

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)

STAFF REPORT

SUMMARY:

Staff has determined that it is necessary to propose a modification of the existing delegation of authority from the I-Bank Board of Directors (Board) to the I-Bank's executive director and his assignees (the "Executive Director") to ensure timely, efficient and cost-effective delivery of services to the recipients of I-Bank financial assistance. In the connection with the issuance of I-Bank bonds, Resolution 11-24 would authorize the modification of existing delegations for bond related amendments, facility substitutions and agent substitutions. Further, in connection with loans made pursuant to the I-Bank's Infrastructure State Revolving Fund Program (ISRF Program), Resolution 11-24 would clarify and modify existing delegations with respect to ISRF Program financing agreements and amendments. Finally, Resolution 11-24 would augment authority already granted under the Bergeson-Peace Infrastructure and Economic Development Act (California Government Code Section 63000 et. Seq.) (Act) by delegating authority to seek external sources of funding for I-Bank programs as well as authority to recover I-Bank costs. If adopted, Resolution 11-24 would supersede Resolution 08-35 (Bond Resolution) and Resolution 09-05 (ISRF Resolution) (see Attachments A and B, respectively).

DISCUSSION:

Delegation Authority Under the Act. In several provisions, the Act authorizes the delegation by the I-Bank Board to the Executive Director or his/her assignees the authority to act on behalf of the I-Bank in providing financial assistance to qualified projects and in otherwise conducting the business and affairs of the I-Bank. For example, section 63022 provides, in part, that "... the board may assign to the executive director, by resolution, those duties generally necessary or convenient to carry out its powers and purposes under this chapter..." and "Subject to any conditions that the board may from time to time prescribe, the executive director may exercise any power, function, or duty conferred by law on the bank in connection with the administration, management, and conduct of the business and affairs of the bank, the infrastructure bank fund, and the guarantee trust fund."

Towards this end, and since the inception of the I-Bank, the Board has delegated certain duties to the Executive Director to facilitate the efficient, cost-effective and customer-responsive delivery of I-Bank financial assistance and program administration. From time to time, I-Bank staff determine that it is necessary to update such delegations.

Bond Related Amendments, Facility Substitutions and Agent Substitutions. The Bond Resolution adopted by the Board on November 20, 2008, specifies a number of

conditions related to bond amendments, credit facility substitutions and agent substitutions that have to be met in order for the delegation to be effective. In nearly all amendments requested since its adoption, one or more of the conditions could not be met. This resulted in significant staff work associated with the preparation of a board item and a concomitant delay of I-Bank action until the matter could be brought before the Board. Upon review, I-Bank staff has determined that the majority of such requests were technical or ministerial amendments, or routine post-issuance agent substitutions, in which the I-Bank's interests were not affected. Since the conditions mandated by the Bond Resolution almost always exceeded the conditions for amendments or substitutions that were negotiated by the parties at the time of the original bond issuance, and that were part of the Board's bond financing approval, I-Bank staff recommends that the bond amendment and substitution delegation conditions be modified so as to match those in the original transaction documents. This would ensure that the interests of all parties continue to be protected while at the same time avoiding delays of I-Bank action and maximizing staff time available for other bond programs endeavors. These recommendations are reflected in sections 2, 5 and 6 of Resolution 11-24.

Reimbursement, Redemption and Prepayment. The Bond Resolution provides for delegation of authority (i) to execute documents to evidence, in the manner required by Federal tax law, the I-Bank's intent to allow the use the proceeds of tax-exempt bonds to reimburse costs incurred prior to the issuance of the bonds and (ii) to effect a redemption of bonds or a prepayment of the obligations of others to the I-Bank. Sections 3 and 4 of Resolution 11-24 make no substantive changes to the delegations on these matters, but includes them because, if adopted, Resolution 11-24 would supersede the Bond Resolution.

