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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 12. Public Finance Contracts [5920 - 5925] (Chapter 12 added by Stats. 1987, Ch. 846, Sec. 1.)

5920. The Legislature finds and declares that the incurring or carrying of obligations and making and managing of investments by state and local governments involves a variety of interest rates, payment, and other risks, that a number of financial instruments are available to offset, hedge, or reduce, and improve net costs, and that many state agencies and local governments lack express statutory authority to take advantage of those instruments.

(Added by Stats. 1987, Ch. 846, Sec. 1.)

5921. As used in this chapter, the following definitions apply, unless the context otherwise indicates or requires another or different meaning or intent:

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

(b) "State" means the state or any department, agency, board, commission, or authority of the state.

(c) "Local government" means any city, city and county, county, public district, public corporation, authority, agency, board, commission, or other public entity.

(Amended by Stats. 2006, Ch. 640, Sec. 1. Effective September 29, 2006.)

5921.5. For purposes of this chapter, in addition to any other authorization provided by law, the Treasurer may enter into and manage on behalf of the state any contracts described in Section 5922 with respect to any state bonds for which the Treasurer acts as the agent for sale pursuant to Chapter 9 (commencing with Section 5700).

(Added by Stats. 2006, Ch. 640, Sec. 2. Effective September 29, 2006.)

5922. Notwithstanding any other provision of law, all of the following apply:

(a) (1) In connection with, or incidental to, the issuance or carrying of bonds, or acquisition or carrying of any investment or program of investment, the state or any local government may enter into any contracts that the state or local government determines to be necessary or appropriate to place the obligation or investment of the state or local government, as represented by the bonds, investment or program of investment and the contract or contracts, in whole or in part, on the interest rate, currency, cashflow, or other basis desired by the state or local government, including, without limitation, contracts commonly known as interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, or contracts to exchange cashflows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by the state or by local governments in connection with, or incidental to, entering into or maintaining any agreement that secures bonds, including bonds issued by private entities. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the state or the local government, 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.

(2) No local government shall enter into any of the contracts or arrangements pursuant to this subdivision, unless its governing body first determines that the contract or arrangement or program of contracts is designed to reduce the amount or duration of payment, currency, rate, spread, or similar risk or result in a lower cost of borrowing when used in combination with the issuance

of bonds or enhance the relationship between risk and return with respect to the investment or program of investment in connection with, or incident to, the contract or arrangement which is to be entered into.

(b) Bonds issued by the state or by a local government may be payable in accordance with their terms, in whole or in part, in currency other than lawful money of the United States of America, provided that the state or the local government enters into a currency swap or similar agreement for payments in lawful money of the United States of America, which covers the entire amount of the debt service payment obligation of the state or the local government with respect to the bonds payable in other currency, and provided further that if the term of that agreement is less than the term of the bonds, the state or the local government shall covenant to enter into additional agreements as may be necessary to cover the entire amount of the debt service payment obligation. An issuer shall include in its written notice to the California Debt Advisory Commission pursuant to subdivision (g) of Section 8855 a statement of its intent to issue bonds payable in a currency other than lawful money of the United States of America.

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

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

(Amended by Stats. 2006, Ch. 640, Sec. 3. Effective September 29, 2006.)

5923. (a) To the extent that this chapter is inconsistent with any other general statute or special act or parts thereof, now or hereafter enacted, this chapter is controlling.

(b) This chapter shall be liberally construed to effect its purpose.

(Added by Stats. 1987, Ch. 846, Sec. 1.)

5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.

(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.

(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed 3 percent.

(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.

(Amended (as amended by Stats. 2009, Ch. 646, Sec. 1) by Stats. 2012, Ch. 32, Sec. 4. (SB 1006) Effective June 27, 2012.)

5925. The purchase or other acquisition of bonds by or on behalf of the state or local government that issued the bonds does not cancel, extinguish, or otherwise affect the bonds and the bonds shall be treated as outstanding bonds for all purposes except to the extent otherwise determined by the issuer or otherwise provided in the constituent instruments defining the rights of the holders of the bonds.

(Added by Stats. 2008, Ch. 3, Sec. 1. Effective March 26, 2008.)