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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 6. PUBLIC BONDS AND OBLIGATIONS [5000 - 5979] (Division 6 enacted by Stats. 1943, Ch. 134.)

CHAPTER 11. Public Financing [5900 - 5909] (Chapter 11 added by Stats. 1986, Ch. 1389, Sec. 1.)

5900. The Legislature finds and declares all of the following:

(a) The ability of the state and local governments to issue bonds is essential to their ability to finance public improvements and other projects and programs which serve important public purposes and have major social and economic consequences to the people of California.

(b) The exemption of interest on these bonds from federal income taxation has been a major feature of this financing, reducing interest costs to the state and local government issuers and enhancing the marketability of the bonds.

(c) Proposed federal tax legislation would substantially curtail the purposes for, and conditions under which, bonds may be issued with interest exempt from federal income taxation, with the result that in order to provide financing for those purposes or under those conditions state and local governments will in some instances be required, or elect, to issue bonds which bear interest not exempt from federal income taxation. These bonds often have different terms and structural features and are sold and traded in a different market than bonds the interest on which is exempt from federal income taxation.

(d) The state and local governments have the power to issue bonds bearing interest subject to federal income taxation, but the state and local governments may lack clear authority to structure this financing for the applicable market or otherwise to achieve the lowest effective borrowing cost or terms most suitable to the state or local government issuer, the project, or the financing program.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5901. It is the intent of the Legislature that state and local governments be provided with the powers and flexibility necessary and appropriate for them to access the market for bonds which bear interest subject to federal income taxation.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5902. As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise indicates or requires another or different meaning or intent:

(a) "Bonds" means bonds, notes, warrants, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements or certificates of participation therein.

(b) "Legislative body" means the governing body or board of the state or local government.

(c) "State or local government" means the state, any department, agency, board, commission, or authority of the state, or any city, city and county, county, public district, public corporation, authority, agency, board, commission, or other public entity.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5903. If, prior to issuing any bonds, the legislative body determines that the interest payable on the bonds to be issued by the state or local government will be subject to federal income taxation under the law in existence on the date of issuance or pending on the date of issuance with an effective date preceding the date of issuance, then notwithstanding any other provision of law, the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds may provide for any of the following:

(a) The bonds shall be in the denominations, in the form, either bearer or registered, and payable at the place or places, either within or without the United States, at the time or times, in lawful money of the United States of America, with the maturity or maturities, with the terms of redemption, and at the interest rate or rates, either fixed or variable, including methods of determining the rate or rates if variable, as the legislative body shall determine.

(b) The bonds shall be sold at public or private sale, in such manner and place or places, either within or without the United States, and at the price or prices, above or below par, as the legislative body shall determine.

(c) In connection with, or incidental to, the sale and issuance of the bonds, the state or local government may offer, sell, and issue warrants for additional bonds, as well as issue additional bonds pursuant to these warrants on terms consistent with this chapter, and may enter into any contracts which the legislative body determines to be necessary or appropriate to place the obligation of the state or local government, as represented by the bonds and the contract or contracts, in whole or in part on the interest rate, cashflow, or other basis desired by the legislative body, including, without limitation, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cashflows or a series of payments, or contracts, including, without limitation, options, puts or calls to hedge payment, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by state or local governments in connection with, or incidental to, entering into any agreement which secures bonds, including bonds issued by private entities. These contracts and arrangements shall be made upon the terms and conditions established by the legislative body, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In addition, these contracts and arrangements may be made only if the bonds are rated in one of the three highest rating categories by two nationally recognized rating agencies, and if there has been receipt, from any rating agency rating the bonds, of written evidence that the contract or agreement will not adversely affect the rating.

(d) In connection with, or incidental to, the sale and issuance of the bonds, or entering into any of the contracts or arrangements referred to in subdivision (c), the state or local government may enter into credit enhancement or liquidity agreements, with payment, interest rate, security, default, remedy, and other terms and conditions as the legislative body shall determine.

(e) Proceeds of the bonds and any moneys set aside or pledged to secure payment of the bonds, or any of the contracts entered into pursuant to subdivision (c), may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

(Amended by Stats. 2014, Ch. 201, Sec. 4. (SB 1462) Effective January 1, 2015.)

5903.5. Section 5903 shall apply to any bonds the interest on which will not be subject to federal income taxation under the law in existence on the date of issuance or pending on the date of issuance with an effective date preceding the date of issuance, notwithstanding any other provision of law, if the bonds are issued by the same state or local government for the same project or purpose and within 45 days of the date of issuance of bonds described in Section 5903.

(Added by Stats. 1987, Ch. 845, Sec. 2. Effective September 21, 1987.)

5904. The state or a local government may take any actions, and enter into any agreements, necessary or appropriate to register or qualify the bonds described in Section 5903 for offer and sale under the federal or any state's or nation's securities laws and to comply with those laws.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5905. One or more state or local governments may cause to be formed, and may acquire all, but not less than all, of the voting stock in, one or more corporations, not chartered by a state or federal agency as a depository institution, but organized for the purpose of undertaking financing programs approved by each legislative body and found by each legislative body to be of benefit to the state or local government.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5906. Any bonds issued by a state or local government pursuant to this chapter, or otherwise, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. Any loan, lease, installment sale, investment, forbearance of money, or other agreement between a user of the proceeds of or other moneys pledged to bonds and the issuer of the bonds, or entered into by or on behalf of the issuer of the bonds that provides for the use of the proceeds of the bonds or other moneys pledged to or securing the bonds, and the issuer of the bonds or any person acting on its behalf in connection with the foregoing shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. This section creates and authorizes exempted classes of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(Amended by Stats. 2006, Ch. 538, Sec. 231. Effective January 1, 2007.)

5907. This chapter shall not affect bonds approved by the voters of the state or local government issuer prior to the effective date of this chapter, to the extent that this chapter is inconsistent with the measure authorizing those bonds.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5908. The authority conferred by this chapter includes the authority to enter into any and all contracts incident to the exercise of the authority conferred by this chapter, including, without limitation, contracts for the performance of professional services.

(Added by Stats. 1986, Ch. 1389, Sec. 1. Effective September 30, 1986.)

5909. To the extent that the provisions of this chapter are inconsistent with any other provision of general law or special act or any part thereof, now or hereafter enacted, the provisions of this chapter shall be controlling.

(Added by Stats. 1987, Ch. 845, Sec. 4. Effective September 21, 1987.)