coalition for green capital

Comments on the Development of an Investment Plan for the Auction Proceeds to the State from the Cap-and-Trade Program to Reduce Greenhouse Gas Emissions

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I. INTRODUCTION AND EXECUTIVE SUMMARY

The Coalition for Green Capital ("CGC") thanks the Air Resources Board ("ARB") for this opportunity to provide comments regarding the development of an investment plan for the State's auction proceeds from the cap-and-trade program established pursuant to Assembly Bill 32 ("AB 32"). CGC is a non-profit organization based in Washington, DC that advocates for tax and finance policies at the state, national, and international levels that would support investment in renewable energy, energy efficiency and other clean energy technologies, products and services (together, "clean energy and energy efficiency projects"). In particular, CGC works to establish "green banks"—funds that provide low-cost, long-term financing to clean energy and energy efficiency projects.

These comments will explain how certain financing structures implemented by a state green bank can leverage scarce government dollars and attract private investment so that each public dollar invested in clean energy and energy efficiency projects can support multiple dollars of private investment. By providing financing support, a California state green bank would drive down the price of deploying clean energy and energy efficiency projects so that fewer public dollars will be needed in order to meet the State's greenhouse gas ("GHG") reduction goals under AB 32 and Executive Order S-3-05.

The State's auction proceeds from the cap-and-trade program provide an opportunity to capitalize a California state green bank that could become self-sustaining once it begins generating proceeds and reinvesting those funds. A state green bank also could be structured so as to meet the various standards and guidelines associated with the investment of the State's proceeds from the cap-and-trade auction. If desired, a state green bank could even assist in streamlining and coordinating the many clean energy incentive programs that already exist in California.

These comments begin by providing an overview of the benefits that a state green bank can provide, as well as some fundamental principles that should be used when structuring a state green bank. Next, we explain how the State's proceeds from the AB 32 cap-and-trade auctions could be used to capitalize a state green bank. Lastly, we provide specific examples of how a state green bank could be structured in California.

II. A STATE GREEN BANK CAN REDUCE THE COSTS OF DEPLOYING CLEAN ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES

A. Defining a State Green Bank

A state green bank is a public or quasi-public financial institution that provides low-cost, long-term financing to clean energy and energy efficiency projects and leverages public funds by using various financial mechanisms to attract private investment so that each public dollar supports multiple dollars of private investment.[1] A state green bank would be able to increase the deployment of clean energy and energy efficiency projects in California by lowering the cost of projects, correcting failures in commercial capital markets, and leveraging public funding resources such as the State's proceeds from the cap-and-trade auction. In California, a green bank would help enable companies to build clean energy and energy efficiency projects that generate electricity at competitive market rates and would provide increased access to debt financing at favorable rates. It also means that fewer public dollars will be needed in order to achieve the State's GHG reduction goals.

B. How a State Green Bank Leverages Public Funds

A state green bank may use various financial mechanisms to leverage public funds, including, but not limited to direct loans, guarantees and credit enhancements, as well as financing support for pooling and securitization. For example, a state green bank could, in combination with private lenders, directly lend to clean energy project developers or stakeholders at below-market rates and/or the state green bank could provide a layer of debt subordinated to private debt. These measures would lower the risk for private investors and address possible shortages of senior debt financing. A state green bank also could provide other forms of financing support to reduce the overall cost of capital for clean energy and energy efficiency projects such as loan loss reserve funds and loan guarantees. Another option would be for a state green bank to facilitate the pooling and securitization of clean energy project financial instruments (e.g., loans, leases). It could do so by standardizing clean energy project financial instruments, bundling them and selling the aggregated product, or by investing in an entity or pooled fund that aggregates smaller financial instruments such as those for energy efficiency projects.

