Senate Bill No. 661

CHAPTER 863

An act to add Sections 91559, 91559.1, 91559.2, 91559.3, and 91559.4 to, and to add and repeal Section 91558.5 of, the Government Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 661, Alarcon. Economic development lenders.

Existing law establishes the California Industrial Development Financing Advisory Commission to, among other things, assist industrial development authorities in the planning, preparation, marketing, and sale of industrial development revenue bonds.

This bill would require until January 1, 2005, to the extent funds are appropriated by the Legislature, that the commission establish procedures to evaluate and certify the participation of economic development lenders, as defined, in a program that allows those lenders to recapitalize their financial resources to meet current demands of borrowers by pledging as collateral loans to the commission in exchange for cash liquidity. This bill would give the commission the authority to issue public debt in the form of bonds, and the power to secure those bonds with the loans pledged to the commission by economic development lenders. The bill would establish the Community and Economic Development Fund in the State Treasury and provide that the fund shall be continuously appropriated to the commission for purposes of the bill. Revenue generated through the sale of bonds secured by loans pledged to the commission by economic development lenders would be available to recapitalize the Community and Economic Development Fund or a reserve fund. By establishing this continuously appropriated fund, and by providing the mechanism to enable moneys to flow into the fund, this bill would make an appropriation.

Appropriation: yes.

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

SECTION 1. (a) The Legislature finds and declares that there is a need to maximize the availability of capital to California small businesses for purposes of business expansion and job creation.

(b) The Legislature finds and declares that economic development lenders are a source of small business financing to communities with historically lower overall access to capital. It is estimated that community and economic development lenders have loans outstanding in this state in excess of three hundred fifty million dollars ($350,000,000) and provide loans to California businesses that cannot attract private financing. The capital is then recycled as the loans are repaid by relending the capital to other businesses.

(c) The Legislature finds and declares that stimulating a secondary market for community and economic development lenders can significantly increase the availability of capital to California small businesses.

SEC. 2. Section 91558.5 is added to the Government Code, to read:

91558.5. (a) For purposes of this section, the following terms have the following meanings:

(1) ‘‘Economic development lenders’’ may include public, private, or quasi-public community development loan funds, microenterprise funds, community development corporation-based loan funds, community and economic development venture funds, revolving loan funds, and community development financial institutions, as defined in Section 1805.200 of Title 12 of the Code of Federal Regulations.

(2) ‘‘Fund’’ means the Community and Economic Development Fund established pursuant to subdivision (b).

(3) ‘‘Measured criteria’’ means evaluation of active loans based upon the lender’s original underwriting criteria, including, but not limited to, the payment history of the borrower, the relationship between the lender and borrower, and the borrower’s pledged collateral. ‘‘Measured criteria’’ also includes traditional credit risk analysis.

(4) ‘‘Overcollateralization’’ means the assignment of collateral in excess of the principal amount of the debt secured by that collateral.

(5) ‘‘Reserve fund’’ means cash assets held in the fund to offset loan losses otherwise intended to meet the dividend obligations of the commission pursuant to this section. The reserve fund may be capitalized by the transfer to the fund made by the act adding this section, by loan payments from loans pledged to the commission by economic development lenders pursuant to subdivision (d), and by revenue generated through the bonds secured by those loans.

(6) ‘‘Subordination’’ means the commission’s right to receive payment on the loans securing the bonds issued by the commission shall be subordinate to the obligations owed to the purchasers of those bonds.

(b) The Community and Economic Development Fund is hereby created in the State Treasury and, notwithstanding Section 13340, this fund is continuously appropriated to the commission for purposes of this section. The commission may expend up to 10 percent of any moneys appropriated by the Legislature to the fund for administrative costs directly related to the implementation of this section.

(c) The commission shall establish procedures to evaluate and certify the participation of economic development lenders in the state in a program that allows lenders to recapitalize their financial resources in order to meet the current demands of borrowers. The evaluation and certification procedures shall include the performance of due diligence on the part of economic development lenders and for each loan a lender seeks to pledge as collateral to the commission pursuant to subdivision (f).

(d) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall develop and maintain a data base on economic development lenders in the state, including, but not limited to, the asset size of each lender, average loan size and loan duration, borrower target groups, and loan default and loan loss rates. The data base shall also include information on loans pledged by economic development lenders to participate in the program.

