

AMENDED IN ASSEMBLY MARCH 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2046

Introduced by Assembly Member Gomez

February 20, 2014

An act to amend Section 6588 of the Government Code, relating to joint exercise of powers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2046, as amended, Gomez. Joint exercise of powers: financing.

The Joint Exercise of Powers Act authorizes the legislative or other governing bodies of 2 or more public agencies to jointly exercise by agreement any power common to the contracting parties, as specified, and authorizes a joint powers authority to exercise various powers, including, among others, the power to issue bonds, including bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program, as specified.

This bill would authorize a joint powers authority to ~~execute and deliver, issue~~ or cause to be ~~executed and delivered, certificates of participation in a lease or installment sale~~ *issued bonds and enter into a loan* agreement for the financing or refinancing of a project that is situated in another state, including working capital related to that project, if the project and its financing meets certain conditions.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 6588 of the Government Code is amended
2 to read:

3 6588. In addition to other powers specified in an agreement
4 pursuant to Article 1 (commencing with Section 6500) and Article
5 2 (commencing with Section 6540), the authority may do any or
6 all of the following:

7 (a) Adopt bylaws for the regulation of its affairs and the conduct
8 of its business.

9 (b) Sue and be sued in its own name.

10 (c) (1) Issue bonds, including, at the option of the authority,
11 bonds bearing interest, to pay the cost of any public capital
12 improvement, working capital, or liability or other insurance
13 program.

14 (2) (A) In addition to paragraph (1), for any purpose for which
15 an authority may execute and deliver or cause to be executed and
16 delivered certificates of participation in a lease or installment sale
17 agreement with any public or private entity, the authority, at its
18 option, may issue or cause to be issued bonds, rather than
19 certificates of participation, and enter into a loan agreement with
20 the public or private entity.

21 (B) Notwithstanding Sections 6586 and 6586.5 or any other
22 law, ~~and in addition to any other purpose for which the~~ *an* authority
23 ~~may issue bonds, an authority may execute and deliver, or cause~~
24 ~~to be executed and delivered, certificates of participation in a lease~~
25 ~~or installment sale agreement pursuant to this paragraph~~ *issue or*
26 *cause to be issued bonds and enter into a loan agreement, pursuant*
27 *to subparagraph (A), for the financing or refinancing of a project*
28 *that is situated in another state, including working capital related*
29 *to that project, if all of the following apply:*

30 (i) The project is owned, developed, or operated by a private
31 entity.

32 (ii) ~~The execution and delivery of the certificates of participation~~
33 *issuance of bonds* by the authority and the financing of the project
34 is approved by resolution, order, or other official action of the city,
35 county, or other public body with land use planning authority over
36 the project, or of the state in which the project is situated. This
37 ~~subparagraph~~ *clause* does not apply to the issuance of refunding

1 bonds if a prior financing or refinancing of the project was
2 approved by the city, county, public body, or state.

3 (iii) The authority finds, based on the facts and circumstances
4 attendant to the project or the financing or refinancing of the
5 project, that the ~~execution and delivery of the certificates of~~
6 ~~participation~~ *issuance of the bonds* or the financing or refinancing
7 of the project will result in a substantial public benefit to, and are
8 for a public purpose of, the citizens of this state.

9 (d) Engage the services of private consultants to render
10 professional and technical assistance and advice in carrying out
11 the purposes of this article.

12 (e) As provided by applicable law, employ and compensate
13 bond counsel, financial consultants, and other advisers determined
14 necessary by the authority in connection with the issuance and sale
15 of any bonds.

16 (f) Contract for engineering, architectural, accounting, or other
17 services determined necessary by the authority for the successful
18 development of a public capital improvement.

19 (g) Pay the reasonable costs of consulting engineers, architects,
20 accountants, and construction, land-use, recreation, and
21 environmental experts employed by any sponsor or participant if
22 the authority determines those services are necessary for the
23 successful development of public capital improvements.

24 (h) Take title to, sell by installment sale or otherwise, or lease
25 lands, structures, real or personal property, rights, rights-of-way,
26 franchises, easements, and other interests in lands that are located
27 within the state that the authority determines are necessary or
28 convenient for the financing of public capital improvements, or
29 any portion thereof.

30 (i) Receive and accept from any source, loans, contributions,
31 or grants, in either money, property, labor, or other things of value,
32 for, or in aid of, the construction financing, or refinancing of public
33 capital improvement, or any portion thereof or for the financing
34 of working capital or insurance programs, or for the payment of
35 the principal of and interest on bonds if the proceeds of those bonds
36 are used for one or more of the purposes specified in this section.