Importantly, a state green bank could develop and employ risk management techniques to ensure that the types of financing support being provided have low default rates and generate interest revenue so that the state green bank is able to reinvest its proceeds and eventually become self-sustaining without additional public funding. By focusing on self-sustaining financing support programs instead of grants (e.g., installation rebates), interest rate buy-downs and other one-time funding support tools, a state green bank increases the deployment of clean energy and energy efficiency projects for every dollar of public funding available and shifts the focus from untested technologies to those that are commercially viable but for the cost and availability of capital. Further, by partnering with private sector financial institutions in the vetting process, state green bank financing support requires potential recipients to meet commercial financing standards.

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[1] *See generally* Ken Berlin, et al., *State Clean Energy Finance Banks: New Investment Facilities for Clean Energy Deployment* (Brookings-Rockefeller Sept. 2012).

C. Support for State Green Banks

In June 2011, with significant policy and legal support from CGC, Connecticut became the first state in the U.S. to create a green bank, the Clean Energy Finance and Investment Authority ("CEFIA"). The legislation creating CEFIA passed unanimously in the Connecticut Senate, and by a vote of 138-9 in the Connecticut House of Representatives. CEFIA is a quasi-public clean energy authority that combined existing clean energy funds into an entity with the ability to make loans, leveraging the public capital with private capital, opening to private investors and providing a reasonable rate of return for those investors' contributions.[2]

The successful creation of CEFIA in Connecticut sparked the interest of policy leaders in numerous other states. In October 2011, CGC partnered with the Brookings Institution to host a workshop on state green banks that was attended by policy leaders from 14 different states, including California. Those discussions led to the September 2012 release of a report co-authored by the Brookings Institution and CGC's Chief Executive Officer (Reed Hundt) and Senior Vice President for Policy and Planning and General Counsel (Kenneth Berlin), entitled *State Clean Energy Finance Banks: New Investment Facilities for Clean Energy Deployment*.[3]

Other states also are considering creating green banks similar to CEFIA. For example, in his January 9, 2013 State of the State Address, New York Governor Andrew Cuomo proposed the creation of a New York Green Bank. This New York Green Bank would leverage $1 billion of public funds, matched from the private sector. This proposal is outlined in the Governor's NY Rising: 2013 State of the State ("NY Rising"), and highlights many of the reasons states should create green banks. As stated in NY Rising, state green banks can overcome the concern of "unstable federal funding and policy, uncoordinated action and disparate one-time subsidies at the state level, a lack of appropriate financial instruments, and an apprehension in the investor community."[4]

Also for example, we have worked with policy leaders in Hawaii, where legislation was introduced in January 2013 to create a state-administered green bank through a green infrastructure authority and a green infrastructure loan program.[5] This legislation has received strong public support from policy leaders in Hawaii, including Governor Neil Abercrombie, and has passed through various legislative committees with bipartisan support.

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2 *Id.* at 3.

3 This report is available for download at the Brookings Institution's website, http://www.brookings.edu/research/papers/2012/09/12-state-energy-investment-muro. CGC also has authored numerous other publications, including a major release co-authored with the Center for American Progress. *See, e.g., Cutting the Cost of Clean Energy 1.0*, available for download at the Center for American Progress's website, http://www.americanprogress.org/issues/green/report/2010/11/16/8655/cutting-the-cost-of-clean-energy-1-0/.

4 Governor Andrew M. Cuomo, *NY Rising: 2013 State of the State* 28 (January 13, 2013), *available at* http://www.governor.ny.gov/sites/default/themes/governor/sos2013/2013SOSBook.pdf.

5 *See* Hawaii House Bill 856 (2013), *available at* http://www.capitol.hawaii.gov/session2013/Bills/HB856_.htm.

In California, the creation of a state green bank already has been recognized by the California Senate Office of Oversight and Outcomes as one of the primary recommendations to encourage the manufacturing of clean energy technologies and products in California.[6] ARB also has recognized the importance of leveraging public investment in its Draft Concept Paper for how the proceeds from the cap-and-trade auctions should be invested.[7] Legislation has also recently been introduced to create a state green bank in California. On February 22, 2013, Senator Kevin de León (D-Los Angeles) introduced Senate Bill ("SB") 798, which would create the California Green Infrastructure Bank ("CGIB"), an entity capable of providing financing support for clean energy and energy efficiency projects in the State.

