

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

LEGAL STAFF REPORT

ISSUE:

Existing California Infrastructure and Economic Development Bank (“I-Bank”) Resolution No. 11-24 (attached hereto as Attachment A) provides certain delegations of authority from the I-Bank’s board of directors (the “Board”) to the I-Bank’s Executive Director (the “Executive Director”) to ensure the timely, efficient and cost effective delivery of services to the recipients of I-Bank financial assistance. Legal staff requests approval of Resolution No. 12-08, which if adopted would (i) supersede I-Bank Resolution No. 11-24; (ii) restate prior delegations without change; and, (iii) provide one additional delegation in relation to I-Bank bonds.

DISCUSSION:

Delegation Authority under the I-Bank Act.

In several provisions, the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.) (the “I-Bank 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.”

Existing Delegation Resolution.

On September 27, 2011 the Board adopted Resolution No. 11-24 which delegated authority to the Executive Director to act on behalf of the I-Bank in the following areas: bond related amendments; credit or liquidity facility substitution; agent substitutions; reimbursement of costs with bond proceeds, redemption of bonds, prepayments, loan program financing agreements and amendments; fund raising efforts; and recovery of I-Bank costs.

Exercise of Delegated Authority over Past Year.

Since the adoption of Resolution 11-24 in September of 2011, the Executive Director acted on a number of matters pursuant to the delegated authority and reported back to the Board, at the earliest practicable opportunity, as to the nature of the actions he took. By acting under his delegated authority, the Executive Director facilitated the timely, efficient and cost-effective delivery of I-Bank services to its patrons with respect to

matters that were related to providing financial assistance to eligible projects, but ancillary to the issuance of bonds or the making of loans.

New Delegation Resolution.

If adopted by the Board, Resolution 12-09 would incorporate a new section to delegate to the Executive Director, in connection with any proposed post bond issuance consummation of transactions that were already contemplated in the documents associated with the original issuance of I-Bank bonds (“Contemplated Transactions”), the authority to consummate such Contemplated Transactions. Thus, the delegation under Resolution 12-09 includes Executive Director authority to act with respect to interest rate mode changes, mandatory tenders, conversions and the remarketing of I-Bank bonds.

Further, the delegation under Resolution 12-09 includes a delegation to the Executive Director of the authority, in instances where a remarketing of bonds is done in the form of a limited offering or private placement, to waive the I-Bank rating requirement upon determining that any applicable I-Bank private placement or limited offering conditions have been satisfied. For example, the I-Bank policy titled “Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities” (“Bond Policy”) sets forth conditions applicable to private placements and limited offerings. These conditions read as follows:

“When the Infrastructure Bank agrees to waive the requirement for a credit rating stated in [the preceding] paragraph, the Participating Party will be required to use a private placement or limited underwritten offering, subject to the following additional conditions:

1. **Sophisticated Investor.** The investor(s) will be required to sign a “sophisticated investor” letter acceptable to the Infrastructure Bank. Each investor must be a qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an equivalent sophisticated investor with a demonstrated understanding of the risks associated with the municipal market, acceptable to the Infrastructure Bank.
2. **Resale Limitations.** Depending on the circumstances of the proposed sale, the Infrastructure Bank may require conditions for the resale of the Bonds after initial issuance.
3. **Minimum Denomination.** The Infrastructure Bank will require a minimum bond denomination of at least \$100,000 on private placements or limited underwritten offerings; denominations may be higher depending on the circumstances of the sale.”

Since the Board’s adoption of the aforementioned section of the Bond Policy, all staff report recommendations involving private placements for bond issuances presented for Board consideration have included a recommendation to the Board to approve the waiver of the rating requirement consistent with the Bond Policy. The delegation authority discussed herein enables the Executive Director to provide that waiver, but only in instances where a remarketing of bonds is done in the form of a limited offering or private placement.

Resolution 12-09 supersedes and restates the delegated authorities found in Resolution 11-24 by adding a new Section 7, and renumbering the remaining sections.

RECOMMENDATION:

Legal staff recommends that the Board approve Resolution 12-09 superseding Resolution 11-24, restating prior delegations without change and providing one additional delegation to the Executive Director.

