AMENDED IN ASSEMBLY MAY 28, 2010

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california legislature—2009–10 regular session

ASSEMBLY BILL No. 2437

Introduced by Assembly Member V. Manuel Perez

February 19, 2010

An act to amend Sections 91502 and 91558 of, and to add Article 6 (commencing with Section 91600) to Chapter 1 of Title 10 of, the Government Code, relating to economic development.

legislative counsel's digest

AB 2437, as amended, V. Manuel Perez. State government: economic development.

The California Industrial Development Financing Act authorizes cities, counties, cities and counties, and redevelopment agencies to establish industrial development authorities that are authorized to issue industrial development bonds, the proceeds of which may be used to fund capital projects of private enterprise under terms and conditions specified in the act. That act establishes the California Industrial Development Financing Advisory Commission and grants it various powers relating to industrial development bonds.

This bill, the California Manufacturing Competitiveness Act of 2010, would authorize the commission to establish the California Manufacturing Competitiveness Loan and Loan Guarantee Program for the purpose of attracting, retaining, and expanding large manufacturing facilities, and would require the commission to establish guidelines for the implementation of the program, as specified. The bill would require the commission to provide for the development and administration of the program application and evaluation process, and would require that applicants to the program demonstrate that they meet specified requirements. The bill would also require each applicant to pay a nonrefundable application fee of $5,000 and an administrative fee equal to 0.5% of the total requested guarantee amount. The bill would specify that only companies with at least 200 employees are eligible to receive assistance under the program.

The bill would also create the Manufacturing Program Account within the Industrial Development Fund. *The bill would prohibit General Fund moneys from being deposited in the account.* The bill would prohibit the commission from commencing the program prior to its adoption of a resolution finding that there is sufficient money in the account to cover the costs of implementing the program. The bill would allow moneys in the account to be ~~paid~~ *allocated* to a lending institution or financial company that will act as trustee of the funds, with the approval of the Department of Finance. The bill would also require the account to pay for specified direct loans, which the bill would limit to a maximum amount of $5,000,000 under the program, and defaulted loan guarantees, which the bill would limit to a maximum amount of $10,000,000 under the program. The bill would further require the above-described application fees to be deposited in the account to ensure that funds are available to the state for the sole purpose of administration of the program.

The bill would require the commission, beginning October 1, 2012, and annually thereafter, to post on its Internet Web site and provide the Legislature with a report on the program's activities and impact on the manufacturing industry, and on the state's economy generally.

The bill would provide that the above-described provisions shall be implemented only to the extent that sufficient moneys are available to the commission to implement the California Manufacturing Competitiveness Loan and Loan Guarantee Program. The bill would provide that its provisions only remain in effect until January 1, 2016, and as of that date are repealed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 91502 of the Government Code is amended to read:

91502. It is the purpose of this title to carry out and make effective the findings of the Legislature, and to that end, to provide business with alternative methods of financing in acquiring, constructing, or rehabilitating facilities, including, but not limited to, equipment and furnishings, in accordance with the criteria set forth in Section 91502.1, all to the mutual benefit of the people of the state and to protect their health, welfare, and safety.

SEC. 2. Section 91558 of the Government Code is amended to read:

91558. (a) The commission may, upon request of two or more authorities, in order to share expenses and facilitate bond issuance, act as a pooling agent to issue bonds on a joint or composite basis for companies which have applied for financing to the participating authorities. Authorities shall enter into written agreements with the commission specifying the projects which are to be delegated to the commission for financing pursuant to this section.

(b) Prior to issuance of any bonds pursuant to this section, the authority and public agency shall have completed the procedures required by Section 91530.

(c) The commission may issue bonds as requested and authorized by this section. For these purposes, the commission is granted all of the powers of an authority and may enter into project agreements and take all steps toward the sale, issuance, and security of bonds in the same manner as authorities may do. The resolution required by Section 91537 shall be adopted by the commission rather than by an authority.

(d) The commission may make loans or lines of credit available to companies, directly or through a contract with a participating financial institution, for the purpose of acquiring, constructing, or rehabilitating facilities or portions thereof, including, but not limited to, equipment and furnishings, pursuant to Article 6 (commencing with Section 91600), all to the mutual benefit of the people of the state and to protect their health, welfare, and safety.

