

ASSEMBLY BILL

No. 1033

Introduced by Assembly Member Eduardo Garcia

February 26, 2015

An act to amend Section 63010 of, and to add Chapter 7 (commencing with Section 63090) to Division 1 of Title 6.7 of, the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1033, as introduced, Eduardo Garcia. Infrastructure financing.

The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the California Infrastructure and Economic Development Bank, within the Governor's Office of Business and Economic Development, to be governed by a specified board of directors. The act makes findings and declarations, provides definitions, and authorizes the board to take various actions in connection with the bank, including the issuance of bonds, as specified.

This bill, among other things, would revise the definition of economic development facilities to include facilities that are used to provide goods movement and would define goods movement-related infrastructure. The bill would revise the definition of port facilities to specifically reference airports, landports, waterports, and railports, and would expand the definition of a participating party to include an international governmental entity.

This bill would also enact the California Economic Development Infrastructure Act of 2015 to create the California Infrastructure Finance Center to administer the act, as specified, under the oversight of the bank. This bill would authorize the designation of corporations as a California Infrastructure Development Partner, as specified, and would

establish requirements for those corporations to secure participation rights, as defined, as part of forming public-private partnerships with the bank in building infrastructure related to economic-related activities. This bill would prove that participation rights include, but are not limited to, a commitment by the state to use the corporation to deliver infrastructure projects and the right to compete for public-private partnership projects, also known as P3 projects. This bill would exempt contracts entered into between the bank and the corporations awarded participation rights under this act from specified public contracting requirements. This bill would authorize the bank to charge a fee related to the cost of designating and overseeing the act, and to borrow from other resources of the bank or the state, if approved by the Legislature, to pay for operational expenses of the first 2 years of the act, as provided. This bill would establish the Infrastructure Development Account in an unspecified fund to accept fees charged by the bank.

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. (a) The Legislature finds and declares that
 2 engaging the private sector in building infrastructure related to
 3 economic-related activities will further the opportunities of
 4 California businesses and workers.

5 (b) Without a modern infrastructure network comprised of roads,
 6 highways, railroads, and airports, landports, and seaports,
 7 California will be unable to remain sufficiently connected to the
 8 global economy.

9 (c) Finding appropriate means for partnering with private sector
 10 infrastructure developers must be undertaken in a thoughtful way
 11 that ensures workers, residents, and small businesses are not
 12 negatively impacted or result in an unreasonable ability to
 13 participate in the broader economy.

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

16 63010. For purposes of this division, the following words and
 17 terms shall have the following meanings unless the context clearly
 18 indicates or requires another or different meaning or intent:

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

1 (b) “Bank” means the California Infrastructure and Economic
2 Development Bank.

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

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

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

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

38 (g) “Economic development facilities” means real and personal
39 property, structures, buildings, equipment, and supporting
40 components thereof that are used to provide industrial, recreational,

1 research, commercial, utility, *goods movement*, or service enterprise
2 facilities, community, educational, cultural, or social welfare
3 facilities and any parts or combinations thereof, and all facilities
4 or infrastructure necessary or desirable in connection therewith,
5 including provision for working capital, but shall not include any
6 housing.

7 (h) “Electrical corporation” has the meaning set forth in Section
8 218 of the Public Utilities Code.

9 (i) “Executive director” means the Executive Director of the
10 California Infrastructure and Economic Development Bank
11 appointed pursuant to Section 63021.

12 (j) “Financial assistance” in connection with a project, includes,
13 but is not limited to, any combination of grants, loans, the proceeds
14 of bonds issued by the bank or special purpose trust, insurance,
15 guarantees or other credit enhancements or liquidity facilities, and
16 contributions of money, property, labor, or other things of value,
17 as may be approved by resolution of the board or the sponsor, or
18 both; the purchase or retention of bank bonds, the bonds of a
19 sponsor for their retention or for sale by the bank, or the issuance
20 of bank bonds or the bonds of a special purpose trust used to fund
21 the cost of a project for which a sponsor is directly or indirectly
22 liable, including, but not limited to, bonds, the security for which
23 is provided in whole or in part pursuant to the powers granted by
24 Section 63025; bonds for which the bank has provided a guarantee
25 or enhancement, including, but not limited to, the purchase of the
26 subordinated bonds of the sponsor, the subordinated bonds of a
27 special purpose trust, or the retention of the subordinated bonds
28 of the bank pursuant to Chapter 4 (commencing with Section
29 63060); or any other type of assistance deemed appropriate by the
30 bank or the sponsor, except that no direct loans shall be made to
31 nonpublic entities other than in connection with the issuance of
32 rate reduction bonds pursuant to a financing order or in connection
33 with a financing for an economic development facility.

