

ASSEMBLY, No. 586

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen LUSTBADER and RUSSO

1 AN ACT concerning the procedures for the issuance of State bonds  
2 and the selection of bond underwriters, financial advisors and  
3 counsel, and supplementing Title 52 of the Revised Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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8 1. The Legislature finds and declares that:

9 a. There is substantial cost to the State in the issuance of bonds  
10 and the selection of bond underwriters, financial advisors and counsel;  
11 and

12 b. Because of that cost, there need to be established procedures  
13 which ensure the lowest cost to the State and the integrity of the  
14 selection process; and

15 c. It has been shown that competitive bidding protects the public's  
16 interest by obtaining the lowest possible interest cost and avoids  
17 allegations of unfairness and impropriety.

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19 2. As used in this act:

20 a. "Bond counsel" means a person, firm or corporation of attorneys  
21 engaged by an issuer to advise and assist the issuer in legal, financial  
22 and tax matters relating to a bond transaction.

23 b. "Bond transaction" means any financial transaction by an issuer  
24 with respect to State bonds, notes, certificates or other instruments of  
25 debt.

26 c. "Financial advisor" means a person, firm or corporation engaged  
27 by an issuer to perform origination tasks for any bond transaction such  
28 as structuring the maturity schedule, preparing the official statement,  
29 obtaining a rating, obtaining credit enhancement, timing a sale or such  
30 other financial advice and assistance to an issuer.

31 d. "Issuer" means the State or any body corporate and politic,  
32 district, agency, authority or instrumentality thereof.

33 e. "Underwriter" means a person, firm or corporation to which an  
34 issuer sells or proposes to sell bonds.

1       3. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
2 seq.), each sale of bonds by an issuer shall be awarded to the lowest  
3 responsible bidder after public advertisement for bids and full and free  
4 competition as provided in this act. The State Treasurer shall adopt  
5 procedures which set forth the manner of public notice, the  
6 specifications and invitation to bid, the time and place when and where  
7 sealed proposals shall be received and publicly opened, the method of  
8 award and such other procedures as will ensure openness and  
9 competition and quality services at the lowest possible cost. The  
10 procedures shall also ensure that appropriate consideration will be  
11 given to New Jersey-based vendors and vendors with significant  
12 minority or women ownership.

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14       4. For any bond transaction, the issuer shall request in writing to  
15 the State Treasurer and Attorney General that bond counsel be  
16 appointed. A selection committee consisting of a representative of the  
17 issuer, the State Treasurer and the Attorney General shall select not  
18 more than five firms from a qualified list as provided for in this act.  
19 The committee shall request each of the five firms to submit its fees  
20 for the bond issue in the form of hourly charges for each level of  
21 attorney assigned, and as a maximum charge for the anticipated work.  
22 The committee may set other conditions or request other information.  
23 The committee shall prepare a written report on the reasons for  
24 selection of the firm assigned the work. The report shall be made  
25 available to the public.

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27       5. The Attorney General, from time to time, shall issue a request  
28 for qualifications of prospective bond counsel. The request shall not  
29 be specific to a bond transaction and shall apply to bond transactions  
30 anticipated to be undertaken by issuers over a two-year period. The  
31 request shall elicit descriptive information on the bond counsel, its  
32 knowledge and experience in finance law, tax law and specifically the  
33 law regarding tax-exempt bonds, any special area of expertise and  
34 proposed fees for financial transactions involving bonds. The Attorney  
35 General shall maintain a qualified list of bond counsel for each type of  
36 bond transaction.

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38       6. Notwithstanding any contrary provisions of section 3 of this act,  
39 an issuer may sell bonds by negotiation if it is more beneficial to the  
40 State to do so and if the issuer sets forth extraordinary circumstances  
41 for such a sale in writing. Extraordinary circumstances shall be  
42 specific to the bond sale and are a. the novelty of the financing issues  
43 and b. the complexity of the issuance. The statement shall be made  
44 available to the public.

45       If the issuer is an issuer other than the State, its governing body  
46 shall adopt the statement by resolution and submit it to the State

1 Treasurer. The State Treasurer shall accept or reject the resolution.  
2 If the State Treasurer rejects the resolution, the bonds shall be sold in  
3 accordance with section 3 of this act. The State Treasurer shall report  
4 his findings, in writing, to the issuer and set forth the reasons for  
5 acceptance or rejection. The statement shall be made available to the  
6 public.

