



Comments on the Air Resources Board's AB 32 2013 Scoping Plan Update

August 5, 2013

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 Assembly Bill 32 (“AB 32”) 2013 Scoping Plan Update (“2013 Scoping Plan Update”). 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”—entities that provide low-cost, long-term financing support 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 could drive down the price of deploying clean energy and energy efficiency projects so that fewer public dollars will be needed to meet the State’s 2020 and post-2020 greenhouse gas (“GHG”) reduction goals under AB 32 and Executive Order S-3-05.

The State’s auction proceeds from the AB 32 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. AB 32 and subsequent California legislation provide standards and guidelines for the expenditure of cap-and-trade funds.¹ A state green bank could be structured to meet these standards and guidelines for investment of the proceeds from the cap-and-trade auctions. If desired, a state green bank could even assist in streamlining and coordinating the many clean energy incentive programs that already exist in California.

The 2013 Scoping Plan Update is an ideal venue to endorse the formation of a state green bank. AB 32 requires ARB to develop a Scoping Plan to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions to 1990 levels by 2020 and to update that Scoping Plan every five years.² To reach 1990 levels, California must reduce emissions to achieve a target level of 427 million metric tons.³

¹ See Cal. Health & Safety Code § 38565.

² *Id.* at § 38561.

³ California Air Resources Board (“ARB”), Assembly Bill 32: Global Warming Solutions Act, available at <http://www.arb.ca.gov/cc/ab32/ab32.htm>. Between 2000 and 2011, California’s GHG emissions trended downward, reaching 449 million metric tons in 2011. See Mike

ARB's 2008 Climate Change Scoping Plan ("2008 Scoping Plan") provided an approach for California to reduce emissions of GHGs to 1990 levels by 2020 and also recommended a comprehensive set of actions intended to improve the environment, create jobs, increase energy efficiency, diversify energy sources, and enhance public health.⁴ The 2008 Scoping Plan includes emission reduction measures, including a cap-and-trade program, designed to work synergistically toward achieving the AB 32 mandate. An effective program to reduce California's GHG emissions will encourage investment—both public and private—in low-carbon energy solutions, such as green technologies, renewable energy sources, and energy efficient infrastructure.

In addition to utilizing and improving upon reduction measures set forth in the 2008 Scoping Plan, we understand that the 2013 Scoping Plan Update will outline California's strategy to achieve Executive Order S-3-05's goal to cut California's GHG emissions to 80 percent below 1990 levels by 2050. This level of emissions reduction will require a monumental effort on the part of Californians.

CGC believes these ambitious 2020 and post-2020 goals are achievable with the prudent use of cap-and-trade auction revenues. Investments that effectively deploy existing technologies for clean energy and energy efficiency projects and that spur the development of new clean technologies will be an essential part of California's comprehensive climate change strategy. Smart investments also will bring green jobs and health benefits to the State and can be structured to address negative environmental impacts in disadvantaged communities. The State's budget constraints only serve to increase the importance of implementing cost-effective solutions, particularly in striving to meet the State's goals for 2050. A green bank is a powerful tool that can leverage public funds to increase the flow of private capital to endeavors that will help California meet both its 2020 and post-2020 GHG reduction goals. It would further cement California's place as an environmental leader and as a model for other states seeking to reduce GHGs. Consequently, CGC strongly encourages a thorough discussion and favorable recommendation of a green bank in the 2013 Scoping Plan Update.

These comments will provide 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.

Tollstrup, Project Assessment Branch Chief, Stationary Source Division, California Air Resources Board, *Scoping Plan Overview: 2013 Update to AB 32 Scoping Plan*, 18-19 (June/July 2013), available at http://www.arb.ca.gov/cc/scopingplan/meetings/061313/spu_workshop_presentation_final.pdf.

⁴ See ARB, *2008 Climate Change Scoping Plan* (Dec. 2008), [hereinafter *2008 Scoping Plan*] available at http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

II. A STATE GREEN BANK IS A COST-EFFECTIVE TOOL TO REDUCE CALIFORNIA'S GREENHOUSE GAS EMISSIONS

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 support to clean energy and energy efficiency projects by leveraging public funds through the use of various financial mechanisms to attract private investment so that each public dollar supports multiple dollars of private investment.⁵ 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 commercial market 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 and energy efficiency project developers or stakeholders at below-market rates, and 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 and energy efficiency project financial instruments (e.g., loans, leases). It could do so by standardizing clean energy and energy efficiency 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 availability of low-cost capital. Further, by partnering with private sector financial institutions in the vetting process, state green bank financing support will require potential recipients to meet commercial financing standards.

