

AMENDED IN ASSEMBLY APRIL 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2523

Introduced by Assembly Member Hueso

February 24, 2012

An act to amend Sections 63010 and 63035 of, and to add Section 63025.5 to, the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 2523, as amended, Hueso. Infrastructure and Economic Development Bank: participation loans.

Existing law authorizes the Infrastructure and Economic Development Bank to enter into loan agreements with a sponsor or a participating party in order to finance a project related to infrastructure or economic development. Existing law requires the bank to submit an annual report to the Governor and the Joint Legislative Audit Committee on various topics related to the operation of the bank's projects.

This bill would authorize the bank, upon appropriation by the Legislature, to enter into participation loan agreements, as defined, with financial institutions for the bank to purchase interests in loans made or held by financial institutions to small businesses. *This bill would authorize the bank to establish a California Preferred Broker-Dealer program for the purpose of closing financial and information gaps within the network of public and private financial institutions and intermediaries that serve small businesses.* This bill would require the bank to include in its annual report a summary of the participation loan agreement program.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The availability of capital for California small businesses
4 that are engaged in economic development is critical to continued
5 job growth and development of the economy of California.

6 (b) Existing state-managed funds constitute a major financial
7 resource of California. Prudent investment, management, and
8 coordination of these funds may, together with access to capital
9 provided in partnership with financial institutions, enhance the
10 availability of capital for California small businesses and farms
11 and contribute to sustainable job growth.

12 (c) This act will help the economic development of this state
13 by accomplishing the following purposes:

14 (1) Support the economic development of this state by increasing
15 access to capital for small businesses and farms in this state in
16 partnership with local financial institutions and through existing
17 state agency programs and infrastructure.

18 (2) Support California employment by encouraging and
19 coordinating investments that can result in job creation and
20 retention in a sustainable and efficient manner.

21 (3) Assist in providing stability to the local financial sector, but
22 not to compete in any way with banks, credit unions, or other
23 financial institutions.

24 (4) Fund related governmental operations with a portion of the
25 program’s earnings, when practical.

26 SEC. 2. Section 63010 of the Government Code is amended
27 to read:

28 63010. For purposes of this division, the following words and
29 terms shall have the following meanings unless the context clearly
30 indicates or requires another or different meaning or intent:

31 (a) “Act” means the Bergeson-Peace Infrastructure and
32 Economic Development Bank Act.

33 (b) “Bank” means the California Infrastructure and Economic
34 Development Bank.

35 (c) “Board” or “bank board” means the Board of Directors of
36 the California Infrastructure and Economic Development Bank.

37 (d) “Bond purchase agreement” means a contractual agreement
38 executed between the bank and a sponsor, or a special purpose

1 trust authorized by the bank or a sponsor, or both, whereby the
2 bank or special purpose trust authorized by the bank agrees to
3 purchase bonds of the sponsor for retention or sale.

4 (e) “Bonds” means bonds, including structured, senior, and
5 subordinated bonds or other securities; loans; notes, including
6 bond, revenue, tax or grant anticipation notes; commercial paper;
7 floating rate and variable maturity securities; and any other
8 evidences of indebtedness or ownership, including certificates of
9 participation or beneficial interest, asset backed certificates, or
10 lease-purchase or installment purchase agreements, whether taxable
11 or excludable from gross income for federal income taxation
12 purposes.

13 (f) “Cost,” as applied to a project or portion thereof financed
14 under this division, means all or any part of the cost of construction,
15 renovation, and acquisition of all lands, structures, real or personal
16 property, rights, rights-of-way, franchises, licenses, easements,
17 and interests acquired or used for a project; the cost of demolishing
18 or removing any buildings or structures on land so acquired,
19 including the cost of acquiring any lands to which the buildings
20 or structures may be moved; the cost of all machinery, equipment,
21 and financing charges; interest prior to, during, and for a period
22 after completion of construction, renovation, or acquisition, as
23 determined by the bank; provisions for working capital; reserves
24 for principal and interest and for extensions, enlargements,
25 additions, replacements, renovations, and improvements; and the
26 cost of architectural, engineering, financial and legal services,
27 plans, specifications, estimates, administrative expenses, and other
28 expenses necessary or incidental to determining the feasibility of
29 any project or incidental to the construction, acquisition, or
30 financing of any project, and transition costs in the case of an
31 electrical corporation.