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8 7. The State Treasurer, from time to time, shall issue a request for  
9 qualifications of potential underwriters and financial advisors for bond  
10 transactions. The request shall not be specific to a bond transaction  
11 and shall apply to bond transactions anticipated to be undertaken by  
12 issuers over a two-year period. The request shall elicit an  
13 underwriter's or financial advisor's experience in marketing bonds and  
14 notes with reference to various types of bonds; its financial  
15 responsibility, with specific reference to capital allocated to  
16 underwriting government bonds; proposed fees for financial  
17 transactions involving bonds; the degree of corporate investment or  
18 presence in this State, including the location of corporate offices,  
19 brokerage offices, back-office operations and the like; the proportion  
20 of minority or women ownership of the underwriter or financial  
21 advisor; and such other information deemed necessary by the State  
22 Treasurer.

23 The State Treasurer shall maintain a list of qualified underwriters  
24 and financial advisors on the basis of the information provided in the  
25 request for qualifications. The State Treasurer shall determine the list  
26 on the basis of the qualifications set forth in the request, with  
27 appropriate consideration given to underwriters and financial advisors  
28 who are minority owned, reside in this State and have corporate  
29 investment in this State.

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31 8. The State Treasurer shall issue to each underwriter or financial  
32 advisor on the qualified list a request for proposals on each bond  
33 transaction. The underwriter or financial advisor shall provide in the  
34 proposal specific information on financial strategies for the proposed  
35 transaction; a recommended strategy for identifying and targeting  
36 purchasers of the bonds; proposed fees for the bond sale in question;  
37 and case examples of similar bond transactions on which the  
38 underwriter or financial advisor has worked.

39 The selection shall be made on the basis of the skills required for  
40 each transaction, the underwriter's or financial advisor's past  
41 performance on bond transactions, a rotation designed to give each  
42 underwriter or financial advisor a fair opportunity to participate in  
43 bond transactions, and such other factors based on the request for  
44 qualifications and as the State Treasurer deems appropriate. The State  
45 Treasurer shall issue a report to the issuer on the selection, stating the

1 reasons for the selection, and the report shall be made available to the  
2 public.

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4 9. Each contract of sale between an issuer and an underwriter shall  
5 include a provision that the underwriter agrees to use its best efforts  
6 to assure that the State meets its objectives in the fair and reasonable  
7 allocation of bonds to members of the underwriting syndicate; and that  
8 the allocation of bonds and fees received by each member of the  
9 underwriting syndicate shall be reported to the State Treasurer within  
10 30 days of closing of the bond issue. The State Treasurer shall make  
11 the report available to the public and shall set such terms and  
12 conditions as are necessary to implement the reporting requirement.  
13 Failure of the underwriter to comply with the reporting requirement  
14 shall not void the bond transaction, but shall constitute a basis for  
15 removal of the underwriter from the qualified list.

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17 10. No issuer shall select or direct the selection of any person, firm  
18 or corporation to provide professional services to an underwriter,  
19 financial advisor or bond counsel.

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21 11. The provisions of this act shall not apply to bond transactions  
22 issued solely by the New Jersey Economic Development Authority.

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24 12. This act shall take effect immediately and shall apply to bond  
25 transactions commenced after its effective date.

## 26 27 28 STATEMENT

29  
30 This bill provides for the establishment in statutory law of rules to  
31 govern the selection of financial advisors, bond counsel, and bond  
32 underwriters in connection with the issuance of bonds or other debt  
33 instruments by the State or any agency or instrumentality of the State.  
34 The selection of persons to provide these services is presently exempt,  
35 under a "professional services" exception (N.J.S.A.52:34-9), from the  
36 statute (P.L.1954, c.48; N.J.S.A.52:34-6 et seq.) that requires  
37 advertisement of and public bidding for State public contracts.

38 Selection of a financial advisor. "Financial advisor" under the  
39 legislation refers to "a person, firm or corporation engaged by an  
40 issuer to perform origination tasks for any bond transaction such as  
41 structuring the maturity schedule, preparing the official statement,  
42 obtaining a rating, obtaining credit enhancement, timing a sale or such  
43 other financial advice and assistance to an issuer." A "bond  
44 transaction", in turn, is defined as "any financial transaction by an  
45 issuer with respect to State bonds, notes certificates or other  
46 instruments of debt".

