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AB-78 Bergeson-Peace Infrastructure and Economic Development Bank. (2019-2020)

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Assembly Bill No. 78

CHAPTER 10

An act to amend Sections 63071 and 63088.5 of, and to add Article 6.7 (commencing with Section 63048.91) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to economic development, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 29, 2020. Filed with Secretary of State June 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 78, Committee on Budget. Bergeson-Peace Infrastructure and Economic Development Bank.

The Bergeson-Peace Infrastructure and Economic Development Bank Act (Bank Act) establishes the California Infrastructure and Economic Development Bank (I-Bank) in the Governor's Office of Business and Economic Development, that is governed by a board of directors. The Bank Act, among other things, authorizes the I-Bank to make loans, issue bonds, and provide financial assistance for various types of projects that qualify as economic development or public development facilities.

This bill would create the Climate Catalyst Revolving Loan Fund Act of 2020. The bill would create the Climate Catalyst Revolving Loan Fund within the State Treasury, and make the moneys in the fund available for expenditure, upon appropriation by the Legislature. The bill would require the bank to administer the Climate Catalyst Revolving Loan Fund and would authorize the bank, under the Climate Catalyst Revolving Loan Fund Program, to provide financial assistance to any eligible sponsor or participating party for eligible climate catalyst projects, either directly to the sponsor or participating party or to a lending or financial institution, as specified. The bill would define "climate catalyst projects" as any building, structure, equipment, infrastructure, or other improvement within California, or financing the general needs of any sponsor or participating party for operations or activities within California that are consistent with, and intended to, further California's climate goals, activities that reduce climate risk, and the implementation of low-carbon technology and infrastructure.

This bill would provide how the bank is to administer the moneys in the fund, including, but not limited to, authorizing the bank to pledge any or all of the moneys in the fund as security for the payment on a particular issuance of bonds issued for the purposes of the article, authorizing the bank to use moneys in the fund to purchase subordinated bonds issued by the bank, requiring the bank to create separate accounts within the fund, requiring the bank to hold moneys in trust for the security and payment of revenue bonds, organizing the fund as a public enterprise fund, and requiring assets of the fund be available for payment of bank salaries and expenses incurred in the administration of the act. The bill would require the bank to provide financial assistance with low-interest rates and at low cost, as determined by the bank, to support eligible climate catalyst projects and attract 3rd-party capital. The bill would require that the repayments under the program be deposited in the appropriate account within the Climate Catalyst Revolving Loan Fund.

This bill would also require the Strategic Growth Council, in consultations with the Labor and Workforce Development Agency, to advise the Legislature beginning in 2020 of potential categories of climate catalyst projects that would focus on the state's key

climate mitigation and resilience priorities and inform the bank of the advice provided to the Legislature. The bill would require the bank to prepare and submit a report regarding Climate Catalyst Revolving Loan Fund Program activities for the preceding fiscal year to the Strategic Growth Council, the Governor, the Speaker of the Assembly, and the President pro Tempore of the Senate, as specified. The report would be required to be posted on the bank's internet website and presented to the Strategic Growth Council.

This bill would require the bank's operating budget for the activities authorized by the act to be subject to review and appropriation in the annual Budget Act.

The Bank Act limits the total amount of revenue bonds issued to finance public development facilities that may be outstanding at any one time under this authority to \$5,000,000,000 and the total amount of rate reduction bonds that may be outstanding at any one time under this authority to \$10,000,000,000. The Bank Act creates the California Infrastructure and Economic Development Bank Fund, a continuously appropriated fund, into which all moneys accruing to the I-bank pursuant to the act are to be deposited.

This bill would instead limit the total amount of rate reduction bonds and bonds issued to finance public development facilities that may be outstanding at any one time under that authority to \$15,000,000,000. By authorizing the deposit of additional moneys into the California Infrastructure and Economic Development Bank Fund, a continuously appropriated fund, the bill would make an appropriation.