Attachment A - Resolution 11-24

RESOLUTION NO. 11-24

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK DELEGATING TO THE EXECUTIVE DIRECTOR OF THE INFRASTRUCTURE BANK AND THE EXECUTIVE DIRECTOR'S ASSIGNEES THE AUTHORITY TO ACT ON BEHALF OF THE INFRASTRUCTURE BANK IN PROVIDING FINANCIAL ASSISTANCE TO ELIGIBLE PROJECTS AND OTHERWISE CONDUCTING THE BUSINESS AND AFFAIRS OF THE INFRASTRUCTURE BANK

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 providing financial assistance to eligible projects in the State of California (the "State") through a variety of financing mechanisms, which include, among other things, bonds and various forms of credit enhancement, as well as direct loans that are currently made pursuant to the I-Bank's Infrastructure State Revolving Fund Program (the "ISRF Program");

WHEREAS, from time to time, recipients of I-Bank financial assistance may request changes to certain financing agreements or other financing related documents ("Requests");

WHEREAS, the Act provides that "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 [I-Bank] in connection with the administration, management, and conduct of the business and affairs of the [I-Bank], the infrastructure bank fund and the guarantee fund" and the Act further provides that the executive director of the I-Bank may assign such authority to others;

WHEREAS, prior delegation resolutions of the I-Bank Board of Directors (the "Board") have circumscribed the I-Bank's ability to respond to such Requests by imposing numerous preconditions to utilizing delegated authority and, as a result, on a number of occasions, action on such Requests had to be delayed until the matter could be brought before the Board;

WHEREAS, in all circumstances, but most particularly during difficult economic times and periods of capital market volatility, the I-Bank desires to act more quickly and in a manner that is even more responsive to the needs of recipients of I-Bank financial assistance;

WHEREAS, the Board has determined that modifying the conditions that are imposed by Resolutions 08-35 and 09-05 would achieve the Board's goal of greater responsiveness and faster I-Bank action by ensuring that Requests involving technical amendments, ministerial issues and other matters that do not affect the I-Bank's interests no longer require Board approval;

WHEREAS, the Board has determined that there are other areas of I-Bank operations where it is both appropriate and more efficient for the executive director and the executive

director's assignees (the "Executive Director") to undertake certain actions on behalf of the I-Bank;

WHEREAS, the Act authorizes the I-Bank to receive, serve as the conduit for receipt of and accept from sources, including but not limited to, the federal government, the State, any agency of the State, public and private pension funds and any other sources ("Funding Sources"), any grants, contributions, subventions, dedicated taxes, appropriations, advances, guarantees, financial enhancements in money, property, labor and other things of value;

WHEREAS, the Board has determined that seeking, securing and receiving funds from Funding Sources would augment the I-Bank's ability to provide financial assistance to eligible projects and to further the purposes of the Act;

WHEREAS, the Act authorizes the I-Bank to charge and equitably apportion, among recipients of I-Bank financial assistance, those costs and expenses associated with I-Bank financing transactions and services or that are otherwise incurred in the exercise of the powers and duties conferred on the I-Bank by the Act ("I-Bank Charges") and where such I-Bank Charges are to be distinguished, under the Act, from "fees" which the I-Bank may also impose pursuant to the Act but which are not covered by this resolution;

WHEREAS, the Board has determined that authorizing the Executive Director to determine, impose and collect I-Bank Charges would enhance the I-Bank's ability to provide financial assistance to eligible projects and to further the purposes of the Act;

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 delegates to the Executive Director in connection any proposed amendment of bond related documents (an "Amendment"), the authority to execute and deliver all agreements, contracts, certificates, orders, appointments, notices, waivers, approvals, acknowledgements, consents, written directions, instruments and other documents ("I-Bank Documents") necessary or convenient to effect such Amendment; provided that, the I-Bank receives an opinion of counsel to the effect (1) that the Amendment is in accordance with the associated transaction documents and (2) where bonds were issued as tax-exempt bonds, that the Amendment will not adversely affect the tax-exempt status of interest on the bonds.

Section 3. The Board hereby delegates to the Executive Director, in connection with any instance where any portion of the proceeds tax-exempt bonds are expected to be used to reimburse costs incurred prior to the issuance of such bonds (a "Reimbursement"), the authority to execute all certificates or documents evidencing the official intent of the I-Bank to authorize such Reimbursement pursuant to applicable federal tax law then in effect.