32 (g) “Economic development facilities” means real and personal
33 property, structures, buildings, equipment, and supporting
34 components thereof that are used to provide industrial, recreational,
35 research, commercial, utility, or service enterprise facilities,
36 community, educational, cultural, or social welfare facilities and
37 any parts or combinations thereof, and all facilities or infrastructure
38 necessary or desirable in connection therewith, including provision
39 for working capital, but shall not include any housing.

1 (h) “Electrical corporation” has the meaning set forth in Section
2 218 of the Public Utilities Code.

3 (i) “Executive director” means the Executive Director of the
4 California Infrastructure and Economic Development Bank
5 appointed pursuant to Section 63021.

6 (j) “Financial assistance” in connection with a project, includes,
7 but is not limited to, any combination of grants, loans, the proceeds
8 of bonds issued by the bank or special purpose trust, insurance,
9 guarantees or other credit enhancements or liquidity facilities, and
10 contributions of money, property, labor, or other things of value,
11 as may be approved by resolution of the board or the sponsor, or
12 both; the purchase or retention of bank bonds, the bonds of a
13 sponsor for their retention or for sale by the bank, or the issuance
14 of bank bonds or the bonds of a special purpose trust used to fund
15 the cost of a project for which a sponsor is directly or indirectly
16 liable, including, but not limited to, bonds, the security for which
17 is provided in whole or in part pursuant to the powers granted by
18 Section 63025; bonds for which the bank has provided a guarantee
19 or enhancement, including, but not limited to, the purchase of the
20 subordinated bonds of the sponsor, the subordinated bonds of a
21 special purpose trust, or the retention of the subordinated bonds
22 of the bank pursuant to Chapter 4 (commencing with Section
23 63060); or any other type of assistance deemed appropriate by the
24 bank or the sponsor, except that no direct loans shall be made to
25 nonpublic entities other than in connection with the issuance of
26 rate reduction bonds pursuant to a financing order or in connection
27 with a financing for an economic development facility.

28 For purposes of this subdivision, “grant” does not include grants
29 made by the bank except when acting as an agent or intermediary
30 for the distribution or packaging of financing available from
31 federal, private, or other public sources.

32 (k) “Financial institutions” means banking or savings
33 organizations, including, but not limited to, banks, savings and
34 loan associations, and credit unions, authorized to conduct business
35 in California and state-chartered commercial banks, trust
36 companies, and savings and loan associations. “*Financial*
37 *institutions*” also includes nonprofit organizations that serve as
38 a financial intermediary or microbusiness lender, as defined in
39 Section 13997.2.

1 (l) “Financing order” has the meaning set forth in Section 840
2 of the Public Utilities Code.

3 (m) “Guarantee trust fund” means the California Infrastructure
4 Guarantee Trust Fund.

5 (n) “Infrastructure bank fund” means the California
6 Infrastructure and Economic Development Bank Fund.

7 (o) “Loan agreement” means a contractual agreement executed
8 between the bank or a special purpose trust and a sponsor that
9 provides that the bank or special purpose trust will loan funds to
10 the sponsor and that the sponsor will repay the principal and pay
11 the interest and redemption premium, if any, on the loan.

12 (p) “Participation loan agreement” means an agreement whereby
13 the bank would purchase portions of outstanding loans ~~by providing~~
14 ~~capital and collecting interest and principal payments on a pro rata~~
15 ~~basis or sharing in the ownership of a loan or package of loans~~
16 without servicing, managing, or otherwise administrating the
17 underlying loan. *A participation loan agreement may include an*
18 *agreement to refinance a loan or package of loans where the term*
19 *of the loan or loans to be refinanced is within 18 months of coming*
20 *due.*

21 (q) “Participating party” means any person, company,
22 corporation, association, state or municipal governmental entity,
23 partnership, firm, or other entity or group of entities, whether
24 organized for profit or not for profit, engaged in business or
25 operations within the state and that applies for financing from the
26 bank in conjunction with a sponsor for the purpose of implementing
27 a project. However, in the case of a project relating to the financing
28 of transition costs or the acquisition of transition property, or both,
29 on the request of an electrical corporation, or in connection with
30 a financing for an economic development facility, or for the
31 financing of insurance claims, the participating party shall be
32 deemed to be the same entity as the sponsor for the financing.