ISRF Program Loan Financing Agreements and Amendments. The ISRF Resolution adopted by the Board on February 24, 2009, delegates the authority to finalize terms and execute the appropriate financing agreements upon approval of any loan made under the ISRF Program (ISRF Program Loan). However, since adoption of the ISRF Resolution, I-Bank staff have struggled with interpretation of certain of its conditions and exceptions. For example, I-Bank staff have had to consult with I-Bank legal counsel in order to determine if a proposed amendment would "materially adversely affect any series of ISRF Program Bonds." Thus, Resolution 11-24 simplifies matters by requiring I-Bank counsel approval in certain circumstances. Sections 7 and 8 of Resolution 11-24 clarify when delegation to the Executive Director for approval of amendments to ISRF Program Loans would apply and when proposed amendments must instead be approved by the Board. This would again avoid delays of I-Bank action and maximize staff time available for other ISRF Program endeavors.

Fund Raising Efforts. Section 9 of Resolution 11-24 would authorize the Executive Director to seek, apply for and accept grants and other funds awarded by sources such as the Federal government, the State and by public and private pension funds. However, this section of Resolution 11-24 does not delegate any authority for the

expenditure of any of the funds received. Once funds are received, I-Bank staff would seek Board approval for related program criteria or policies and for proposed uses of such funds.

Recovery of I-Bank Costs. The Act provides for recovery of I-Bank costs associated with providing financial assistance and other services pursuant to the Act. Section 10 of Resolution 11-24 clarifies that the Executive Director may act on that authority in order to capture and recover costs incurred by the I-Bank in performing its duties pursuant to the Act. The Act also provides authority for the imposition of I-Bank “fees” and the I-Bank currently imposes such fees for certain services provided under the ISRF Program and its revenue bonds programs. However, Resolution 11-24 does not delegate authority over such fees.

RECOMMENDATION:

I-Bank staff recommends that the Board approve Resolution 11-24 clarifying, modifying and augmenting existing Executive Director delegations.

RESOLUTION NO. 08-35

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK DELEGATING TO THE EXECUTIVE DIRECTOR OF THE BANK CERTAIN AUTHORITY TO ACT ON BEHALF OF THE BANK IN RELATION TO THE ISSUANCE OF CONDUIT REVENUE BONDS AND CERTAIN POST-ISSUANCE ACTIVITIES PERTAINING TO CONDUIT REVENUE BONDS

WHEREAS, the California Infrastructure and Economic Development Bank (the “I-Bank”) is established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.) (the “Act”), for the purpose of promoting economic development in the State of California (the “State”);

WHEREAS, the I-Bank is authorized under the Act to, among other things, issue revenue bonds to provide financing and refinancing for economic development facilities and public development facilities located in the State, as requested by sponsors and participating parties (the “Project Sponsors”) pursuant to the authority and requirements of the Act (“Conduit Revenue Bonds”);

WHEREAS, the I-Bank has previously issued various series of Conduit Revenue Bonds pursuant to documents which may include, for each series, without limitation, an indenture or trust agreement, a loan agreement, a bond purchase agreement or purchase contract, a lease agreement and a tax certificate or agreement between the I-Bank and other parties to the transaction as well as disclosure documents pertaining to the offering of the bonds (collectively, “Bond Documents”);

WHEREAS, from time to time Project Sponsors or another party to a Conduit Revenue Bond transaction may desire to (1) obtain an alternate credit facility (such as a letter of credit or bond insurance) or alternate liquidity facility (such as a letter of credit) for the bonds which, pursuant to the applicable Bond Documents must be approved or consented to by the I-Bank (each, a “Facility Substitution”); (2) amend certain provisions of Bond Documents (each, a “Bond Document Amendment”); or (3) remove or replace an agent then acting under the Bond Documents (such as the trustee, registration agent or remarketing agent) in a way in which such removal or replacement must be made or consented to by the I-Bank (each, an “Agent Substitution”);

WHEREAS, Sections 63022 and 63023 of the Act provide that the I-Bank is governed by the Board of Directors of the I-Bank (the “Board”), and that the management of and the conduct of the business and affairs of the I-Bank are to be undertaken by the Executive Director;

WHEREAS, Section 63023 of the Act authorizes the Board to delegate to the Executive Director the authority to take certain acts on behalf of the I-Bank;

WHEREAS, the Board has previously adopted Resolution 06-37 for the purpose of delegating certain authority to the Executive Director and has determined that certain of the

delegations of Resolution 06-37 as they relate to Conduit Revenue Bonds should be augmented and restated by this Board;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The Board hereby finds that the above recitals are true and correct.

