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SB-1509 State finance. (2017-2018)

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Senate Bill No. 1509

CHAPTER 931

An act to amend Section 5703 of the Government Code, relating to state finance.

[Approved by Governor September 29, 2018. Filed with Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1509, Committee on Governance and Finance. State finance.

Existing law establishes the Treasurer as the sole agent for offering and selling state bonds. Existing law requires the Treasurer to develop and implement a competitive process for selection of underwriters and for negotiated offerings of bonds. Existing law exempts agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness pursuant to those provisions from provisions that otherwise govern state contracts for services in general or consulting services.

This bill would exempt the Treasurer from the Administrative Procedure Act when entering into agreements in connection with the sale and administration of any evidence of indebtedness, including the establishment of pools of eligible contractors, pursuant to those provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5703 of the Government Code is amended to read:

5703. (a) Except as provided in subdivisions (b), (c), and (d), the Treasurer, in exercising the duties of agent for offering and selling bonds, whose duties include, among others, establishing the timing of a sale, preparation or approval of the documentation for the sale, sole authority to select the underwriters for negotiating the sale, and executing the bond purchase agreement on behalf of the state or the state's agencies, is responsible for developing and implementing a competitive process for selection of underwriters for negotiated offerings of bonds. The competitive process may be conducted on a issue-by-issue basis or to establish one or more pools of underwriters for various types of issues. The competitive process shall have at least all of the following features:

- (1) Solicitation of written qualifications from at least 20 underwriting firms.
- (2) Consideration of the goals for minority and women business enterprise participation in professional bond services contracts.
- (3) The written submissions shall be available for inspection at the office of the Treasurer for a period of at least six months.
- (4) If a pool of underwriters is established, the competitive process shall be repeated at least every 24 months to reestablish the pool of underwriters.

(b) For negotiated offerings of bonds by state financing authorities that act as conduits to provide financing to other public, nonprofit, or private organizations, the Treasurer shall use the competitive process described in subdivision (a) to establish one or more pools of underwriters for each financing authority. The Treasurer may make additions to a pool without competitive solicitation, on a case-by-case determination upon the recommendation of a project applicant, where the Treasurer finds that the underwriter to be added has provided significant services to the project applicant with the expectation of compensation for those services from underwriting the revenue bonds which will fund the applicant's project.

(c) The Treasurer may select underwriters for a negotiated sale of bonds by means other than as described in subdivision (a) if the Treasurer makes a written finding that extraordinary market conditions do not allow enough time to comply with subdivision (a) without risking financial detriment to the state.

(d) Subdivisions (a), (b), and (c) shall not apply to the issuance of state bonds for which the Treasurer is precluded by statute from selecting underwriters.

(e) For negotiated sales, the Treasurer shall maintain records of all cost information pertinent to the initial offering of all state bonds, except that in the case of bonds issued by a state financing authority, as described in subdivision (b), the issuing state financing authority shall instead be responsible for maintaining the same cost information on bonds it has issued. The information shall include, but not be limited to, all of the following:

(1) All amounts paid out of bond proceeds to the underwriter, detailed by management fee, takedown, risk, and underwriter's expenses.

(2) All costs paid out of bond proceeds to rating agencies for rating of the bonds.

(3) All fees paid out of bond proceeds to bond counsels, trustees, or financial advisers relating to the initial offering of the bonds.

(4) The interest rate to be paid on the bonds.

(f) For competitive sales, the Treasurer shall maintain records of all bids submitted and the documentation of bid verifications including the terms of sale and the calculation of net interest cost or true interest cost.

(g) The State Auditor shall audit the cost records required to be maintained pursuant to subdivision (e) and conduct a review of the records required to be maintained pursuant to subdivision (f).

(h) The State Auditor shall report whether this section is being fully implemented. The State Auditor shall make cost and interest rate comparisons with similar initial bond offerings of other states where possible. The State Auditor shall submit a report to the Legislature on March 1, 1993, and March 1, 1995, for bonds sold during the two calendar years immediately preceding the year in which the report is due.

(i) Section 10295 of, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code are not applicable to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness.

(j) The Treasurer is exempt from the rulemaking procedures and requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3) when entering into agreements in connection with the sale or administration of any evidence of indebtedness, including the establishment of pools of eligible contractors, pursuant to this chapter.