

ASSEMBLY, No. 600

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen LUSTBADER and LANCE

1 AN ACT concerning the procedures for the issuance of bonds and the  
2 awarding of certain professional services contracts by the State and  
3 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. As used in sections 1 through 5 of this act:

9 "bond counsel" means a person, firm or corporation of attorneys  
10 engaged by an issuer to advise and assist the issuer in legal, financial  
11 and tax matters relating to a bond transaction;

12 "bond transaction" means any financial transaction by an issuer with  
13 respect to bonds;

14 "bond" means any bond, certificate of obligation, certificate of  
15 participation, or other instrument evidencing a proportionate interest  
16 in payments due to be paid by an issuer, or other obligation that is  
17 incurred by an issuer in the exercise of its borrowing power, which is  
18 represented by an instrument issued in bearer or registered form or the  
19 transfer of which is registered on books maintained for that purpose  
20 by, or on behalf of, the issuer, as well as a refunding of an existing  
21 bond issued by the issuer;

22 "financial advisor" means a person, firm or corporation engaged by  
23 an issuer to perform origination tasks for any bond transaction such as  
24 structuring the maturity schedule, preparing the official statement,  
25 obtaining a rating, obtaining credit enhancement, timing a sale or such  
26 other financial advice and assistance to an issuer;

27 "issuer" means the State or any body corporate and politic, district,  
28 agency, authority or instrumentality thereof, but does not include any  
29 county, municipality, school district or local government agency,  
30 district or authority; and

31 "underwriter" means a person, firm or corporation to which an  
32 issuer sells or proposes to sell bonds, including a senior manager or  
33 co-manager participating in a bond transaction.

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35 2. a. Notwithstanding the provisions of any other law to the

1 contrary, the sale of bonds by an issuer shall be to the lowest qualified  
2 bidder. Bids shall be publicly solicited prior to the selection and shall  
3 be communicated to the issuer in a sealed or otherwise confidential  
4 manner.

5 An issuer may, however, negotiate the sale of bonds without  
6 publicly soliciting bids upon making a written determination that the  
7 bond transaction involves complex or poor credits; a complex  
8 financing structure, including the simultaneous sale of more than one  
9 series of bond with each series structured differently; volatile  
10 marketing conditions; large issue size; a program or financial technique  
11 which is new to investors; or variable rate transactions. The written  
12 determination shall set forth, in specific terms, the reasons for  
13 negotiating the sale. A copy thereof shall be filed with the State  
14 Treasurer and shall be a public record pursuant to P.L.1963, c.73  
15 (C.47:1A-1 et seq.).

16 b. An issuer which engages in similar types of bond transactions on  
17 a regular basis may make a written determination with respect to the  
18 method of sale, consistent with subsection a. of this section, to be used  
19 for two or more transactions which are part of a larger bonding  
20 program of similarly secured financings. The written determination  
21 shall set forth, in specific terms, the reasons for adopting a particular  
22 method of sale. A copy thereof shall be filed with the State Treasurer  
23 and shall be a public record pursuant to P.L.1963, c.73 (C.47:1A-1  
24 et seq.).

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26 3. a. The selection of an underwriter or a financial advisor in  
27 connection with a bond transaction shall be made through the use of  
28 the competitive procedures established by this section.

29 b. When a bond is to be secured by an appropriation from the  
30 State's general fund, the full faith and credit of the State, or otherwise  
31 by State revenues, the issuer, in conjunction with the State Treasurer,  
32 shall develop a request for proposals and criteria for selection for  
33 each contract to engage the services of an underwriter or a financial  
34 advisor. The criteria for selection shall include, but not be limited to,  
35 the quality of response regarding the proposed bond structure, credit,  
36 or marketing strategy; sophisticated cash-flow capabilities as required  
37 by a particular financing; development of new ideas; demonstrated  
38 ability to distribute New Jersey securities; quality of relevant service  
39 to the State in previous transactions; experience with similar financings  
40 in which the firm and its proposed financing team participated;  
41 proposed fees for the particular bond transaction; and sufficient capital  
42 to participate in underwriting the issue. The underwriters or financial  
43 advisors for a particular bond transaction shall be selected by the  
44 issuer and the State Treasurer. The criteria for selection developed by  
45 the issuer and the State Treasurer, as well as information concerning  
46 the identity of each underwriter or financial advisor solicited or

1 selected, shall be a public record pursuant to P.L.1963, c.73,  
2 (C.47:1A-1 et seq.).