⁵ 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, and to leverage its capital with private capital, permitting private investment in and alongside the bank with the investors receiving a reasonable rate of return on their investments.”⁶

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*.⁷

We also have worked with policy leaders in Hawaii, where Governor Neil Abercrombie recently signed legislation in June of this year that will create a state-administered green bank through a green infrastructure authority and a green infrastructure loan program.⁸ Hawaii’s innovative program is the first to combine bond financing and on-bill repayment for clean energy infrastructure, including distributed generation solar PV systems. This feature will allow residents to install distributed generation solar PV systems using state-assisted financing that can be repaid on monthly electric bills. The legislation received strong public support from policy leaders in Hawaii, and overwhelmingly passed in the Senate by a 23-1 vote and in the House by a 50-1 vote.⁹

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

⁶ *Id.* at 3.

⁷ 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/>.

⁸ *See* Hawaii Senate Bill 1087 (2013), available at http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=1087.

⁹ Anne C. Mulkern, *Hawaii Approves First-in-the-Nation Finance System for Solar Power*, ClimateWire (May 3, 2013).

create green banks.¹⁰ 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.”¹¹

Support for a green bank also exists within California, which has long been considered a preeminent leader in enacting forward-looking environmental policies and reducing harmful GHGs. In September 2012, Governor Brown signed AB 1532 into law, which identified the purposes for which the legislature can spend money in the Greenhouse Gas Reduction Fund, a fund made up of revenues for the cap-and-trade auctions.¹² As the name indicates, the legislature must appropriate the funds to go toward technology development and projects that reduce GHG emissions. The Governor also signed SB 535 into law in September 2012, which earmarked at least 25 percent of the Greenhouse Gas Reduction Fund for disadvantaged communities.¹³ A green bank would be an effective tool for the implementation of this legislation because it allows both for easy and prompt distribution of public funds, as well as continued funds for future projects without additional governmental assistance, as the money loaned is paid back with interest.

The creation of a state green bank already has been recognized by the California Senate Office of Oversight and Outcomes as one of its primary recommendations to encourage the manufacturing of clean energy technologies and products in California.¹⁴ In fact, ARB 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.¹⁵ Further, ARB’s 2008 Scoping Plan notes the possibility of using revenues from cap-and-trade auctions to leverage private investment, and it remarks on the need for innovative financing options to help achieve AB 32’s GHG reduction goals.¹⁶ Legislation also was introduced earlier this year regarding the

¹⁰ 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>.

¹¹ *Id.*

¹² Assembly Bill No. 1532, Chapter 807 of the Statutes of 2012, Legislative Counsel’s Digest, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB1532.

¹³ Cal. Health & Safety Code § 39713(a).

¹⁴ 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>.

¹⁵ See, e.g., ARB, *Draft Concept Paper: Cap-and-Trade Auction Proceeds Investment Plan* 15 (Released Feb. 15, 2013) [hereinafter *Draft Concept Paper*], 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.”). This language from ARB’s Draft Concept Paper was ultimately included in the Department of Finance’s Final Investment Plan. California Department of Finance, *Cap-and-Trade Auction Proceeds Investment Plan: Fiscal Years 2013-14 through 2015-16*, at 34 (May 14, 2013) [hereinafter *Final Investment Plan*].

¹⁶ ARB, *2008 Scoping Plan*, *supra* note 4, at 42-43, 58, 69-71.

formation of 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.

In addition, the California Energy Commission (“CEC”) has issued a Draft Action Plan for the Comprehensive Energy Efficiency Program for Existing Buildings (“Draft Action Plan”), which calls for increased investment in clean energy technology and products, and encourages public entities to partner with private financial groups to obtain the level of financing California needs to meet its energy efficiency goals—which is at least four to ten times the amount of current investments.¹⁷ The CEC emphasizes the need for easily accessible capital, loan guarantees, and industrial development bonds to achieve these goals.¹⁸ It also calls for more diverse funding methods other than the current rate-payer investment into energy efficiency upgrades.¹⁹ Because rate-payer funded loans are limited to short-term, low risk products, the CEC articulates the need for “uniform platforms and lending requirements that can attract capital at scale.”²⁰ A green bank could potentially assist in providing the financing support highlighted in the CEC’s Draft Action Plan while minimizing public expenditures and risk.

