

AMENDED IN SENATE JUNE 19, 2014

AMENDED IN ASSEMBLY MAY 15, 2014

AMENDED IN ASSEMBLY MARCH 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2046**

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**Introduced by Assembly Member Gomez**

February 20, 2014

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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 issue or cause to be 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.

*The Personal Income Tax Law imposes a tax on an individual taxpayer's taxable income for the taxable year, but excludes certain items of income from the computation of tax. That law, in conformity*

*with federal income tax laws, exempts from tax interest on bonds issued by this state or a local government in this state. The Joint Exercise of Powers Act also provides that all bonds issued by a joint powers authority and the interest thereon or income therefrom are exempt from all taxation in this state, except as otherwise provided.*

*This bill would provide that the interest on an issue of bonds as described above would not be exempt from tax and would be included in gross income under the Personal Income Tax Law, unless specified conditions are met.*

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

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. 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) (i) Notwithstanding Sections 6586 and 6586.5 or any other
- 22 law, an authority may issue or cause to be issued bonds and enter
- 23 into a loan agreement, pursuant to subparagraph (A), for the
- 24 financing or refinancing of a project that is situated in another

1 state, including working capital related to that project, if all of the  
2 following apply:

3 (i)

4 (I) The project is owned, developed, or operated by a private  
5 entity.

6 (ii)

7 (II) The issuance of bonds by the authority and the financing  
8 of the project is approved by resolution, order, or other official  
9 action of the city, county, or other public body with land use  
10 planning authority over the project, or of the state in which the  
11 project is situated. This clause does not apply to the issuance of  
12 refunding bonds if a prior financing or refinancing of the project  
13 was approved by the city, county, public body, or state.

14 (iii)

15 (III) The authority finds, based on the facts and circumstances  
16 attendant to the project or the financing or refinancing of the  
17 project, that the issuance of the bonds or the financing or  
18 refinancing of the project will result in a substantial public benefit  
19 to, and are for a public purpose of, the citizens of this state.

20 (IV) *As of July 1, 2014, the authority had at least 70 local*  
21 *agency members and the authority had issued bonds and entered*  
22 *into loan agreements to finance at least 25 separate projects.*

23 (ii) *Notwithstanding Section 6575 of the Government Code and*  
24 *Section 17133 of the Revenue and Taxation Code or any other*  
25 *law, the interest on an issue of bonds pursuant to this subparagraph*  
26 *shall not be exempt from tax, and shall be included in gross income*  
27 *under Part 10 (commencing with Section 17001) of Division 2 of*  
28 *the Revenue and Taxation Code, unless one or more of the*  
29 *following is satisfied:*

30 (I) *At least 20 percent of the net proceeds of the issue are*  
31 *allocated to the financing of one or more projects, including*  
32 *working capital related thereto, located in this state.*

33 (II) *The borrower of the bond proceeds has its principal place*  
34 *of business in this state and, if that borrower is subject to income*  
35 *or franchise tax in this state or any other state, that borrower has*  
36 *paid to this state for the most recent tax year income or franchise*  
37 *tax of at least fifty thousand dollars (\$50,000) or one-half of its*  
38 *total income or franchise tax liability to all states, whichever is*  
39 *less. If the borrower has little or no assets other than the project*  
40 *to be financed and is owned by another company or companies,*

1 *then the company or companies that own a majority of interest in*  
2 *the borrower shall have its or their principal place of business in*  
3 *this state.*

4 *(III) In the case of the financing of one or more multifamily*  
5 *rental housing projects, the developer of that project or projects*  
6 *has its principal place of business in this state, and any such*  
7 *developer subject to personal or corporate income tax in California*  
8 *or other states has paid to this state for the most recent tax year*  
9 *income or franchise tax of at least fifty thousand dollars (\$50,000)*  
10 *or one-half of its total income or franchise tax liability to all states,*  
11 *whichever is less.*

12 *(iii) For purposes of this subparagraph, the following definitions*  
13 *apply:*

14 *(I) “Developer” means a corporation, partnership, limited*  
15 *liability company, or other person that is the initial controlling*  
16 *party within the legal entity that owns the multifamily rental*  
17 *housing project to be financed with proceeds of the bonds and that*  
18 *is expected to be the primary economic beneficiary of, and to take*  
19 *the primary economic risks related to, development and*  
20 *performance of the project.*

21 *(II) “Financing” shall include refinancing of bonds of the*  
22 *authority or of bonds issued by any other state or local entity*  
23 *located within this state.*

24 *(III) “Issue” shall have the same meaning as in U.S. Treasury*  
25 *Regulations Section 1.150-1(c), as in effect on July 1, 2014.*