D. The Benefits of a State Green Bank in California

The fundamental purpose of a state green bank is to drive down the cost of deploying clean energy and energy efficiency projects by implementing financing mechanisms that lower the cost of projects, correct commercial market failures, and leverage existing public funds to attract private investment that would not otherwise be available at a reasonable cost. Reducing GHG emissions as envisioned in AB 32 is a historic and monumental task, and one that is not without both positive and negative economic impacts. A state green bank in California has the ability to minimize potential negative economic impacts by sufficiently lowering the cost of projects to make them cost competitive with existing generation and by requiring use of fewer public dollars from the State's cap-and-trade auction proceeds to reach the desired levels of GHG emissions reductions. At the same time, the Green Bank would act as a catalyst for private sector investment in clean energy and energy efficiency projects in California.

In a report issued last year, the California Senate Office of Oversight and Outcomes effectively summarized the three primary benefits of a California state green bank. First, "unlike grants, loans are repaid, creating a revolving fund for reinvestment."[8] It should be noted that the self-sustaining nature of a state green bank responds to one of the primary difficulties in developing an investment plan for cap-and-trade auction proceeds, as acknowledged by ARB and the Department of Finance: "One of the planning challenges is drafting an investment plan when the amount of auction proceeds to the State each year is unknown."[9] After an initial capitalization, potentially from the proceeds of past auctions with known revenues, a state green bank should not need further injections of public funds. Second, "taxpayers' dollars would be

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6 Nancy Vogel and Dorothy Korber, California Senate Office of Oversight and Outcomes, *Finding the Sweet Spot: Green Energy Incentives and Job Creation* (Apr. 26, 2012) (hereinafter "Senate Office of Oversight and Outcomes Report"), *available at* http://sooo.senate.ca.gov/sites/sooo.senate.ca.gov/files/Finding%20the%20Sweet%20Spot.pdf.

7 *See, e.g.*, CARB, *Draft Concept Paper: Cap-and-Trade Auction Proceeds Investment Plan* 15 (Released Feb. 15, 2013), *available at* http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/workshops/concept_paper.pdf ("Funding should leverage private and other government investment to the maximum extent possible.").

8 Senate Office of Oversight and Outcomes Report at 44.

9 CARB, *Draft Concept Paper: Cap-and-Trade Auction Proceeds Investment Plan* 11 (Released Feb. 15, 2013), *available at* http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/workshops/concept_paper.pdf

multiplied by leveraging public investment with private capital."[10] And lastly, "the fruits of California's innovators—jobs and profits—would stay in California."[11]

An additional benefit of creating a green bank in California is that it would be synergistic with the existing Property Assessed Clean Energy ("PACE") program, which allows local governments to provide renewable energy project loans to property owners. PACE allows property owners, using financing districts, to finance the installation of onsite renewable generation or energy efficiency improvements through voluntary assessment on their property tax bills.[12] Although PACE has come to a stand-still for residential properties, it continues to be used for commercial properties, through financing provided to local governments by CaliforniaFIRST.[13] CaliforniaFIRST received bond funding in summer 2012 and, as of December 2012, was providing $7.5 million of financing for 22 active projects.[14] A California green bank could provide another source of consistent funding for the CaliforniaFIRST and/or PACE programs.

