

AMENDED IN ASSEMBLY MARCH 22, 2010

SENATE BILL

No. 71

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senators
Padilla, Alquist, and Strickland**

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Buchanan, and Huber)*

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January 20, 2009

~~An act relating to the Budget Act of 2009. An act to amend Section 26003 of, and to add and repeal Section 26011.8 of, the Public Resources Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 71, as amended, ~~Committee on Budget and Fiscal Review~~ Padilla.
~~Budget Act of 2009. Economic development: sales and use tax
exclusions: environmental technology project.~~

*The California Alternative Energy and Advanced Transportation
Financing Authority Act established the California Alternative Energy
and Advanced Transportation Financing Authority. The authority is
authorized to do all things necessary and convenient to carry out the
purposes of the act. The authority is also required to establish a*

renewable energy program to provide financial assistance, as defined, to certain entities for projects to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies. Existing law provides that the transfer of title of tangible personal property constituting a project under the act to the authority by a participating party, or the lease or transfer of tangible personal property constituting a project under the act by the authority to a participating party pursuant to the act is not a “sale” or “purchase” for the purposes of the Sales and Use Tax Law.

This bill would, for purposes of the act until January 1, 2021, expand the definition of “alternative sources” and “projects,” as specified. The bill would, until January 1, 2021, authorize the authority to evaluate project applications, and to approve projects, as defined, for financial assistance under the existing exclusion from a “sale” or “purchase” subject to sales or use tax, as provided. This bill would require the Legislative Analyst’s Office to submit a report to the Joint Legislative Budget Committee, as provided.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and districts, as specified, may impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

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

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.

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

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

1 *SECTION 1. Section 26003 of the Public Resources Code is*
2 *amended to read:*

3 26003. As used in this division, unless the context otherwise
4 requires:

5 (a) “Authority” means the California Alternative Energy and
6 Advanced Transportation Financing Authority established pursuant
7 to Section 26004, and any board, commission, department, or
8 officer succeeding to the functions of the authority, or to which
9 the powers conferred upon the authority by this division shall be
10 given.

11 (b) “Cost” as applied to a project or portion of the project
12 financed under this division means all or part of the cost of
13 construction and acquisition of all lands, structures, real or personal
14 property or an interest in the real or personal property, rights,
15 rights-of-way, franchises, easements, and interests acquired or
16 used for a project; the cost of demolishing or removing any
17 buildings or structures on land so acquired, including the cost of
18 acquiring any lands to which those buildings or structures may be
19 moved; the cost of all machinery, equipment, and furnishings,
20 financing charges, interest prior to, during, and for a period after,
21 completion of construction as determined by the authority; the cost
22 of the purchase or sale of energy derived from an alternative source
23 pursuant to subdivision (g) of Section 26011; provisions for
24 working capital; reserves for principal and interest and for
25 extensions, enlargements, additions, replacements, renovations,
26 and improvements; the cost of architectural, engineering, financial,
27 accounting, auditing and legal services, plans, specifications,
28 estimates, administrative expenses, and other expenses necessary
29 or incident to determining the feasibility of constructing any project
30 or incident to the construction, acquisition, or financing of a
31 project.

32 (c) (1) “Alternative sources” means the application of
33 cogeneration technology, as defined in Section 25134; the
34 conservation of energy; or the use of solar, biomass, wind,
35 geothermal, hydroelectricity under 30 megawatts, or any other
36 source of energy, the efficient use of which will reduce the use of
37 fossil and nuclear fuels.

(2) “Alternative sources” does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) “Advanced transportation technologies” means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

(1) Intelligent vehicle highway systems.

(2) Advanced telecommunications for transportation.

(3) Command, control, and communications for public transit vehicles and systems.

(4) Electric vehicles and ultralow-emission vehicles.

(5) High-speed rail and magnetic levitation passenger systems.

(6) Fuel cells.

(e) “Financial assistance” includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.

(2) Any other type of assistance the authority determines is appropriate.

(f) “Participating party” means either of the following:

(1) A person or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(2) A public agency or nonprofit corporation that does either of the following:

1 (A) Applies for financial assistance from the authority for the
2 purpose of implementing a project in a manner prescribed by the
3 authority.

4 (B) Participates in the purchase or sale of energy derived from
5 an alternative source pursuant to subdivision (g) of Section 26011.

6 (g) (1) “Project” means a land, building, improvement to the
7 land or building, rehabilitation, work, property, or structure, real
8 or personal, stationary or mobile, including, but not limited to,
9 machinery and equipment, whether or not in existence or under
10 construction, that utilizes, or is designed to utilize, an alternative
11 source, or that is utilized for the design, technology transfer,
12 manufacture, production, assembly, distribution, or service of
13 advanced transportation technologies, or an arrangement for the
14 purchase, including prepayment, or sale of energy derived from
15 an alternative source pursuant to subdivision (g) of Section 26011.

16 (2) “*Project*,” for the purposes of Section 26011.8, means any
17 tangible personal property that is utilized for the design,
18 manufacture, production, or assembly of advanced transportation
19 technologies or alternative source products, components, or
20 systems.

21 (h) “Public agency” means a federal or state agency, department,
22 board, authority, state or community college, university, or
23 commission, or a county, city and county, city, regional agency,
24 public district, school district, or other political entity.