3 However, an underwriter or a financial advisor may be selected on  
4 a noncompetitive basis when all of the following factors are present:  
5 an innovative idea has been brought to an issuer, a request for  
6 proposals cannot be constructed without communicating the new idea  
7 and the issue would not benefit from a competitive selection process.

8 Underwriters or financial advisors may be selected for two or more  
9 transactions from a pool of qualified individuals or firms without  
10 soliciting separate proposals when the transactions are part of a larger  
11 bonding program of similarly secured financings. Pool participants  
12 shall be chosen in a manner consistent with this act.

13 c. When a bond issue is not to be secured by an appropriation from  
14 the State's general fund, the full faith and credit of the State, or  
15 otherwise by State revenues, the issuer shall formulate procedures for  
16 the selection of an underwriter or financial advisor which are  
17 consistent with the provisions of subsection b. of this section and  
18 which provide for an open and competitive process. This information  
19 and information about particular selections shall be a public record  
20 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

21 d. In selecting underwriters and financial advisors an issuer shall  
22 give particular consideration to firms with a presence in New Jersey  
23 and to minority- and women-owned firms.

24 e. Within 30 days of completion of a bond transaction, an issuer  
25 shall provide a written report to the State Treasurer which sets forth  
26 the allocation of bonds and fees received by each member of the  
27 underwriting syndicate and a breakdown of the costs of issuance paid  
28 by the issuer.

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30 4. a. The Attorney General shall establish procedures for the  
31 selection of bond counsel pursuant to section 13 of P.L.1944, c.20  
32 (C.52:17A-13) which provide for the appointment of bond counsel on  
33 a competitive basis and under criteria based upon the common themes  
34 of quality, economy and accountability and which place great weight  
35 on the bond counsel's qualifications and suitability for a particular  
36 bond transaction, as well as the fee proposal. Such criteria shall  
37 include, but not be limited to, the bond counsel's experience with  
38 similar transactions; familiarity with State laws relevant to the  
39 proposed bond transaction; proficiency with securities laws, tax laws,  
40 and other laws relevant to the transaction; quality of the proposed  
41 legal strategy with respect to specific questions posed in the request  
42 for proposal; quality of past legal services rendered to the State and its  
43 authorities; and fees. However, an appointment may be made on a  
44 noncompetitive basis when necessitated by unusual circumstances,  
45 such as the unique prior experience of a bond counsel with respect to  
46 a particular type of bond transaction.

1       b. Issuers other than those for which the Attorney General must  
2 appoint a bond counsel pursuant to section 13 of P.L.1944, c.20  
3 (C.52:17A-13) shall establish competitive appointment processes  
4 based on the criteria set forth in subsection a. of this section. The  
5 Attorney General shall develop guidelines for the use of such issuers  
6 when selecting bond counsel.

7       c. In selecting bond counsel an issuer shall give particular  
8 consideration to firms with a presence in New Jersey and to minority-  
9 and women-owned firms.

10      d. Policies and procedures established pursuant to this section shall  
11 be a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

12      e. The Attorney General or the issuer, as appropriate, may establish  
13 a procedure, consistent with the provisions of this act, whereby a firm  
14 is appointed for a series of transactions which are part of a larger  
15 bonding program or for specific time periods and may establish a  
16 competitive procedure whereby a group of bond counsel firms are  
17 appointed to serve as counsel to frequent bond issuers for a specific  
18 term not to exceed two years. In the latter case, an issuer may select  
19 from the competitively established group without soliciting separate  
20 proposals for each bond issue. A fee schedule for such transaction  
21 shall be established at the beginning of a term.

22      f. In selecting a bond counsel, the Attorney General or the issuer,  
23 as appropriate, shall consider the interests of others who may be  
24 affected by the bond transaction. In appropriate cases, other parties  
25 to the transaction, such as borrowers, may be consulted concerning the  
26 choice of bond counsel.