III. POSSIBLE STRUCTURES FOR A GREEN BANK IN CALIFORNIA

A. Introduction

One of the fundamental principles of a state green bank is that it should focus on self-sustaining financing support programs so that it can ultimately function by reinvesting its own proceeds without the need for infusions of additional public capital. Proceeds from the AB 32 auctions are one of several possible sources of revenues needed to capitalize a state green bank in California.[15] A state green bank could be structured so as to meet the various guidelines and standards associated with being allocated a portion of the revenue realized from the cap-and-trade auctions. State green banks can be created within an existing public agency, and remain as part of the state government. This is also the model proposed in the pending legislation in Hawaii discussed above. A green bank built on an existing state entity might alter the public entity to operate by providing loans, rather than grants, and create a partnership agreement to combine the state entity's funds with private funds. This could be either a new entity within an

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10 Senate Office of Oversight and Outcomes Report at 44.

11 *Id.*

12 Center for Sustainable Energy, "Property Assessed Clean Energy (PACE) Programs," http://energycenter.org/index.php/incentive-programs/pace-property-assesed-clean-energy.

13 California Statewide Communities Development Authority, "About CaliforniaFIRST," https://californiafirst.org/about.

14 Center for Sustainable Energy, *supra* n. 12.

15 Existing revenue streams other than AB 32 auction proceeds that could be used to capitalize a state green bank include the public goods charge that raises roughly $356 million a year through an existing surcharge on investor-owned utility customers and the Self-Generation Incentive Program ("SGIP"), which raises roughly $83 million a year through a separate surcharge on investor-owned utility ratepayers.

existing agency or through expansion of an existing agency if there is no current entity with sufficient authority.[16]

Alternatively, a state green bank can be a new quasi-public institution, separate and independent from existing public agencies. This was the model used in Connecticut when CEFIA was created. As a quasi-public institution, CEFIA was formed from an existing entity, the Connecticut Clean Energy Fund, which was transformed into a clean energy finance bank, using existing staff and a new Board of Directors. Because CEFIA is quasi-public, it is independent from the state budget.[17]

The third model for green banks is an infrastructure bank, which could be created either through a new energy and infrastructure bank or through the expansion of an existing infrastructure bank that currently does not have sufficient authority to act as a green bank.[18] The CGIB proposed in SB 798, for example, would be a new entity modeled in part after the existing California Infrastructure and Development Bank ("I-Bank"). Infrastructure and clean energy do, at times, have disparate goals – infrastructure aims to produce a public good with widely distributed benefits without direct payment by users, whereas clean energy investment is typically direct, and into projects that provide a return to investors. Similarly, the scale of infrastructure and clean energy and energy efficiency projects varies widely, with infrastructure projects typically on the large end of the spectrum and many clean energy and energy efficiency projects considered small by comparison.[19] Thus, a bank that combined public infrastructure and clean energy and energy efficiency projects would need separate "windows" and business models for each activity.

In any of the above structures, the green bank would have to develop different "windows" and business models for deploying low-risk clean energy technologies like wind and solar generation projects and high-risk projects like manufacturing plants for innovative new technologies. Low-risk deployment of energy projects can proceed based on standard financial instruments. High-risk manufacturing projects, where there is a likelihood of some project failures, require a business model closer to a venture capital model.

B. A New Entity Could House a State Green Bank in California

Should proceeds from the cap-and-trade allowance auctions be used to create a California state green bank, they also could be put in a new entity, either quasi-public or public. A quasi-public entity would have greater freedom over which investments it could take, and it would be outside of the state budget. A public entity would be completely within the public sphere, and so would operate as a non-profit organization, be limited in what private funds it could accept, and be linked to the state budget.

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16 Ken Berlin, et al., *State Clean Energy Finance Banks: New Investment Facilities for Clean Energy Deployment* 3 (Brookings-Rockefeller Sept. 2012).

17 *Id.* at 3.

18 *Id.* at 11.

19 *Id.* at 11.

