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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 13. Fractional Interest in Local Agency Obligations [5950 - 5955] (Chapter 13 added by Stats. 1994, Ch. 972, Sec. 3.)

5950. As used in this chapter:

- (a) "Accredited investor" has the meaning specified in Rule 501 of the Securities Act of 1933.
- (b) "In this state" has the meaning specified in Section 25008 of the Corporations Code.
- (c) "Issuer" has the meaning specified in Section 25010 of the Corporations Code.
- (d) "Issuer transaction" means any transaction directly or indirectly for the benefit of the issuer. A transaction is indirectly for the benefit of the issuer if any portion of the purchase price of any security constituting a fractional interest in a lease, installment sale, or other obligation of a local agency involved in the transaction will be received indirectly by the issuer. An offer or sale that involves both an issuer transaction and a transaction that is not an issuer transaction shall be treated as separate transactions.
- (e) "Knowingly" means that a person, with respect to an offer or sale of a security constituting a fractional interest in a lease, installment sale, or other obligation of a local agency, does any of the following:
 - (1) Has actual knowledge that the local agency has not consented to the offer or sale of such security.
 - (2) Acts in deliberate ignorance of whether or not the local agency has consented to the offer or sale of that security.
 - (3) Acts in reckless disregard of whether or not the local agency has consented to the offer or sale of that security.

Proof of specific intent to violate Section 5951 is not required.

- (f) "Local agency" means a city, county, city and county, school district, special district, public corporation, or other public entity of this state.
- (g) "Person" has the meaning specified in Section 25013 of the Corporations Code.
- (h) "Qualified institutional buyer" has the meaning specified in Rule 144A of the Securities Act of 1933.
- (i) "Sale," "sell," "offer," and "offer to sell" have the respective meanings specified in Section 25017 of the Corporations Code.
- (j) "Security" has the meaning specified in Section 25019 of the Corporations Code.
- (k) "Securities Act of 1933" and "Investment Company Act of 1940" means the federal statutes of those names as amended before or after the effective date of this chapter.

(Added by Stats. 1994, Ch. 972, Sec. 3. Effective September 29, 1994.)

5951. It is unlawful for any person to offer or sell in an issuer transaction in this state, or otherwise knowingly to offer or sell in this state, any security constituting a fractional interest in a lease, installment sale, or other obligation of a local agency without obtaining the prior written consent of that local agency to that offer or sale. However, this section shall not apply to any of the following:

- (a) Any security that constitutes a fractional interest in a lease, installment sale, or other obligation of a local agency and that was first issued and sold prior to October 2, 1993.
- (b) Offers or sales of shares or interests in any registered unit investment trust or management company, each as defined in the Investment Company Act of 1940.

(c) Any security that constitutes a fractional interest in a lease, installment sale, or other obligation of a local agency and that is registered under the Securities Act of 1933.

(d) Offers or sales of any security described in this section subsequent to an offer or sale of that security in compliance with this section.

(e) Offers or sales of participation interests between financial institutions.

(f) Any security that constitutes a fractional interest in a lease, installment sale, or other obligation of a local agency and that is created concurrently with, and as an integral part of, a financing to which the local agency is a party.

(g) Offers or sales of any security that constitutes a fractional interest in a lease, installment sale, or other obligation of a local agency made solely to one or more persons who are reasonably believed to be qualified institutional buyers or accredited investors.

(h) Any security that was first issued and sold prior to the effective date of this section if that security is either described in subdivision (b), (c), or (f), or was issued and sold in a transaction described in subdivision (d), (e), or (g).

(Added by Stats. 1994, Ch. 972, Sec. 3. Effective September 29, 1994.)

5952. Any consent granted by a local agency under Section 5951 shall be conclusively evidenced by a resolution of the governing body of the local agency, or by a written instrument executed on behalf of the local agency by its treasurer, chief financial officer, or purchasing agent, or by any other officer of the local agency authorized by resolution of the governing body thereof to grant consents under Section 5951.

(Added by Stats. 1994, Ch. 972, Sec. 3. Effective September 29, 1994.)

5953. No local agency that consents to an offer or sale of a security that constitutes a fractional interest in a lease, installment sale, or other obligation of the local agency shall be required to review any proceedings relating to the creation of the security or any of the offering or placement memoranda or any other marketing or descriptive materials relating to the security, and all memoranda or materials shall include a prominent statement on the face thereof substantially to the effect that the consenting local agency (specified by name) has not reviewed any of the proceedings relating to the creation of the security or any of the offering or placement memoranda or other marketing materials relating thereto.

(Added by Stats. 1994, Ch. 972, Sec. 3. Effective September 29, 1994.)

5954. Any person who violates this chapter shall upon conviction be fined not more than ten million dollars (\$10,000,000), or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code for five years, or be punished by both that fine and imprisonment.

(Amended by Stats. 2011, Ch. 15, Sec. 128. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

5955. The obtaining of local agency consent to an offer or sale of a security under Section 5951 shall not obviate the necessity of qualification of the offer or sale of such security under Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code, unless the security or transaction is exempt from qualification under such law.

(Added by Stats. 1994, Ch. 972, Sec. 3. Effective September 29, 1994.)