

Senate Bill No. 485

CHAPTER 61

An act to amend Sections 7078, 91503, 91520, 91533, and 91560 of the Government Code, relating to the California Industrial Development Financing Act.

[Approved by Governor July 6, 1999. Filed with
Secretary of State July 6, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 485, Rainey. California Industrial Development Financing Act.

(1) The California Industrial Development Financing Act provides cities and counties with the authority to pass ordinances, and redevelopment agencies with the authority to pass resolutions, establishing industrial development authorities that are empowered to issue industrial development revenue bonds under terms and conditions specified in the act.

This bill would provide a public agency with the power to transact any business or exercise any powers of an industrial development authority under the act without having to establish an authority and would provide that references in the act to authority and board shall mean public agency and governing body, respectively.

(2) The act provides that property acquired pursuant to certain of its provisions shall be suitable for, or shall evidence an obligation respecting, certain uses and activities.

This bill would add commercial uses in an enterprise zone or commercial activities in an empowerment zone and enterprise community to that list of authorized uses and activities.

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

SECTION 1. Section 7078 of the Government Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

7078. The limitations in Section 91503 on the allowable uses of proceeds of bonds issued pursuant to Title 10 (commencing with Section 91500) shall not apply to bonds issued on behalf of any enterprise zone or any portion of that zone.

SEC. 2. Section 91503 of the Government Code is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless



incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Energy development, production, collection, or conversion from one form of energy to another.

(3) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(4) Commercial uses located within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 or commercial activities within an empowerment zone and enterprise community designated pursuant to Section 1391 of the Internal Revenue Code of 1986, in effect on January 1, 1998.

(5) Processing or manufacturing recycled or reused products and materials by manufacturing facilities.

(b) (1) Residential real property for family unit or other housing activities.

(2) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any thereof.

(3) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, unless the property acquired is suitable for one or more of the activities described in paragraph (2) of subdivision (a) and is not described in Section 142(f) of the Internal Revenue Code of 1986, as amended.

(4) Water furnishing activities.

(5) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1986, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 3. Section 91520 of the Government Code is amended to read:

91520. (a) There is in each public agency a public, corporate instrumentality of the State of California, known as the industrial development authority of the public agency. Each public agency is authorized to utilize that authority in the issuance of revenue bonds in the accomplishment of the public purposes as provided in Section 91502. The purposes provided in Section 91502 shall be deemed to constitute public purposes of the public agency, and the exercise by each authority of the powers conferred by this title, including the power to issue revenue bonds, shall be deemed to be the performance of an essential governmental function of the public agency; provided, however, that exercise of the powers conferred by



this title in the achievement of the purposes provided in Section 91502 shall be subject to the provisions of, and exclusively as provided in, this article.

(b) An authority shall not transact any business or exercise any powers under this article unless, by ordinance, or, in the case of a redevelopment agency, by resolution, the governing body declares that there is a need for the authority and that the authority shall function. The ordinance shall be subject to referendum in the manner prescribed by law for ordinances of the public agency. With respect to a redevelopment agency, the resolution provided for herein shall be subject to referendum in the manner prescribed by law for ordinances of the community in which the agency is located.

(c) An authority shall conclusively be deemed to have been established and authorized to transact business and exercise its powers upon proof of the adoption of such an ordinance or resolution.

(d) Notwithstanding any other provision contained in this article, a public agency shall have the power to transact any business or exercise any powers of an authority conferred by this title without having to establish an authority. However, a public agency may, at its option, establish an authority pursuant to the provisions of this article to exercise any powers conferred by this article. In the event that a public agency acts as an industrial development authority, any reference to authority and board contained in this title shall mean public agency and governing body, respectively.

SEC. 4. Section 91533 of the Government Code is amended to read:

91533. Authorities shall undertake projects by entry into project agreements in substance not inconsistent with the following:

(a) The company shall comply with (or cause to be complied with) all legal requirements relating to the project and the operation, repair, and maintenance of the facilities, including (1) obtaining any rezonings or variances, building, development, and other permits and approvals, and licenses and other entitlements for use, without regard to any exemption for public projects; and (2) securing the issuance of any certificates of need, convenience, and necessity or other certificates or franchises; and shall provide satisfactory evidence of compliance.

(b) The company shall comply with all conditions imposed by the public agency in its approval of the project pursuant to subdivision (f) of Section 91530.

(c) The company shall provide, or cause to be provided by others, all amounts required for the project and all property relating to the project that are not to be provided as or by expenditure of bond proceeds, and in the case of any amounts and property that the company proposes to cause to be provided by others, as by contract, grant, subsidy, loan, or other form of assistance, shall provide



satisfactory evidence that those amounts and property will be provided when required.

(d) Expenditure of bond proceeds shall be supervised to assure proper application to the project.

(e) The company shall at its own expense insure, repair, and maintain the facilities, pay taxes with respect to its interests in the property relating to the project as Division 1 (commencing with Section 101) of the Revenue and Taxation Code requires, and pay assessments and other public charges secured by liens, upon those interests as constitute the tax base for property taxation on the same basis as other property, or shall cause the same to be provided by others to the satisfaction of the authority.