25 (i) (1) “Renewable energy” means a device or technology that
26 conserves or produces heat, processes heat, space heating, water
27 heating, steam, space cooling, refrigeration, mechanical energy,
28 electricity, or energy in any form convertible to these uses, that
29 does not expend or use conventional energy fuels, and that uses
30 any of the following electrical generation technologies:

31 (A) Biomass.

32 (B) Solar thermal.

33 (C) Photovoltaic.

34 (D) Wind.

35 (E) Geothermal.

36 (2) For purposes of this subdivision, “conventional energy fuel”
37 means any fuel derived from petroleum deposits, including, but
38 not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,
39 including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, “renewable energy” also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.

(j) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 2. Section 26011.8 is added to the Public Resources Code, to read:

26011.8. (a) The purpose of this section is to promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. In furtherance of this purpose, the authority may approve a project for financial assistance in the form of the sales and use tax exclusion established in Section 6010.8 of the Revenue and Taxation Code.

(b) (1) For purposes of this section, “project” means a project as defined in paragraph (2) of subdivision (g) of Section 26003.

(2) For purposes of this section, “alternative sources” also includes advanced electric distributive generation technology as defined in Section 379.8 of the Public Utilities Code or energy storage technologies and their component materials.

(c) The authority shall publish notice of the availability of project applications and deadlines for submission of project applications to the authority.

(d) The authority shall evaluate project applications based upon all of the following criteria:

(1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.

(2) The extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.

(3) The extent to which the project will create new, permanent jobs in California.

1 (4) *To the extent feasible, the extent to which the project, or the*
2 *product produced by the project, results in a reduction of*
3 *greenhouse gases, a reduction in air or water pollution, an increase*
4 *in energy efficiency, or a reduction in energy consumption, beyond*
5 *what is required by any federal or state law or regulation.*

6 (5) *The extent of unemployment in the area in which the project*
7 *is proposed to be located.*

8 (6) *Any other factors the authority deems appropriate in*
9 *accordance with this section.*

10 (e) *At a duly noticed public hearing, the authority shall approve,*
11 *by resolution, project applications for financial assistance.*

12 (f) *Notwithstanding subdivision (j), and without regard to the*
13 *actual date of any transaction between a participating party and*
14 *the authority, any project as defined in subdivision (g) of Section*
15 *26003 approved by the authority by resolution for the sales and*
16 *use tax exclusion pursuant to Section 6010.8 of the Revenue and*
17 *Taxation Code prior to the effective date of this section, shall not*
18 *be subject to this section.*

19 (g) *The Legislative Analyst's Office shall report to the Joint*
20 *Legislative Budget Committee on the effectiveness of this program,*
21 *on or before January 1, 2019, by evaluating factors, including,*
22 *but not limited to, the following:*

23 (1) *The number of jobs created by the program in California.*

24 (2) *The number of businesses that have remained in California*
25 *or relocated to California as a result of this program.*

26 (3) *The amount of state and local revenue and economic activity*
27 *generated by the program.*

28 (4) *The amount of reduction in greenhouse gases, air pollution,*
29 *water pollution, or energy consumption.*

30 (h) *Once the exclusions granted pursuant to Section 6010.8 of*
31 *the Revenue and Taxation Code for projects approved by the*
32 *authority pursuant to this section exceed one hundred million*
33 *dollars (\$100,000,000) annually, the authority shall provide a*
34 *20-day notice to the Legislature prior to making additional*
35 *approvals pursuant to this section.*

36 (i) *The authority shall make every effort to expedite the*
37 *operation of this section, and shall adopt regulations for purposes*
38 *of implementing the section as emergency regulations in*
39 *accordance with Chapter 3.5 (commencing with Section 11340)*
40 *of Part 1 of Division 3 of Title 2 of the Government Code. For*

1 *purposes of that Chapter 3.5, including Section 11349.6 of the*
2 *Government Code, the adoption of the regulations shall be*
3 *considered by the Office of Administrative Law to be necessary*
4 *for the immediate preservation of the public peace, health and*
5 *safety, and general welfare.*

6 *(j) This section shall remain in effect only until January 1, 2021,*
7 *and as of that date is repealed. The sale or purchase of tangible*
8 *personal property of a project approved prior to January 1, 2021,*
9 *shall continue to be excluded from sales and use taxes pursuant*
10 *to Section 6010.8 of the Revenue and Taxation Code for the period*
11 *of time set forth in the authority's resolution approving the project*
12 *pursuant to this section.*

13 *SEC. 3. Notwithstanding Section 2230 of the Revenue and*
14 *Taxation Code, no appropriation is made by this act and the state*
15 *shall not reimburse any local agency for any sales and use tax*
16 *revenues lost by it under this act.*

17 *SEC. 4. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety within*
19 *the meaning of Article IV of the Constitution and shall go into*
20 *immediate effect. The facts constituting the necessity are:*

21 *In order to create jobs to stimulate the economy, it is necessary*
22 *that this act go into immediate effect.*

23 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
24 ~~changes relating to the Budget Act of 2009.~~

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27 **CORRECTIONS:**

28 **Heading—Coauthors—Line 11.**
29