Section 2. The Board hereby authorizes the Executive Director to execute and deliver, for and on behalf of the I-Bank, all resolutions adopted by the Board approving the issuance of or otherwise pertaining to Conduit Revenue Bonds.

Section 3. The Board hereby delegates to the Executive Director the authority to execute and deliver for and on behalf of the I-Bank (A) all Bond Documents approved by the Board; (B) agreements, contracts, certificates, orders and instruments that are ancillary and related to Board-approved Bond Documents, necessary or convenient to accomplish the sale, issuance and delivery of Conduit Revenue Bonds approved by the Board, and consistent with the terms of the Revenue Bond transaction approved by the Board including, without limitation, redemption certificates, swap and hedge agreement confirmations, tax regulatory certificates and certificates of representation; (C) certificates and confirmations necessary or convenient to further an anticipated issuance of Conduit Revenue Bonds that do not purport to commit the I-Bank to issue Conduit Revenue Bonds that are not subsequently approved by the Board, including, without limitation, swap and hedge agreement confirmations and certificates or documents evidencing the official intent of the I-Bank to authorize the reimbursement of costs incurred by a conduit qualified small issue borrower or exempt facility bond borrower from the proceeds of tax-exempt bonds pursuant to Internal Revenue Code section 1.150-2; and (D) certain post-issuance certificates, orders and instruments necessary or convenient to accomplishing the redemption of Conduit Revenue Bonds or the prepayment of a Project Sponsor's obligation to the I-Bank.

Section 4. The Board hereby delegates to the Executive Director the authority to execute and deliver, for and on behalf of the I-Bank, any written consent, direction, appointment, certificate, order or other instrument required by the Bond Documents or otherwise necessary or convenient to effectuate any Facility Substitution; provided that (A) the Facility Substitution is made pursuant to and in accordance with the terms of any Bond Document that establishes the terms of the Facility Substitution, (B) bondholder consent is not required by such Bond Document for the Facility Substitution, (C) the Facility Substitution supports a long-term rating on the Conduit Revenue Bonds of at least "A3" from Moody's Investors Service (Moody's), or "A-" from Standard & Poor's (S&P) or Fitch Ratings, Inc. (Fitch), or a short-term rating of at least a "VMIG 1" or "P-1" from Moody's, "SP-1" or "A-1" from S&P, or "F1" from Fitch, and (D) the I-Bank receives an opinion of bond counsel to the effect that the Facility Substitution is made pursuant to and in accordance with the terms of any Bond Document that establishes the terms of the Facility Substitution and does not, in and of itself, cause the interest on the bonds to be includable in gross income for federal income tax purposes or materially, adversely affect the holders of the bonds, provided that no opinion as to the effect of such Facility Substitution on bondholders will be required in the event that the Facility Substitution is effective in conjunction with the remarketing of the bonds.

Section 5. The Board hereby delegates to the Executive Director the authority to execute and deliver, for and on behalf of the I-Bank any Bond Document Amendment; provided that (A) the Bond Document Amendment (1) does not result in a material change to the terms of the transaction approved by any resolution of the Board, (2) can be effectuated pursuant to the terms of the applicable Bond Documents without the consent of bondholders and (3) does not provide for any additional material duties of or costs to the I-Bank; and (B) the I-Bank is provided with an opinion of bond counsel to the effect that the Bond Document Amendment will not, in and of itself, cause the interest on the bonds to be includable in gross income for federal income tax purposes or materially, adversely affect the holders of the bonds

Section 6. The Board hereby delegates to the Executive Director the authority to execute and deliver, for and on behalf of the I-Bank, any written consent, direction, appointment, certificate, order or other instrument required by the Bond Documents or necessary or convenient to effectuate any Agent Substitution; provided that (A) the Agent Substitution is made pursuant to and in accordance with the terms of any Bond Document that establishes the terms of the Agent Substitution, (B) bondholder consent is not required by such Bond Document for the Agent Substitution, (C) the Agent Substitution does not result in any additional cost to the I-Bank, (D) with respect to the replacement of a remarketing agent, broker-dealer, or marketing agent, the substituted agent is listed on the State Treasurer's list of underwriters approved for negotiated offerings pursuant to California Government Code Section 5703, and (E) with respect to replacement of any other agent, that agent is currently serving in the same capacity in relation to I-Bank or State of California bonds.

