

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: March 12, 2018**

Resolution of the California Pollution Control Financing Authority Delegating to the Executive Director the Authority to Approve Initial Resolutions Related to Bond Financings

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Summary. Staff requests Authority approval of a resolution authorizing the delegation of authority to the Executive Director to approve Initial Resolutions for the purposes of bond financings.

Health and Safety Code section 44519 provides that, “The authority may, by resolution, delegate to one or more of its members, its executive director, or any other official or employee of the authority any powers and duties that it may deem proper, including, but not limited to, the power to enter into contracts on behalf of the authority.”

Further Health and Safety Code section 44534(a) provides that “The authority shall take initial action of any completed application for financing submitted to it by a participating party no later than the next meeting of the authority that occurs after at least 30 days following receipt of the application. The authority may delegate to its executive director or any other official of the authority to grant initial approval for financing to a participating party.”

The current request would expire December 31, 2018.

Background. Section 147 (f) of Title 26 of the Internal Revenue Code requires that for such bonds to be issued that it be approved by (i) the governmental unit – (I) which issued such bond, or (II) on behalf of which such bond was issued, and (ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than one governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located only one such unit need to approve such issue).

The first step for a borrower in a conduit bond transaction normally is obtaining an initial approval from the financing authority. The enabling legislation for the Authority provides for such initial approval at Health and Safety Code section 44534(a). As such, upon a qualifying application, the Authority approves and adopts an “Initial Resolution Reflecting Official Intent to Issue Revenue Bonds”, or “Initial Resolution”. Such Initial Resolution constitutes the statement of “official action” or “official intent” required by the Section 103 of the Internal Revenue Code of 1986 as amended. Functionally, the Initial Resolution includes and constitutes an agreement in principle by the Authority to issue Bonds for a proposed Project, but is not binding commitment. For exempt facilities seeking tax exempt financing from the Authority, an Initial Resolution may be obtained early in the planning process. Obtaining an Initial Resolution from the Authority enables borrowers to be reimbursed for certain qualifying Project costs incurred prior to the close of financing. Bonds may finance costs if an Initial Resolution is approved no

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more than 60 days after the costs are spent and the bonds are issued not more than eighteen month after the Project is ready to be placed in service. Thus, an Initial Resolution may be obtained before the borrower enters into binding contracts for the construction or operation of a Project.

However, nothing in the Health & Safety Code or other controlling law requires a borrower to obtain an Initial Resolution for private activity bonds issued by the Authority, prior to applying for a Final Resolution for financing and volume cap allocation. Therefore, many borrowers do not seek the approval of an Initial Resolution in advance of the financing of exempt facility projects.

For the past ten years the Authority has been awarded annual or carryforward allocation from the California Debt Limit Allocation Committee (CDLAC), which allowed borrowers a streamlined process to obtain both financing and allocation approval from the Authority at a single meeting. For a borrower not requiring an Initial Resolution, it could submit applications for the Initial Resolution, the Final Resolution for financing, and the volume cap allocation at the same time, with all three discretionary approvals presented to the Authority simultaneously at a single public meeting.

Under the typical CPCFA application process, the Authority also notices and holds the federally-required "TEFRA" hearing prior to the public meeting approving the financing and the allocation. In 1982 the Internal Revenue Service (IRS) published temporary regulations regarding The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requiring that public approval requirements be met. In order to comply with this regulation a public notice must be published in a publication or publications that serves all project locations and a public hearing be held. These notifications must be published for at least 14 days prior to the hearing, which CPCFA holds in their office in Sacramento. The public may respond in writing, call in to the hearing with the published number, or attend in person. This TEFRA hearing the hearing requirement of the IRS at Section 147 (f) of Title 26 of the Internal Revenue Code.

In January 2018, CDLAC determined that it would now award the volume cap allocation for CPCFA's exempt facility financings at the regularly scheduled meetings of the Committee, meaning that companies seeking financing from the Authority must also apply to CDLAC for allocation. Under CDLAC's regulations describing its application process, in order for an Issuer to be awarded volume cap allocation, the application submitted sixty (60) days prior to the Committee's public meeting must include an "inducement or reimbursement resolution" from the Authority. (See CDLAC Regulation Section 5033(b)(4)). This "inducement or reimbursement resolution" is the same as the Initial Resolution approved by CPCFA. Without the Initial Resolution, the application for volume cap allocation is deemed incomplete by CDLAC.