26 *(IV) “Net proceeds of an issue” means the aggregate principal*  
27 *amount of that issue, less the amount of that issue allocated to*  
28 *original issue discount, issuance costs, reserve funds, and credit*  
29 *enhancement costs.*

30 *(d) Engage the services of private consultants to render*  
31 *professional and technical assistance and advice in carrying out*  
32 *the purposes of this article.*

33 *(e) As provided by applicable law, employ and compensate*  
34 *bond counsel, financial consultants, and other advisers determined*  
35 *necessary by the authority in connection with the issuance and sale*  
36 *of any bonds.*

37 *(f) Contract for engineering, architectural, accounting, or other*  
38 *services determined necessary by the authority for the successful*  
39 *development of a public capital improvement.*

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

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

12 (i) Receive and accept from any source, loans, contributions,  
13 or grants, in either money, property, labor, or other things of value,  
14 for, or in aid of, the construction financing, or refinancing of public  
15 capital improvement, or any portion thereof or for the financing  
16 of working capital or insurance programs, or for the payment of  
17 the principal of and interest on bonds if the proceeds of those bonds  
18 are used for one or more of the purposes specified in this section.

19 (j) Make secured or unsecured loans to any local agency in  
20 connection with the financing of capital improvement projects,  
21 working capital or insurance programs in accordance with an  
22 agreement between the authority and the local agency. However,  
23 no loan shall exceed the total cost of the public capital  
24 improvements, working capital or insurance needs of the local  
25 agency as determined by the local agency and by the authority.

26 (k) Make secured or unsecured loans to any local agency in  
27 accordance with an agreement between the authority and the local  
28 agency to refinance indebtedness incurred by the local agency in  
29 connection with public capital improvements undertaken and  
30 completed.

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

35 (m) Assign or pledge all or any portion of its interests in  
36 mortgages, deeds of trust, indentures of mortgage or trust, or  
37 similar instruments, notes, and security interests in property,  
38 tangible or intangible, of a local agency to which the authority has  
39 made loans, and the revenues therefrom, including payment or  
40 income from any interest owned or held by the authority, for the

1 benefit of the holders of bonds issued to finance public capital  
 2 improvements. The pledge of moneys, revenues, accounts, contract  
 3 rights, or rights to payment of any kind made by or to the authority  
 4 pursuant to the authority granted in this part shall be valid and  
 5 binding from the time the pledge is made for the benefit of the  
 6 pledgees and successors thereto, against all parties irrespective of  
 7 whether the parties have notice of the claim.

8 (n) Lease the public capital improvements being financed to a  
 9 local agency, upon terms and conditions that the authority deems  
 10 proper; charge and collect rents therefor; terminate any lease upon  
 11 the failure of the lessee to comply with any of the obligations of  
 12 the lease; include in any lease provisions that the lessee shall have  
 13 options to renew the lease for a period or periods, and at rents as  
 14 determined by the authority; purchase or sell by an installment  
 15 agreement or otherwise any or all of the public capital  
 16 improvements; or, upon payment of all the indebtedness incurred  
 17 by the authority for the financing or refinancing of the public  
 18 capital improvements, the authority may convey any or all of the  
 19 project to the lessee or lessees.

20 (o) Charge and apportion to local agencies that benefit from its  
 21 services the administrative costs and expenses incurred in the  
 22 exercise of the powers authorized by this article. These fees shall  
 23 be set at a rate sufficient to recover, but not exceed, the authority's  
 24 costs of issuance and administration. The fee charged to each local  
 25 obligation acquired by the pool shall not exceed that obligation's  
 26 proportionate share of those costs. The level of these fees shall be  
 27 disclosed to the California Debt and Investment Advisory  
 28 Commission pursuant to Section 6599.1.

29 (p) Issue, obtain, or aid in obtaining, from any department or  
 30 agency of the United States or of the state, or any private company,  
 31 any insurance or guarantee to, or for, the payment or repayment  
 32 of interest or principal, or both, or any part thereof, on any loan,  
 33 lease, or obligation or any instrument evidencing or securing the  
 34 same, made or entered into pursuant to this article.

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

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

4 (s) Invest any moneys held in reserve or sinking funds, or any  
5 moneys not required for immediate use or disbursement, in  
6 obligations that are authorized by law for the investment of trust  
7 funds.

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

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

14 (v) Purchase, with the proceeds of its bonds or its revenue, bonds  
15 issued by any local agency at public or negotiated sale. Bonds  
16 purchased pursuant to this subdivision may be held by the authority  
17 or sold to public or private purchasers at public or negotiated sale,  
18 in whole or in part, separately or together with other bonds issued  
19 by the authority.