Section 7. The Board authorizes the Secretary of the Board to attest to the signature of the Executive Director on any resolution, document, consent, certificate, direction, appointment, order or other instrument executed by the Executive Director pursuant to the terms of this Resolution.

Section 8. This Resolution supersedes Sections 2.a., 2.b., 2.c. and 2.g. of Resolution 06-37 as those Sections pertain to Conduit Revenue Bonds. For all other purposes, Resolution 06-37 shall remain in full force and effect. This Resolution shall take effect from and after its adoption.

Section 9. The Executive Director shall provide a report of actions taken pursuant to the authority delegated in Sections 3(C), 3(D), 4, 5 and 6 no later than the second regular meeting of the Board following the date the action was taken.

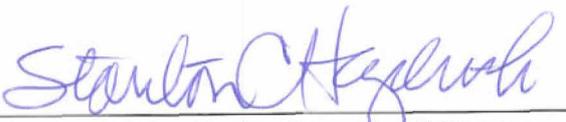
PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on November 20, 2008, by the following vote:

AYES: Berte, Sheehy, Lujano, Lopez, Rice

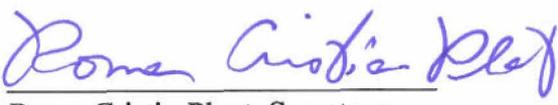
NOES: None

ABSENT: None

ABSTAIN: None

By 
Stanton C. Hazelroth, Executive Director

Attest:

By 
Roma Cristia-Plant, Secretary

RESOLUTION NO. 09-05

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK DELEGATING TO THE EXECUTIVE DIRECTOR OF THE BANK CERTAIN AUTHORITY TO ACT ON BEHALF OF THE BANK IN RELATION TO FINANCING PUBLIC DEVELOPMENT FACILITIES PURSUANT TO THE INFRASTRUCTURE STATE REVOLVING FUND LOAN PROGRAM

RECITALS

WHEREAS, the California Infrastructure and Economic Development Bank (the “I-Bank”) is established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.) (the “Act”), for the purpose of promoting a system of public improvements essential to the economic well-being of the citizens of the State of California (the “State”) and that are necessary to maintain, as well as create, employment within the State;

WHEREAS, the I-Bank is authorized under the Act to, among other things, finance public development facilities (or “Projects”), as defined in the Act, located in the State, as requested by sponsors and participating parties pursuant to the authority and requirements of the Act;

WHEREAS, the I-Bank has adopted Criteria, Priorities and Guidelines (the “Criteria”) for a program to finance public development facilities known as the Infrastructure State Revolving Fund Program (the “ISRF Program”);

WHEREAS, under the ISRF Program the I-Bank finances public development facilities using a variety of financing mechanisms, including loans, and installment sale, lease-leaseback, sale-leaseback and tax increment financings, each transaction documented through a variety of agreements, including loan agreements, installment sales agreements, and facility lease and site lease agreements (“Financing Agreements”), secured through a variety of arrangements, including leases and documents creating liens on real and personal property, including intangible personal property such as revenue streams, funds and accounts which may or may not be included in an agreement separate from a Financing Agreement (“Security Agreements”), and which may also otherwise be reflected in agreements, contracts, certificates, orders and instruments that are ancillary and related to those Financing Agreements and Security Agreements and that are necessary or convenient to accomplish the financing of public development facilities (“Additional Documents”);

WHEREAS, the ISRF Program financings are funded in part by the proceeds of bonds issued by the I-Bank (the “ISRF Program Bonds”), and the ISRF Program financings must be structured in conformance with certain federal tax law requirements that apply to the ISRF Program Bonds and in conformance with certain contractual agreements made by the I-Bank in relation to the ISRF Program Bonds;

WHEREAS, ISRF Program financings frequently leverage other sources of funding for the Project, including federal, state or local grants and loans including those made from bond proceeds, which sources often include restrictions on use that require adjustments to the sources and uses for funding proceeds available for the Project as the restrictions are more fully understood from time to time;

WHEREAS, from time to time there is a need to make minor alterations or augmentations to the Projects that the Board has approved for financing and to make minor alterations or augmentations to the other terms of the transaction approved by the Board;