33 (r) “Project” means designing, acquiring, planning, permitting,
34 entitling, constructing, improving, extending, restoring, financing,
35 and generally developing public development facilities or economic
36 development facilities within the state or financing transition costs
37 or the acquisition of transition property, or both, upon approval of
38 a financing order by the Public Utilities Commission, as provided
39 in Article 5.5 (commencing with Section 840) of Chapter 4 of Part
40 1 of Division 1 of the Public Utilities Code.

1 (s) “Public development facilities” means real and personal
2 property, structures, conveyances, equipment, thoroughfares,
3 buildings, and supporting components thereof, excluding any
4 housing, that are directly related to providing the following:

5 (1) “City streets” including any street, avenue, boulevard, road,
6 parkway, drive, or other way that is any of the following:

7 (A) An existing municipal roadway.

8 (B) Is shown upon a plat approved pursuant to law and includes
9 the land between the street lines, whether improved or unimproved,
10 and may comprise pavement, bridges, shoulders, gutters, curbs,
11 guardrails, sidewalks, parking areas, benches, fountains, plantings,
12 lighting systems, and other areas within the street lines, as well as
13 equipment and facilities used in the cleaning, grading, clearance,
14 maintenance, and upkeep thereof.

15 (2) “County highways” including any county highway as defined
16 in Section 25 of the Streets and Highways Code, that includes the
17 land between the highway lines, whether improved or unimproved,
18 and may comprise pavement, bridges, shoulders, gutters, curbs,
19 guardrails, sidewalks, parking areas, benches, fountains, plantings,
20 lighting systems, and other areas within the street lines, as well as
21 equipment and facilities used in the cleaning, grading, clearance,
22 maintenance, and upkeep thereof.

23 (3) “Drainage, water supply, and flood control” including, but
24 not limited to, ditches, canals, levees, pumps, dams, conduits,
25 pipes, storm sewers, and dikes necessary to keep or direct water
26 away from people, equipment, buildings, and other protected areas
27 as may be established by lawful authority, as well as the
28 acquisition, improvement, maintenance, and management of
29 floodplain areas and all equipment used in the maintenance and
30 operation of the foregoing.

31 (4) “Educational facilities” including libraries, child care
32 facilities, including, but not limited to, day care facilities, and
33 employment training facilities.

34 (5) “Environmental mitigation measures” including required
35 construction or modification of public infrastructure and purchase
36 and installation of pollution control and noise abatement
37 equipment.

38 (6) “Parks and recreational facilities” including local parks,
39 recreational property and equipment, parkways and property.

1 (7) “Port facilities” including docks, harbors, ports of entry,
2 piers, ships, small boat harbors and marinas, and any other
3 facilities, additions, or improvements in connection therewith.

4 (8) “Power and communications” including facilities for the
5 transmission or distribution of electrical energy, natural gas, and
6 telephone and telecommunications service.

7 (9) “Public transit” including air and rail transport of goods,
8 airports, guideways, vehicles, rights-of-way, passenger stations,
9 maintenance and storage yards, and related structures, including
10 public parking facilities, equipment used to provide or enhance
11 transportation by bus, rail, ferry, or other conveyance, either
12 publicly or privately owned, that provides to the public general or
13 special service on a regular and continuing basis.

14 (10) “Sewage collection and treatment” including pipes, pumps,
15 and conduits that collect wastewater from residential,
16 manufacturing, and commercial establishments, the equipment,
17 structures, and facilities used in treating wastewater to reduce or
18 eliminate impurities or contaminants, and the facilities used in
19 disposing of, or transporting, remaining sludge, as well as all
20 equipment used in the maintenance and operation of the foregoing.

21 (11) “Solid waste collection and disposal” including vehicles,
22 vehicle-compatible waste receptacles, transfer stations, recycling
23 centers, sanitary landfills, and waste conversion facilities necessary
24 to remove solid waste, except that which is hazardous as defined
25 by law, from its point of origin.

26 (12) “Water treatment and distribution” including facilities in
27 which water is purified and otherwise treated to meet residential,
28 manufacturing, or commercial purposes and the conduits, pipes,
29 and pumps that transport it to places of use.

30 (13) “Defense conversion” including, but not limited to, facilities
31 necessary for successfully converting military bases consistent
32 with an adopted base reuse plan.