The California State Treasurer’s Office already characterizes some of its sub-entities as a limited version of “California’s Green Bank” based on the notion that the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) and the California Pollution Control Financing Authority (“CPCFA”) “finance and administer programs and projects that help promote green jobs and green California industries.”²¹ Both CAEATFA and CPCFA have implemented programs which provide reduced interest loans and low-rate bonds for qualified projects with environmental benefits.²² In addition, the CEC’s Draft Action Plan expresses its continued commitment to working with CAEATFA’s loan program and seeks to further develop a public building revolving loan program.²³

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

¹⁷ Efficiency & Renewable Energy Division, California Energy Commission, *Draft Action Plan for the Comprehensive Energy Efficiency Program for Existing Buildings*, at 61, (June 2013), available at <http://www.energy.ca.gov/2013publications/CEC-400-2013-006/CEC-400-2013-006-D.pdf>.

¹⁸ *Id.* at 61-62.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See California State Treasurer, California’s Green Bank, available at <http://www.treasurer.ca.gov/greenbank/>.

²² See *id.*

²³ Efficiency & Renewable Energy Division, California Energy Commission, *Draft Action Plan for the Comprehensive Energy Efficiency Program for Existing Buildings*, at 64, *supra* note 17.

attract private investment that might not otherwise be available. 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."²⁴ 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."²⁵ After an initial capitalization, potentially from the proceeds of past auctions with known revenues, a state green bank could function without further injections of public funds. Second, "taxpayers' dollars would be multiplied by leveraging public investment with private capital."²⁶ And lastly, project eligibility requirements could be established so that "the fruits of California's innovators—jobs and profits—would stay in California."²⁷

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.²⁸ Although PACE is facing significant implementation challenges for residential properties, it continues to be used for commercial properties, through financing provided to local governments by CaliforniaFIRST.²⁹ CaliforniaFIRST received bond funding in summer 2012 and, as of December 2012, was providing \$7.5 million of financing for 22 active projects.³⁰ A California green bank could provide another source of funding for the CaliforniaFIRST and PACE programs.

²⁴ Senate Office of Oversight and Outcomes Report at 44.

²⁵ ARB, *Draft Concept Paper*, *supra* note 15; *see also* Final Investment Plan, *supra* note 15, at 30.

²⁶ Senate Office of Oversight and Outcomes Report at 44.

²⁷ *Id.*

²⁸ Center for Sustainable Energy, "Property Assessed Clean Energy (PACE) Programs," <http://energycenter.org/index.php/incentive-programs/pace-property-assesed-clean-energy>.

²⁹ California Statewide Communities Development Authority, "About CaliforniaFIRST," <https://californiafirst.org/about>.

³⁰ Center for Sustainable Energy, *supra* note 28.

III. POSSIBLE STRUCTURES FOR A GREEN BANK IN CALIFORNIA

A fundamental principle of a state green bank is its focus on self-sustaining financing support programs that allow it to function by reinvesting its own proceeds without the need for additional infusions of public capital. Proceeds from AB 32's cap-and-trade auctions represent a logical source for revenues needed to capitalize a state green bank in California. To date, cap-and-trade auctions have raised \$257 million for the Greenhouse Gas Reduction Fund.³¹ While the enacted 2013-14 budget includes a \$500 million loan from the Greenhouse Gas Reduction Fund to the General Fund, the loan will be repaid with interest when needed by the Greenhouse Gas Reduction Fund.³² As discussed below, a state green bank, capitalized by funds from the Greenhouse Gas Reduction Fund, can be housed either within a newly created entity or one of several existing entities.

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

A new entity, either quasi-public or public, could be formed to house a state green bank. A quasi-public entity would have greater freedom over which investments it could take, and also would be separate and independent from other public agencies and the state budget process. Connecticut created CEFIA as a quasi-public entity. CEFIA was formed from an existing entity, the Connecticut Clean Energy Fund, which was transformed into a green bank, using existing staff and a new Board of Directors.

