

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2334

**Introduced by Assembly Members Mullin and Ting
(Principal coauthor: Assembly Member Eggman)**

February 18, 2016

An act to amend Section 26011.8 of the Public Resources Code, and to amend Section 6010.8 of the Revenue and Taxation Code, relating to alternative energy, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2334, as amended, Mullin. Sales and use taxes: exclusion: alternative energy financing.

The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority. The act authorizes, until January 1, 2021, the authority to provide financial assistance in the form of a sales and use tax exclusion for any lease or transfer of title of tangible personal property constituting a project to any participating party, and defines a project and participating party for those purposes. The act limits the sales and use tax exclusion to \$100,000,000 for each calendar year.

This bill would ~~extend~~ *expand those persons eligible for the sales and use tax* ~~exclusion~~ *exclusion, which is limited in amount, to additionally include* any contractor for use in the performance of a construction contract for the participating party that will use that property as an integral part of the approved project. This bill would

~~also provide for an additional sales and use tax exclusion amount of \$475,000,000 for the 2016 calendar year and \$250,000,000 for each calendar year thereafter, plus allow the exclusion amount granted by the authority in any year to include any amounts not granted or amounts granted but unused from the previous calendar year beginning in the 2017 calendar year.~~

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ²/₃ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

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

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

- 1 SECTION 1. Section 26011.8 of the Public Resources Code
- 2 is amended to read:
- 3 26011.8. (a) The purpose of this section is to promote the
- 4 creation of California-based manufacturing, California-based jobs,
- 5 advanced manufacturing, the reduction of greenhouse gases, or
- 6 reductions in air and water pollution or energy consumption. In
- 7 furtherance of this purpose, the authority may approve a project
- 8 for financial assistance in the form of the sales and use tax
- 9 exclusion established in Section 6010.8 of the Revenue and
- 10 Taxation Code.
- 11 (b) For the purposes of this section, the following terms have
- 12 the following meanings:
- 13 (1) “Project” means tangible personal property if at least 50
- 14 percent of its use is either to process recycled feedstock that is
- 15 intended to be reused in the production of another product or using
- 16 recycled feedstock in the production of another product or soil
- 17 amendment, or tangible personal property that is used in the state
- 18 for the design, manufacture, production, or assembly of advanced
- 19 manufacturing, advanced transportation technologies, or alternative
- 20 source products, components, or systems, as defined in Section
- 21 26003. “Project” does not include tangible personal property that
- 22 processes or uses recycled feedstock in a manner that would
- 23 constitute disposal as defined in subdivision (b) of Section 40192.

1 (2) “Recycled feedstock” means materials that would otherwise
2 be destined for disposal, having completed their intended end use
3 and product lifecycle.

4 (3) “Soil amendments” may include “compost,” as defined in
5 Section 14525 of the Food and Agricultural Code, “fertilizing
6 material,” as defined in Section 14533 of the Food and Agricultural
7 Code, “gypsum” or “phosphatic sulfate gypsum,” as those terms
8 are defined in Section 14537 of the Food and Agricultural Code,
9 or a substance distributed for the purpose of promoting plant
10 growth or improving the quality of crops by conditioning soils
11 through physical means.

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

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

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

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

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

25 (4) To the extent feasible, the extent to which the project, or the
26 product produced by the project, results in a reduction of
27 greenhouse gases, a reduction in air or water pollution, an increase
28 in energy efficiency, or a reduction in energy consumption, beyond
29 what is required by federal or state law or regulation.

30 (5) The extent of unemployment in the area in which the project
31 is proposed to be located.

32 (6) Any other factors the authority deems appropriate in
33 accordance with this section.

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

36 (f) Notwithstanding subdivision (j), and without regard to the
37 actual date of any transaction between a participating party and
38 the authority, any project approved by the authority by resolution
39 for the sales and use tax exclusion pursuant to Section 6010.8 of

1 the Revenue and Taxation Code before March 24, 2010, shall not
 2 be subject to this section.

3 (g) The Legislative Analyst’s Office shall report to the Joint
 4 Legislative Budget Committee on the effectiveness of this program,
 5 on or before January 1, 2019, by evaluating factors, including, but
 6 not limited to, the following:

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

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

10 (3) The amount of state and local revenue and economic activity
 11 generated by the program.

12 (4) The types of advanced manufacturing, as defined in
 13 paragraph (1) of subdivision (a) of Section 26003, utilized.

