

Introduced by Senator PadillaFebruary 18, 2011

An act to add Division 4 (commencing with Section 64140) to Title 6.7 of the Government Code, and to add Sections 17053.25 and 23629 to the Revenue and Taxation Code, relating to bonds.

LEGISLATIVE COUNSEL'S DIGEST

SB 867, as introduced, Padilla. Build California Bonds.

Existing law creates the California Transportation Financing Authority with specified powers and duties relative to the issuance of bonds to fund transportation projects to be backed, in whole or in part, by various revenue streams of transportation funds and toll revenues in order to increase the construction of new capacity or improvements for the state transportation system.

This bill would, in addition, provide for the authority to issue Build California Bonds, the proceeds of which would be used for specified transportation capital improvements. Bondholders would be entitled to nonrefundable tax credits against their personal income tax or corporate tax liability. The bonds would not be a debt or liability of the state or a political subdivision of the state, except for the authority. The bill would provide for the authority to enter into financing agreements with participating local transportation authorities for the purpose of financing or refinancing transportation projects. Each series of bonds issued by the authority would be secured by a financing agreement between the authority and the local transportation authority. The bill would limit the principal amount of bonds to be issued by the authority under these provisions to \$5 billion over a 5-year period commencing January 1, 2012. The bill would enact other related provisions.

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

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

1 SECTION 1. Division 4 (commencing with Section 64140) is
2 added to Title 6.7 of the Government Code, to read:

3

4

DIVISION 4. BUILD CALIFORNIA BONDS

5

6 64140. The Legislature finds and declares all of the following:

7 (a) The Build California Bond Program (the program) will
8 enhance California's transportation infrastructure and improve
9 mobility, reduce congestion, enhance air quality, create jobs, and
10 boost California's economic competitiveness.

11 (b) It is in the public interest to authorize and implement the
12 program as soon as possible, in order to ensure the funding of high
13 priority public transportation projects pursuant to the program
14 described in Section 64142.

15 (c) California's economy is highly dependent upon the efficient
16 movement of goods and people throughout its major metropolitan
17 areas. By creating the program, the state recognizes that investing
18 in transportation infrastructure can stimulate economic growth,
19 support additional jobs, and generate fiscal benefits for the state.

20 64141. For purposes of this division, the following terms have
21 the following meanings, unless the context clearly requires another
22 meaning:

23 (a) "Authority" means the California Transportation Financing
24 Authority established in Division 3 (commencing with Section
25 64100).

26 (b) "Build California Bonds" means bonds, as defined in
27 subdivision (e) of Section 63010, that entitle the beneficial owners
28 thereof to California state tax credits as provided in this division.

29 (c) "Transportation project" means and includes all or a portion
30 of the planning, design, development, finance, construction,
31 reconstruction, rehabilitation, improvement, or acquisition of a
32 highway, street, rail line, bus line, or related facilities supplemental
33 to or improvements upon existing facilities currently owned and
34 operated by a transportation agency, provided the project shall be

1 a capital project and have a useful life at least as long as the term
2 of the bonds financing it.

3 (d) “Record date” means the close of business on the last day
4 of each calendar year. The first record date with respect to any
5 Build California Bond will be the close of business on the last day
6 of the calendar year in which the Build California Bond is issued,
7 and the last record date with respect to any Build California Bond
8 will be the close of business on the last day of the calendar year
9 in which the Build California Bond is redeemed or retired.

10 64142. (a) The authority may enter into financing agreements
11 with participating local transportation authorities for the purpose
12 of financing or refinancing transportation projects. Each series of
13 bonds issued by the authority shall be secured by a financing
14 agreement between the authority and a local transportation
15 authority.

16 (b) The authority may issue Build California Bonds for the
17 purpose of financing or refinancing all or any portion of the cost,
18 as defined in subdivision (f) of Section 63010, of a transportation
19 project. Bond proceeds may also be used to fund necessary
20 reserves, credit enhancement costs, and costs of issuance, provided
21 that at least 95 percent of the proceeds of Build California Bonds
22 must be expended for financing or refinancing capital expenditures
23 for transportation projects. Refinancing shall be limited to
24 providing permanent financing for interim construction financing
25 only, and not refinancing outstanding long-term bonds previously
26 issued to finance transportation projects.

27 (c) The total principal amount of Build California Bonds
28 authorized to be issued pursuant to this division in each of the five
29 fiscal years beginning with the 2011–12 fiscal year is one billion
30 dollars (\$1,000,000,000), for a total of five billion dollars
31 (\$5,000,000,000), and any portion of the authorization not used
32 in any fiscal year may be used in a future fiscal year, provided that
33 the authority must determine prior to the issuance of any Build
34 California Bonds that the aggregate amount of California state tax
35 credits granted to all taxpayers pursuant to this division for all
36 Build California Bonds previously issued pursuant to this division
37 and the Build California Bonds then being issued does not exceed
38 two hundred fifty million dollars (\$250,000,000) for any fiscal
39 year.

1 (d) Build California Bonds may not have a final maturity in
2 excess of 30 years from the date of issuance. Following the
3 construction period, the principal of each series of Build California
4 Bonds is required to be structured on an approximately level debt
5 service basis, taking into account the annual tax credits and any
6 supplemental interest payable by the authority.