SEC. 3. Article 6 (commencing with Section 91600) is added to Chapter 1 of Title 10 of the Government Code, to read:

Article 6. California Manufacturing Competitiveness Act of 2010

91600. This act may be cited as the California Manufacturing Competitiveness Act of 2010.

91601. (a) The Legislature finds and declares all of the following:

(1) California is one of the largest and most diverse economies in the world, with a state gross domestic product (GDP) of over $1.8 trillion in 2008. Based on figures from the International Monetary Fund, if California were an independent nation it would rank as the eighth largest economy in the world.

(2) Historically, the state's significance in the global marketplace resulted from a variety of factors, including: its strategic west coast location that provides direct access to the growing markets in Asia; its economically diverse regional economies; its large, ethnically diverse population, representing both a ready workforce and significant consumer base; its access to a wide variety of venture and other private capital; its broad base of small- and medium-sized businesses that support the global manufacturing supply chain; and its culture of innovation and entrepreneurship, particularly in the area of high technology.

(3) Historically, economic growth in California has outpaced the economic growth rate of the nation as a whole, and the state has led the nation in export-related jobs, business startups, and innovation. However, since the subprime home mortgage crisis in 2007, California communities have struggled. With the increasing rates of home foreclosure and the tightening of the credit markets, many businesses have found their existing lines of credit unaccessible. Significant drops in consumer spending have led to workforce reductions and business bankruptcies.

(4) For much of 2009, the number of unemployed workers rose by 40,000 to 60,000 per month, and the year ended with 2.25 million unemployed California workers. While California may have emerged from the recession in the final quarter of 2009, unemployment is expected to remain high throughout 2010 and 2011. Without specific intervention to support job creation and business expansion, many regions of California will be very slow to recover.

(5) Further, as California moves forward from this recession, it is important that the state support the recovery of industries that provide quality jobs, including manufacturing industries. A robust manufacturing sector offers many benefits to the state, including high-wage jobs, a basis for international trade, and one of the highest multiplier effects on other industries and businesses. It has been estimated that for every job created in manufacturing, two and a half jobs are supported in other industry sectors. For instance, in the electronic computer manufacturing industry, the multiplier effect is 16 to one.

(6) Manufacturing employers and other large employers in California, however, face many challenges in maintaining global and domestic competitiveness, including maintaining a skilled workforce and cost-effective productivity in the face of lower safety and wage standards in emerging foreign markets.

(b) It is therefore the intent of the Legislature to strengthen the manufacturing capacity of California through the implementation of the California Manufacturing Competitiveness Act of 2010. The act will provide the framework and focus to retool and expand California's manufacturing facilities, support a vibrant logistics network, and retain and create more quality jobs.

91602. Unless the context requires otherwise, for the purposes of this article, the following terms shall have the following meanings:

(a) "Administration expenses" means the reasonable and necessary expenses incurred by a commission in the administration of this title, including, without limitation, the fees and costs of paying agents, trustees, attorneys, consultants, and others.

(b) "Commission" means the California Industrial Development Financing Advisory Commission established pursuant to Article 3 (commencing with Section 91550).

(c) "Company" means a person, partnership, corporation, whether for profit or not, limited liability company, trust, or other private enterprise of whatever legal form, for which a project is undertaken or proposed to be undertaken pursuant to this title or which is in possession of property owned by an authority, and may include more than a single enterprise.

(d) "Cost" as applied to any project, may include all of the following:

(1) The cost of construction, improvement, repair, rehabilitation, and reconstruction.

(2) The cost of acquisition, including rights in land and other property, both real and personal and improved and unimproved, and franchises, and disposal rights.

(3) The cost of demolishing, removing, or relocating any building or structures on lands so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated.

(4) The cost of machinery, equipment, and furnishings, of engineering and architectural surveys, plans, and specifications, and of transportation and storage until the facility is operational.

(5) The cost of agents or consultants, including, without limitation, legal, financial, engineering, accounting, and auditing costs, necessary or incident to a project and the determination as to the feasibility or practicability of undertaking the project.

(6) The cost of acquiring or refinancing existing obligations incident to the undertaking and carrying out, including the financing, of a project, and the reimbursement to any governmental entity or agency, or any company, of expenditures made by or on behalf of the entity, agency, or company that are costs of the project hereunder, without regard to whether or not the expenditures may have been made before or after the adoption of a resolution of intention with respect to that project by an authority.