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

38 (k) “Financing order” has the meaning set forth in Section 840
39 of the Public Utilities Code.

1 (l) “Guarantee trust fund” means the California Infrastructure
2 Guarantee Trust Fund.

3 (m) “Infrastructure bank fund” means the California
4 Infrastructure and Economic Development Bank Fund.

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

10 (o) “Participating party” means any person, company,
11 corporation, ~~association~~, *association*; state ~~or~~, *international*, or
12 municipal governmental ~~entity~~, *entity*; partnership, firm, or other
13 entity or group of entities, whether organized for profit or not for
14 profit, engaged in business or operations within the state and that
15 applies for financing from the bank in conjunction with a sponsor
16 for the purpose of implementing a project. However, in the case
17 of a project relating to the financing of transition costs or the
18 acquisition of transition property, or both, on the request of an
19 electrical corporation, or in connection with a financing for an
20 economic development facility, or for the financing of insurance
21 claims, the participating party shall be deemed to be the same
22 entity as the sponsor for the financing.

23 (p) “Project” means designing, acquiring, planning, permitting,
24 entitling, constructing, improving, extending, restoring, financing,
25 and generally developing public development facilities or economic
26 development facilities within the state or financing transition costs
27 or the acquisition of transition property, or both, upon approval of
28 a financing order by the Public Utilities Commission, as provided
29 in Article 5.5 (commencing with Section 840) of Chapter 4 of Part
30 1 of Division 1 of the Public Utilities Code.

31 (q) “Public development facilities” means real and personal
32 property, structures, conveyances, equipment, thoroughfares,
33 buildings, and supporting components thereof, excluding any
34 housing, that are directly related to providing the following:

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

37 (A) An existing municipal roadway.

38 (B) Is shown upon a plat approved pursuant to law and includes
39 the land between the street lines, whether improved or unimproved,
40 and may comprise pavement, bridges, shoulders, gutters, curbs,

1 guardrails, sidewalks, parking areas, benches, fountains, plantings,
 2 lighting systems, and other areas within the street lines, as well as
 3 equipment and facilities used in the cleaning, grading, clearance,
 4 maintenance, and upkeep thereof.

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

13 (3) “Drainage, water supply, and flood control” including, but
 14 not limited to, ditches, canals, levees, pumps, dams, conduits,
 15 pipes, storm sewers, and dikes necessary to keep or direct water
 16 away from people, equipment, buildings, and other protected areas
 17 as may be established by lawful authority, as well as the
 18 acquisition, improvement, maintenance, and management of
 19 floodplain areas and all equipment used in the maintenance and
 20 operation of the foregoing.

21 (4) “Educational facilities” including libraries, child care
 22 facilities, including, but not limited to, day care facilities, and
 23 employment training facilities.

24 (5) “Environmental mitigation measures” including required
 25 construction or modification of public infrastructure and purchase
 26 and installation of pollution control and noise abatement
 27 equipment.

28 (6) “Parks and recreational facilities” including local parks,
 29 recreational property and equipment, ~~parkways~~ *parkways*, and
 30 property.

