AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MAY 29, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 18, 2012

california legislature—2011–12 regular session

ASSEMBLY BILL No. 2523

Introduced by Assembly Member Hueso
(Coauthors: Senators Corbett, Correa, Hernandez, Negrete McLeod, Price, and Vargas)

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. California Infrastructure and Economic Development Bank: participation loans.

Existing law authorizes the California 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. The bill would require the bank, if an appropriation is made to finance the participation loan program, to include in its annual report a summary of the participation loan agreement program, and would require the bank to also submit that portion of the report to the appropriate policy and fiscal committees of the Legislature. *The bill would authorize the bank, upon appropriation by the Legislature, to enter into syndicated loan agreements, as defined.*

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. The Legislature finds and declares all of the following:

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

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

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

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

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

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

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

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

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

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

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

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

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

(h) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(i) "Executive director" means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

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

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

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

(*l*) "Financing order" has the meaning set forth in Section 840 of the Public Utilities Code.

(m) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(n) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

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

(p) "Loan syndication" means a process of involving multiple lenders in providing various portions of a loan to a single borrower. These loans may be structured, arranged, or administered by one or more financial institutions.

~~(p)~~

(q) "Participation loan agreement" means an agreement whereby the bank would purchase portions of outstanding loans without servicing, managing, or otherwise administrating the underlying loan. A participation loan agreement may include an agreement to refinance a loan or package of loans in which the term of the loan or loans to be refinanced is within 18 months of coming due.

~~(q)~~

(r) "Participating party" means any person, company, corporation, association, state or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing

of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing.

~~(r)~~

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

~~(s)~~

(t) "Public development facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

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

(A) An existing municipal roadway.

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

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

(3) "Drainage, water supply, and flood control" including, but not limited to, ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water

away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of flood plain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" including local parks, recreational property and equipment, parkways and property.

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

(8) "Power and communications" including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

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

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

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

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

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

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

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

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

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

~~(t)~~

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

~~(u)~~

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

~~(v)~~

(w) “Small business” has the same meaning as defined in any of the following:

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

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

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

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

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

~~(w)~~

(x) “Special purpose trust” means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

~~(x)~~

(y) “Sponsor” means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have

an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

~~(y)~~

(z) "State" means the State of California.

(aa) "Syndicated loan agreement" means a loan agreement entered into pursuant to loan syndication.

~~(z)~~

(ab) "Transition costs" has the meaning set forth in Section 840 of the Public Utilities Code.

~~(aa)~~

(ac) "Transition property" has the meaning set forth in Section 840 of the Public Utilities Code.

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

63025.5. (a) The bank may, upon an appropriation by the Legislature~~ for this purpose~~, enter into participation loan agreements with financial institutions for the bank to purchase participation interests in loans made or held by financial institutions to small businesses.

(b) The bank may, upon an appropriation by the Legislature, enter into syndicated loan agreements with financial institutions for loans made or held by financial institutions to small businesses.

~~(b)~~

(c) The bank may promulgate guidelines to establish the procedures and standards for implementing this section.

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

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

(a) (1) A listing of applications accepted, including a description of the expected employment impact of each project.

(2) A separate summary of applications for the Infrastructure State Revolving Fund Program, including a summary of the number of preliminary applications that did not receive funding and the reason the applicant did not qualify.

(b) A specification of bonds sold and interest rates thereon.

(c) The amount of other public and private funds leveraged by the assistance provided.

(d) A report of revenues and expenditures for the preceding fiscal year, including all of the bank's costs. The information provided pursuant to this subdivision shall include, but need not be limited to, both of the following:

(1) The amount and source of total bank revenues. Revenues shall be shown by main categories of revenues, including interest earnings, fees collected, and bond proceeds, for each bank program.

(2) The amount and type of total bank expenditures. Expenditures shall be shown by major categories of expenditures, including loans provided, debt service payments, and program support costs, for each bank program.

(e) A projection of the bank's needs and requirements for the coming year.

(f) Recommendations for changes in state and federal law necessary to meet the objectives of this division.

(g) (1) A summary of the participation loan agreement program, including a summary of any participation loan agreements entered into by the bank pursuant to Section 63025.5, including, but not limited to, the number of jobs impacted and created, the number of businesses assisted, the geographic areas where the businesses were located in, and the industry sectors of the businesses served, as defined by the North American Industry Classification System (NAICS).

(2) The bank shall submit this part of the report to, in addition to the parties described in subdivision (a), the appropriate policy and fiscal committees of Legislature.

(3) Paragraph (1) shall become operative only if an appropriation is made to finance the loan participation program established by Section 63025.5.

O