AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN ASSEMBLY JUNE 24, 2009

SENATE BILL No. 832

Introduced by Committee on Environmental Quality (Senators Simitian (Chair), Ashburn, Corbett, Hancock, Lowenthal, Pavley, and Runner)

March 25, 2009

An act to amend Sections 44501, 44502, 44506, 44507, 44508, 44510, 44520, 44525, 44525.6, 44525.7, 44526, 44530, 44532, 44534, 44536, 44537, 44542, 44543, 44545, 44550, 44552.5, 44553, 44554, 44555, 44559.1, and 44559.4 of, and to repeal Sections 44525.5, 44533, 44535, 44546, and 44547 of, the Health and Safety Code, and to amend Sections 6206.5 and 41780 of the Public Resources Code, relating to resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 832, as amended, Committee on Environmental Quality. Resources: California Pollution Control Financing Authority: public lands: solid waste diversion.

(1) The California Pollution Control Financing Authority Act establishes the California Pollution Control Financing Authority, with specified powers and duties, and authorizes the authority to approve financing for projects or pollution control facilities to prevent or reduce environmental pollution.

This bill would make various changes to the financial and administrative provisions of the act. The bill would include state agencies as eligible participating parties for financing, and would define project or pollution control facility as specified.

(2) Under existing law, the State Lands Commission has the power to apply to the United States Department of the Interior for patents to the numbered school sections in place, which have not been patented by the state.

This bill would delete the condition that the numbered school sections to which this provision applies be those that have not been patented by the state.

(3) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. Those entities are required to divert, from disposal or transformation, 50% of the solid waste through source reduction, recycling, and composting subject to the element, except as specified.

This bill would delete the condition that the solid waste subject to source reduction, recycling, and composting under these provisions, be diverted from landfill disposal or transformation.

(4) The bill would make conforming changes.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 44501 of the Health and Safety Code is amended to read:

44501. The Legislature finds and declares all of the following:

(a) It is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment, provide clean water, and enable alternative and renewable sources of energy. Industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities need to be modified and supplemented to meet the quality standards established, and to be established, for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The disposal of waste products by methods such as incineration and landfill pollute the environment by degrading air and water quality. In order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. Those new and alternative processes and facilities include those that recover resources and energy from waste products. In order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the state.

(d) California is expected to undergo tremendous population growth by the addition of millions of new jobs, new residents, and new households. This constitutes more rapid growth than California experienced during the ~~1950's, 1960's, and 1970's~~ *1950s, 1960s, and 1970s*, combined. As a result of this unprecedented growth, the long-term environmental quality of the state depends, in part, on altering current growth patterns by adopting policies and programs that promote new forms of sustainable development and that will help reduce pollution and the degradation of the environment. A key element of sustainable development is infill development and the revitalization of existing communities. Sustainable development will result in the remediation of brownfields, reduce traffic and auto pollution, and help preserve open spaces. Many communities in California do not have the resources or expertise to identify and compete for state, federal, or private assistance in order to develop and implement environmentally sensitive growth policies and programs for economically struggling neighborhoods. Assisting economically distressed counties and cities to develop and implement sustainable and environmentally sensitive growth policies and programs that increase the utilization of unproductive properties within existing communities will help reduce environmental hazards created by brownfields and traffic congestion, while aiding in the revitalization of economically struggling neighborhoods and the preservation of open space at the urban edges. The grant and loan program provided in this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

(e) Real property contaminated with hazardous substances is a continuing blight on communities. Estimates suggest there are between 67,000 and 119,000 contaminated sites, commonly referred to as "brownfields," throughout the state. Located in existing communities, many of these sites are abandoned, idle, or underutilized due to a combination of factors, including legal liability concerns, regulatory issues, and the costs of pollution cleanup. Additionally, many of the undeveloped brownfields in the state are located within communities with depressed land values and pressing economic need, communities often characterized by a lack of capital investment. The remediation and development of brownfields is an important component of revitalizing existing communities and supporting sustainable growth patterns. While remediation and development activities should focus on brownfield sites that, although contaminated, have the potential for economically beneficial reuse, there currently exist few, if any, sources for financing the assessment, planning, and reporting activities that are the necessary first steps toward determining whether a site has the potential for economically beneficial reuse.

