

# 52:31C-1 to 52:31C-13

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 1999                    **CHAPTER:** 157

**NJSA:** 52:31C-1 to 52:31C-13                    (“Structured Financing Act”)

**BILL NO:** A2964                    (Substituted for S1790 – 1<sup>st</sup> Reprint)

**SPONSOR(S):** Bagger and Weingarten

**DATE INTRODUCED:** March 15, 1999

**COMMITTEE:**                    **ASSEMBLY:** Appropriations

**SENATE:** Budget

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** May 10, 1999

**SENATE:** June 21, 1999

**DATE OF APPROVAL:** July 2, 1999

### FOLLOWING ARE ATTACHED IF AVAILABLE:

**FINAL TEXT OF BILL:** 2<sup>nd</sup> Reprint  
(Amendments during passage denoted by superscript numbers)

#### **A2964**

**SPONSORS STATEMENT:** (Begins on page 7 of original bill)                    Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**                    Yes

**SENATE:**                    Yes

**FLOOR AMENDMENT STATEMENTS:**                    Yes

**LEGISLATIVE FISCAL ESTIMATE:**                    Yes    4-23-99

Yes    5-3-99

#### **S1790**

**SPONSORS STATEMENT:** (Begins on page 7 of original bill)                    Yes

Bill and Sponsors Statement identical to S1790

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**                    No

**SENATE:**                    Yes

Identical to Senate Committee Statement to A2964

**FLOOR AMENDMENT STATEMENTS:**                    No

**LEGISLATIVE FISCAL ESTIMATE:**                    Yes

Identical to Legislative Fiscal estimate of 4-23-99 for A2964

**VETO MESSAGE:**                    No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

Title 52.  
Chapter 31C. (New)  
Structured Financing  
§§1 - 13  
C. 52:31C-1  
To  
52:31C-13

P.L. 1999, CHAPTER 157, *approved July 2, 1999*  
Assembly, No. 2964 (*Second Reprint*)

1 AN ACT authorizing the undertaking by the State <sup>1</sup>and local  
2 governmental units<sup>1</sup> of structured financing transactions,  
3 supplementing Title 52 of the Revised Statutes.

4

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

7

8 1. This act shall be known and may be cited as the "Structured  
9 Financing Act."

10

11 2. The Legislature finds and declares that:

12 a. In this era of limited sources of State <sup>1</sup>and local<sup>1</sup> revenues  
13 coupled with the increasing demands placed on State <sup>1</sup>and local<sup>1</sup>  
14 government to fulfill its governmental functions, the need exists to  
15 maximize the value of <sup>1</sup>**[the State's]** their<sup>1</sup> assets;

16 b. One possible way of maximizing such value is to utilize new and  
17 innovative financing structures which take advantage of the  
18 <sup>1</sup>**[State's]** existing assets;

19 c. A new and innovative financing structure that has been  
20 developed is the structured financing transaction whereby a  
21 governmental entity<sup>1</sup> **[, such as the State,]**<sup>1</sup> can obtain additional  
22 revenues by conveying its interest in its assets to other parties and by  
23 so conveying such interests, transfer certain benefits which the State  
24 <sup>1</sup>or local government unit<sup>1</sup> enjoys in connection with its assets, which  
25 would have value to the other party but of which the State <sup>1</sup>or local  
26 government unit<sup>1</sup> cannot take advantage;

27 d. Entry into such structured financing transactions is not intended  
28 to interfere with the <sup>1</sup>**[State's]** governmental unit's<sup>1</sup> ownership,  
29 occupation or use of its assets, although under the terms of a  
30 structured financing transaction, upon the occurrence of certain  
31 events, the other party may have the right to exercise certain rights  
32 and remedies and to acquire certain interests which may interfere with  
33 the <sup>1</sup>**[State's]** governmental unit's<sup>1</sup> ownership, occupation or use of  
34 its assets;

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted March 29, 1999.

<sup>2</sup> Senate SBA committee amendments adopted May 20, 1999.