37 (j) Make secured or unsecured loans to any local agency in
38 connection with the financing of capital improvement projects,
39 working capital or insurance programs in accordance with an
40 agreement between the authority and the local agency. However,

1 no loan shall exceed the total cost of the public capital
2 improvements, working capital or insurance needs of the local
3 agency as determined by the local agency and by the authority.

4 (k) Make secured or unsecured loans to any local agency in
5 accordance with an agreement between the authority and the local
6 agency to refinance indebtedness incurred by the local agency in
7 connection with public capital improvements undertaken and
8 completed.

9 (l) Mortgage all or any portion of its interest in public capital
10 improvements and the property on which any project is located,
11 whether owned or thereafter acquired, including the granting of a
12 security interest in any property, tangible or intangible.

13 (m) Assign or pledge all or any portion of its interests in
14 mortgages, deeds of trust, indentures of mortgage or trust, or
15 similar instruments, notes, and security interests in property,
16 tangible or intangible, of a local agency to which the authority has
17 made loans, and the revenues therefrom, including payment or
18 income from any interest owned or held by the authority, for the
19 benefit of the holders of bonds issued to finance public capital
20 improvements. The pledge of moneys, revenues, accounts, contract
21 rights, or rights to payment of any kind made by or to the authority
22 pursuant to the authority granted in this part shall be valid and
23 binding from the time the pledge is made for the benefit of the
24 pledgees and successors thereto, against all parties irrespective of
25 whether the parties have notice of the claim.

26 (n) Lease the public capital improvements being financed to a
27 local agency, upon terms and conditions that the authority deems
28 proper; charge and collect rents therefor; terminate any lease upon
29 the failure of the lessee to comply with any of the obligations of
30 the lease; include in any lease provisions that the lessee shall have
31 options to renew the lease for a period or periods, and at rents as
32 determined by the authority; purchase or sell by an installment
33 agreement or otherwise any or all of the public capital
34 improvements; or, upon payment of all the indebtedness incurred
35 by the authority for the financing or refinancing of the public
36 capital improvements, the authority may convey any or all of the
37 project to the lessee or lessees.

38 (o) Charge and apportion to local agencies that benefit from its
39 services the administrative costs and expenses incurred in the
40 exercise of the powers authorized by this article. These fees shall

1 be set at a rate sufficient to recover, but not exceed, the authority's
2 costs of issuance and administration. The fee charged to each local
3 obligation acquired by the pool shall not exceed that obligation's
4 proportionate share of those costs. The level of these fees shall be
5 disclosed to the California Debt and Investment Advisory
6 Commission pursuant to Section 6599.1.

7 (p) Issue, obtain, or aid in obtaining, from any department or
8 agency of the United States or of the state, or any private company,
9 any insurance or guarantee to, or for, the payment or repayment
10 of interest or principal, or both, or any part thereof, on any loan,
11 lease, or obligation or any instrument evidencing or securing the
12 same, made or entered into pursuant to this article.

13 (q) Notwithstanding any other provision of this article, enter
14 into any agreement, contract, or any other instrument with respect
15 to any insurance or guarantee; accept payment in the manner and
16 form as provided therein in the event of default by a local agency;
17 and assign any insurance or guarantee that acts as security for the
18 authority's bonds.

19 (r) Enter into any agreement or contract, execute any instrument,
20 and perform any act or thing necessary, convenient, or desirable
21 to carry out any power authorized by this article.

22 (s) Invest any moneys held in reserve or sinking funds, or any
23 moneys not required for immediate use or disbursement, in
24 obligations that are authorized by law for the investment of trust
25 funds.

26 (t) At the request of affected local agencies, combine and pledge
27 revenues to public capital improvements for repayment of one or
28 more series of bonds issued pursuant to this article.

29 (u) Delegate to any of its individual parties or other responsible
30 individuals the power to act on its behalf subject to its general
31 direction, guidelines, and oversight.

32 (v) Purchase, with the proceeds of its bonds or its revenue, bonds
33 issued by any local agency at public or negotiated sale. Bonds
34 purchased pursuant to this subdivision may be held by the authority
35 or sold to public or private purchasers at public or negotiated sale,
36 in whole or in part, separately or together with other bonds issued
37 by the authority.

38 (w) Purchase, with the proceeds of its bonds or its revenue, VLF
39 receivables sold to the authority pursuant to Section 6588.5. VLF
40 receivables so purchased may be pledged to the payment of bonds

1 issued by the authority or may be resold to public or private
2 purchasers at public or negotiated sale, in whole or in part,
3 separately or together with other VLF receivables purchased by
4 the authority.