(f) The California Pollution Control Financing Authority should work in conjunction with public and private sector entities, including, but not limited to, cities, counties, school districts, redevelopment agencies, and financial institutions, to assist in financing, through loans, the cost of performing or obtaining site assessments, remedial action plans technical assistance, and reports, and where it is determined that a site has the potential for economically beneficial reuse, the cleanup, remediation, or development of brownfield sites. The loan program provided by this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

SEC. 2. Section 44502 of the Health and Safety Code is amended to read:

44502. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to do all of the following, to the mutual benefit of the people of the state and to protect their health and welfare:

(a) To provide industry within the state, irrespective of company size, with an alternative method of financing in providing, acquiring, enlarging, or installing facilities for establishing pollution control, providing supplies of clean water, and producing energy from alternative or renewable sources, that are needed to accomplish the purposes of this division.

(b) To assist economically distressed counties and cities to develop and implement growth policies and programs that reduce pollution hazards and the degradation of the environment or promote infill development.

(c) To assist with the financing of the costs of assessment, remedial planning and reporting, technical assistance, and the cleanup, remediation, or development of brownfield sites, or other similar or related costs.

SEC. 3. Section 44506 of the Health and Safety Code is amended to read:

44506. “Participating party” means any person, company, corporation, public agency, partnership, firm, or other entity or group of entities engaged in operations within this state that requires financing pursuant to the terms of this division to aid and assist in the control, remediation, or elimination of pollution of the environment of the state.

SEC. 4. Section 44507 of the Health and Safety Code is amended to read:

44507. “Pollution” means an alteration of the quality of the environment of the state and shall be determined by the various standards prescribed from time to time by this state, the federal government, or any agency, department, or political subdivision of this state or the federal government, and may include, but is not limited to, all of the following:

(a) Earth, air, or water pollution.

(b) Pollution caused by solid or hazardous waste materials including the disposal or processing of these materials.

(c) Thermal pollution.

(d) Radiation contamination.

(e) The release of hazardous materials.

(f) Noise pollution.

(g) Contamination of soil or groundwater resulting from the release of hazardous materials, as defined in Section 25260.

(h) The presence of asbestos or lead paint, at sites with a reasonable potential for economically beneficial reuse.

(i) Any natural or manmade substance that must be removed to provide safe drinking water.

SEC. 5. Section 44508 of the Health and Safety Code is amended to read:

44508. “Project” and “pollution control facility,” respectively, mean any land, building, improvement thereto, work, real or personal property or structure, vehicle, or equipment providing or designed to provide for the control, reduction, abatement, elimination, remediation, or prevention of pollution, improvement of air, water, or soil quality, ensure the safe handling, recycling, or disposal of materials that might otherwise be improperly disposed of, or provide for environmental restoration, cleanup, or enhancement. Eligible projects include, but are not limited to, any type of project described in this subdivision that is authorized pursuant to federal law for tax-exempt or tax credit financing including in Section 142 (a)(4),(5), (6), (8), (9), (10), (12), or (14) of Title 26 of the United States Code.

SEC. 6. Section 44510 of the Health and Safety Code is amended to read:

44510. “Revenues” means all rents, receipts, purchase payments and all other income or receipts derived by the authority from the sale, lease, or other disposition of pollution control facilities, loan repayments under any loans made in connection with financing pollution control facilities, and any income or revenue derived from the investment of any money in any fund or account of the authority.

SEC. 7. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans and grants authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

SEC. 8. Section 44525 of the Health and Safety Code is amended to read:

44525. The authority may charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for financing pursuant to this division and to support authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 8 (commencing with Section 44559), and grants and loans as authorized by subdivisions (h) and (g) of Section 44526.