Existing law, the California Small Business Financial Development Corporation Law (Law), provides for the creation of nonprofit small business financial development corporations, including requiring approval from the board of directors of the California Infrastructure and Economic Development Bank, as provided. Existing law, the Small Business Financial Assistance Act of 2013 (Assistance Act), authorizes the I-Bank's board to, pursuant to the Law and the Assistance Act, continue programs funded by the Small Business Expansion Fund or establish one or more programs administered by the bank or under contract with small business financial development corporations.

This bill would authorize the I-Bank board to establish one or more programs administered by the bank directly, in conjunction with financial companies or financial institutions, in direct or indirect participation with special purpose entities established for small business finance, or under contract with small business financial development corporations. The bill would also authorize the I-Bank to establish any and all programs pursuant to the Assistance Act and the Law that it determines are necessary or desirable to directly or indirectly assist small businesses obtain capital.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes 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) As a climate leader, California is dedicated to reducing climate risks, especially in the state's most vulnerable communities, while making a transition to a carbon-neutral economy.

(b) In September 2019, Governor Gavin Newsom signed Executive Order No. N-19-19, which, among other things, requires that "every aspect of state government redouble its efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change while building a sustainable, inclusive economy."

(c) Executive Order No. N-19-19 also directed the Department of Finance to create the Climate Investment Framework to better align the state's pension investments and physical state-owned assets with the state's climate goals.

(d) As the state further examines how to support programs that can move projects at the scale and speed necessary to meet its climate goals, it must look beyond grants and better leverage private-sector dollars to support these efforts.

(e) Government-backed low-interest financing can address current market barriers to funding for low-carbon technology and infrastructure, including the lack of familiarity due to limited data, a misperception of the risk of these projects, and an unwillingness to fund projects in underserved areas of the state.

(f) This act would create a fund to be known as the Climate Catalyst Revolving Loan Fund to provide capital to deploy technologies, innovations, and infrastructure that address critical climate goals yet face demonstrated financing gaps. The Infrastructure and Economic Development Bank will pursue capitalization from governmental entities other than the state and from private sources.

(g) The bank may work in concert with the other elements of the climate budget by providing low-interest financing for a portfolio of projects across California's climate agenda, and by focusing on areas not well-served by grant, bond, or other loan programs.

(h) Eligible Climate Catalyst Revolving Loan Fund Program participants include governmental, private, and tribal entities.

SEC. 2. Article 6.7 (commencing with Section 63048.91) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 6.7. Climate Catalyst Revolving Loan Fund Act of 2020

63048.91. (a) This chapter shall be known, and may be cited, as the Climate Catalyst Revolving Loan Fund Act of 2020.

(b) Notwithstanding any other provision of this division, this article does not apply to any other activities, powers, and duties of the Infrastructure and Economic Development Bank under this division.

(c) The bank shall administer the Climate Catalyst Revolving Loan Fund to provide financial assistance for climate catalyst projects, as defined in subdivision (b) of Section 63048.92.

(d) Financial assistance for climate catalyst projects through the Climate Catalyst Revolving Loan Fund Program shall be provided at low-interest rates and at low-cost as determined by the bank, to support the projects directly and to attract additional third-party capital.

63048.92. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) "Bank" means the Infrastructure and Economic Development Bank.

(b) "Climate catalyst project" means any building, structure, equipment, infrastructure, or other improvement within California, or financing the general needs of any sponsor or participating party for operations or activities within California that are consistent with, and intended to, further California's climate goals, activities that reduce climate risk, and the implementation of low-carbon technology and infrastructure.

(c) "Climate Catalyst Revolving Loan Fund" means revolving funds by that name created under, and administered pursuant to, this article to provide financial assistance for climate catalyst projects.

(d) "Climate Catalyst Revolving Loan Fund Program" means the program of that name to administer the Climate Catalyst Revolving Loan Fund and to provide financial assistance for climate catalyst projects, to be administered by the bank pursuant to this article and criteria, priorities, and guidelines to be adopted by the bank board.