27      g. The Attorney General or the issuer, as appropriate, shall prepare  
28 a written report containing information relative to the selection of  
29 bond counsel for each bond transaction. The Attorney General shall  
30 maintain such reports on file. A report shall be a public record  
31 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

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33      5. On or before January 31 of each calendar year, each issuer shall  
34 submit to the State Treasurer a debt management plan describing its  
35 bond financing programs. The plan shall include information on the  
36 outstanding debt and debt service costs for the prior one-year period  
37 and the next one-year period. It shall describe each proposed bond  
38 issue including: the size and purpose of each transaction; the  
39 anticipated sale date of each issue; the security and anticipated rating  
40 for each transaction; the anticipated method of sale; and the  
41 anticipated method of selecting underwriters, financial advisors and  
42 bond counsel to be used in connection with each transaction.

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44      6. Notwithstanding the provisions of section 4 of P.L.1954, c.48  
45 (C.52:34-9) or any other law to the contrary, a contract for the  
46 services of an architect, engineer or accountant the cost or contract

1 price of which is to be paid with or out of State funds shall, to the  
2 fullest extent practicable, be awarded according to competitive  
3 procedures established by each contracting agency. The procedures  
4 shall be developed with the purpose of ensuring that each agency will  
5 receive the best possible services at the lowest cost.

6 In selecting an architect, engineer or accountant, a contracting  
7 agency shall give particular consideration to firms with a presence in  
8 New Jersey and to minority- and women-owned firms.

9 Procedures established pursuant to this section shall be a public  
10 record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

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12 7. This act shall take effect immediately.

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#### STATEMENT

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17 This bill would implement certain procedures for the issuance of  
18 bonds by the State and State authorities, and the selection of  
19 underwriters, financial advisors and bond counsel in connection  
20 therewith, contained in Executive Order No. 26 (Whitman), issued  
21 October 25, 1994. The Executive Order adopts recommendations  
22 made in the "Report of the Advisory Panel on Government  
23 Contracting Procedures," issued on July 29, 1994.

24 The procedures which previously governed the sale of bonds were  
25 established by Executive Order No. 92 (Florio), issued May 4, 1993,  
26 and the report of the State Treasurer to the Governor, dated May 3,  
27 1993, which that Executive Order incorporated by reference. These  
28 provided that bonds shall be issued on the basis of competitive bidding  
29 (i.e., on the basis of price alone) except in extraordinary  
30 circumstances. Similarly, professionals who rendered services in  
31 connection with bond transactions were primarily selected on the basis  
32 of price.

33 The bill recognizes that while competitive bond sales generally  
34 provide an effective method of sale at low cost in most cases, there are  
35 circumstances under which a negotiated sale is likely to provide higher  
36 quality services at a lower price. It permits a negotiated sale in cases  
37 involving complex or poor credits; complex financing structures;  
38 volatile market conditions; large issue sizes; programs or financial  
39 techniques which are new to investors; or variable rates.

40 The bill also provides that competitive procedures be established for  
41 the selection of underwriters and financial advisors. It allows an issuer  
42 to choose financial professionals, based upon such factors, in addition  
43 to price, as the quality of response regarding the proposed bond  
44 structure, credit, or marketing strategy; sophisticated cash flow  
45 capabilities; development of new ideas; demonstrated ability to market  
46 New Jersey securities; quality of relevant service to the State in past

1 transactions and experience with similar financings; proposed fees; and  
2 sufficient capital.

3 Under the bill's provisions, bond counsel would be selected on a  
4 competitive basis using, in addition to proposed fees, criteria such as  
5 experience with similar transactions; familiarity with State laws  
6 relevant to the proposed bond transaction; proficiency with securities  
7 laws, tax law, and other laws relevant to the transaction; proposed  
8 legal strategy with respect to specific questions posed in the request  
9 for proposals, and past legal services rendered to the State and its  
10 authorities.

11 The bill provides that the basis for choosing a negotiated sale as  
12 well as the criteria used in each case to select financial professionals  
13 shall be in writing and accessible to the public. In addition, particular  
14 consideration would be given to minority- and women-owned firms  
15 when selecting underwriters, financial advisors and bond counsel.

16 The bill requires issuers to annually submit to the State Treasurer  
17 a debt management plan describing its bond financing programs.

18 The bill also provides that State contracts for the services of  
19 architects, engineers and accountants shall, to the fullest extent  
20 practicable, be awarded according to competitive procedures.

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25 Establishes procedures for issuance of State bonds including selection  
26 of underwriters, financial advisors and bond counsel; provides for  
27 competitive selection of architects, engineers and accountants in  
28 connection with State contracts.