For example, the CGIB proposed in SB 798 would be a new public entity modeled in part after the existing I-Bank, which is discussed in more detail below. As proposed, the CGIB would be able to provide a range of financing support for clean energy and energy efficiency projects using bond issuances and a portion of auction proceeds from the cap-and-trade program. The CGIB would, similarly to the I-Bank, be governed by a five-member Board of Directors with broad discretion with regard to funding decisions. Those seeking financing support from the CGIB would partner with a "sponsor," which is defined as any subdivision of state or local government, to apply for financing support. This process is similar to that of the I-Bank, as discussed below.

The CGIB is one of several ways in which a state green bank could be created in California to leverage public funds realized from the GHG allowance auctions. While there are certain advantages to creating a new entity as discussed above, it is also possible work within existing frameworks to create a state green bank.

C. Existing Entities in California that Could House a State Green Bank

Existing entities provide a means by which a state green bank can be up and running on the first day, by providing staff and infrastructure. Following the Connecticut model, however, it is critical to have staff with commercial banking and investment expertise who understand the financing mechanisms to be used by the state green bank. There are two existing public entities in California that could potentially either house a state green bank or become a state green bank themselves: (i) the California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA"); and (ii) the I-Bank.

1. CAEATFA

CAEATFA was created to finance alternative energy and advanced transportation technologies. CAEATFA's enabling statute describes it as a vehicle to:

- "promote the prompt and efficient development of energy sources which are renewable or which more efficiently utilize and conserve scarce energy resources"[20]

- "to advance the state's goals of reducing the levels of greenhouse gas emissions, increasing the deployment of sustainable and renewable energy sources, implementing measures that increase the efficiency of the use of energy, creating high quality employment opportunities, and lessening the state's dependence on fossil fuels and to that end to provide an alternative method of financing…."[21]

As described further below, CAEATFA was set up with the intention of functioning as an alternative financing source for renewable energy generating and manufacturing facilities—and it appears it could be established as a "home" for a green bank, perhaps without further legislation.

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[20] Cal. Pub. Res. Code § 26001(a) (2013).

[21] *Id.* § 26002.

To these ends, CAEATFA was created to provide California companies with an alternative method of financing by providing and encouraging the establishment of both facilities "utilizing alternative methods and sources of energy" and facilities required "for the development and commercialization of advanced transportation technologies."[22]

CAEATFA already is authorized to finance a wide array of clean energy and transportation technologies. "Alternative sources" of energy are defined by the statute to include "devices or technologies" used to produce renewable energy, "the efficient use of which will reduce the use of fossil and nuclear fuels."[23] "Advanced transportation technologies" has a similarly broad definition, which includes "emerging commercially competitive transportation-related technologies," which create jobs and "enhanc[e] the state's commitment to energy conservation, pollution and greenhouse gas emissions reduction, and transportation efficiency."[24]

CAEATFA is imbued with a number of different powers and duties which it can exercise in the role of financing energy and transportation technologies.[25] It is "vested with all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under" [26] the enabling statute and is empowered "[t]o do all things generally necessary or convenient to carry out the purposes" set forth in the enabling statute.[27] These are broad grants of power which authorize CAEATFA to provide financing to alternative energy and advanced transportation technologies.

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22 *Id.*

23 *Id.* § 26003(a)(3)(A).

24 *Id.* § 26003(a)(2)(A).

25 An assessment of CAEATFA prepared in February 2011 preliminarily concluded that CAEATFA is limited to financing projects relating to manufacturing of renewable energy equipment (and not renewable energy projects themselves). This analysis pointed to the statutory definition of "project." However, the statute contains two definitions of "project" (see Section 26003(a)(8)(A)-(B) of the California Public Resources Code) and we believe CAEATFA may be more broadly encompassing as a result.

One definition applies only to the statutory provision authorizing a sales and use tax exclusion (sometimes referred to as "SB 71"), which is found at § 26011.8. Cal. Pub. Res. Code § 26003(a)(8)(B) (2013). The other definition includes renewable energy projects and applies to the § 26011 general financing authority and § 26011.6 renewable energy program discussed below. *Id.* § 26003(a)(8)(A). CAEATFA issued an interpretation of its SB 71 sales and use tax authority stating that the Legislature "carved alternative source generation out of the program" via the definition of "project" specifically associated with the SB 71 program. *See* California State Treasurer, *Legal Analysis of the Use of AB 71 STE for Alternative Source Energy Generation Facilities*, http://www.treasurer.ca.gov/caeatfa/sb71/analysis.pdf.