(e) "Sponsor" and "participating party" shall mean the same as defined in Section 63010, but also include federally recognized Native American tribes and tribal business enterprises located in California.

63048.93. (a) The bank is hereby authorized and empowered to provide financial assistance under the Climate Catalyst Revolving Loan Fund Program to any eligible sponsor or participating party either directly or to a lending or financial institution, in connection with the financing or refinancing of a climate catalyst project, in accordance with an agreement or agreements, between the bank and the sponsor or participating party, including, but not limited to, tribes, either as a sole lender or in participation or syndication with other lenders.

(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 does not apply to any criteria, priorities, and guidelines adopted by the bank in connection with the Climate Catalyst Revolving Loan Fund Program or any other program of the bank.

(c) Repayments of financing made under the Climate Catalyst Revolving Loan Fund Program shall be deposited in the appropriate account created within the Climate Catalyst Revolving Loan Fund.

(d) The Strategic Growth Council, in consultation with the Labor and Workforce Development Agency, shall advise the Legislature prior to the end of each calendar year, commencing with the calendar year of 2020, of potential categories of climate catalyst projects that would focus on the state's key climate mitigation and resilience priorities. The Strategic Growth Council's recommendations may include indicative percentages of investment allocations across identified priority sectors. The Strategic Growth Council shall inform the bank of the advice provided to the Legislature.

63048.94. (a) Annually, commencing October 1, 2021, and no later than October 1 of each year, the bank shall prepare and submit to the Strategic Growth Council, the Governor, the Speaker of the Assembly, and the President pro Tempore of the Senate, a report containing Climate Catalyst Revolving Loan Fund Program activity for the preceding fiscal year ending June 30, and including all of the following:

(1) Information on individual Climate Catalyst Revolving Loan Fund Program financing, specifically all of the following:

(A) Climate catalyst project category.

(B) Climate catalyst project description.

(C) Financial assistance amount.

(D) Outstanding financial assistance amount due.

(E) The county and city of the funded climate catalyst project.

(F) A description of the expected contribution of the climate catalyst project to the state's climate policy objectives, including both greenhouse gas reduction and climate resilience benefits.

(G) Type and quality of any jobs created as a result of the financial assistance.

(2) Total number and type of financial assistance issued to small businesses.

(3) Total number and type of applications received.

(4) Recommendations on needed Climate Catalyst Revolving Loan Fund Program changes or improvements to meet the objectives of this article. The bank shall meet and confer with the Strategic Growth Council prior to the annual submission of the report required herein in an effort to develop those recommendations.

(5) Any advice provided by the Strategic Growth Council pursuant to Section 63048.93.

(b) The report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(c) (1) The report shall be posted on the bank's internet website.

(2) The report shall be presented to the Strategic Growth Council at its final public meeting of the calendar year in which the report was prepared. If the Strategic Growth Council holds no public meetings following the submission of the report, the report shall be presented to the Strategic Growth Council at its next available public meeting.

63048.95. (a) (1) There is hereby created in the State Treasury the Climate Catalyst Revolving Loan Fund for the purpose of implementing the objectives and provisions of this article. Moneys deposited into the Fund shall be limited only to receipt of funds from private entities and governmental entities other than the state. The Climate Catalyst Revolving Loan Fund shall be separate from any other fund or account created under this division.

(2) Obligations of the bank incurred in connection with the activities authorized under this article shall be payable solely from moneys within the Climate Catalyst Revolving Loan Fund. No other fund or account of the bank shall be available or shall be used for the payment of obligations incurred in connection with this article.

(3) Within the Climate Catalyst Revolving Loan Fund there shall also be established a Climate Catalyst Revolving Loan Account, a Climate Catalyst Guarantee and Credit Enhancement Account, a Climate Catalyst Securities Acquisition Account, and additional accounts and subaccounts that the bank may establish.