SEC. 9. Section 44525.5 of the Health and Safety Code, as added by Chapter 914 of the Statutes of 2000, is repealed.

SEC. 10. Section 44525.6 of the Health and Safety Code is amended to read:

44525.6. (a) Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the program described in subdivision (g) of Section 44526 describing the total amount of loans issued pursuant to subdivision (g) of Section 44526 in the previous calendar year, the amount of each loan issued, and a description of the programs awarded funding.

(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends that date.

SEC. 11. Section 44525.7 of the Health and Safety Code, as added by Chapter 915 of the Statutes of 2000, is amended to read:

44525.7. Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the program described in subdivision (h) of Section 44526.

SEC. 12. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized to do any of the following:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, or for the loan of moneys to finance pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, loan repayments, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To receive and accept loans, contributions, or grants, of money, property, labor, or other things of value, for, or in aid of, the authority in carrying out the purposes of this division, from any source, including, but not limited to, the federal government, the state, or any agency of the state, any local government or agency thereof, or any nonprofit or for-profit private entity or individual.

(f) To apply for, and accept, subventions, grants, loans, advances, and contributions from any source, of money, property, labor, or other things of value. The sources may include, but are not limited to, bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(g) To provide grants and loans to any city or county deemed eligible by the authority. The grants and loans shall be used to assist California neighborhoods suffering from high poverty or unemployment levels, or from low-income levels, to assist cities and counties in developing and implementing growth policies and programs that reduce pollution hazards and the degradation of the environment, or to promote infill development to revitalize these communities. The grants and loans may be used to employ the technical expertise necessary to identify, assess, and complete applications for state, federal, and private economic assistance programs that develop and implement sustainable development and sound environmental policies and programs. Priority shall be given to applicants lacking the resources to identify, assess, and complete applications to economic assistance, and for those lacking the resources to develop and implement sustainable growth and other sound environmental policies and programs. The authority shall fund these grants and loans from any funds available to the authority or set aside for the authority's administrative expenses. The authority may not award more than seven million five hundred thousand dollars ($7,500,000) in grants and loans pursuant to this subdivision. This subdivision shall remain operative only until January 1, 2012.

(h) (1) To provide a loan directly, or indirectly through one or more public or private sector intermediaries, to any city, county, school district, redevelopment agency, financial institution, as defined in subdivision (d) of Section 44559.1, for-profit or not-for-profit organization, or participating party, as defined in Section 44506, to assist in financing, among other things, the costs of performing or obtaining brownfield site assessments, remedial action plans and reports, technical assistance, the cleanup, remediation, or development of brownfield sites, or any other similar or related costs, subject to all applicable federal, state, and local laws, procedures, and regulations.

(2) The authority shall establish standards and criteria to ensure that a recipient of direct or indirect financing for cleanup or remediation pursuant to this subdivision has the necessary financial resources and expertise to successfully and appropriately complete the cleanup or remediation of the property.

(3) The authority may pay all, or a portion, of the associated program development and implementation costs of any public or private sector intermediaries through which a loan is made. A loan authorized by this subdivision is subject to both of the following:

(A) A loan may be used in connection with a brownfield site prior to a determination of whether the site has a reasonable potential for economically beneficial reuse.

(B) A loan may be made upon the terms determined by the authority and may provide for any rate of interest or no interest.

(4) The authority shall fund a loan made pursuant to this subdivision from any funds available to it, from any funds set aside for the authority's administrative expenses, or from any small business assistance fund established for these purposes pursuant to Section 44548.

(5) The authority may waive repayment of all, or a portion, of any loan made pursuant to this subdivision upon conditions to be determined by the authority, and the amount so waived shall be deemed a grant to the recipient.

