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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. FISCAL AFFAIRS [16100 - 17700] (Division 4 added by Stats. 1945, Ch. 119.)

PART 3. STATE BONDS [16650 - 16965.1] (Part 3 added by Stats. 1945, Ch. 120.)

CHAPTER 4. State General Obligation Bonds [16720 - 16787] (Chapter 4 added by Stats. 1953, Ch. 1698.)

ARTICLE 2. Issuance of Bonds [16730 - 16737] (Article 2 added by Stats. 1953, Ch. 1698.)

16730. Upon request of the board, supported as required in the bond act, the committee shall determine the necessity or desirability of obtaining interim financing pursuant to Section 16312 or 16313 and of issuing any bonds authorized to be issued and the amount of interim financing or bonds then to be obtained or issued and sold. Successive issues of bonds may be authorized and sold and shall be designated by an appropriate number or other designation. It is not necessary that all of the bonds authorized to be issued be sold at any one time.

(Amended by Stats. 1991, Ch. 856, Sec. 2.)

16731. Whenever the committee determines that the sale of all or any part of the bonds authorized to be issued is necessary or desirable, it shall adopt a resolution to that effect. The resolution shall specify all of the following as to the bonds then to be sold:

(a) The aggregate number, aggregate par value, denominations, and the date of the bonds to be then sold. The denominations shall be in the sum of twenty-five dollars (\$25) or multiples of that sum. The date appearing on the bonds shall be deemed to be the date of issuance for all purposes of this chapter, irrespective of the actual date of delivery of the bonds and the payment of the purchase price of the bonds.

(b) The dates of maturity and the amount of the bonds maturing at each date of maturity, which amounts need not be equal. The last dates of maturity shall be not more than 45 years after the date of the bonds.

(c) Whether or not the bonds are to be subject to redemption or tender prior to maturity, and, if so, the provisions for the redemption or tender, the manner of the call or notice thereof, and the price or prices at which the bonds shall be subject to redemption or tender.

(d) (1) (A) The annual rate, or rates, of interest that the bonds to be issued shall bear, which shall be in the increments determined by the Treasurer, but not in excess of 11 percent. The rate or rates may be determined at the time of the sale of the bonds.

(B) As an alternative to subparagraph (A), the resolution may specify that the bonds may pay a variable interest rate or rates, as prescribed in the resolution, but not in excess of 11 percent per annum, and in accordance with the requirements of this subparagraph.

(i) At the time and as the result of the issuance of any bonds bearing a variable interest rate, the aggregate principal amount of all state general obligation bonds bearing variable interest rates may not exceed 20 percent of the aggregate principal amount of all state general obligation bonds then outstanding.

(ii) For purposes of the calculation made pursuant to clause (i), variable rate bonds shall not include commercial paper notes issued pursuant to Section 16731.6 or bonds that have an effective fixed interest rate through a hedging contract, as specified in subparagraph (C), but shall include bonds that have an effective variable interest rate through a hedging contract.

(iii) Notwithstanding any other provision of this chapter, if the committee decides to issue state general obligation bonds bearing variable interest rates, the committee is not required to comply with Section 16732.

(iv) Notwithstanding any other provision of law, if bonds are issued bearing a variable interest rate under a bond act approved by the voters on or after January 1, 2002, and if the variable interest rate bonds provide a right of tender, then any

amount payable by the state as a result of the tender with respect to principal of and interest on the bonds prior to the regularly scheduled principal or interest payment dates, or payable by the state pursuant to redemption or call initiated as a means to repay the obligation of the state resulting from the tender, is backed by the full faith and credit of the state and shall be payable under the bond act.

(v) A contractual obligation of the state to repay advances and pay interest thereon under a credit enhancement or liquidity agreement entered into in connection with variable interest rate bonds providing a right of tender and issued under a bond act approved by the voters on or after January 1, 2002, shall be backed by the full faith and credit of the state and shall be payable under the bond act, except to the extent bond interest paid with an advance and interest on the advance would exceed the maximum interest rate specified in this subdivision.

(C) For the purposes of clause (ii) of subparagraph (B), bonds that have an "effective fixed interest rate through a hedging contract" means bonds for which the Treasurer determines the hedging contract meets either of the following conditions:

(i) Significantly reduces variable rate risk by providing changes in fair values or cashflows that substantially offset the changes in fair value or cashflows of the bonds.

(ii) Qualifies for integration with the bonds in calculating the yield on the bonds under the rules prescribed in Section 148 of the United States Internal Revenue Code (26 U.S.C. Sec. 148).