(b) (1) All moneys in the Climate Catalyst Revolving Loan Fund are available for expenditure, including for the bank's general administration of the activities authorized by this article, upon appropriation by the Legislature.

(2) This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt, payments on credit enhancements or guarantees, acquisition of securities of any sponsor or participating party in connection with a climate catalyst project, or any other purpose in connection with providing financial assistance to a sponsor or participating party in connection with a climate catalyst project as set forth in this article.

(c) Not more than 5 percent of any bond proceeds administered by the bank in connection with the activities of the bank authorized under this article may be expended to cover the costs of issuance, as that terminology is defined under Section 147(g) of the Internal Revenue Code (26 U.S.C. Sec. 147(g)).

63048.96. (a) (1) The bank may pledge any or all of the moneys in the Climate Catalyst Revolving Loan Fund as security for payment of the principal of, and interest on, any particular issuance of bonds issued for the purposes of this article. The bank may use any or all of the moneys in the Climate Catalyst Revolving Loan Fund to retain or purchase for retention or sale, subordinated bonds issued by the bank, by a special purpose trust, or by a sponsor, all in connection with the purposes of this article. For these

purposes, the bank may divide the fund into separate accounts, as set forth in Section 63048.95, or may divide the accounts created under this article into separate subaccounts.

(2) All moneys accruing from the Climate Catalyst Revolving Loan Fund and its accounts and subaccounts, the proceeds of financial assistance provided to a sponsor or participating party, the investment of any moneys within the Climate Catalyst Revolving Loan Fund, or any other moneys generated in connection with the activities authorized under this article, shall be deposited in the fund.

(b) Subject to liens, covenants against encumbrances, negative covenants, priorities, and other exclusions or reservations that may be created by the pledge of particular moneys in the Climate Catalyst Revolving Loan Fund to secure any issuance of revenue bonds of the bank, a special purpose trust, or a sponsor, in each instance in connection with the purposes of this article, and subject further to reasonable costs that may be incurred by the bank in administering the Climate Catalyst Revolving Loan Fund Program, all moneys in the Climate Catalyst Revolving Loan Fund derived from any source, shall be held in trust for the security and payment of revenue bonds of the bank, a special purpose trust, or a sponsor, in each instance in connection with the purposes of this article, and shall not be used or pledged for any other purpose so long as the revenue bonds are outstanding and unpaid.

(c) Pursuant to any agreements with the holders of revenue bonds issued for the purposes of this article pledging any particular assets, revenues, or moneys of the Climate Catalyst Revolving Loan Fund, the bank may create separate accounts or subaccounts in the Climate Catalyst Revolving Loan Fund to manage these assets, revenues, or moneys in the manner set forth in the agreements.

(d) (1) The bank may direct the Treasurer to invest moneys in the Climate Catalyst Revolving Loan Fund that are not required for its current needs, including proceeds from the sale of any bonds, in any eligible securities specified in Section 16430 as the bank shall designate.

(2) The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in any bank in this state or in any savings and loan association in this state. The bank may alternatively require the transfer of moneys in the Climate Catalyst Revolving Loan Fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(3) Notwithstanding Section 16305.7, all interest or other increment resulting from the investment or deposit of moneys from the Climate Catalyst Revolving Loan Fund shall be deposited in the Climate Catalyst Revolving Loan Fund. Moneys in the Climate Catalyst Revolving Loan Fund shall not be subject to transfer to any other funds pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2, except to the Surplus Money Investment Fund.

(4) Notwithstanding any contrary provision in this article, moneys in the Climate Catalyst Revolving Loan Fund may be deposited in accounts held by a trustee bank, or other financial institution, in connection with the issuance of any revenue bonds for the purposes of this article.