33 (14) “Public safety facilities” including, but not limited to, police
34 stations, fire stations, court buildings, jails, juvenile halls, and
35 juvenile detention facilities.

36 (15) “State highways” including any state highway as described
37 in Chapter 2 (commencing with Section 230) of Division 1 of the
38 Streets and Highways Code, and the related components necessary
39 for safe operation of the highway.

1 (16) (A) Military infrastructure, including, but not limited to,
2 facilities on or near a military installation, that enhance the military
3 operations and mission of one or more military installations in this
4 state. To be eligible for funding, the project shall be endorsed by
5 the Office of Military and Aerospace Support established pursuant
6 to Section 13998.2.

7 (B) For purposes of this subdivision, “military installation”
8 means any facility under the jurisdiction of the Department of
9 Defense, as defined in paragraph (1) of subsection (e) of Section
10 2687 of Title 10 of the United States Code.

11 (t) “Rate reduction bonds” has the meaning set forth in Section
12 840 of the Public Utilities Code.

13 (u) “Revenues” means all receipts, purchase payments, loan
14 repayments, lease payments, and all other income or receipts
15 derived by the bank or a sponsor from the sale, lease, or other
16 financing arrangement undertaken by the bank, a sponsor or a
17 participating party, including, but not limited to, all receipts from
18 a bond purchase agreement, and any income or revenue derived
19 from the investment of any money in any fund or account of the
20 bank or a sponsor and any receipts derived from transition property.
21 Revenues shall not include moneys in the General Fund of the
22 state.

23 (v) “Small business” has the same meaning as defined in
24 ~~subdivision (d) of Section 14837.~~ *any of the following:*

25 (1) *A small business as defined in subdivision (d) of Section*
26 *14837.*

27 (2) *A business that meets the requirements of an eligible small*
28 *business under Part 121 of Chapter 1 of Title 13 of the Code of*
29 *Federal Regulations.*

30 (3) *A business that is eligible for a loan guarantee under the*
31 *California Small Business Financial Development Corporation*
32 *Law (Chapter 1 (commencing with Section 14000) of Part 5 of*
33 *Division 3 of Title 1 of the Corporations Code).*

34 (4) *A qualified business that is eligible for a loan guarantee*
35 *under Article 8 (commencing with Section 44559) of Chapter 1 of*
36 *Division 27 of the Health and Safety Code.*

37 (5) *A nonprofit organization that meets the size limitations of*
38 *paragraphs (1) to (4), inclusive.*

39 (w) “Special purpose trust” means a trust, partnership, limited
40 partnership, association, corporation, nonprofit corporation, or

1 other entity authorized under the laws of the state to serve as an
2 instrumentality of the state to accomplish public purposes and
3 authorized by the bank to acquire, by purchase or otherwise, for
4 retention or sale, the bonds of a sponsor or of the bank made or
5 entered into pursuant to this division and to issue special purpose
6 trust bonds or other obligations secured by these bonds or other
7 sources of public or private revenues. Special purpose trust also
8 means any entity authorized by the bank to acquire transition
9 property or to issue rate reduction bonds, or both, subject to the
10 approvals by the bank and powers of the bank as are provided by
11 the bank in its resolution authorizing the entity to issue rate
12 reduction bonds.

13 (x) “Sponsor” means any subdivision of the state or local
14 government including departments, agencies, commissions, cities,
15 counties, nonprofit corporations formed on behalf of a sponsor,
16 special districts, assessment districts, and joint powers authorities
17 within the state or any combination of these subdivisions that
18 makes an application to the bank for financial assistance in
19 connection with a project in a manner prescribed by the bank. This
20 definition shall not be construed to require that an applicant have
21 an ownership interest in the project. In addition, an electrical
22 corporation shall be deemed to be the sponsor as well as the
23 participating party for any project relating to the financing of
24 transition costs and the acquisition of transition property on the
25 request of the electrical corporation and any person, company,
26 corporation, partnership, firm, or other entity or group engaged in
27 business or operation within the state that applies for financing of
28 any economic development facility, shall be deemed to be the
29 sponsor as well as the participating party for the project relating
30 to the financing of that economic development facility.

31 (y) “State” means the State of California.