(D) The Treasurer's determination specified in subparagraph (C) shall be made at the time the hedging contract is entered into and shall apply through the maturity of the bonds, unless the hedging contract is terminated prior to maturity.

(2) (A) (i) Notwithstanding any other provision of law, for bonds approved by the voters after January 1, 2006, payment of any amounts owed by the state to a counterparty, after any offset for payments owed to the state on any hedging contract described in Section 5922 in connection with those bonds, shall be deemed to be included within the appropriation for interest on the bonds contained in the applicable bond act.

(ii) The total payments of stated interest on the bonds together with payments owed by the state after any offset for payments owed to the state on a hedging contract shall not exceed the maximum interest rate set forth in this subdivision.

(iii) To the extent payments of interest on a bond, together with payments on a hedging contract, would, in any fiscal year, exceed the maximum interest rate specified in this subdivision, the excess amounts may be paid in subsequent fiscal years, if the aggregate amount of interest and that excess amount paid in any year does not exceed the maximum interest rate specified in this subdivision.

(B) The Treasurer may not enter into any hedging contract described by subparagraph (A) unless the committee has approved policies developed by the Treasurer relating to the entering into and managing of those hedging contracts that shall include both of the following:

(i) A requirement that any hedging contract 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 or carrying of bonds.

(ii) A description of the criteria to be used to evaluate the potential risks and benefits to the state of entering into a particular hedging contract or program of contracts and to evaluate the performance of outstanding hedging contracts in comparison to the objectives for which the hedging contract was executed.

(C) The policies approved pursuant to subparagraph (B) are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3.

(e) The interest payment dates.

(f) The technical form and language of the bonds.

(g) Whether or not the right is reserved to make delivery in the form of temporary or interim bonds, certificates, or receipts, exchangeable for definitive bonds when executed and available for delivery. If the right is reserved, the denominations and form of the temporary securities shall be stated.

(h) Provisions for the registration and exchange of bonds and for the use of a depository to hold book-entry bonds after issuance.

(i) All other terms and conditions of the bonds and of the execution, issuance, and sale of the bonds, which shall be consistent with all of this chapter.

(Amended by Stats. 2011, Ch. 282, Sec. 1. (AB 1408) Effective January 1, 2012.)

16731.5. (a) Notwithstanding any other provision of this chapter, the committee may provide for the issuance of all or part of the bonds authorized to be issued as zero coupon or capital appreciation bonds. The committee shall adopt a resolution finding that issuance of these bonds is necessary and desirable, directing the Treasurer to arrange for preparation of the requisite number of suitable bonds, and specifying other provisions relating to the bonds including the following:

(1) The date, number, denominations, and aggregate par value of the bonds payable at maturity. The aggregate par value may be represented by bond certificates in denominations as the committee deems appropriate, but not less than twenty-five dollars (\$25).

(2) The dates of maturity and the aggregate amounts of the bonds maturing on each of these dates. Determination of maturity dates and amounts by the committee shall be made upon recommendation of the Treasurer to provide the maximum benefit to potential purchasers and to respond to the expected demand for the bonds. Whenever the committee determines to issue bonds from any authorized bond act as zero coupon or capital appreciation bonds, and to issue bonds from the same authorization at the same time pursuant to Section 16731, the committee may comply with the requirements of subdivision (b) of Section 16731 by taking into account all the bonds of the same authorization being issued at the same time.

(3) The interest rate or rates, and interest payment dates applicable to the bonds. Zero coupon bonds may bear a zero rate of interest, and capital appreciation bonds may bear a stated rate of interest payable only at maturity, compounded at the same rate, which rate or rates may be determined at the time of sale of the bonds. The rate of interest borne by these bonds, or the nominal interest rate taking into account the original issue discount of these bonds, when bearing a zero interest rate, shall not exceed 11 percent per annum.

(4) Any provisions for the redemption of the bonds prior to their stated maturity.

(5) The technical form and language of the bonds.

(6) All other terms and conditions of the bonds and of their execution, issuance, and sale, deemed necessary and appropriate by the committee.

(b) Notwithstanding any other provision of this chapter, when the committee determines to issue bonds as zero coupon or capital appreciation bonds, all of the following shall apply:

(1) The bonds may be sold at negotiated sale at a price below the par value in a manner consistent with paragraph (3) of subdivision (a). If the committee determines to issue other bonds authorized by the same bond act at the same time as zero coupon or capital appreciation bonds are issued, the other bonds may also be sold at negotiated sale with a discount of not more than 3 percent of the par amount thereof.