WHEREAS, from time to time there is a need to amend ISRF Program Financing Agreements, Security Agreements or Additional Documents;

WHEREAS, Sections 63022 and 63023 of the Act provide that the I-Bank is governed by the Board of Directors of the I-Bank (the "Board"), and that the management of and the conduct of the business and affairs of the I-Bank are to be undertaken by the Executive Director;

WHEREAS, Section 63022 and 63023 of the Act authorize the Board to delegate to the Executive Director the authority to take certain acts on behalf of the I-Bank, while requiring that any action involving final approval of any bonds, notes or loans shall require the approval of a majority of the members of the Board;

WHEREAS, the Board has adopted Resolution 06-37 for the purpose of delegating certain authority to the Executive Director, including authority related to the ISRF Program;

WHEREAS, the Board has adopted Resolution 08-35 to augment and restate certain portions of Resolution 06-37 as it pertains to conduit revenue bonds and to supersede certain sections of Resolution 06-37 as those Sections pertain to conduit revenue bonds; and

WHEREAS, the Board has determined that the scope of the delegation of Resolution 06-37 as it pertains to the ISRF Program should also be clarified and restated by this Board;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The Board hereby finds that the above recitals are true and correct.

Section 2. The Board hereby authorizes the Executive Director to execute and deliver, for and on behalf of the I-Bank, all resolutions adopted by the Board, including without limitation those resolutions approving the financing of public development facilities under the ISRF Program.

Section 3. The Board hereby delegates to the Executive Director the authority to approve, execute and deliver for and on behalf of the I-Bank all Financing Agreements, Security Agreements and Additional Documents necessary or convenient to effect and secure the financing of public development facilities approved by the Board and which are consistent with the transaction terms authorized by the Board; provided, however, that the Executive Director may approve, execute and deliver Financing Agreements, Security Agreements and Additional

Documents which include alterations or amendments to the terms of the transaction authorized by the Board, provided that any such alteration or amendment shall be consistent with the Criteria, shall not materially adversely affect the I-Bank's security, shall not in and of itself materially adversely affect any series of the ISRF Program Bonds, and shall not alter any of the following, each of which the Board hereby determines is a substantive and material term of each ISRF Program financing transaction approved by the Board, except as permitted herein:

- a. The sponsor or participating party, except to permit the assumption of all the obligations and interests of that sponsor or participating party under all applicable Financing Agreements, Security Agreements and Additional Documents by an entity that is either an eligible sponsor or participating party, as applicable, under the Act.
- b. The maximum principal financing amount.
- c. The maximum maturity date.
- d. The repayment/security pledged to repay the financing.
- e. The method of calculating the interest rate.
- f. The fees paid by the sponsor or participating party of the Project to the I-Bank.
- g. The type of financing (e.g., an installment sale, loan, or lease-leaseback financing).
- h. The description of the Project in a way that would make the Project inconsistent with the subsection of Section 63010(q) of the Act applicable to the Project as approved by the Board.

Section 4. The Board hereby delegates to the Executive Director the authority to approve, execute and deliver for and on behalf of the I-Bank amendments to previously approved, executed and delivered Financing Agreements, Security Agreements and Additional Documents provided that the amended Financing Agreement, Security Agreement or Additional Document shall not alter any of the terms identified by the Board as substantive or material in Section 3 except as permitted therein, shall not materially adversely affect the I-Bank's security, or, in and of itself materially adversely affect any series of the ISRF Program Bonds. Such amendments shall be consistent with the Criteria except those pertaining to application for financing approval, or scoring for prioritizing projects.

Section 6. This Resolution supersedes Resolution 06-37 adopted on August 22, 2006, and shall take effect from and after its adoption.

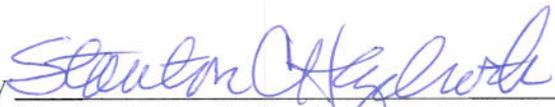
PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on February 24, 2009, by the following vote:

AYES: Bonner, Rockwell, Lujano, Rice

NOES: None

ABSENT: Marin

ABSTAIN: None

By 
Stanton C. Hazelroth, Executive Director

Attest:

By 
Roma Cristia-Plant, Secretary