32 (z) “Transition costs” has the meaning set forth in Section 840
33 of the Public Utilities Code.

34 (aa) “Transition property” has the meaning set forth in Section
35 840 of the Public Utilities Code.

36 SEC. 3. Section 63025.5 is added to the Government Code, to
37 read:

38 63025.5. (a) (1) The bank ~~may~~, *may establish a California*
39 *Preferred Broker-Dealer program for the purpose of closing*
40 *financial and information gaps within the network of public and*

1 *private financial institutions and intermediaries that serve small*
 2 *businesses.*

3 *(2) In order for a financial institution to be eligible to participate*
 4 *in the California Preferred Broker-Dealer program, the financial*
 5 *institution shall demonstrate a long-term relationship with*
 6 *community development financial institutions, and shall meet all*
 7 *of the following requirements:*

8 *(A) Adhere to a prescribed set of underwriting criteria, which*
 9 *would be designed to meet the needs of small businesses and*
 10 *provide a high-quality loan-backed security.*

11 *(B) Demonstrate the ability to facilitate participation loan*
 12 *agreements and the syndication of loans and loan packages that*
 13 *provide capital to small businesses.*

14 *(C) Commit a minimum percent of capital to any syndication*
 15 *or participation agreement entered into under the auspices of the*
 16 *program.*

17 *(D) Annually report on the number of small businesses served,*
 18 *jobs created, geographic locations, and industry sectors.*

19 *(b) Financial institutions that participate in the California*
 20 *Preferred Broker-Dealer program shall have priority access to*
 21 *guarantees under the Small Business Loan Guarantees program*
 22 *under Article 8 (commencing with Section 44559) of Chapter 1 of*
 23 *Division 27 of the Health and Safety Code.*

24 *(c) The bank may, upon an appropriation by the Legislature for*
 25 *this purpose, enter into participation loan agreements with financial*
 26 *institutions for the bank to purchase participation interests in loans*
 27 *made or held by financial institutions to small businesses.*

28 ~~(b)~~

29 ~~(d) The bank may promulgate regulations in accordance with~~
 30 ~~the Administrative Procedures Act (Chapter 3.5 (commencing with~~
 31 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
 32 ~~Code) guidelines to establish the procedures and standards for~~
 33 ~~entering into participation loan agreements in accordance with this~~
 34 ~~act implementing this section.~~

35 SEC. 4. Section 63035 of the Government Code is amended
 36 to read:

37 63035. The bank shall, not later than November 1 of each year,
 38 submit to the Governor and the Joint Legislative Budget Committee
 39 a report of its activities pursuant to this division for the preceding
 40 fiscal year. The report shall include all of the following:

- 1 (a) (1) A listing of applications accepted, including a description
2 of the expected employment impact of each project.
- 3 (2) A separate summary of applications for the Infrastructure
4 State Revolving Fund Program, including a summary of the number
5 of preliminary applications that did not receive funding and the
6 reason the applicant did not qualify.
- 7 (b) A specification of bonds sold and interest rates thereon.
- 8 (c) The amount of other public and private funds leveraged by
9 the assistance provided.
- 10 (d) A report of revenues and expenditures for the preceding
11 fiscal year, including all of the bank's costs. The information
12 provided pursuant to this subdivision shall include, but need not
13 be limited to, both of the following:
- 14 (1) The amount and source of total bank revenues. Revenues
15 shall be shown by main categories of revenues, including interest
16 earnings, fees collected, and bond proceeds, for each bank program.
- 17 (2) The amount and type of total bank expenditures.
18 Expenditures shall be shown by major categories of expenditures,
19 including loans provided, debt service payments, and program
20 support costs, for each bank program.
- 21 (e) A projection of the bank's needs and requirements for the
22 coming year.
- 23 (f) Recommendations for changes in state and federal law
24 necessary to meet the objectives of this division.
- 25 (g) A summary of the participation loan agreement program,
26 ~~including the policies and practices of the bank for the investment~~
27 ~~and management of state funds, and~~ a summary of any participation
28 loan agreements entered into by the bank pursuant to Section
29 63025.5, *including, but not limited to, the number of jobs impacted*
30 *and created, the number of businesses assisted, the geographic*
31 *areas the businesses were located, and the industry sectors of the*
32 *businesses served, as defined by the North American Industry*
33 *Classification System (NAICS).*

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