A purely public entity would be completely within the public sphere; thus, it would operate as a non-profit organization, be limited in what private funds it could accept, and maintain a link to the state budget. For example, the CGIB proposed in SB 798 would be a new public entity modeled in part after the California Infrastructure and Economic Development Bank ("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. Similar to the I-Bank, the CGIB would be governed by a five-member Board of Directors with broad discretion regarding funding decisions. Parties 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 such support. Again, this process is similar to that of the I-Bank.

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, it also is possible to work within existing frameworks to create a state green bank.

³¹ 2013-14 Budget Summary, Environmental Protection, Cal. Dept. Finance, *available at* <http://www.ebudget.ca.gov/2013-14/pdf/Enacted/BudgetSummary/EnvironmentalProtection.pdf>

³² *Id.* One reason for making the loan is to await the completion of ARB's 2013 Scoping Plan Update, which will provide guidance to the Legislature in the best of use of such funds to reduce GHGs. *Id.*

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

Existing entities provide additional options for housing a state green bank. By providing staff and infrastructure, this model can allow a quicker start-up time for a green bank. A green bank built on an existing entity might alter the entity so that it may operate by providing loans, rather than grants, and create a partnership agreement to combine the new entity's funds with private funds. These changes could be accomplished either by creating a new entity within an existing entity or through expansion of an existing entity if there is no current entity with sufficient authority.³³

There are at least four existing entities in California that potentially could either house a state green bank or become a state green bank themselves: (i) the California Alternative Energy and Advanced Transportation Financing Authority; (ii) the California Pollution Control Financing Authority; (iii) the California Infrastructure and Economic Development Bank; and (iv) the California Clean Energy Fund, now known as CalCEF.

1. California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA")

CAEATFA was created to finance alternative energy and advanced transportation technologies. In particular, it is a vehicle to promote the development of renewable energy sources and energy efficiency programs while also advancing the state's GHG reduction goals and creating quality jobs.³⁴ To these ends, it offers an alternative method of financing that encourages the establishment of both facilities "utilizing alternative methods and sources of energy" and facilities required "for the development and commercialization of advanced transportation technologies."³⁵ Because CAEATFA was established as an alternative financing source for renewable energy generating and manufacturing facilities, it appears it could be established as a "home" for a green bank, perhaps without further legislation.

CAEATFA's enabling statute affords it fairly broad discretion to engage in actions necessary to accomplish the goals of a green bank. It already is authorized to finance a wide array of clean energy and transportation technologies.³⁶ The financial assistance CAEATFA is authorized to provide is far-reaching in that it 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

³³ Ken Berlin, et al., *State Clean Energy Finance Banks: New Investment Facilities for Clean Energy Deployment* 3 (Brookings-Rockefeller Sept. 2012).

³⁴ Cal. Pub. Res. Code §§ 26001(a), 26002 (2013).

³⁵ *Id.* at § 26002.

³⁶ "Alternative sources" of energy are defined by CAEATFA's enabling 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." *Id.* at § 26003(a)(3)(A). "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." *Id.* at § 26003(a)(2)(A).

appropriate.³⁷ The types of parties and projects for which CAEATFA can provide financing support appear to be similarly extensive under its statutory authority,³⁸ although CAEATFA has interpreted the scope of this authority narrowly.³⁹ Consequently, while CAEATFA has significant discretion to provide financing support for activities with an alternative energy or advanced transportation technology nexus, it could benefit from clarification regarding the scope of projects to which it may provide financing support under its existing statutory authority.

In addition, CAEATFA is imbued with a number of powers and duties which it can exercise in the role of financing energy and transportation technologies. These powers include a broad authorization to carry out its purpose and responsibilities.⁴⁰ CAEATFA also is empowered

³⁷ *Id.* at § 26003(a)(6).

³⁸ CAEATFA can provide financing to a “participating party,” which 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.” *Id.* at §§ 26011(d), 26003(a)(7). Eligible projects 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” and “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.” *Id.* at § 26003(a)(8)(A)-(B).