31 (7) “Port facilities” including *airports, landports, waterports,*
 32 *railports,* docks, harbors, ports of entry, piers, ships, small boat
 33 harbors and marinas, and any other facilities, additions, or
 34 improvements in connection ~~therewith~~: *therewith that transport*
 35 *good or persons.*

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

39 (9) “Public transit” including air and rail ~~transport of goods,~~
 40 *transport,* airports, guideways, vehicles, rights-of-way, passenger

1 stations, maintenance and storage yards, and related structures,
2 including public parking facilities, *and* equipment used to provide
3 or enhance transportation by bus, rail, ferry, or other conveyance,
4 either publicly or privately owned, that provides to the public
5 general or special service on a regular and continuing basis.

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

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

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

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

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

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

32 (16) (A) ~~Military infrastructure,~~ “*Military infrastructure*”
33 including, but not limited to, facilities on or near a military
34 installation, that enhance the military operations and mission of
35 one or more military installations in this state. To be eligible for
36 funding, the project shall be endorsed by the Office of ~~Military~~
37 ~~and Aerospace Support established pursuant to Section 13998.2.~~
38 *Planning and Research.*

39 (B) For purposes of this subdivision, “military installation”
40 means any facility under the jurisdiction of the Department of

1 Defense, as defined in paragraph (1) of subsection (e) of Section
2 2687 of Title 10 of the United States Code.

3 (17) *“Goods movement-related infrastructure” including port*
4 *facilities, roads, rail, and other facilities and projects that move*
5 *goods, energy, and information.*

6 (r) “Rate reduction bonds” has the meaning set forth in Section
7 840 of the Public Utilities Code.

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

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

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

1 corporation shall be deemed to be the sponsor as well as the
 2 participating party for any project relating to the financing of
 3 transition costs and the acquisition of transition property on the
 4 request of the electrical corporation and any person, company,
 5 corporation, partnership, firm, or other entity or group engaged in
 6 business or operation within the state that applies for financing of
 7 any economic development facility, shall be deemed to be the
 8 sponsor as well as the participating party for the project relating
 9 to the financing of that economic development facility.

10 (v) “State” means the State of California.

11 (w) “Transition costs” has the meaning set forth in Section 840
 12 of the Public Utilities Code.

13 (x) “Transition property” has the meaning set forth in Section
 14 840 of the Public Utilities Code.

15 SEC. 3. Chapter 7 (commencing with Section 63090) is added
 16 to Division 1 of Title 6.7 of the Government Code, to read:

17
 18 CHAPTER 7. CALIFORNIA ECONOMIC DEVELOPMENT
 19 INFRASTRUCTURE FINANCE ACT OF 2015

20
 21 Article 1. Introduction

22
 23 63090. (a) This chapter shall be known, and may be cited, as
 24 the California Economic Development Infrastructure Act of 2015.

25 (b) Notwithstanding any other provision of this division, this
 26 chapter shall not apply to any other activities, powers, and duties
 27 of the bank under any of the other chapters of this division.

28 (c) Infrastructure development, enhancement, and modernization
 29 is fundamental to the continued economic growth of the state. In
 30 order to be successful in the integrated global economy, California
 31 businesses and workers must have access to the necessary
 32 infrastructure. Some of this infrastructure will be financed with
 33 state moneys, while other infrastructure is more appropriately
 34 funded privately.

35 (d) It is necessary to authorize the bank to serve as a conduit
 36 financier, project advisor, and a project facilitator for infrastructure
 37 that supports private economic development activities that provide
 38 a meaningful benefit to the people of California.

39 (e) This chapter shall not supplant any infrastructure contracting
 40 authority that a government entity has under a different law. A

1 state agency, with the approval of the bank board, may avail itself
2 of the process authorized by this chapter.

3

4

Article 2. Definitions

5

6 63091. Unless the context otherwise requires, the definitions
7 in this section govern the construction of this chapter. The
8 definitions in this chapter shall apply only to this chapter and not
9 to any other provision of this division.

10 (a) “Bank” means the California Infrastructure and Economic
11 Development Bank.

12 (b) “Bank board” means the Board of Directors of the California
13 Infrastructure and Economic Development Bank.

14 (c) “California Infrastructure Development Center” means the
15 governmental unit within the bank with the administrative
16 responsibility for programs and activities authorized pursuant to
17 this chapter.