Nonetheless, the same interpretation confirmed that generating facilities, while exempt from the SB 71 program, are fully eligible for financing under the § 26011 general financing authority and § 26011.6 renewable energy program discussed below given the definition of "project" applicable to these programs: "it is clear that under PRC Section 26003[(a)(8)(A)] CAEATFA has the authority to provide financial assistance to alternative source generating facilities as 'machinery and equipment… that utilizes, or is designed to utilize, an alternative source…'." *Id.*

26 Cal. Pub. Res. Code § 26006 (2013).

27 *Id.* § 260011(h).

"Financial assistance" is defined broadly under the enabling statute and includes, without limitation, loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, and any other type of assistance the authority determines is appropriate.[28] The latter part of this definition affords CAEATFA broad discretion in choosing the manner in which it is to provide assistance.

Another significant power is CAEATFA's ability "to provide financial assistance to a participating party."[29] As noted above, "financial assistance" is defined quite broadly. A "participating party" is defined as:

> [A] person, federal or state agency, department, board, authority, or commission, state or community college, or university, or a city or county, regional agency, public district, school district, or other political entity engaged in the business or operations in the state, whether organized for profit or not for profit, that applies for financial assistance from the authority for the purpose of implementing a project. [30]

A "participating party," then, also is defined liberally to include any entity which applies for financial assistance for the purpose of implementing a "project." A "project" is defined to include

- "land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies, or alternative source components." [31]

- "for the purposes of Section 26011.8 and Section 6010.8 of the Revenue and Taxation Code, means any tangible personal property that is utilized for the design, manufacture, production, or assembly of advanced manufacturing, advanced transportation technologies, or alternative source products, components, or systems."[32]

Under its authority to "to provide financial assistance to a participating party," CAEATFA has significant discretion to assist activities with an alternative energy or advanced transportation technology nexus.

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28 *Id.* § 26003(a)(6).

29 *Id.* § 26011(d).

30 *Id.* § 26003(a)(7).

31 *Id.* § 26003(a)(8)(A).

32 *Id.* § 26003(a)(8)(B).

CAEATFA also is empowered to take other actions not specifically discussed above which could fall under the purview of a green bank, such as collecting interest on loans[33] and purchasing bonds issued by a public agency.[34]

Certain limitations restricted CAEATFA's renewable energy financing authority under these provisions, but none materially hindered it from serving as a source of financing for renewable energy projects. These provisions were repealed in 2013.[35]

2. California Infrastructure and Economic Development Bank ("I-Bank")

The mission of the I-Bank is to finance public infrastructure and private development that promote economic development, revitalize communities and enhance quality of life for Californians.[36] The I-Bank was created in 1994 and operates pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (the "Act") contained in the California Government Code Sections 63000 *et seq*. The I-Bank is located within the Business, Transportation and Housing Agency and is governed by a five-member Board of Directors. The I-Bank has broad authority to issue tax-exempt and taxable revenue bonds, provide financing to public agencies, provide credit enhancements, acquire or lease facilities, and leverage State and Federal funds.

Although not specifically established to address energy-related or cleantech investments, various provisions within the Act may provide channels through which a green bank and/or specific clean energy and energy efficiency projects may apply for funding from the I-Bank. Section 63040 of the Act describes the minimum criteria that projects to receive funding must meet, including "the State Environmental Goals and Policy Report, or its successor."[37] Applications for funding can be made under Article 3, pursuant to which a project is submitted by a "Participating Party"[38] in conjunction with a "Sponsor," which is defined as a subdivision of

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33 *Id.* § 26011(e).