(e) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall recommend minimum standards for loan documentation, loan underwriting, and loan servicing for economic development lenders who participate in the program. The loan documentation, underwriting, and servicing standards shall be designed to promote uniformity in the commission's process of loan evaluation and due diligence for individual loans. The loan documentation and underwriting standards shall seek to be consistent with the mission of economic development lenders eligible for participation under this part. The commission shall develop measurement criteria for consideration of existing loans pledged for participation in the program that were made by economic development lenders prior to the establishment of the minimum standards.

(f) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall provide technical assistance to lenders in order to increase utilization of the minimum loan documentation, loan underwriting, and loan servicing standards.

(g) Once certified by the commission to participate in the program, economic development lenders may pledge as collateral to the commission current and active loans in exchange for cash liquidity. The amount of cash liquidity available for each loan shall be determined on a loan-by-loan basis, shall be based upon the projected income from the loan and the perceived risk of the loan, and shall provide the economic development lender a reasonable value for the loan asset. The income stream from loans pledged as collateral to the commission shall accrue to the commission in order to regenerate the fund.

(h) Loans pledged to the commission pursuant to subdivision (g) shall serve as collateral for bonds issued by the commission. The revenue generated by the issuance of bonds secured by those loans shall be used to regenerate the fund and may also be used by the commission to establish and recapitalize a reserve fund. The commission may provide credit enhancements for these bonds in order to support the credit quality of the bonds and increase their marketability to investors. Credit enhancements by the commission may include, but shall not be limited to, overcollateralization, subordination, third party letters of credit, or a reserve fund dedicated to ensure full and timely repayment of the bonds.

(i) The commission shall report to the Governor and the Legislature on or before January 1, 2004, on the effectiveness of this program in creating a secondary market for community and economic development lenders and on any recommended changes to the program established by this section.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date. This subdivision shall not, however, apply to any bonds secured by loans pledged to the commission pursuant to this section, if those bonds were issued prior to, and remain outstanding on, January 1, 2005. Those bonds shall remain outstanding until their redemption date or until the time that they are purchased or mature, and the commission may issue bonds for the purpose of refunding those outstanding bonds only for the purpose of reducing the commission's borrowing costs, and provided further that the term of the bonds so refunded is not extended. Upon prepayment of the loans securing those bonds, the bonds shall be redeemed as soon as practicable.

SEC. 3. Section 91559 is added to the Government Code, to read:

91559. (a) The commission is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities, collectively called ''bonds,'' in order to provide funds for financing projects or achieving any of its other purposes, except that the commission is not authorized to issue industrial development bonds. Without limiting the generality of the foregoing, the bonds may be authorized to finance a single project for a single company, a series of projects for a single company, or several projects for several participating parties. In anticipation of the sale of these bonds, the commission may issue negotiable bond anticipation notes and may renew the notes from time to time. The notes shall be paid from any revenues of the commission or other moneys available therefor and not otherwise pledged, or from the proceeds of the sale of the bonds of the commission in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. The notes and agreements relating to notes and bond anticipation notes, collectively called ''notes,'' and the resolution or resolutions authorizing the notes may contain any provisions, conditions, or limitations which a bond, agreement relating to the bond, and bond resolution of the commission may contain.

(b) Except as may otherwise be expressly provided by the commission, every issue of its bonds or notes shall be general obligations of the commission payable from any revenues or moneys of the commission available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys and subject to any agreements with any company. Notwithstanding that the bonds, notes, or obligations may be payable from a special fund, they shall be, and shall be deemed to be, for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the commission, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the commission and shall bear the date or dates, mature at the time or times, not exceeding 40 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States at the place or places, and be subject to the terms of redemption, as the resolution or resolutions may provide. The bonds or notes may be sold by the Treasurer at public or private sale, for the price or prices and on the terms and conditions as the commission shall determine, after giving due consideration to the recommendations of any company to be assisted from the proceeds of the bonds or notes. Pending preparation of definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The Treasurer may sell any bonds, notes, or other evidence of indebtedness at a price below the par value thereof.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to the following:

(1) Pledging the full faith and credit of the commission or pledging all or any part of the revenues of any project or any revenue-producing contract or contracts made by the commission with any individual, partnership, corporation, or association or other body, public or private, or other moneys of the commission, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof.