³⁹ 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. *Id.* at § 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.* at § 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.*

⁴⁰ Cal. Pub. Res. Code §§ 26006, 260011(h).

to take other actions not specifically discussed above which could fall under the purview of a green bank, such as collecting interest on loans⁴¹ and purchasing bonds issued by a public agency.⁴²

2. California Pollution Control Financing Authority (“CPCFA”)

Since 1972, the CPCFA has issued over \$13 billion of tax-exempt private activity bonds to support qualified waste and recycling projects.⁴³ Its statutory purpose is to, among other things, “provide industry within the state, irrespective of company size, with an alternative method of financing in providing, acquiring, enlarging, or installing facilities for establishing pollution control, providing supplies of clean water, and producing energy from alternative or renewable sources.”⁴⁴

The CPCFA is authorized to incur indebtedness and to issue securities “of any kind or class.”⁴⁵ It also may accept monies from both public and private entities to carry out its directives.⁴⁶ The CPCFA’s organic statute authorizes it to select projects and lend financial assistance to both public and private entities.⁴⁷ Projects that may qualify for financial assistance are broadly defined.⁴⁸

The CPCFA’s organic statute also authorizes it to create “small business assistance funds,” and provides additional guidance as to what forms of financial assistance the CPCFA may provide to small businesses.⁴⁹ With respect to the small business assistance funds, the CPCFA is authorized to provide assistance to reduce loan interest rates and to acquire letters of credit, insurance, guarantees, or other forms of credit support.⁵⁰ The CPCFA also may make or acquire loans or guarantee commercial loans to participating parties eligible for assistance from

⁴¹ *Id.* at § 26011(e).

⁴² *Id.* at § 26011(g).

⁴³ California Pollution Control Financing Authority, Overview, *available at* <http://www.treasurer.ca.gov/cpcfafa/>.

⁴⁴ Cal. Health & Safety Code § 44502.

⁴⁵ *Id.* at § 44540. Specifically, CPCFA may issue bonds, notes, or other securities “for any corporate purpose;” however, these bonds do not have the full faith and credit of the state. *Id.* at §§ 44542, 44544; *see also id.* at 44526.

⁴⁶ *See id.* at § 44526(c)-(d).

⁴⁷ *See id.* at § 44526(a).

⁴⁸ Such projects include “land, building, structure, improvement thereto, work, real or personal property, vehicle, or equipment providing or designed to provide for the control, reduction, abatement, elimination, remediation, or prevention of pollution, improvement of air, water, or soil quality, ensure the safe handling, recycling, or disposal of materials that might otherwise be improperly disposed of, or provide for environmental restoration, cleanup, or enhancement.” *Id.* at § 44508.

⁴⁹ *See id.* at § 44548. The CPCFA’s regulations define “small business” by referencing the provisions in 13 C.F.R. Part 121, but it also includes any entity that employs no more than 500 employees. *See* 4 CCR 8020(l).

⁵⁰ Cal. Health & Safety Code § 44548(b)(1).

these funds.⁵¹ The CPCFA recently began an Energy Efficiency Loan Participation Program, which will provide loan assistance to small businesses for projects that include energy efficiency, distributed generation, renewable energy, and water conservation.⁵²

3. The California Infrastructure and Economic Development Bank (“I-Bank”)

The mission of the I-Bank is to finance public infrastructure and private development projects that promote economic development, revitalize communities, and enhance quality of life for Californians.⁵³ The I-Bank was created in 1994 and operates pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (the “IEDB Act”).⁵⁴ 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. Some of the I-Bank’s current programs are 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.⁵⁵

Although not specifically established to address energy-related or cleantech investments, various provisions within the IEDB Act may provide channels through which a green bank or specific clean energy and energy efficiency projects may apply for funding from the I-Bank. Section 63040 of the IEDB Act describes the minimum criteria that projects receiving funding must meet, including “the State Environmental Goals and Policy Report, or its successor.”⁵⁶ A party applying for funding, however, may need to partner with a state or local government sponsor.⁵⁷ If a party is an Economic Development Facility, it also can apply directly.⁵⁸

⁵¹ *Id.* at § 44548(b)(4).

⁵² See California Pollution Control Financing Authority, California Energy/Environmental Loan Participation Program, Presentation at 4 (Feb. 5, 2013), available at <http://www.treasurer.ca.gov/cpcfaca/ce3lpp/workshops/presentation.pdf>.