34 *Id.* § 26011(g).

35 *See, e.g.*, Cal. Pub. Res. Code §§ 26011.6(a), 26011.6(c), 26011.6(d), 26011.6(e), 26016.

36 California Infrastructure and Economic Development Bank, "Welcome," http://www.ibank.ca.gov/.

37 Cal. Gov't Code § 63040(b)(1).

38 "Participating Party" is defined broadly to mean "any person, company, corporation, association, state or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing." *Id.* § 63010(o).

the state or local government.[39] The language of the Act describing projects for consideration by the I-Bank is broad.

Section 63041 states that Sponsors must find by resolution that each project submitted for consideration to the I-Bank (i) be consistent with the general plan of the city and county in which it is located, (ii) have proposed financing appropriate for the specific project, (iii) facilitate economic development and conservation of natural resources, and (iv) be consistent with the general criteria outlined in Section 63040 of the Act.[40]

Applications for funding also can be made under Article 5, pursuant to which an "Economic Development Facility" ("EDF") can directly apply for funding from the I-Bank.[41] The definition of an EDF is sufficiently broad so as to create a potential vehicle for funding of a green bank:

> [R]eal and personal property, structures, buildings, equipment, *and supporting components thereof* that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, *and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital*, but shall not include any housing.[42]

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39 Cal. Gov't Code § 63041. "Sponsor" is defined as "any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility." *Id.* § 63010(u).

40 Cal. Gov't Code § 63041.

41 Cal. Gov't Code § 63044 ("The bank shall consider a project for conduit financing for economic development facilities upon filing of an application with the bank by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities.").

42 *Id.* § 63010(g) (emphases added).

The I-Bank's current programs include the Infrastructure State Revolving Fund Program, 501(c)(3) Revenue Bond Program, Industrial Development Revenue Bond Program, Exempt Facility Revenue Bond Program and Governmental Bond Program.[43]

While it is unclear whether a state green bank can fit squarely within the I-Bank's current programs, the language of the Act provides the I-Bank's Board of Directors with broad discretion with regard to funding decisions and does not require that a project fit within one of these program categories in order to be eligible for funding. The Act does provide, however, that money in the I-Bank fund "is available for expenditure for general administration only upon appropriation by the Legislature," while the I-Bank's authority to expend funds directly related to the servicing of approved debt is not limited.[44]

Under Section 63050 of the Government Code, a "California Infrastructure and Economic Development Bank Fund" was created within the State Treasury to implement the objectives of the Act. The legislature initially appropriated $425 million as a "one-time appropriation for financial assistance to local government to meet capital outlay and infrastructure needs" per Section 63041.5(a) and (b). The I-Bank's publication regarding their current programs provides further information regarding the amount of annual funding available for projects within each of the I-Bank's current programs.[45]

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43 *See* California I-Bank, *Programs Fact Sheet*, http://www.ibank.ca.gov/res/docs/pdfs/Programs_Fact_Sheet.pdf.

44 Cal. Gov't Code § 63051(c).

45 *See I-Bank Programs Fact Sheet, supra* n. 43, at 2.

IV. CONCLUSION

Regardless of how it is structured and where it is ultimately placed, a state green bank in California could lower the costs of deploying clean energy and energy efficiency projects and incentivize the manufacturing of clean energy technologies and products in California. By lowering the cost of capital for clean energy and energy efficiency projects, a state green bank could lower the amount of public funding necessary to meet the State's GHG reduction goals under AB 32 and Executive Order S-3-05, and simultaneously encourage clean energy innovation and manufacturing within the State. A state green bank also could be structured so as to meet the various guidelines and standards associated with the appropriation of the State's proceeds from the cap-and-trade auction. Only a portion of these proceeds would be necessary to capitalize a state green bank, and each of those public dollars would support and attract multiple dollars of private investment in California.

Respectfully submitted,

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