1       The bill provides that, periodically, the State Treasurer is to issue  
2 a request for qualifications of potential financial advisors. The  
3 requests are not to be specific to a particular bond transaction, but  
4 rather are to apply to transactions anticipated over a two-year period.  
5 The information requested is to cover a prospective advisor's  
6 experience in marketing bonds, financial responsibility, proposed fees,  
7 degree of its corporate investment or presence in New Jersey, the  
8 proportion of minority or women ownership of the advisor, and such  
9 other information as deemed necessary by the State Treasurer. On the  
10 basis of the information provided in response to the request for  
11 qualifications, the Treasurer is to maintain a list of qualified financial  
12 advisors, with appropriate consideration being given to financial  
13 advisors who are minority owned and who reside and have corporate  
14 investment in the State.

15       When an issuer undertakes a bond transaction, the State Treasurer  
16 is to issue to each financial advisor on the qualified list a request for  
17 proposals on the transaction. The financial advisor is to provide in the  
18 proposal "specific information on financial strategies for the proposed  
19 transaction; a recommended strategy for identifying and targeting  
20 purchasers of the bonds; proposed fees . . .; and case examples of  
21 similar bond transactions" with which the financial advisor has been  
22 involved.

23       The selection of a financial advisor is to be made "on the basis of  
24 the skills required for each transaction, the . . . financial advisor's past  
25 performance on bond transactions, a rotation designed to give each  
26 financial advisor a fair opportunity to participate in bond transactions,  
27 and such other factors based on the request for qualifications and as  
28 the State Treasurer deems appropriate." The Treasurer is to report to  
29 the issuer the reasons for the selection; this report is to be available to  
30 the public.

31       Selection of bond counsel. The bill provides that the Attorney  
32 General shall periodically request prospective bond counsel to submit  
33 qualifications, including information on firm experience, expertise and  
34 fees. As in the case of financial advisors, the requests for  
35 qualifications are not to be specific to a particular bond transaction,  
36 but rather are to apply to transactions anticipated over a two-year  
37 period. On the basis of the qualifications so submitted, the Attorney  
38 General is to maintain a qualified list of bond counsel for each type of  
39 bond transaction. For any proposed bond transaction, bond counsel  
40 is to be appointed upon the issuer's request by a selection committee  
41 consisting of a representative of the issuer and the State Treasurer and  
42 Attorney General. This selection committee is to select not more than  
43 five firms from the qualified list and ask those firms to submit  
44 information on charges and on such other matters as it sees fit. The  
45 committee shall report in writing the reasons for its selection of the  
46 firm assigned the work and make that report available to the public.

1        Selection of an underwriter. Under the bill, each bond sale by a  
2 State issuer "shall be awarded to the lowest responsible bidder after  
3 public advertisement for bids and full and free competition as provided  
4 in this act." The State Treasurer is to adopt procedures which set  
5 forth the manner of public notice, the specifications for and the  
6 solicitation and review of bids, the awarding of contracts, "and such  
7 other procedures as will ensure openness and competition and quality  
8 services at the lowest possible cost." The procedures are also to  
9 ensure that appropriate consideration is given to "New Jersey-based  
10 vendors and vendors with significant minority or women ownership."

11        The bill provides that the the State Treasurer is to establish and  
12 maintain a qualified list for potential underwriters on the basis of the  
13 same information and using the same procedures as provided for  
14 financial advisors. The Treasurer shall, based on the response to a  
15 request for proposals circulated among firms appearing on the  
16 qualified list, select an underwriter from among those listed firms in  
17 the same manner and applying the same factors as in the selection of  
18 a financial advisor.

19        Notwithstanding the provisions for competitive bidding on the  
20 awarding of a contract for the sale of bonds, an issuer may sell bonds  
21 by negotiation "if it is more beneficial to the State to do so and if the  
22 issuer sets forth extraordinary circumstances for such a sale in writing.  
23 Extraordinary circumstances shall be specific to the bond sale and are  
24 a. the novelty of the financing issues[,]and b. the complexity of the  
25 issuance." The statement of extraordinary circumstances is to be made  
26 available to the public. Negotiated sales by issuers other than the  
27 State are to be allowed only with the approval of the State Treasurer.

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32        Sets forth procedures for the selection of bond underwriters, financial  
33 advisors and counsel on State bond transactions.