(2) For purposes of determining the principal amount of bonds of any voted authorization outstanding, in the case of any bonds which are zero coupon or capital appreciation bonds and do not provide for payment of interest on the bond prior to maturity, the principal amount of the bonds shall be the cash price paid by the initial purchasers of the bonds to the state, and deposited in the fund, plus the amount of any costs of issuance of the bonds. Within 30 days of the delivery of any zero coupon or capital appreciation bonds, the Treasurer shall submit to the committee a certificate stating the principal amount of bonds of each issue, calculated as stated in this subdivision, which have been sold, and the certification shall be conclusive for all purposes under this chapter and the constitution.

(3) The committee may arrange to utilize the services of investment banks, commercial banks, savings and loans or other financial institutions, or other advisers as it may deem appropriate to publicize and assist in the marketing and sale of zero coupon or capital appreciation bonds.

(c) When zero coupon or capital appreciation bonds are issued pursuant to this section, the debt service payments on the bonds should continue to be managed in a manner consistent with the state's policy of retiring general obligation bonds in an orderly efficient manner. It is the expectation of the Legislature that the authority provided by this section will not be used to defer debt service payments as a means of preserving General Fund moneys for short-term purposes. The committee shall provide in the resolution authorizing the issuance of zero coupon or capital appreciation bonds that the state shall set aside, in a separate trust fund within the State Treasury, an amount in each year representing the amount of interest accrued during that year to be payable at the maturity of the bonds, with these payments to be deemed a payment of debt service on the bonds.

(Amended by Stats. 2011, Ch. 282, Sec. 2. (AB 1408) Effective January 1, 2012.)

16731.6. (a) Notwithstanding any other provision of this chapter, and as an alternative to the procedures set forth in Section 16731, the committee may provide for the issuance of all or part of the bonds authorized to be issued as commercial paper notes. The committee shall adopt a resolution finding that issuance of the bonds in the form of commercial paper notes is necessary and

desirable, directing the Treasurer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes, including all of the following:

(1) For each program of commercial paper notes authorized, the resolution shall contain the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date, in accordance with all of the following:

(A) The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date, and that the amount issued from time to time may be set by the Treasurer up to the maximum amount authorized to be outstanding at any one time.

(B) The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes.

(C) The determination of the final maturity date and total amount by the committee shall be made upon recommendation of the Treasurer to meet the needs of the state for funds, to provide the maximum benefit to potential purchasers, and to respond to the expected demand for the commercial paper notes.

(D) Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee is not required to comply with the requirements of Section 16732.

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes, in accordance with the following:

(A) Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes.

(B) The rate of interest borne by the commercial paper notes shall not exceed 11 percent per annum.

(C) Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee is not required to comply with the requirements of Section 16733.

(3) Any provisions for the redemption of the commercial paper notes prior to stated maturity.

(4) The technical form and language of the commercial paper notes.

(5) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale, deemed necessary and appropriate by the committee.

(b) Notwithstanding any other provision of this chapter, when the committee determines to issue commercial paper notes, all of the following shall apply:

(1) The commercial paper notes may be sold at negotiated sale at a price below the par value in a manner consistent with paragraph (2) of subdivision (a).

(2) During the term of any program of commercial paper notes, the renewal and reissuance from time to time of the commercial paper notes in an amount up to the maximum amount authorized by the resolution shall be deemed to be a refunding of the previously maturing amount, permitted by and consistent with Article 6 (commencing with Section 16780).

(3) Consistent with the intent for the General Fund to realize a savings in debt service costs when commercial paper notes are issued in place of bonds without shifting or adding financing and debt service costs to the bond funds, the state administrative costs of commercial paper and interest payable and other costs associated with commercial paper notes shall be paid for as follows:

(A) The proceeds of commercial paper notes are, notwithstanding Section 13340, continuously appropriated to pay the state administrative costs of commercial paper including, but not limited to, costs of the Treasurer's office, the Controller's office, and the Department of Finance.

(B) An amount necessary to pay the interest payable on maturing commercial paper notes, up to the maximum rate authorized by law, is, notwithstanding Section 13340, continuously appropriated from the General Fund to pay the interest.

(C) Notwithstanding Section 13340, there is continuously appropriated from the General Fund, an amount necessary to pay the costs associated with commercial paper notes that are not described in subparagraph (A), including, but not limited to, both of the following:

(i) Fees, costs, indemnities, and other similar expenses incurred under or in connection with agreements to purchase commercial paper notes, including, but not limited to, letters or lines of credit, not to exceed annually for each agreement 3

percent of the maximum principal amount of commercial paper notes that could be purchased and outstanding at any one time pursuant to an agreement.