- 1 e. By the State <sup>1</sup>or local government unit<sup>1</sup> entering into such  
2 structured financing transactions, the State <sup>1</sup>or local government unit<sup>1</sup>  
3 can obtain additional revenues required to carry out its governmental  
4 functions without affecting the use by the State <sup>1</sup>or local government  
5 unit<sup>1</sup> of its assets for its governmental functions;
- 6 f. It is in the best interests of the State <sup>1</sup>or local government unit<sup>1</sup>  
7 to <sup>1</sup>**[authorize the State Treasurer] be able**<sup>1</sup> to enter into structured  
8 financing transactions <sup>1</sup>**[and to provide the State Treasurer with**  
9 flexibility in designing these transactions to realize the greatest benefit  
10 to the State]<sup>1</sup>.

11

12 3. As used in this act,

13 “Assets” means all property, both real, personal or mixed, tangible  
14 or intangible, of any type and all rights, easements, privileges or  
15 interests of any kind or description in, relating to, or connected with  
16 property, including but not limited to, land, buildings, plants,  
17 structures, institutions, water supply facilities, resource recovery  
18 facilities, sewage treatment facilities, wastewater treatment facilities,  
19 transportation facilities, highways, parking facilities, equipment, motor  
20 vehicles, rolling stock, machinery, furniture, leasehold improvements,  
21 fixtures, space rights, development rights, and air rights.

22 “Benefits” means benefits, including but not limited to tax benefits,  
23 which the State enjoys as a result of its ownership, use or occupancy  
24 of its assets of which the State cannot take advantage but which would  
25 have value to an investor if those assets were transferred to the  
26 investor.

27 “Investor” means a person who enters into a structured financing  
28 transaction pursuant to which the investor agrees to pay consideration  
29 to the State in return for the transfer to the investor of the State’s  
30 benefits enjoyed in connection with certain State assets.

31 “Land” means real property, including improvements thereof or  
32 thereon, rights-of-way, lands under water, water, riparian and other  
33 rights, easements, privileges and all other rights or interest of any kind  
34 or description in, relating to or connected with real property.

35 “Net receipt” means the State receipt less the amount deposited  
36 into the State payment account.

37 “Payment bank” means a bank, trust company, savings bank,  
38 investment company, financial institution or any other person carrying  
39 on a banking or financial business which may be selected by the State  
40 to hold the State payment account in connection with a structured  
41 financing transaction.

42 “State asset” means any asset that the State owns, or leases,  
43 operates or otherwise has a property interest therein in conjunction  
44 with other State agencies and State authorities.

45 “State receipt” means an amount of money paid to the State by the  
46 investor representing the consideration paid by the investor to the

1 State pursuant to a structured financing agreement.

2 “State payment account” means an account to be established with  
3 a payment bank by the State and used to pay the State’s payment  
4 obligations under a structured financing agreement.

5 “State authority” means a public body established by statute as an  
6 instrumentality of the State exercising public and essential  
7 governmental functions.

8 “State agency” means a department, division, commission, board,  
9 bureau or agency of the State.

10 “Structured financing agreement” means an agreement, contract or  
11 action taken to authorize, implement and finance a structured financing  
12 transaction including, but not limited to, lease and sublease  
13 agreements, State payment account agreements, escrow deposit  
14 agreements, mortgages, security agreements, pledge agreements, trust  
15 agreements, service agreements, letter of credit agreements, operating  
16 agreements, financing agreements including credit agreements, line of  
17 credit agreements, revolving credit agreements, interest rate exchange  
18 agreements, insurance contracts, surety bonds, purchase or sale  
19 agreement, or commitments or other contracts or agreements entered  
20 into in connection with a structured financing transaction.

21 “Structured financing transaction” means a transaction, or series of  
22 transactions, evidenced by one or more structured financing  
23 agreements, pursuant to which the State conveys to an investor in  
24 return for a State receipt all or a portion of its interest in State assets,  
25 including but not limited to the conveyance of the State’s property  
26 interests in State assets, in order that the investor receives all or a  
27 portion of the benefits in the State assets. A structured financing  
28 transaction shall not include the conveyance of fee simple title interest  
29 to real property<sup>1</sup>, nor entail or permit a change in the operation or  
30 name of a State asset<sup>1</sup>.