(7) The cost of making relocation assistance payments as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(8) The cost of procuring raw materials and finished goods that become integral to the property as a result of construction, improvement, repair, rehabilitation, or reconstruction.

(e) "Governing body" means the board of supervisors, city council, or board of directors of a redevelopment agency, as the case may be.

(f) "Indenture" means any mortgage, deed of trust, trust indenture, security agreement, or other instrument relating to establishing a lien or security interest in, or on, property, any pledge or other instrument relating to the possession of property, and any assignment or other instrument relating to establishing any right, title, or interest in, or related to, property, including the revenues therefrom, given by an authority to a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or bondholder or agent, for the security of its bonds and the benefit of the bondholders.

(g) “Manufacturing Program Account” means the account established within the Industrial Development Fund for moneys which are available for direct loans and loan guarantees. Moneys in this account are not subject to Section 91554.

(h) “Project” means the acquisition, construction, improvement, repair, rehabilitation, and reconstruction of facilities and the acquisition and rehabilitation of machinery, equipment, and furnishings, and the acquisition of engineering and architectural surveys, plans, and specifications, and all other necessary and related capital expenditures by the issuance of bonds upon the application of and to be repaid by payments from a company for the purposes of this title.

(i) “Project agreements” means the agreements between an authority and a company respecting a project, and may include, without limitation, leases, subleases, options, and installments or the contracts of purchase or sale, loan, or guaranty agreements, notes, mortgages, deeds of trust, and security agreements.

(j) (1) “Property” means any land, air rights, water rights, disposal rights, improvements, buildings or other structures, and any personal property, tangible or intangible, and includes, but is not limited to, machinery and equipment, whether or not in existence or under construction, and interests in any of the foregoing, or promissory notes or other obligations of any kind respecting such interests.

(2) Property also means property suitable for one or more of the activities or uses described below:

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

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

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

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

(E) Business activities with the purpose of creating or producing intangible property.

(F) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any of those activities are prohibited unless the property acquired is suitable for one or more of the activities described in subparagraphs (A) to (E), inclusive.

(G) Sewage or solid waste disposal activities or electric energy or gas furnishing activities are prohibited unless the property acquired is suitable for one or more of the activities described in subparagraphs (A) to (E), inclusive.

(H) Water furnishing activities are prohibited unless the property acquired is suitable for one or more of the activities described in subparagraphs (A) to (E), inclusive.

(k) "Public agency" means any city, county, city and county, or redevelopment agency.

(*l*) "Revenues" means all rents, purchase payments, and other income derived from, or with respect to, the sale, lease, or other voluntary or involuntary disposition of, or repayment of loans with respect to, property, bond proceeds, and any receipts derived from the deposit or investment of any income or proceeds in the account, but does not include receipts designated to cover administration expenses.

91603. (a) The commission may establish the California Manufacturing Competitiveness Loan and Loan Guarantee Program for the purpose of attracting, retaining, and expanding large manufacturing facilities. The commission shall establish guidelines for the implementation of this program consistent with this article. The commission shall not commence operation of the program prior to adopting a resolution finding that there is sufficient money in the Manufacturing Program Account, established pursuant to Section 91604, to cover the costs of implementing the program, including, but not limited to, appropriate oversight costs.

(b) In designing the California Manufacturing Competitiveness Loan and Loan Guarantee Program, the commission shall develop a program that meets all of the following objectives:

(1) Encourages the development of the state's long-term manufacturing capacity.

(2) Creates jobs through the support of retooling and expansion of manufacturing facilities.

(3) Prioritizes assistance to manufacturers who consistently pay the highest wages based on the average weekly wage rate for their industry subsector and health benefits.

(4) Allows manufacturers to access funds under terms and conditions which would not otherwise be available in the private market.

(5) Prioritizes assistance to applications that are jointly submitted by management and the union at the facility or the union pending representation of workers at the facility.

(6) Assists manufacturers to cost effectively respond to energy efficiency regulations and new technologies.

