projects to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are sold in advance of designation of the projects, and participating parties to receive the financing.

(e) Neither the members of the commission, nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The commission shall have the power out of any funds available for these purposes to purchase its bonds or notes. The commission may hold, pledge, cancel, or resell those bonds, subject to and in accordance with agreements with the bondholders.

(g) Any funds of the commission, including without limitation, proceeds from the sale of bonds or notes, may be invested in any obligations of any state or local government meeting the requirements of subsection (a) of Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103(a)) including mutual funds, trusts, and similar instruments representing a pool of obligations. The Treasurer may adopt regulations providing appropriate investment standards for those investments. If the Treasurer determines it to be necessary to assure compliance with federal tax laws or regulations, the commission may, notwithstanding any other ~~provision of~~ law, deposit funds received as fees from the issuance of its obligations with a bank or trust company acting on behalf of the commission.

SEC. 16. Section 91571 of the Government Code is amended to read:

91571. (a) All issues of bonds may be qualified for issuance under this section.

(b) The commission may refuse to qualify an issue unless it finds that the proposed issuance is fair, just, and equitable to a purchaser of the bonds, and that the bonds proposed to be issued and the methods to be used by an authority in issuing them are not such as, in its opinion, will work a fraud upon the purchaser thereof.

(c) The commission may impose when qualifying an issue under this section conditions imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, or any other condition, if the commission finds that without the condition the issuance will be unfair, unjust, or inequitable to a purchaser of the bonds. The commission may in its discretion modify or remove any of the conditions when, in its opinion, they are no longer necessary or appropriate.

(d) The commission may refuse to qualify an issue of bonds under this section ~~which~~ *that* is proposed to be issued in exchange for one or more outstanding bonds, or bonds and claims, or partly in the exchange and partly for cash or property, unless it approves the terms and conditions of the issuance and exchange and the fairness of the terms and conditions, and may hold a hearing upon the fairness of the terms and conditions, at which all persons to whom it is proposed to issue bonds or to deliver any other consideration in the exchange have the right to appear.

(e) The commission may refuse to qualify an issue unless it finds that the bonds issued in connection with the project by the authority will be adequately secured and the revenues and other funds applicable to the payment of the bonds are, or upon the acquisition of the facilities ~~which~~ *that* the bonds finance, will be sufficient to pay the principal of and the interest on the bonds.

(f) The commission may refuse to qualify an issue of bonds proposed pursuant to Section 1401 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or any amendments thereto, unless it finds that the issuer has approved the issuance of bonds for the project pursuant to a resolution in compliance with the American Recovery and Reinvestment Act of 2009 and that the project meets the criteria established by the American Recovery and Reinvestment Act of 2009.

(g) (1) The commission may establish one or more reserve funds to provide financial assistance to businesses on behalf of issuers of qualifying bond issues. The reserve may be established and replenished with grants, allocations, reimbursements, appropriations, awards, or other funds from federal, state, or nonprofit agencies, programs, or sources. The commission shall adopt criteria and procedures for funding cost of issuance for qualifying bond issues through a secure fund under this subdivision. The commission shall not levy taxes or impose fees, except the fees as authorized by this act.

(2) The commission may establish one or more reserve funds to provide financial assistance, the form of which may be, but is not limited to, any of the following:

(A) Payments of part or all of the cost of acquiring letters of credit for qualified bonds.

(B) Payments of part or all of the cost of acquiring insurance for qualified bonds.

(C) Payments of part or all of the cost of acquiring guarantees for qualified bonds.

(D) Payments of part or all of the cost of acquiring other forms of credit support for qualifying bonds.

(E) Payments of part or all of the cost of issuance for qualified bonds.

(3) Each reserve fund established pursuant to this subdivision shall be deposited in a special account established by the Controller. Notwithstanding any other law, and subject to any requirements of federal tax law or regulations relative to maintaining the tax-exempt status of the obligations of any qualified bonds, all interest or other gains earned by investment or deposit of money in the special account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 or pursuant to any other provision of law shall be credited to, and deposited in, the account.

(4) Any funds of the commission, including proceeds from the sale of bonds or notes issued on or after January 1, 2010, money set aside for the commission's administrative expenses, and reserve funds created under this subdivision, may be invested in any obligations of any state or local government including mutual funds, trusts, and similar instruments representing a pool of obligations. The Treasurer may adopt regulations providing appropriate investment standards for these investments. If the Treasurer determines it is necessary to ensure compliance with federal tax laws or regulations, the commission may, notwithstanding any other law, deposit funds received as fees from the issuance of obligations or received as reserve funds pursuant to this subdivision, with a bank or trust company acting on behalf of the authority.

SEC. 17. Section 91573 of the Government Code is amended to read:

91573. (a) *(1)* The aggregate amount of bonds qualified pursuant to this title in each calendar year shall not exceed three hundred fifty million dollars ($350,000,000) of the tax-exempt bonds and three hundred fifty million dollars ($350,000,000) of taxable bonds, per calendar year, commencing January 1, 1987. Until October 1 of each year, a minimum of 10 percent of the aggregate amount of taxable bond authority and a minimum of 10 percent of the aggregate amount of tax-exempt bond authority shall be reserved for projects located in enterprise zones pursuant to subdivision (d) of Section 7073 and program areas pursuant to subdivision (i) of Section 7082. Any unused portion of the above reserved amounts as of October 1 of each year shall be made available for projects without regard to enterprise zones and program areas.

(2) The limitation on the aggregate amount of bonds authorized pursuant to this title in paragraph (1) does not apply to bonds for projects supported by funds received from the federal government pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(b) Each authority shall file with the commission reports at those times ~~which~~ *that* are required by the commission, setting forth with respect to each project the bonds of an issue qualified by the commission or the authority, the bonds ~~which~~ *that* have been issued and the dates of delivery and receipt of the purchase prices thereof, and the passage of the period or periods for lapse of qualification.

(c) Bonds may be delivered in return for the purchase price within a six-month period of the making of the determinations required to be made pursuant to Section 91531 or the making of the last determinations to be made pursuant to Section 91532, unless extended for a definite period by further commission action or further authority action in the event the determinations were made by an authority pursuant to subdivision (d) of Section 91531. The unissued amount of a qualification lapses upon the expiration of such period or periods.

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

For the state to be authorized to use specified federal funds for additional economic development programs as soon as possible, it is necessary that this bill go into immediate effect.

All matter omitted in this version of the bill appears in the bill as amended in the Senate, August 17, 2009. (JR11)

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