SENATE BILL No. 99

Introduced by Committee on Local Government (Senators Wiggins (Chair), Aanestad, Cox, Kehoe, and Wolk)

January 27, 2009

An act to amend Sections 6503.5 and 6547 of, to add Sections 6548.5, 6592.1, and 53895.7 to, and to add Chapter 10.7 (commencing with Section 5870) to Division 6 of Title 1 of, the Government Code, relating to joint exercise of powers.

LEGISLATIVE COUNSEL'S DIGEST

SB 99, as introduced, Committee on Local Government. Joint exercise of powers: reporting and disclosures.

Under the Marks-Roos Local Bond Pooling Act of 1985, a joint exercise of powers authority may issue or purchase bonds to assist local agencies in financing public capital improvements, working capital, liability, or other insurance needs, or projects whenever there are significant public benefits for taking that action. Under the Ralph M. Brown Act, all meetings of the legislative body of a local agency must, subject to designated exceptions, be open and public. That act requires the legislative body to hold regular meetings, and permits the legislative body to hold special and emergency meetings, requiring certain notices and agendas.

This bill would require additional reporting and public disclosures by specified public entities that issue certain revenue bonds, including conduit revenue bonds, as defined. This bill would require entities formed under the Joint Exercise of Powers Act, and related officers, that fail or refuse to make required reports to forfeit specified amounts to the state, and would authorize, under certain conditions, the Attorney General to prosecute an action for these forfeitures. This bill would require that a resolution issued pursuant to the Marks-Roos Local Bond

Pooling Act of 1985 relating to bonds, as specified, be adopted by the local agency during a regular meeting. This bill would allow the Controller to cease compiling and publishing transactions reported under these provisions, if the Controller does not receive sufficient funding to do so. This bill would require, until June 30, 2013, the California Debt and Investment Advisory Commission to reimburse the Controller through an interagency agreement for actual costs, not to exceed $200,000 per fiscal year, incurred by the Controller to implement and maintain these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 10.7 (commencing with Section 5870) is added to Division 6 of Title 1 of the Government Code, to read:

Chapter 10.7. Conduit Financing Transparency and Accountability

5870. As used in this chapter, the following definitions apply:

(a) "Conduit financing" means the issuance of conduit revenue bonds.

(b) "Conduit financing provider" means any county, city, city and county, public district, public authority, public corporation, nonprofit corporation, joint powers authority, or other statutorily constituted public entity that issues one or more conduit revenue bonds.

(c) "Conduit revenue bond" means any municipal security the proceeds of which are loaned to any nongovernmental borrower, including, but not limited to, persons, for-profit corporations, nonprofit corporations pursuant to Section 501(c)(3) of the Internal Revenue Code, partnerships, and other legal entities for purposes that are permitted for qualified private activity bonds under applicable federal law.

5871. A conduit financing provider shall make the following information available on its Internet Web site, to the extent that it maintains an Internet Web site:

(a) Agendas for regular meetings posted by a conduit financing provider pursuant to Section 54954.2.

(b) Notices of special meetings posted by a conduit financing provider pursuant to Section 54956.

(c) Notices of meetings of a conduit financing provider provided pursuant to Section 11125.

(d) Staff reports on the items included on the agendas listed in subdivisions (a), (b), and (c).

(e) Minutes of the meetings for which the agendas listed in subdivisions (a), (b), and (c) were produced.

(f) Audits of the conduit financing provider's accounts and records.

(g) Copies of reports of the conduit financing provider's annual financial transactions required pursuant to Section 12460 or 12463.

(h) Annual lists of applications approved for financing by the governing body of the conduit financing provider for any fiscal year in which at least one such application is approved.

5872. (a) When an audit of a conduit financing provider's accounts and records is required by law, in addition to any other requirements, the audit shall include all of the following:

(1) A disclosure of fees imposed on borrowers by, or on behalf of, the conduit financing provider.

(2) A disclosure of expenditures related to those fees made by or on behalf of the conduit financing provider.

(3) The dollar amount and nature of these fees and expenses.

(4) A disclosure of the amount of bonds authorized but unsold at the end of the time period covered by the audit.

(5) A disclosure of the amount of debt the conduit financing provider has issued during the period covered by the audit and the amount of debt still outstanding at the end of the time period covered by the audit.

(b) An audit of a conduit financing provider's accounts and records shall be made publicly available pursuant to the California Public Records Act (Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7).

(c) Notwithstanding any other reporting periods permitted pursuant to subdivision (f) of Section 6505, Section 26909, or any other provision of law, a conduit financing provider shall annually conduct an audit of its accounts and records and report the results of that audit to the Controller. The minimum requirements of the annual audit and report shall be prescribed by the Controller and conform to generally accepted auditing standards.

5873. When a conduit financing provider is required by law to provide a report of its annual financial transaction to the Controller or the Legislature, in addition to any other requirements, the report to the Controller shall be made in the time, form, and manner prescribed by the Controller, and shall include any other information he or she deems of public interest.