(c) The commission shall provide for the development and administration of the application, review, and evaluation process for the program, including, but not limited to, defining the eligibility standards, rating and ranking criteria, and other appropriate policies and procedures for implementing a direct loan and guarantee program subject to the following provisions:

(1) The maximum loan limit shall be five million dollars ($5,000,000). The maximum loan guarantee amount shall be ten million dollars ($10,000,000).

(2) Only companies with at least 200 employees shall be eligible to receive assistance under the program.

(3) All loan and loan guarantee applicants shall demonstrate that they will have the ability to repay the loans.

(4) Loans may be provided at terms and conditions below market to the extent that the overall program remains financially viable.

(5) Applicants must demonstrate they are in compliance with applicable federal, state, and local laws and regulations, or that the project for which they are requesting funding will bring them into compliance.

(6) Outstanding loans must be paid in full six months prior to a relocation of a facility outside of California. If the loan or loan guarantee included a subsidized amount, that amount must also be repaid subject to a sliding scale adopted by the commission.

(7) Each applicant must agree to annually report to the commission on total capital investments made by the company and total employment, including wage levels by type of work, in the prior year and the following two years. The applicant shall also

estimate the number of jobs created or retained through the provision of this state assistance, as well as provide other appropriate performance data, as determined by the commission.

(d) In addition to any other requirements in this article, each applicant shall demonstrate that it meets all of the following requirements:

(1) The facility or facilities where the moneys will be expended or benefit are located in the state.

(2) The moneys being awarded will be used to create or retain jobs in the state.

(3) That wages the applicant pays its employees in the state are on average, equal to or more than the average weekly wage rate for similar workers in the same industry subsector.

(4) That the applicant provides health insurance benefits for all full-time employees.

(5) The applicant's turnover rate has not exceeded 20 percent annually at any facility where moneys obtained through the program will be used.

(e) Each applicant shall pay a nonrefundable application fee of five thousand dollars ($5,000) and an administrative fee equal to one-half of 1 percent of the total requested guarantee amount. These moneys shall be deposited directly into the Manufacturing Program Account, established pursuant to Section 91604, for the purpose of ensuring that funds are available to the state for the sole purpose of administration of the program.

91604. (a) There is hereby created within the Industrial Development Fund, an account called the Manufacturing Program Account. ~~Upon appropriation by the Legislature, all or a portion of the funds in the account may be allocated by the commission, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds.~~ The ~~fund~~ *account* shall be used to pay for direct loans and defaulted loan guarantees issued pursuant to ~~Article 6 (commencing with Section 91600)~~ *this article,* administrative costs of the commission, and those costs necessary to protect a real property interest in a defaulted loan or guarantee.

(b) *All moneys received from the federal government, foundations, and other public or private funding sources for the purpose of implementing the California Manufacturing Competitiveness Loan and Loan Guarantee Program shall be* *deposited in the Manufacturing Program Account.* All loan repayments, interest, and royalties shall be deposited back into the Manufacturing Program Account. *No General Fund moneys may be deposited in the Manufacturing Program Account.*

(c) The commission shall not commence operation of the program prior to adopting a resolution finding that there is sufficient money in the account to cover the costs of implementing the program, including, but not limited to, appropriate oversight costs.

(d) Moneys in the account shall not be subject to Section 91554.

(e) Upon appropriation by the Legislature, all or a portion of the funds in the account may be allocated by the commission, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds.

91605. (a) Beginning October 1, 2012, and annually thereafter, the commission shall post on its Internet Web site or provide the Legislature with a report, whichever is more cost effective, on the program's activities and impact on the manufacturing industry and on the state's economy, in general.

(e) At a minimum, the information provided pursuant to subdivision (a) shall include the following:

(1) The total amount of moneys in the Manufacturing Program Account, at the beginning of the fiscal year and at the end of the fiscal year.

(2) The number of projects funded and the number of manufacturers assisted.

(3) The number of jobs created and the number of jobs retained through program assistance in each of the fiscal years.

(4) The amount of investments made by the manufacturer in the prior year to their assistance and next two years.

(5) The amount of federal, state, and local taxes paid by the companies in aggregate. Information on publicly held companies shall also be reported separately.

91606. *(a) This article shall be implemented only to the extent that sufficient moneys are available to the commission to administer the California Manufacturing Competitiveness Loan and Loan Guarantee Program.*

(b) This article shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

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