(e) Subject to any agreement with holders of particular bonds, in furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the Climate Catalyst Revolving Loan Fund, including, but not limited to, proceeds of any of its bonds or refunding bonds, in obligations of financial institutions as are permitted by board resolution. The bank may alternatively require the transfer of moneys in the Climate Catalyst Revolving Loan Fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(f) Subject to any agreement with the holders of particular bonds, all interest or other increment resulting from the investment or deposit shall be deposited in the Climate Catalyst Revolving Loan Fund, notwithstanding Section 16305.7. Moneys in the climate catalyst revolving loan fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2, excepting the Surplus Money Investment Fund.

(g) The Climate Catalyst Revolving Loan Fund shall be organized as a public enterprise fund.

(h) The bank shall cause all moneys in the Climate Catalyst Revolving Loan Fund that are in excess of current requirements to be invested and reinvested, from time to time.

63048.97. (a) The bank may administer and distribute among the accounts and subaccounts created under this article, at its discretion, the proceeds from any general obligation bonds issued in accordance with the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2).

(b) The assets of the Climate Catalyst Revolving Loan Fund shall be available for the payment of the salaries and other expenses incurred by the bank in connection with the administration of this article, all in accordance with this article.

63048.98. All costs, liabilities, obligations, and expenses incurred in carrying out the purposes of this article shall be payable solely from funds provided for the purposes of this article, and no liability, cost, expense, or obligation shall be imposed upon the state or the bank beyond the extent to which money shall have been provided solely for the purposes of the bank's activities authorized under this article.

63048.99. (a) Moneys in the Climate Catalyst Revolving Loan Fund received from the proceeds of bonds issued pursuant to this division may not be transferred to any other fund except as necessary to pay the expenses of operating the Climate Catalyst Revolving Loan Fund Program.

(b) The bank, for deposit in the Climate Catalyst Revolving Loan Fund for use as set forth in this article, may borrow or receive moneys from other funds within the bank, as permitted by this division, or from any federal, state, or local agency, or any private entity, for the purposes of this article and as authorized by resolution of the board.

63048.100. (a) Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditures of the Climate Catalyst Revolving Loan Fund shall not be subject to the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget for the activities authorized in this article shall be prepared and reviewed not later than November 1 of each year.

(b) The bank's budget regarding the Climate Catalyst Revolving Loan Fund shall include the amount of credit and liabilities of the fund, based on an audit of the fund at the close of the prior fiscal year. The bank's operating budget in connection with the activities authorized under this article shall be subject to review and appropriation in the annual Budget Act.

SEC. 3. Section 63071 of the Government Code is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time as the sponsor shall determine with the consent of the bank.

(b) The total amount of rate reduction bonds and bonds issued to finance public development facilities that may be outstanding at any one time under this chapter shall not exceed fifteen billion dollars (\$15,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 4. Section 63088.5 of the Government Code is amended to read:

63088.5. (a) There is within the Governor's Office of Business and Economic Development the California Infrastructure and Economic Development Bank, which shall, among other things, administer the California Small Business Finance Center that administers programs to assist businesses seeking new capital resources, including, but not limited to, the Small Business Loan Guarantee Program.

(b) The bank board may continue programs funded by the Small Business Expansion Fund or establish one or more programs administered by the bank directly, in conjunction with financial companies or financial institutions, in direct or indirect participation with special purpose entities established for small business finance, or under contract with small business financial development corporations. The bank board may establish any and all programs pursuant to this chapter or Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code that it determines are necessary or desirable to directly or indirectly assist small businesses obtain capital. Programs established pursuant to this chapter or Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code may include the following types of financial products:

(1) Loan guarantees and other credit enhancements.

(2) Direct loans and other debt instruments.

(3) Disaster loan guarantees.

(4) Surety bond guarantees.

(c) In all of their state-funded programs, the corporations shall, to the extent practicable, be complementary to, and not competitive with, commercial lenders and other state and federal programs.

(d) In carrying out this chapter the program manager, the executive director, and the bank board may call on the California Small Business Board for advice and recommendations. All actions by the California Small Business Board are advisory.

(e) The California Small Business Board may also advise the Governor and the Small Business Advocate regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export finance, state procurement, management and technical assistance, venture capital, and financial assistance.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.