14 (5) The amount of reduction in greenhouse gases, air pollution,
 15 water pollution, or energy consumption.

16 (h) (1) ~~(A) The~~ *The* exclusions granted pursuant to ~~paragraph~~
 17 ~~(1) and (2)~~ *paragraphs (1) and (2)* of subdivision (a) of Section 6010.8 of
 18 the Revenue and Taxation Code for projects approved by the
 19 authority pursuant to this section shall not exceed one hundred
 20 million dollars (\$100,000,000) for each calendar year before the
 21 2017 calendar year.

22 ~~(B)~~
 23 (2) For the 2017 calendar year and each calendar year thereafter,
 24 the exclusions granted pursuant to ~~paragraph (1) and (2)~~ *paragraphs (1)*
 25 *and (2)* of subdivision (a) of Section 6010.8 of the Revenue and
 26 Taxation Code for projects approved by the authority pursuant to
 27 this section shall not exceed one hundred million dollars
 28 (\$100,000,000) plus any amounts not granted or amounts granted
 29 but unused from the previous calendar year.

30 ~~(2) In addition to the amount described in paragraph (1), the~~
 31 ~~amount of exclusions that may be granted pursuant to paragraphs~~
 32 ~~(1) and (2) of subdivision (a) of Section 6010.8 of the Revenue~~
 33 ~~and Taxation Code for projects approved by the authority pursuant~~
 34 ~~to this section per calendar year shall be as follows:~~

35 ~~(A) For the 2016 calendar year, four hundred seventy-five~~
 36 ~~million dollars (\$475,000,000).~~

37 ~~(B) For the 2017 calendar year and each calendar year thereafter,~~
 38 ~~two hundred fifty million dollars (\$250,000,000) plus any amounts~~
 39 ~~not granted or amounts granted but unused from the previous~~
 40 ~~calendar year.~~

1 (i) (1) The authority shall study the efficacy and cost benefit
2 of the sales and use tax exemption as it relates to advanced
3 manufacturing projects. The study shall include the number of jobs
4 created, the costs of each job, and the annual salary of each job.
5 The study shall also consider a dynamic analysis of the economic
6 output to the state that would occur without the sales and use tax
7 exemption. Before January 1, 2017, the authority shall submit to
8 the Legislature, consistent with Section 9795 of the Government
9 Code, the result of the study.

10 (2) Before January 1, 2015, the authority shall, consistent with
11 Section 9795 of the Government Code, submit to the Legislature
12 an interim report on the efficacy of the program conducted pursuant
13 to this section. The study shall include recommendations on
14 program changes that would increase the program's efficacy in
15 creating permanent and temporary jobs, and whether eligibility
16 for the program should be extended or narrowed to other
17 manufacturing types. The authority may work with the Legislative
18 Analyst's Office in preparing the report and its recommendations.

19 (j) This section shall remain in effect only until January 1, 2021,
20 and as of that date is repealed, unless a later enacted statute, that
21 becomes operative on or before January 1, 2021, deletes or extends
22 that date. The sale or purchase of tangible personal property of a
23 project approved before January 1, 2021, shall continue to be
24 excluded from sales and use taxes pursuant to Section 6010.8 of
25 the Revenue and Taxation Code for the period of time set forth in
26 the authority's resolution approving the project pursuant to this
27 section.

28 SEC. 2. Section 6010.8 of the Revenue and Taxation Code, as
29 amended by Section 5 of Chapter 788 of the Statutes of 2015, is
30 amended to read:

31 6010.8. (a) (1) "Sale" and "purchase" do not include any lease
32 or transfer of title of tangible personal property constituting any
33 project to any participating party.

34 (2) On and after the operative date of the act adding this
35 paragraph, "sale" and "purchase" do not include any lease or
36 transfer of title of tangible personal property constituting any
37 project to any contractor for use in the performance of a
38 construction contract for the participating party that will use that
39 property as an integral part of the approved project.

1 (b) As used in this section, “project” has the meaning specified
2 in subparagraph (B) of paragraph (8) of subdivision (a) of Section
3 26003 of the Public Resources Code and “participating party” has
4 the meaning specified in subparagraph (B) of paragraph (7) of
5 subdivision (a) of Section 26003 of the Public Resources Code.

6 (c) This section shall remain in effect only until January 1, 2021,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2021, deletes or extends that date.

9 SEC. 3. This act provides for a tax levy within the meaning of
10 Article IV of the California Constitution and shall go into
11 immediate effect.