(4) Limitations on the right of the commission or its agent to restrict or regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(5) Limitations on the purpose to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied, and pledging those proceeds to secure the payment of the bonds or any issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bond that the holders of which are required to consent thereto, and the manner in which the consent may be given.

(8) Limitations on expenditures for operating, administrative, or other expenses of the commission.

(9) Defining the acts or omissions to act which constitute a default in the duties of the commission to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of any project and the site of the project for the purpose of securing the bondholders.

(11) The mortgaging of land, improvements, or other assets owned by a company for the purpose of securing the bondholders.

(12) Procedures for the selection of projects to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are sold in advance of designation of the projects, and participating parties to receive the financing.

(e) Neither the members of the commission, nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The commission shall have the power out of any funds available for these purposes to purchase its bonds or notes. The commission may hold, pledge, cancel, or resell those bonds, subject to and in accordance with agreements with the bondholders.

(g) Any funds of the commission, including without limitation, proceeds from the sale of bonds or notes, may be invested in any obligations of any state or local government meeting the requirements of subsection (a) of Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103(a)) including mutual funds, trusts, and similar instruments representing a pool of obligations. The Treasurer may adopt regulations providing appropriate investment standards for those investments. If the Treasurer determines it to be necessary to assure compliance with federal tax laws or regulations, the commission may, notwithstanding any other provision of law, deposit funds received as fees from the issuance of its obligations with a bank or trust company acting on behalf of the commission.

SEC. 4. Section 91559.1 is added to the Government Code, to read:

91559.1. In the discretion of the commission, any bonds issued under the provisions of this article may be secured by a trust agreement by and between the commission and a corporate trustee or trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company within or without the state. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or projects, or any portion thereof, to be financed out of the proceeds of the bonds. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of the law, including particularly provisions that have been specifically authorized in this article to be included in any resolution or resolutions of the commission authorizing bonds thereof. Any bank or trust company doing business under the laws of this state which may act as depositary of the proceeds of bonds or of revenues or other moneys may furnish indemnifying bonds or pledge securities as may be required by the commission. Any trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any trust agreement or resolution may contain other provisions as the commission may deem reasonable and proper for the security of the bondholders. Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of acting as trustee pursuant to this division. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

SEC. 5. Section 91559.2 is added to the Government Code, to read:

91559.2. Bonds issued under the provisions of this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the commission, or a pledge of the faith and credit of the state or of any political subdivision, other than the commission, but shall be payable solely from the funds herein provided therefor. All bonds shall contain on the face thereof a statement to the effect: ‘‘Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond.’’ The issuance of bonds under the provisions of this article shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Nothing contained in this section shall prevent nor be construed to prevent the commission from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this article.

SEC. 6. Section 91559.3 is added to the Government Code, to read:

91559.3. (a) The commission is authorized to issue bonds of the commission for the purpose of refunding any bonds, notes, or securities of the commission then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of those bonds, and, if deemed advisable by the commission, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a project or any portion thereof.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds, notes, or securities may, in the discretion of the commission, be applied to the purchase, retirement at maturity, or redemption prior to maturity, of any outstanding bonds either on their earliest redemption date or dates, any subsequent redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the commission's obligation to make the payments, and may, pending that application, be placed in escrow to be applied to the purchase, retirement at maturity, or redemption on the date or dates determined by the commission.

(c) Any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the commission, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates. The interest, income, and profits, if any, earned or realized on any investment may also be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the commission for use by the commission.

(d) The portion of the proceeds of any bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a project may be invested and reinvested in obligations or securities authorized by resolution of the commission, maturing not later than the time or times when the proceeds will be needed for the purpose of paying all or any part of the cost. The interest, income, and profits, if any, earned or realized on the investments may be applied to the payment of all or any part of the cost or may be used by the commission in any lawful manner.

(e) All of those refunding bonds are subject to this article in the same manner and to the same extent as other bonds issued pursuant to this article.

SEC. 7. Section 91559.4 is added to the Government Code, to read:

91559.4. The State of California does pledge to and agree with the holders of the bonds, notes, and other obligations issued pursuant to this article, and with those parties who may enter into contracts with the commission pursuant to the provisions of this article, that the state will not limit, alter, or restrict the rights hereby vested in the commission until the bonds, together with the interest thereon, are fully paid and discharged and those contracts are fully performed on the part of the commission. The commission as agent for the state is authorized to include this pledge and undertaking for the state in those bonds or contracts.

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