(i) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 13. Section 44530 of the Health and Safety Code is amended to read:

44530. All expenses incurred in carrying out the provisions of this division shall be payable solely from funds provided under the authority of this division and no liability or obligation shall be imposed upon the State of California and, none shall be incurred by the authority beyond the extent to which moneys shall have been provided under the provisions of this division. Under no circumstances shall the authority create any debt, liability, or obligation on the part of the State of California payable from any source whatsoever other than the moneys provided under the provisions of this division.

SEC. 14. Section 44532 of the Health and Safety Code is amended to read:

44532. When the principal of and interest on bonds of the authority issued to finance or refund the cost of a particular project for a participating party shall have been fully paid and retired or when adequate provision shall have been made for the payment and retirement of the same, and all other conditions of the resolution, indenture, or agreement authorizing and securing the same shall have been satisfied and the lien of the resolution, indenture, or agreement shall have been released in accordance with the provisions thereof, the authority is authorized, upon terms and conditions as may be prescribed by the authority, to execute these deeds and conveyances as are necessary or required to convey title to the project to the participating party.

SEC. 15. Section 44533 of the Health and Safety Code is repealed.

SEC. 16. Section 44534 of the Health and Safety Code is amended to read:

44534. (a) The authority shall take initial action on any completed application for financing submitted to it by a participating party no later than the next meeting of the authority that occurs after at least 30 days following receipt of the application. The authority may delegate to its executive director or deputy executive director the authority to grant initial approval for financing to a participating party.

(b) The authority shall take final action with regard to the issuance of bonds or notes to lend financial assistance to a participating party within 60 days of receipt by the authority of a request from the participating party for the issuance of bonds or notes.

(c) A request from a participating party for final approval of the issuance of bonds or notes shall be accompanied by evidence of the fulfillment of all conditions to the issuance of the bonds or notes and by copies of forms of all principal legal documents to be approved by the authority, which shall be satisfactory in form and substance to the Attorney General.

(d) The authority may give final approval for the issuance of bonds or notes upon terms as it deems necessary and desirable.

SEC. 17. Section 44535 of the Health and Safety Code is repealed.

SEC. 18. Section 44536 of the Health and Safety Code is amended to read:

44536. The authority may approve financing for a pollution control facility, or equipment for a facility, that is not owned by the applicant if the facility or equipment is a component of an approved tradeoff package to achieve air quality standards. The authority may also approve financing for projects where the owner of the project enters into a lease or operating agreement with another entity that will use the project. In either case both the owner and the user shall be treated as participating parties.

SEC. 19. Section 44537 of the Health and Safety Code is amended to read:

44537. The authority shall take all reasonable steps to publicize its programs so that eligible applicants may be aware of them.

SEC. 20. Section 44542 of the Health and Safety Code is amended to read:

44542. (a) (1) The authority is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities (hereinafter collectively called "bonds") for any corporate purpose. These bonds may be authorized, without limiting the generality of the foregoing, to finance a single project for a single participating party, a series of projects for a single participating party, a single project for several participating parties, or several projects for several participating parties.

(2) In anticipation of the sale of the bonds as authorized by Section 44540, or as may be authorized pursuant to Section 44541, the authority may issue negotiable bond anticipation notes and may renew the same from time to time. These bond anticipation notes may be paid from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Notes and agreements relating thereto and bond anticipation notes, hereinafter collectively called notes, and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations that a bond, agreement relating thereto, and bond resolution of the authority may contain, except that the note or renewal thereof shall mature at a time not exceeding three years from the date of issue of the original note.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes, or other obligation shall be general obligations of the authority payable from any revenues or moneys of the authority available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds, notes, or other obligations pledging any particular revenues or moneys and subject to any agreements with any participating party. Notwithstanding that bonds, notes, or other obligations may be payable from a special fund, they shall be and 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 authority in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall bear the date or dates, mature at the time or times, not exceeding 50 years from their respective dates, bear interest at the fixed rate or rates, or at the variable rates, including multiple methods of setting rates from time to time while the bonds are outstanding, be payable at the time or times, be in the denominations, be executed in the manner, be payable in lawful money of the United States of America at the place or places, and be subject to the terms of redemption or tender, as resolution or resolutions may provide. The bonds or notes shall be sold by the Treasurer as ~~agents~~ *agent* for sale. The bond or notes may be sold at a public or private sale, and for the price or prices and on terms and conditions, as the authority shall determine after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes. Pending preparation of the definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds. The Treasurer may sell any bonds, notes, or other evidence of indebtedness at a price below the par value thereof ~~if the discount on any security so sold shall not exceed 6 percent of 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 or any credit provider to be authorized, as to all of the following:

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

(2) The rentals, fees, purchase payments, loan payments, 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 authority or its agent to restrict and 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 sale of any issue of bonds then or thereafter to be issued may be applied and pledging these 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 bonds the holders of which must consent thereto, and the manner in which consent may be given.

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

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

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

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

(12) Provisions for the security of any credit provider supporting payment on the bonds, but only in a manner subordinate to the rights of bondholders.

(e) Neither the members of the authority 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 authority shall have power out of any funds available therefor to purchase its bonds or notes without the cancellation thereof. The authority may hold, pledge, cancel, or resell bonds, subject to, and in accordance with, agreements with bondholders.

SEC. 21. Section 44543 of the Health and Safety Code is amended to read:

44543. (a) In the discretion of the authority, any bonds issued under the provisions of this division may be secured by a trust agreement by and between the authority and a trustee or trustees, which may be 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 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 bonds. The trust agreement or resolution providing for the issuance of bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders, or any credit provider, as may be reasonable and proper and not in violation of law, including particularly provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company doing business under the laws of this state that may act as depository of the proceeds of bonds or of revenues or other moneys may furnish these indemnifying bonds or pledge securities as may be required by the authority. 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 or any credit provider. In addition to the foregoing, any trust agreement or resolution may contain other provisions as the authority 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.

(b) All expenses incurred in carrying out the provisions of a trust agreement or resolution may be treated as a part of the cost of the operation of a project.

SEC. 22. Section 44545 of the Health and Safety Code is amended to read:

44545. (a) The authority may provide for the issuance of bonds of the authority for the purpose of refunding, directly or indirectly, any bonds, notes, or other ~~evidence~~ *evidences* of indebtedness of the authority or a public agency 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 these bonds, and, if deemed advisable by the authority, 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 other securities may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending application, be placed in escrow to be applied to purchase or retirement at maturity or redemption on a date as may be determined by the authority.

(c) Pending this use, any of these escrowed proceeds may be invested and reinvested by the Treasurer or any trustee in instruments as may be specified in the resolution or indenture governing the bonds to be refunded, maturing at the time or times as shall be appropriate to ensure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on this type of investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of these proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(d) All of these bonds shall be subject to the provisions of this division in the same manner and to the same extent as other bonds issued pursuant to this division. If the authority refunds bonds or evidences of indebtedness not originally issued by the authority, the authority shall make findings that the project being refinanced qualifies as a project under this division.

SEC. 23. Section 44546 of the Health and Safety Code is repealed.

SEC. 24. Section 44547 of the Health and Safety Code is repealed.

SEC. 25. Section 44550 of the Health and Safety Code is amended to read:

44550. The authority may contract with any participating party for the construction or acquisition of a project by the participating party. All contracts for the construction or acquisition of a project by a participating party shall provide that the participating party shall be responsible for the architectural and engineering design and for the construction and completion thereof subject to standards for architectural and engineering design as may be established, and subject to supervision as the authority deems necessary. The authority may agree to pay the cost of a project constructed or acquired by any participating party and to advance costs from time to time in installments or otherwise as required by the contract for the construction or acquisition thereof. Title to all of these projects may be vested in the authority subject to the terms of any lease thereof to the participating party or the rights of a participating party under any contract for the purchase or acquisition of the project including the payment of the purchase price under installment sales contracts.