5874. If after June 30, 2013, the Controller does not receive sufficient funding for compiling data reported under Section 5873, the Controller may cease compiling and publishing transactions reported under Section 5873 until sufficient funding is provided.

5875. Until June 30, 2013, the California Debt and Investment Advisory Commission shall reimburse the Controller through an interagency agreement for actual costs, not to exceed two hundred thousand dollars ($200,000) per fiscal year, incurred by the Controller, as authorized by the agreement, to implement and maintain the provisions of this chapter.

SEC. 2. Section 6503.5 of the Government Code is amended to read:

6503.5. Whenever a joint powers agreement provides for the creation of an agency or entity that is separate from the parties to the agreement and is responsible for the administration of the agreement, ~~such~~ *the* agency or entity shall, within 30 days after the effective date of the agreement or amendment thereto, cause a notice of the agreement or amendment to be prepared and filed with the office of the Secretary of State. The agency or entity shall furnish an additional copy of the notice of the agreement or amendment to the Secretary of State, who shall forward the copy to the Controller. The notice shall contain *all of the following*:

(a) The name of each public agency that is a party to the agreement.

(b) The date that the agreement became effective.

(c) A statement of the purpose of the agreement or the power to be exercised.

(d) A description of the amendment or amendments made to the agreement, if any.

(e) A copy of the full text of the original agreement, and any amendments to the agreement.

Notwithstanding any other provision of this chapter, any agency or entity administering a joint powers agreement or amendment to such an agreement, which agreement or amendment becomes effective on or after the effective date of this section, which fails to file the notice required by this section within 30 days after the effective date of the agreement or amendment, shall not thereafter, and until ~~such~~ *those* filings are completed, issue any bonds or incur indebtedness of any kind.

SEC. 3. Section 6547 of the Government Code is amended to read:

6547. The power of the entity to issue revenue bonds is additional to the powers common to the parties to the joint powers agreement, but shall not be exercised until authorized by the parties to that agreement. However, in the case of the issuance of revenue bonds by a fair and exhibition authority this authorization shall not be required. In the case of the issuance of revenue bonds by an entity created pursuant to this chapter to construct bridges and major thoroughfares, as referred to in Section 66484.3, the power of the entity to issue revenue bonds shall be exercised by a resolution adopted by a majority vote of the governing body of the entity *during a regular meeting held pursuant to Section 54954*. However, no member of the entity may vote on the question of bond issuance unless the member has been authorized to vote on that particular question by previous resolution of the public agency the member represents. In the case of the issuance of revenue bonds by an entity created pursuant to this chapter to carry out a consolidated transportation corridor project, as referred to in Section 6546.13, the power of the entity to issue revenue bonds shall be exercised by a resolution adopted by a majority vote of the governing body of the entity. In the case of a project for the generation or transmission of electric energy or a project for the disposal, treatment, or conversion to energy and reusable materials of solid waste, or a project for an intermodal container transfer facility, or a project for the construction of bridges and major thoroughfares pursuant to Section 66484.3, this power shall include the power to issue notes for the purpose of financing studies, the acquisition of options, permits, and other preliminary costs to be incurred prior to the undertaking of the construction or acquisition of a project, and for the purpose of providing temporary financing of costs of construction or acquisition of a project. These notes may be issued at public or private sale, and may be renewed from time to time, and the principal and interest with respect thereto may be made payable from the revenues of the entity unless paid from the proceeds of revenue bonds.

Every local agency shall make any authorization, as permitted under the first sentence of this section, by ordinance, unless otherwise prescribed in this section. Except as provided in this section, the ordinance shall describe in general terms the project, or projects, to be funded by the revenue bonds, the maximum amount of the bonds proposed to be issued, and the anticipated sources of revenue to redeem the bonds. In the case of a project for the generation or transmission of electric energy or a project for the disposal, treatment, or conversion to energy and reusable materials of solid waste, or a project for an intermodal container transfer facility, or a project for the construction of bridges and major thoroughfares pursuant to Section 66484.3, the ordinance shall describe in general terms the project or the studies or other preliminary costs therefor to be funded by the revenue bonds or notes, the estimate of the maximum amount of bonds to be issued for the project or the studies or other preliminary costs, and the anticipated sources of revenue or other funds to pay the principal of and interest on the bonds or notes. In the case of a project for a consolidated transportation corridor pursuant to Section 6546.13, the authorizing resolution shall describe in general terms, the project or projects to be funded by the revenue bonds, the maximum amount of bonds proposed to be issued for the project or projects, and the anticipated sources of revenue or other funds to pay the principal of and interest on the bonds. However, the statement of the estimated maximum amount of the bonds or notes shall not be deemed to prevent the authorization by the ordinance of the issuance of bonds or notes by the entity in amounts ~~which~~ *that* may exceed the estimate without further authorization under the ordinance if and to the extent the additional bonds or notes shall be required to complete the financing of the project or the studies or other preliminary costs. Each ~~such~~ ordinance shall state that it is subject to the provisions for referendum prescribed by Section 9142 of the Elections Code.