5 (x) (1) Purchase, with the proceeds of its bonds or its revenue,
6 Proposition 1A receivables pursuant to Section 6588.6. Proposition
7 1A receivables so purchased may be pledged to the payment of
8 bonds issued by the authority or may be resold to public or private
9 purchasers at public or negotiated sales, in whole or in part,
10 separately or together with other Proposition 1A receivables
11 purchased by the authority.

12 (2) (A) All entities subject to a reduction of ad valorem property
13 tax revenues required under Section 100.06 of the Revenue and
14 Taxation Code pursuant to the suspension set forth in Section
15 100.05 of the Revenue and Taxation Code shall be afforded the
16 opportunity to sell their Proposition 1A receivables to the authority.

17 (B) If these entities offer Proposition 1A receivables to the
18 authority for purchase and duly authorize the sale of the Proposition
19 1A receivable pursuant to documentation approved by the
20 authority, the authority shall purchase all Proposition 1A
21 receivables so offered to the extent it can sell bonds therefor. If
22 the authority does not purchase all Proposition 1A receivables
23 offered, it shall purchase a pro rata share of each entity's offered
24 Proposition 1A receivables.

25 (C) The authority may establish a deadline, no earlier than
26 November 3, 2009, by which these entities shall offer their
27 Proposition 1A receivables for sale to the authority and complete
28 the application required by the authority.

29 (3) For purposes of meeting costs incurred in performing its
30 duties relative to the purchase and sale of Proposition 1A
31 receivables, the authority shall be authorized to charge a fee to
32 each entity from which it purchases a Proposition 1A receivable.
33 The fee shall be computed based on the percentage value of the
34 Proposition 1A receivable purchased from each entity, in relation
35 to the value of all Proposition 1A receivables purchased by the
36 authority. The amount of the fee shall be paid from the proceeds
37 of the bonds and shall be included in the principal amount of the
38 bonds.

39 (4) Terms and conditions of any and all fees and expenses
40 charged by the authority, or those it contracts with, and the terms

1 and conditions of sales of Proposition 1A receivables and bonds
2 issued pursuant to this subdivision, including the terms of optional
3 early redemption provisions, if any, shall be approved by the
4 Treasurer and the Director of Finance, who shall not unreasonably
5 withhold their approval. The aggregate principal amount of all
6 bonds issued pursuant to this subdivision shall not exceed two
7 billion two hundred fifty million dollars (\$2,250,000,000), and the
8 rate of interest paid on those bonds shall not exceed 8 percent per
9 annum. The authority shall exercise its best efforts to obtain the
10 lowest cost financing possible. Any and all premium obtained shall
11 be used for either of the following:

12 (A) Applied to pay the costs of issuance of the bonds.
13 (B) Deposited in a trust account that is pledged to bondholders
14 and used solely for the payment of interest on, or for repayment
15 of, the bonds.

16 (5) (A) In connection with any financing backed by Proposition
17 1A receivables, the Treasurer may retain financial advisors, legal
18 counsel, and other consultants to assist in performing the duties
19 required by this chapter and related to that financing.

20 (B) Notwithstanding any other law, none of the following shall
21 apply to any agreements entered into by the Treasurer pursuant to
22 subparagraph (A) in connection with any Proposition 1A financing:

23 (i) Section 11040 of the Government Code.
24 (ii) Section 10295 of the Public Contract Code.
25 (iii) Article 3 (commencing with Section 10300) and Article 4
26 (commencing with Section 10335) of, Chapter 2 of Part 2 of
27 Division 2 of the Public Contract Code, except for the authority
28 of the Department of Finance under Section 10336 of the Public
29 Contract Code to direct a state agency to transmit to it a contract
30 for review, and except for Section 10348.5 of the Public Contract
31 Code.

32 (C) Any costs incurred by the Treasurer in connection with any
33 Proposition 1A financing shall be reimbursed out of the proceeds
34 of the financing.

35 (y) Set any other terms and conditions on any purchase or sale
36 pursuant to this section as it deems by resolution to be necessary,
37 appropriate, and in the public interest, in furtherance of the
38 purposes of this article.

39 SEC. 2. This act is an urgency statute necessary for the
40 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to timely provide essential bonding authority for the
4 funding of multi-state, public-private projects that are necessary
5 to ensure California's national and international competitiveness
6 and public benefits in this state, it is necessary that this act take
7 effect immediately.

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