Section 4. The Board hereby delegates to the Executive Director, in connection with any proposed redemption of bonds or prepayment of the obligations of others to the I-Bank (a "Redemption"), the authority to take all actions and execute and deliver all I-Bank Documents necessary or convenient to accomplishing such Redemption.

Section 5. The Board hereby delegates to the Executive Director, in connection with the substitution of a credit facility or liquidity facility associated with an I-Bank financing (a “Facility Substitution”), the authority to execute and deliver all I-Bank Documents necessary or convenient to effect such Facility Substitution; provided that the I-Bank receives (1) an opinion of counsel to the effect that the Facility Substitution (i) is in accordance with the associated transaction documents; and (ii) where bonds were issued as tax-exempt bonds, the Facility Substitution will not adversely affect the tax-exempt status of interest on such bonds; and (2) written evidence from the rating agencies specified in the transaction documents that the Facility Substitution will not result in a rating lower than the rating required by the transaction documents.

Section 6. The Board hereby delegates to the Executive Director, in connection with the appointment, removal or substitution of any agent involved in an I-Bank financing, including but not limited to, bond trustee, broker-dealer, marketing agent, title insurance provider, paying agent, remarketing agent, bond registrar, escrow agent and tender agent (an “Agent Substitution”), the authority to execute and deliver all I-Bank Documents necessary or convenient to effect such Agent Substitution; provided that the I-Bank receives (1) an opinion of counsel to the effect that the Agent Substitution (i) is in accordance with the associated transaction documents; and (ii) where bonds were issued as tax-exempt bonds, the Agent Substitution will not adversely affect the tax-exempt status of interest on the bonds.

Section 7. The Board hereby delegates to the Executive Director, in connection with its approval of any loan to be made pursuant to the ISRF Program (an “ISRF Program Loan”), the authority to execute and deliver the appropriate I-Bank financing agreements in substantially the form in use by the I-Bank at the time of the ISRF Program Loan, with such changes or insertions as may be necessary or convenient to cause the same to carry out the intent of the Board resolution approving the ISRF Program Loan, and as are approved by counsel to the I-Bank, such approval to be conclusively evidenced by the delivery thereof. The Board further delegates to the Executive Director the authority to execute and deliver all other I-Bank Documents necessary or convenient to effect such ISRF Program Loan.

Section 8. The Board hereby delegates to the Executive Director, in connection with any ISRF Program Loan, the authority to amend or modify the financing documents associated with the ISRF Program Loan (a “Loan Amendment”) so long as such Loan Amendment is consistent with the intent of the Board resolution that approved the ISRF Program Loan and as approved by counsel to the I-Bank; provided, however that any of the following proposed Loan Amendments are not delegated to the Executive Director: (1) any increase in the principal amount of the ISRF Program Loan; (2) any extension of the final maturity date; (3) any change in the security pledged to repay the ISRF Program Loan; (4) any change in the interest rate.

Section 9. The Board hereby delegates to the Executive Director, in connection with any I-Bank effort to seek grants or other funds from Funding Sources, the authority to apply for, receive, accept and deposit any such funds or other things of value from such Funding Sources, all as permitted by the provisions of the Act (“Funding Efforts”); provided, however that (1), prior to acceptance, the Board must approve the conditions associated with any award of funds; and (2) no delegation is made as to the use of any funds received. The Board further delegates to

the Executive Director the authority to execute and deliver all I-Bank Documents necessary or convenient to effect such Funding Efforts.

Section 10. The Board hereby delegates to the Executive Director the authority to determine, impose and collect I-Bank Charges. The Board further delegates to the Executive Director the authority to execute and deliver all I-Bank Documents necessary or convenient in connection with the determination, imposition and collection of such I-Bank Charges.

Section 11. This resolution shall supersede each of Resolution 08-35 and 09-05 in their entirety and shall take effect immediately upon its adoption.

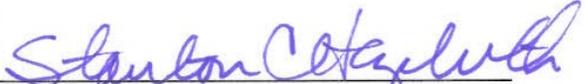
PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on September 27, 2011 by the following vote:

AYES: ROCKWELL, LUJANO, JIMENEZ, ARMSTRONG

NOES: NONE

ABSENT: RICE

ABSTAIN: NONE

By 
Stanton C. Hazelroth, Executive Director

Attest:

By 
Roma Cristia-Plant,
Secretary of the Board of Directors