A separate authorization shall be required for each separate bond issue proposed by the entity, except that, in the case of a project for the generation or transmission of electric energy or a project for the disposal, treatment, or conversion to energy and reusable materials of solid waste, or a project for an intermodal container transfer facility, or a project for the construction of bridges and major thoroughfares pursuant to Section 66484.3, a single authorization shall be sufficient for bonds ~~which~~ *that* may be issued in installments from time to time for a project or the costs of studies or other preliminary costs therefor ~~which~~ *that* shall be identified in the authorization.

The requirement of an ordinance and the right to referendum thereon shall not apply to the issuance of revenue bonds if, prior to March 4, 1971, one or more local or public agencies shall have taken formal action to implement any one or more projects to be acquired or constructed pursuant to a joint powers agreement. Formal action to implement any one or more projects shall include, but not be limited to, any of the following:

(a) The incurring of liability for a substantial portion of an architectural or engineering contract or other contract relating to a project.

(b) The acquisition of land or improvements for the project.

(c) The making of a substantial contribution toward the project.

Notwithstanding the requirement that parties to a joint powers agreement authorize the issuance of revenue bonds, in the case of a project that consists of the generation or transmission of electric energy financed in whole or in part by the issuance of revenue bonds, only those local agencies ~~which~~ *that* contract to make payments to be applied to the payment of the revenue bonds shall be required to authorize the issuance of the revenue bonds.

Any authorizations required by this section for the issuance of revenue bonds to construct bridges and major thoroughfares projects pursuant to Section 50029 or 66484.3 may be by ordinance or resolution.

SEC. 4. Section 6548.5 is added to the Government Code, to read:

6548.5. The level of fees or charges imposed by, or on behalf of, an agency or entity for the issuance of bonds pursuant to this article shall be disclosed in a report of final sale submitted to the California Debt and Investment Advisory Commission pursuant to Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2.

SEC. 5. Section 6592.1 is added to the Government Code, to read:

6592.1. A resolution authorizing bonds or any issuance of bonds or accepting the benefit of any bonds or the proceeds of bonds shall be adopted by an authority only during a regular meeting held pursuant to Section 54954.

SEC. 6. Section 53895.7 is added to the Government Code, to read:

53895.7. (a) For the purpose of this section, “agency” means any agency or entity formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) that issues conduit revenue bonds.

(b) An officer of an agency who fails or refuses to make and file his or her report pursuant to this article within 20 days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars ($1,000) in the case of an agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller’s annual financial reports.

(2) Two thousand five hundred dollars ($2,500) in the case of an agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000), but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller’s annual financial reports.

(3) Five thousand dollars ($5,000) in the case of an agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller’s annual financial reports.

(c) An officer of an agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller in the second or more consecutive year shall forfeit to the state:

(1) Two thousand dollars ($2,000) in the case of an agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller’s annual financial reports.

(2) Five thousand dollars ($5,000) in the case of an agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000), but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller’s annual financial reports.

(3) Ten thousand dollars ($10,000) in the case of an agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(d) In the case of an agency that fails or refuses to make and file its report within 20 days after receipt of a written notice of the failure from the Controller in the third or more consecutive year, the Controller shall conduct, or cause to be conducted, an independent financial audit report consistent with the requirements of Section 6505. The agency shall reimburse the Controller for the cost of complying with this subdivision.

(e) (1) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

(2) Upon a satisfactory showing of good cause, the Controller may waive the penalties for late filing provided in this section.

(f) An agency that makes a forfeiture or payment pursuant to this section shall still file the report required pursuant to Section 53891.

SEC. 7. The Legislature finds and declares all of the following:

(a) Conduit financing providers annually provide billions of dollars of tax-exempt financing to the private sector, at a cost to the state caused by a lack of tax revenues on the interest earned on these investments, for projects that are intended to fulfill a public benefit purpose, including, but not limited to, educational facilities, pollution control facilities, health care facilities, industrial development, and affordable housing.

(b) Testimony and information provided to the Senate Committee on Local Government at its February 6, 2008, informational hearing on "Conduit Financing: Transparency and Accountability" demonstrated the need to provide for greater public awareness of, and participation in, the activities of conduit financing providers.

(c) Statutory ambiguities and discrepancies make it difficult to determine whether all conduit financing providers are complying with audit, annual financial reporting, and other public accountability requirements.

(d) It is the intent of the Legislature in enacting this act to ensure that all conduit financing providers make their activities sufficiently transparent and accountable to the public by extending sufficient opportunities for participation in public meetings and providing useful information about their financial activities.

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