(f) The amounts payable under the project agreements to or for the benefit of an authority shall in the aggregate not be less than amounts sufficient (1) to pay any bonds that shall be issued by the authority to pay the cost of the project, (2) to maintain any required reserves, (3) to make payments as may be required into any sinking fund or other similar fund, and (4) to pay those administration expenses that relate to the administration of the project agreements, the indenture, and the bonds.

(g) The term shall extend at least until the date on which all those bonds and all other obligations incurred by an authority in connection with a project shall have been paid in full or adequate funds for that payment shall have been otherwise provided.

(h) Such additional provisions as in the determination of the board are necessary or appropriate to effectuate the purposes of this article, including provisions for the following:

(1) For payments under the project agreements that include amounts for administration expenses in addition to the amounts that the agreement is required to obligate the company or others to pay.

(2) For payment before a facility exists or becomes functional, or after a facility has ceased to exist or be functional to any extent and from any cause.

(3) For payment whether or not the company is in possession or is entitled to be in possession of the facilities or for payment in the event of sale or other transfer of ownership of or the encumbering of the facilities.

(4) Relating to the carrying out and completion of the project, including the allocation of responsibility between the authority and the company regarding the acquisition of property, the making of other purchases, the contracting for construction of the facilities, with or without competitive bidding, and the payment therefor and the designation of particular deposits or investments otherwise authorized for the deposit, investment, and reinvestment of revenues.

(5) That some or all of the obligations of a company shall be unconditional and shall be binding and enforceable in all



circumstances whatsoever notwithstanding any other provision of law.

(6) Relating to the use, maintenance, repair, insurance, and replacement of property relating to the project, such as the authority and the company deem necessary for the protection of themselves or others, including, but not limited to, liability insurance, and indemnification in the event of default.

(7) Defining events of default and providing remedies therefor, which may include an acceleration of future payments thereunder.

(i) The company shall provide for the payment of relocation assistance as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, and shall reimburse the authority or the public agency, as the case may be, for relocation assistance services, and notwithstanding any other provision of this title, the authority shall determine that those services are provided and that relocation assistance payments are made.

(j) Notwithstanding any other provision of this title, projects undertaken and carried out pursuant to this title shall be consistent with the requirements of the general plan as contained in Article 5 (commencing with Section 65300) of Chapter 3 of Title 7 at the time of entry into the project agreement, or in the event inconsistent at that time, then at the time of delivery of any bonds.

(k) The company may, pursuant to project agreements, provide or cause to be provided other security, such as, but not limited to, an agreement of guaranty, either of itself or another person, or other consideration directly to the bondholders, their agent or the trustee under an indenture, and neither the company nor any such other person, shall be precluded by the project agreements from having other contractual relationships with those bondholders, agent or trustee.

(l) Authorities shall require, whether or not authorities, companies, or others are the contract awarding bodies, that on any construction, improvement, reconstruction, or rehabilitation financed in whole or in part by means of bonds issued pursuant to this title, the resolution of intention for which is adopted on or after January 1, 1983, all workers employed in that work, exclusive of maintenance work, shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Those rates shall be determined by the Director of the Department of Industrial Relations in accordance with the standards set forth in Section 1773 of the Labor Code. The director's determination shall be final, and Sections 1773.1, 1773.5, 1774 and 1776 (excepting subdivision (f)) of the Labor Code shall apply.

SEC. 5. Section 91560 of the Government Code is amended to read:

91560. (a) The Legislature finds and declares that small businesses may have difficulty establishing adequate security for bonds issued by an authority in their behalf; that establishing common reserve funds will help to provide reasonable security for these bonds and will help to make the authority's services available to various small businesses that may be otherwise unable to use them.

(b) For the purpose of establishing and maintaining the common reserve funds it deems necessary or desirable to secure its bonds or any issuance thereof, the commission pursuant to this section or an authority, pursuant to its project agreements with companies, may levy fees or other charges on, or require deposits from, companies receiving financing for projects under this title. Prior to levying any of these fees or charges or requiring deposits, the commission or an authority shall adopt regulations for the operation of the common reserve funds and governing the amounts and any payment schedule for the fees, charges, or deposits.

(c) Subject to any prior contractual obligations to any of its bondholders, the commission or an authority may establish one or more common reserve funds for any or all of its bonds. The commission shall establish its own liability limits of the common reserve fund with respect to any single issue of bonds issued by the commission, and each authority shall establish its liability limits of the common reserve fund with respect to any single issue of bonds issued by the authority subject to the approval of the commission.

(d) Each common reserve fund established pursuant to this section shall be deposited in a special account that shall be established by the Controller. Notwithstanding any other provision of law, all interest or other increment earned by investment or deposit of moneys in such an account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 or pursuant to any other provision of law shall be credited to, and deposited in, the account.