Health and Safety Code section 44534(a) provides that, "The authority may delegate to its executive director or any other official of the authority to grant initial approval for financing to a participating party." Health and Safety Code section 44534(b) further states that, "The Authority shall take final action with regard to the issuance of bonds or notes to lend financial assistance to

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a participating party within 60 days of receipt by the Authority of a request from the participating party for the issuance of bonds or notes.”

The request before the Board will allow the Executive Director to approve the Initial Resolution Reflecting Official Intent to Issue Revenue Bonds upon request from an applicant without the need for the Board to meet. In addition to the ability for the borrower to be reimbursed for certain qualifying expenses from the bond proceeds, it would satisfy CDLAC’s requirement for an inducement or reimbursement resolution, and restore a more streamlined approach to applying for volume cap allocation and receiving tax-exempt financing from the Authority.

Recommendation. Staff recommends adoption of a Resolution No. 18-001-002 authorizing delegation authority to the Executive Director to approve an Initial Resolution Reflecting Official Intent to Issue Revenue Bonds for qualified exempt facility projects, and also to file necessary applications with CDLAC, pay associated fees and certify the posting of the required performance deposit. This delegation resolution will be in force through December 31, 2018.

Resolution No. 18-01-002

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY DELEGATING TO THE EXECUTIVE DIRECTOR THE AUTHORITY
TO APPROVE INITIAL RESOLUTIONS RELATED TO BOND FINANCINGS**

March 12, 2018

WHEREAS, the California Pollution Control Financing Authority (“Authority”) was created under the provisions of Section 44500 of the Health and Safety Code; and

WHEREAS, Section 44522(c) of the Health and Safety Code provides that the Authority is authorized to “do all things generally necessary or convenient to carry out its powers”; and

WHEREAS, Section 44534(a) of the Health and Safety Code provides that “The authority shall take initial action of any completed application for financing submitted to it by a participating party no later than the next meeting of the authority that occurs after at least 30 days following receipt of the application”; and

WHEREAS, the Authority adopts an “Initial Resolution Reflecting Official Intent to Issue Revenue Bonds”, or “Initial Resolution” for qualifying participating parties seeking financing for exempt facilities, to constitute the statement of “official action” or “official intent” required by the Section 103 of the Internal Revenue Code of 1986 as amended; and

WHEREAS, the Initial Resolution adopted by the Authority expressly provides for the reimbursement from bond proceeds for certain qualifying expenditures related to the exempt facility that are incurred prior to the close of financing; and

WHEREAS, Section 44519 of the Health and Safety Code provides that the Authority may employ an executive director as is necessary to enable it to properly perform the duties imposed upon it, and that the Authority may, by resolution, delegate to its executive director any powers and duties that it may need proper; and

WHEREAS, Section 44534(a) of the Health and Safety Code provides further that “The authority may delegate to its executive director or any other official of the authority to grant initial approval for financing to a participating party”; and

WHEREAS, in order for a participating party to receive volume cap allocation from the California Debt Limit Allocation Committee (“Committee”) for tax exempt financing, it must submit an application including an “inducement or reimbursement resolution” adopted by the Authority; and

WHEREAS, the Authority desires to streamline the process for applying for volume cap allocation where prudent and feasible; and

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WHEREAS, delegating Authority to the executive director to grant initial approval for financing will also enable the filing of an application meeting all minimum application requirements of the Committee pursuant to Section 5033 of its regulations, including but not limited to a reimbursement resolution, the payment of any fees required by the Committee, and the certification of the posting of the required performance deposit.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is given specific authorization by this Resolution to approve Initial Resolutions on behalf of the Authority as provided herein.

BE IT FURTHER RESOLVED that upon the approval of the Initial Resolution for an exempt facility, the Executive Director may file an Application with the Committee, pay any fees required by the Committee, and certify the posting of the required performance deposit.

BE IT FURTHER RESOLVED that this Resolution becomes effective immediately upon its adoption and shall expire on December 31, 2018.