20 (w) Purchase, with the proceeds of its bonds or its revenue, VLF  
21 receivables sold to the authority pursuant to Section 6588.5. VLF  
22 receivables so purchased may be pledged to the payment of bonds  
23 issued by the authority or may be resold to public or private  
24 purchasers at public or negotiated sale, in whole or in part,  
25 separately or together with other VLF receivables purchased by  
26 the authority.

27 (x) (1) Purchase, with the proceeds of its bonds or its revenue,  
28 Proposition 1A receivables pursuant to Section 6588.6. Proposition  
29 1A receivables so purchased may be pledged to the payment of  
30 bonds issued by the authority or may be resold to public or private  
31 purchasers at public or negotiated sales, in whole or in part,  
32 separately or together with other Proposition 1A receivables  
33 purchased by the authority.

34 (2) (A) All entities subject to a reduction of ad valorem property  
35 tax revenues required under Section 100.06 of the Revenue and  
36 Taxation Code pursuant to the suspension set forth in Section  
37 100.05 of the Revenue and Taxation Code shall be afforded the  
38 opportunity to sell their Proposition 1A receivables to the authority.

39 (B) If these entities offer Proposition 1A receivables to the  
40 authority for purchase and duly authorize the sale of the Proposition

1 1A receivables pursuant to documentation approved by the  
2 authority, the authority shall purchase all Proposition 1A  
3 receivables so offered to the extent it can sell bonds therefor. If  
4 the authority does not purchase all Proposition 1A receivables  
5 offered, it shall purchase a pro rata share of each entity's offered  
6 Proposition 1A receivables.

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

11 (3) For purposes of meeting costs incurred in performing its  
12 duties relative to the purchase and sale of Proposition 1A  
13 receivables, the authority shall be authorized to charge a fee to  
14 each entity from which it purchases a Proposition 1A receivable.  
15 The fee shall be computed based on the percentage value of the  
16 Proposition 1A receivable purchased from each entity, in relation  
17 to the value of all Proposition 1A receivables purchased by the  
18 authority. The amount of the fee shall be paid from the proceeds  
19 of the bonds and shall be included in the principal amount of the  
20 bonds.

21 (4) Terms and conditions of any and all fees and expenses  
22 charged by the authority, or those it contracts with, and the terms  
23 and conditions of sales of Proposition 1A receivables and bonds  
24 issued pursuant to this subdivision, including the terms of optional  
25 early redemption provisions, if any, shall be approved by the  
26 Treasurer and the Director of Finance, who shall not unreasonably  
27 withhold their approval. The aggregate principal amount of all  
28 bonds issued pursuant to this subdivision shall not exceed two  
29 billion two hundred fifty million dollars (\$2,250,000,000), and the  
30 rate of interest paid on those bonds shall not exceed 8 percent per  
31 annum. The authority shall exercise its best efforts to obtain the  
32 lowest cost financing possible. Any and all premium obtained shall  
33 be used for either of the following:

34 (A) Applied to pay the costs of issuance of the bonds.

35 (B) Deposited in a trust account that is pledged to bondholders  
36 and used solely for the payment of interest on, or for repayment  
37 of, the bonds.

38 (5) (A) In connection with any financing backed by Proposition  
39 1A receivables, the Treasurer may retain financial advisors, legal

1 counsel, and other consultants to assist in performing the duties  
2 required by this chapter and related to that financing.

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

6 (i) Section 11040 of the Government Code.

7 (ii) Section 10295 of the Public Contract Code.

8 (iii) Article 3 (commencing with Section 10300) and Article 4  
9 (commencing with Section 10335) of, Chapter 2 of Part 2 of  
10 Division 2 of the Public Contract Code, except for the authority  
11 of the Department of Finance under Section 10336 of the Public  
12 Contract Code to direct a state agency to transmit to it a contract  
13 for review, and except for Section 10348.5 of the Public Contract  
14 Code.

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

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

22 *SEC. 2. This act is an urgency statute necessary for the*  
23 *immediate preservation of the public peace, health, or safety within*  
24 *the meaning of Article IV of the Constitution and shall go into*  
25 *immediate effect. The facts constituting the necessity are:*

26 *In order to timely provide essential bonding authority for the*  
27 *funding of multi-state, public-private projects that are necessary*  
28 *to ensure California's national and international competitiveness*  
29 *and public benefits in this state, it is necessary that this act take*  
30 *effect immediately.*