SEC. 26. Section 44552.5 of the Health and Safety Code is amended to read:

44552.5. (a) As an alternative to leasing or selling a project to a participating party, the authority may finance the acquisition, construction, or installation of a project by means of a loan to the participating party. The principal amount of the participating party's obligation as borrower shall be sufficient to provide funds for all the purposes specified in subdivisions (a), (b), and (c) of Section 44551 and may be paid in installments, together with interest on the unpaid balance, or otherwise as may be mutually agreed by the authority and the participating party and set forth in the loan agreement. Loans made pursuant to this section may be secured or unsecured in the discretion of the authority.

(b) The authority may also purchase or acquire from a financial institution part or all of a loan made to a participating party for a project meeting the requirements of this division.

(c) Section 44550 shall not apply to projects constructed with moneys loaned pursuant to this section.

SEC. 27. Section 44553 of the Health and Safety Code is amended to read:

44553. All moneys received pursuant to the provisions of this division, whether as proceeds from the sale of bonds, notes, or other evidences of indebtedness or as revenues or fees received by the authority, shall be deemed to be trust funds to be held and applied solely as provided in this division. Any bank or trust company with which these moneys shall be deposited shall act as trustee of these moneys and shall hold and apply the same for the purposes hereof, subject to regulations as the resolution authorizing the bonds of any issue or the trust agreement securing these bonds may provide.

SEC. 28. Section 44554 of the Health and Safety Code is amended to read:

44554. Any holder of bonds, notes, or other obligations issued under the provisions of this division, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any trust agreement securing, bonds, notes, or other obligations, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under resolution or trust agreement, and may enforce and compel the performance of all duties required by this division or by resolution or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges herein authorized and required by the provisions of the resolution or trust agreement to be fixed, established, and collected.

SEC. 29. Section 44555 of the Health and Safety Code is amended to read:

44555. The exercise of the powers granted by this division shall be in all respects for the benefit of the people of this state, for their health and welfare, and protection of the state's environment. Any bonds, notes, or other obligations issued under the provisions of this division, their transfer and the income therefrom, shall at all times be free from taxation of every kind by the state and by municipalities and other political subdivisions of the state.

SEC. 30. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, "financial institution" also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(3) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.

(e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) "Program" means the Capital Access Loan Program created pursuant to this article.

(i) "Qualified business" means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) "Qualified loan" does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.

(m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 31. Section 44559.4 of the Health and Safety Code is amended to read:

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 10 days after the date on which the loan is made, of all of the following:

(1) The disbursement of the loan.

(2) The dollar amount of the loan enrolled.

(3) The interest rate applicable to, and the term of, the loan.

(4) The amount of the agreed upon premium.

(b) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(c) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3½ percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(d) When depositing fees collected under subdivision (c) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount equal to 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

SEC. 32. Section 6206.5 of the Public Resources Code is amended to read:

6206.5. The commission is hereby empowered to apply to the United States Department of the Interior for patents to the numbered school sections in place and to accept patents, in accordance with an act of Congress approved June 21, 1934 (Public No. 440-73d Congress) entitled “An Act Authorizing the Secretary of the Interior to issue patents to the numbered school sections in place, granted to the States by the act approved February 22, 1889, by the act approved January 25, 1927 (44 Stat. 1026), and by any other act of Congress.”

SEC. 33. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each jurisdiction’s source reduction and recycling element shall include an implementation schedule that shows both of the following:

(1) For the initial element, the jurisdiction shall divert 25 percent of all solid waste by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783 and 41784, for the first and each subsequent revision of the element, the jurisdiction shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

(b) This section does not prohibit a jurisdiction from implementing source reduction, recycling, and composting activities designed to exceed the requirements of this division.

SEC. 34. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the protection of the environment at the earliest possible time, it is necessary that this act take effect immediately.

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