7 (e) The authority must obtain an investment grade credit rating
8 from a nationally recognized rating service for each series of Build
9 California Bonds issued pursuant to this division prior to the sale
10 of those bonds.

11 64143. The amount of the state tax credit associated with any
12 issuance of Build California Bonds shall not exceed the greater of
13 (1) 5 percent of the face amount of bonds outstanding, or (2) the
14 yield required to market the bonds to investors at a price of par.

15 64144. (a) The beneficial owners of Build California Bonds
16 on record dates shall be entitled to annual California state tax
17 credits in amounts determined by the authority on or prior to the
18 date of issuance of the Build California Bonds, claimable
19 semiannually on any interest payment date on the bonds. The
20 amount of the tax credit in any calendar year with respect to any
21 Build California Bond shall be an amount that is equal to the
22 principal amount of the bond times the percentage rate set forth
23 in Section 64143. In the event that the bond is not outstanding for
24 the entire year preceding the record date, the amount of the credit
25 allocated to the beneficial owner of the bond will be prorated based
26 upon the number of days the bond was outstanding.

27 (b) Any holder of a Build California Bond may claim a tax
28 credit, which at all times shall be a nonrefundable tax credit, at the
29 time the holder files its personal income or corporate tax return
30 with the state. The state is at no time obligated to make any cash
31 payment under this division with respect to a tax credit.

32 64145. (a) For each calendar year beginning on or after January
33 1, 2012, the beneficial owner of a Build California Bond shall be
34 allowed as a credit against the amount of the beneficial owner's
35 "net tax," as defined in Section 17039 of the Revenue and Taxation
36 Code, and the beneficial owner's "tax," as defined in Section 23036
37 of the Revenue and Taxation Code, for that calendar year, an
38 amount equal to the annual tax credit for that calendar year
39 established by the authority pursuant to subdivision (d) with respect
40 to the Build California Bond.

1 (b) In the case where the credit allowed by this section exceeds
2 the “net tax,” as defined in Section 17039 of the Revenue and
3 Taxation Code, or the “tax,” as defined in Section 23036 of the
4 Revenue and Taxation Code, the excess may be carried over by
5 the beneficial owner to reduce the beneficial owner’s “net tax” or
6 the “tax,” respectively, for the next 10 taxable years, or until the
7 credit has been exhausted, whichever occurs first.

8 (c) There may be a separation, including at issuance, of the
9 ownership of a Build California Bond and any entitlement to the
10 credit under this section with respect to that bond. In case of that
11 separation, the credit under this section shall be allowed to the
12 person that on the credit allowance date holds the instrument
13 evidencing the entitlement and not to the holder of the bond.

14 (d) The authority or the indenture trustee for the Build California
15 Bonds shall do all of the following:

16 (1) Certify the amount of each annual tax credit as specified in
17 subdivision (a).

18 (2) Issue documentation evidencing the tax credit to the
19 registered owners of the Build California Bonds on each record
20 date and request from those registered owners the names of the
21 beneficial owners of the Build California Bonds on the record date,
22 the taxpayer identification number of each beneficial owner, and
23 the amount of tax credit to which each beneficial owner is entitled,
24 and provide an annual listing to the Franchise Tax Board,
25 preferably in electronic form, and in a manner agreed upon by the
26 Franchise Tax Board, of the responses of the registered owners.

27 (3) Request each registered owner of each Build California
28 Bond to provide the beneficial owner or owners of that Build
29 California Bond with a copy of the information reported to the
30 Franchise Tax Board for that beneficial owner or owners.

31 (e) To be eligible for the credit under this section the taxpayer
32 shall do all of the following:

33 (1) Retain for the taxpayer’s records a copy of the information
34 provided to the taxpayer pursuant to paragraph (3) of subdivision
35 (d).

36 (2) Provide a copy of the information provided to the taxpayer
37 pursuant to paragraph (3) of subdivision (d) to the Franchise Tax
38 Board upon request. If the taxpayer fails to comply with the
39 requirements of this subdivision, no credit shall be allowed to that

1 taxpayer under this section for any taxable year unless the taxpayer
2 subsequently complies.

3 (3) Provide the registered owner of the Build California Bond
4 with the taxpayer’s taxpayer identification number.

5 64146. Build California Bonds issued under this division are
6 not a debt or liability of the state or of any political subdivision
7 thereof, except as to the authority pursuant to a financing
8 agreement, as described in Section 64142.

9 64147. Notwithstanding any other law, the scheduled dates for
10 the payment of principal of Build California Bonds issued pursuant
11 to this division shall not be subject to acceleration for any reason.

12 SEC. 2. Section 17053.25 is added to the Revenue and Taxation
13 Code, to read:

14 17053.25. There shall be allowed as a credit against the amount
15 of “net tax” (as defined in Section 17039) the credit provided for
16 in Sections 64144 and 64145 of the Government Code. The credit
17 shall be nonrefundable but any unused portion in any year may be
18 carried over to future years as provided in subdivision (b) of
19 Section 64145 of the Government Code.

20 SEC. 3. Section 23629 is added to the Revenue and Taxation
21 Code, to read:

22 23629. There shall be allowed as a credit against the “tax” (as
23 defined in Section 23036) the credit provided for in Sections 64144
24 and 64145 of the Government Code. The credit shall be
25 nonrefundable but any unused portion in any year may be carried
26 over to future years as provided in subdivision (b) of Section 64145
27 of the Government Code.