18 (d) “Corporation” means any business establishment or groups
19 of two or more business establishments that apply for and are
20 designated by the bank as a California Infrastructure Development
21 Partner.

22 (e) “Directives and requirements” means a document adopted
23 by the bank board setting forth policy direction as well as rules
24 governing a particular subject area.

25 (f) “Executive director” means the Executive Director of the
26 California Infrastructure and Economic Development Bank.

27 (g) “Participation rights” means a commitment by the state to
28 use a corporation to deliver infrastructure projects. Participation
29 rights include the right to compete for a public-private partnership
30 project or projects (P3 projects). If the corporation should be
31 chosen to participate, participation rights may include a
32 preestablished minimum participation rate in financing the P3
33 project or projects.

34 (h) “Program manager” means the manager of the California
35 Infrastructure Development Center as appointed by the executive
36 director of the bank.

37 (i) “Spring fed pool” means a list of corporations designated by
38 the bank board as a California Infrastructure Development Partner
39 through a request for information or request for proposal process.

1 Article 3. Purpose
2

3 63092. The bank shall include the California Infrastructure
4 Finance Center that administers the California Economic
5 Development Infrastructure Act of 2015.
6

7 Article 4. Administrative Structure
8

9 63093. (a) Upon the approval of the board, the bank may award
10 the participation rights to a corporation that meets the criteria in
11 directives and requirements established pursuant to subdivision
12 (f).

13 (b) (1) A corporation designated for inclusion within the spring
14 fed pool by the board may deliver infrastructure projects that have
15 been determined by statute as appropriate for financing through a
16 public-private partnership.

17 (2) Eligible infrastructure projects include goods movement,
18 public transit, solid waste collection and disposal, water treatment
19 and distribution, and defense conversion, as defined in Section
20 63010.

21 (3) The contract awarding the participation rights shall state the
22 rights and conditions of the agreement. At a minimum, the
23 agreement shall include the right of competition in each and all
24 P3 projects the state undertakes during the term of the contract
25 relating to the specific type of infrastructure identified in the
26 contract. The agreement may include, for projects the corporation
27 agrees to participate in, a preestablished minimum participation
28 rate in financing each and all P3 projects.

29 (4) No agreement shall be for longer than five years.

30 (5) The bank may cancel a contract for fraudulent activity and
31 poor performance as set forth in the directives and requirements
32 adopted pursuant to subdivision (f).

33 (c) The award of the participation rights may be reflected as an
34 equity investment by the state in either an individual project or the
35 corporation.

36 (d) The bank may employ consultants and advisers as may be
37 necessary in its judgment, in connection with the award of the
38 participation rights. Payment for these services shall be reimbursed
39 from fees received from an applicant for designation under this
40 section.

1 (e) The bank may charge a fee to recover the cost of making
2 designations and overseeing the act, including, but not limited to,
3 the cost of consultants and advisors. Operation costs may be
4 recovered from fee revenues upon appropriation by the Legislature
5 of the Infrastructure Development Account of the ____ Fund,
6 which is hereby established to receive those fee revenues.
7 Operation costs for the first two years may be borrowed from other
8 resources of the bank or the state, if approved by the Legislature,
9 and then repaid once corporations are designated and fees become
10 available.

11 (f) (1) Section 10295 of the Public Contract Code does not
12 apply to agreements entered into by the bank in connection with
13 the award of participation rights under this chapter.

14 (2) The bank board shall adopt directives and requirements
15 concerning the implementation of this chapter. These directives
16 and requirements shall include a process for receiving and
17 reviewing applications and entering into participation rights
18 agreements that meet the requirements of this section.

19 (g) The bank shall annually report on its activities related to the
20 duties and authorities in this section as part of the bank’s annual
21 report, as required in Section 63035.

22 63094. The program manager acting under the guidance of the
23 executive director shall do all of the following:

- 24 (a) Administer this chapter.
- 25 (b) Enter into participation rights agreements between the bank
26 and a corporation for services to be provided by the corporation
27 to the state under this chapter.
- 28 (c) Act as a liaison between corporations, other state and federal
29 agencies, lenders, and the Legislature.