(ii) All other costs, including, but not limited to, remarketing and dealer fees, issuing and paying agent fees, rating agency fees, and bond counsel fees, in an annual amount not to exceed 0.25 percent of the highest sum at any time during that year of the maximum principal amount of commercial paper notes authorized by all resolutions.

(Amended by Stats. 2014, Ch. 28, Sec. 40. (SB 854) Effective June 20, 2014.)

16732. In determining the dates of maturity of the bonds, and the amount thereof to mature at each date of maturity, the committee shall be guided, so far as it may deem to be practicable, by the amounts and dates of maturity of the revenue estimated to accrue to the fund pursuant to the bond act. The committee shall fix and determine the dates and amounts of such maturities in such manner that, together with the dates and amounts of interest payments on the bonds, they shall coincide, as nearly as it may deem to be practicable, with the dates and amounts of such estimated revenues.

(Added by Stats. 1953, Ch. 1698.)

16733. The rate of interest to be borne by the bonds need not be uniform for all bonds of the same issue, and shall be the rate or rates specified in the bid or proposal for negotiated sale accepted by the Treasurer, unless a variable interest rate is prescribed for the bonds in the resolution pursuant to subdivision (d) of Section 16731. The first interest payment date may be any date within one year after the date of the bonds.

(Amended by Stats. 2001, Ch. 97, Sec. 4. Effective July 24, 2001.)

16734. Both principal of and interest on the bonds shall be payable in lawful money of the United States, at the Office of the State Treasurer, or at the office of any state fiscal agent, or at the office of any duly authorized agent of the State Treasurer.

(Amended by Stats. 1957, Ch. 2070.)

16735. Each bond shall contain a reference to the bond act, and if subject to call, tender, or redemption prior to maturity, a recital to that effect.

(Amended by Stats. 2009, Ch. 205, Sec. 4. (SB 826) Effective January 1, 2010.)

16737. (a) When the committee deems it in the best interests of the state, it may authorize the Treasurer, upon those terms and conditions that may be fixed by the committee or determined by the Treasurer, to issue notes, on a negotiated or a competitive-bid basis, maturing within a period not to exceed five years, in anticipation of the sale of bonds duly authorized at the time the notes are issued. The proceeds from the sale of those notes shall be deposited in the related fund and used only for the purposes for which may be used the proceeds of the sale of bonds in anticipation whereof the notes were issued or as additionally authorized by this section.

(b) The notes authorized by this section may be sold at a price at, above, or below the principal amount thereof, at the discretion of the Treasurer.

(c) Any premium received from the sale of notes authorized by this section may be applied to pay costs of issuance of the notes or interest accruing on the notes.

(d) The notes authorized by this section may bear a fixed or variable rate or rates of interest.

(e) In connection with the sale of notes pursuant to this section, the Treasurer may engage the services of legal and financial advisers, credit enhancers, trustees or paying agents, and other professionals that the Treasurer deems necessary, and may enter into contracts for these services, to be paid from proceeds of the notes or any duly enacted appropriation.

(f) When the committee deems it in the best interests of the state, it may authorize the Treasurer to deliver the notes in payment for work or material furnished to the state for a public improvement, pursuant to a contract awarded in the manner prescribed by law. The notes shall be so delivered only for the purposes for which may be used the proceeds of the sale of bonds in anticipation whereof the notes were issued.

(g) All notes issued pursuant to this section and any renewals thereof shall be payable at a fixed time, solely from the proceeds of the sale of the bonds and not otherwise, except if the sale of the bonds did not occur prior to the maturity of the notes issued in anticipation of the sale, the Treasurer shall, in order to meet the notes or the renewals thereof then maturing, issue renewal notes for this purpose. No renewal of a note or a renewal note shall be issued after the sale of bonds in anticipation of which the original note was issued.

(h) Every note issued pursuant to this section and any renewal thereof shall, unless paid from a renewal note, be payable from the proceeds of the sale of bonds and not otherwise. The total amount of the notes or renewals thereof issued and outstanding shall not exceed the total amount of the unsold bonds.

(i) Interest on the notes issued pursuant to this section shall be payable from any appropriation made for that purpose or from proceeds of the sale of the notes.

(Amended by Stats. 2009, Ch. 205, Sec. 6. (SB 826) Effective January 1, 2010.)