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**TITLE 5. LOCAL AGENCIES [50001 - 57607]** ( Title 5 added by Stats. 1949, Ch. 81. )

**DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]** ( Division 2 added by Stats. 1949, Ch. 81. )

**PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]** ( Part 1 added by Stats. 1949, Ch. 81. )

**CHAPTER 4. Financial Affairs [53600 - 53997]** ( Chapter 4 added by Stats. 1949, Ch. 81. )

**ARTICLE 2.5. Sale of Securities [53690 - 53692]** ( Article 2.5 added by Stats. 1979, Ch. 388. )

**53690.** For the purposes of this article:

(a) "Local agency" means a county, city, city and county, redevelopment agency, public district, joint powers authority, or public nonprofit corporation.

(b) "Securities" means any bonds, notes, warrants, or other evidences of indebtedness and the interest coupons, if any, attached thereto, issued or proposed to be issued to finance or refinance a public project.

(c) "Issuer" means a local agency which issues securities.

(d) "Broker" has the same meaning as "broker-dealer" as defined in Section 25004 of the Corporations Code.

(e) "Dealer" has the same meaning as "broker-dealer" as defined in Section 25004 of the Corporations Code.

(f) "Municipal securities dealer" means any person, including a separately identifiable department or division of a bank, trust company, or savings and loan association engaged in the business of buying and selling municipal securities for his or her own account, through a broker or otherwise, but does not include any of the following:

(1) Any person insofar as he or she buys or sells those securities for his or her own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(2) A bank, trust company, or savings and loan association, unless the bank, trust company, or savings and loan association is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise, unless the bank, trust company or savings and loan association is engaged in that business through a separately identifiable department or division, in which case the department or division, and not the bank, trust company, or savings and loan association, is the municipal securities dealer.

(Amended by Stats. 1981, Ch. 496, Sec. 1.)

**53691.** (a) A financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders, or enters into an agreement to render, financial advisory or consultant services to, or on behalf of, an issuer, with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, and terms of an issue or issues, for a fee or other compensation, or in expectation of compensation for the rendering of the services. Notwithstanding the foregoing, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, and terms of a new issue of municipal securities.

(b) Each financial advisory relationship shall be evidenced by a writing executed prior to, upon, or promptly after, the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences). The writing shall set forth the basis of compensation for the financial advisory services to be rendered, including provisions relating to the deposit of funds or the utilization of fiduciary or agency services offered by the broker, dealer, or municipal securities dealer, or by a person controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer in connection with the rendering of the financial advisory services.

(c) No broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to a new issue of municipal securities shall acquire, as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of the issue, nor arrange for the acquisition or participation by a person controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer, unless one of the following applies:

(1) If the issue is to be sold by the issuer on a negotiated basis, all of the following conditions have occurred:

(A) The financial advisory relationship with respect to the issue has been terminated in writing and, at or after the termination, the issuer has expressly consented in writing to the acquisition or participation in the purchase of the securities on a negotiated basis.

(B) The broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer, at or before the termination, that there may be a conflict of interest in changing from the capacity of financial adviser to purchaser of the securities with respect to which the financial advisory relationship exists, and the issuer has expressly acknowledged in writing to the broker, dealer, or municipal securities dealer receipt of that disclosure.

(C) The broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer, at or before the termination, the source and anticipated amount of all remuneration to the broker, dealer, or municipal securities dealer with respect to the issue in addition to the compensation referred to in subdivision (b), and the issuer has expressly acknowledged in writing to the broker, dealer, or municipal securities dealer receipt of that disclosure.

(2) If the issue is to be sold by the issuer at competitive bid, the issuer has expressly consented in writing prior to the bid to that acquisition or participation.

The limitations and requirements set forth in this subdivision shall also apply to any broker, dealer, or municipal securities dealer controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer having a financial advisory relationship. The use of the term "indirectly" in this subdivision shall not preclude a broker, dealer, or municipal securities dealer who has a financial advisory relationship with respect to a new issue of municipal securities from purchasing those securities from an underwriter, either for its own trading account or for the account of customers, except to the extent that the purchase is made to contravene the purpose and intent of this section. Each broker, dealer, and municipal securities dealer subject to the provisions of this subdivision shall maintain a copy of the written disclosures, acknowledgments, and consents required by this section in a separate file.

(d) If a broker, dealer, or municipal securities dealer acquires all or a portion of a new issue of municipal securities or participates in a syndicate or other account that acquires those securities in accordance with subdivision (c), the broker, dealer, or municipal securities dealer shall disclose the existence of the financial advisory relationship in writing to each customer who purchases those securities from that broker, dealer, or municipal securities dealer, at or before the completion of the transaction with the customer.

*(Repealed and added by Stats. 1981, Ch. 496, Sec. 3.)*

**53692.** In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars (\$1,000,000) but do not exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

*(Amended by Stats. 2004, Ch. 7, Sec. 5. Effective January 22, 2004.)*