⁵³ California Infrastructure and Economic Development Bank, “Welcome,” <http://www.ibank.ca.gov/>.

⁵⁴ Cal. Gov’t Code §§ 63000 *et seq.*

⁵⁵ See California I-Bank, *Programs Fact Sheet*, http://www.ibank.ca.gov/res/docs/pdfs/Programs_Fact_Sheet.pdf.

⁵⁶ Cal. Gov’t Code § 63040(b)(1).

⁵⁷ *Id.* at § 63041. A 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.” *Id.* at § 63010(u).

⁵⁸ *Id.* at § 63044. The Act defines an Economic Development Facility as “real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities,

While it is unclear whether a state green bank can fit squarely within the I-Bank's current programs, the language of the IEDB Act provides the I-Bank's Board of Directors with broad discretion regarding funding decisions and does not require that a project fit within existing program categories to be eligible for funding. The IEDB 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.⁵⁹ If the I-Bank were to be reconfigured to include a state green bank, such a bank should be incorporated as its own division of the I-Bank separate from other divisions of the I-Bank focused on large infrastructure projects because the scope and characteristics of clean energy and energy efficiency projects differ significantly from large infrastructure projects such as bridges and highways. The financial models and selection criteria for clean energy and energy efficiency projects will likely differ accordingly, and having a separate division in the I-Bank that focuses on these types of projects will help to ensure that new state green bank will receive the appropriate level of expertise and attention.

4. CalCEF

Whereas the three existing entities discussed so far are all public institutions, another option for implementing a state green bank in California would be to partner with an existing private entity with specific expertise to create a quasi-public entity similar to CEFIA. For example, CalCEF is a non-profit, public benefit corporation created in 2004 and initially funded by litigation settlement payments resulting from the California energy crisis of 2000-2001 that has been working to promote the transition to a clean energy economy by creating institutions and investment vehicles that grow markets for clean energy technologies, and could potentially help establish or become the home of a state green bank in California.⁶⁰

CalCEF is in part comprised of two affiliated entities: (i) CalCEF Innovations, a non-profit organization that leads CalCEF's analysis and product development by designing its market strategies, business models, and public policies; and (ii) CalCEF Ventures, a \$30 million non-profit venture capital fund that executes CalCEF's investment strategy.⁶¹ CalCEF Ventures uses a "fund-of-funds" model to create institutions and investment vehicles focused on advancing clean energy technologies and is invested in more than 40 companies covering a range of clean energy technologies. CalCEF Ventures makes for-profit investments and then recycles its profits using an "evergreen" investment strategy into further fund creation. CalCEF Innovations and CalCEF Ventures are governed by separate boards of directors comprised of prominent policy makers, scientists, entrepreneurs, and financial professionals.

By leveraging the expertise of an organization such as CalCEF in areas such as project selection and investment strategies, a nascent state green bank would be able to begin providing financing support to eligible clean energy and energy efficiency projects quickly and efficiently.

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." *Id.* at § 63010(g).

⁵⁹ *Id.* at § 63051(c).

⁶⁰ See generally <http://calcef.org>.

⁶¹ CalCEF also includes CalCEF Catalyst, a 501(c)(6) trade association platform.

As with CEFIA in Connecticut, legislation would most likely be necessary to create a quasi-public state green bank within CalCEF.

IV. CONCLUSION

Regardless of how it is structured and where it is ultimately placed, a state green bank 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 would help California meet its 2020 goals under AB 32 by expediting the deployment of already developed technologies and projects while working toward the post-2020 goals by also financing the development of innovative new technologies. In addition, a state green bank could help to create quality green jobs in the State and could provide affordable financing support for otherwise shovel-ready projects in disadvantaged communities. Only a portion of the proceeds from cap-and-trade auctions 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. For these reasons, we strongly encourage ARB to include a robust discussion of a state green bank and recommend its formation in the 2013 Scoping Plan Update.

Respectfully submitted,

/s/ Kenneth Berlin

Kenneth Berlin
General Counsel
The Coalition for Green Capital
2001 K Street N.W.
Suite 802
Washington, D.C. 20006
Phone: 202-371-7350
Email: kenneth.berlin@skadden.com