31

32 4. Notwithstanding any other provisions of law to the contrary:

33 a. The State Treasurer is authorized to enter into a structured  
34 financing transaction, on such terms, covenants and conditions and at  
35 such times as the State Treasurer may determine, to enter into, execute  
36 and deliver a structured financing agreement, and to do any act  
37 necessary or convenient to carrying out a structured financing  
38 transaction; provided that the State Treasurer shall not enter into a  
39 structured financing transaction relating to any State assets that are  
40 otherwise restricted by law, regulation or contract with respect to the  
41 transfer of the State’s interest in those assets. A structured financing  
42 transaction shall not result in a change in the use or occupancy by the  
43 State of the assets that are the subject of a structured financing  
44 transaction; provided however, that the structured financing  
45 transaction may permit that, upon the occurrence of certain events, the  
46 investor may have the right to exercise certain rights and remedies and

1 to acquire certain interests which may interfere with or terminate the  
2 State's ownership, occupation or use of the assets.

3 b. No consent or approval of any State agency or State authority,  
4 other than the approval as required by subsection a. and subsection c.  
5 of this section, shall be required to effectuate a structured financing  
6 transaction and to enter into, execute, deliver and perform a structured  
7 financing agreement.

8 c. If with respect to assets that are the subject of a structured  
9 financing agreement, the participation of a State agency or State  
10 authority is required, the State Treasurer shall not enter into that  
11 structured financing agreement without the consent of the participating  
12 State agency or State authority, as the case may be, and upon such  
13 consent if given, such State agency or State authority is hereby  
14 authorized, notwithstanding any other law to the contrary, to enter  
15 into, execute, deliver and perform a structured financing agreement  
16 upon such terms and conditions as such State agency, State authority  
17 and the State Treasurer shall determine; and no consent or approval of  
18 any other State agency or State authority, except as otherwise required  
19 by this section, shall be required to authorize entry into, execution,  
20 delivery and performance of a structured financing agreement.  
21 Notwithstanding anything to the contrary, the entry into, execution,  
22 delivery and performance of a structured financing agreement by the  
23 New Jersey Building Authority established pursuant to the "New  
24 Jersey Building Authority Act," P.L.1981, c.120 (C.52:18A-78.1 et  
25 seq.) shall not constitute a "project" for the purposes of the "New  
26 Jersey Building Authority Act."

27 d. The State Treasurer is authorized to select the investors for  
28 structured financing transactions <sup>1</sup> [in such manner as the State  
29 Treasurer deems appropriate] through a public bidding procedure<sup>1</sup>.

30 e. The State Treasurer is authorized to engage, in such manner as  
31 the State Treasurer may determine, the services of financial advisors  
32 and experts, placement agents, underwriters, appraisers, and such  
33 other advisors, consultants and agents as may be necessary in the State  
34 Treasurer's judgment to assist the State Treasurer in carrying out a  
35 structured financing transaction.

36 f. An obligation of the State to make payments pursuant to a  
37 structured financing transaction shall not constitute a general  
38 obligation of the State or a debt or a liability within the meaning of the  
39 State Constitution. An obligation of the State to make payments  
40 pursuant to a structured financing agreement shall be subject to and  
41 dependent upon appropriations being made by the Legislature for the  
42 purposes of this act. The net receipt made in connection with a  
43 structured financing transaction and received by the State Treasurer  
44 shall be deposited in the General Fund of the State.

1       5. a. The State Treasurer may establish a State payment account  
2 for a structured financing transaction. If the State Treasurer  
3 determines that a State payment account should be established, the  
4 State Treasurer is authorized to:

5       (1) Select the payment bank in such manner as the State Treasurer  
6 may determine to be appropriate;

7       (2) Direct the deposit of monies to the payment bank to fund the  
8 State payment account; and

9       (3) Take any actions necessary or convenient in connection with  
10 the establishment of the State payment account.

11       b. There are appropriated such moneys as are required to be  
12 deposited in a State payment account for the purposes specified in the  
13 related structured financing agreement.

14  
15       6. a. <sup>2</sup>Prior to entering into a structured financing transaction, the  
16 State Treasurer shall transmit to the Joint Budget Oversight  
17 Committee, or its successor, a preliminary report that a decision to  
18 enter a structured financing transaction has been made, reciting the  
19 basis on which the decision was made, including an estimate of the  
20 State receipt and net receipt related to the transaction upon which the  
21 State Treasurer relied when making the decision to enter into a  
22 structured financing transaction.

23       b. The Joint Budget Oversight Committee, or its successor, shall  
24 have authority to approve or disapprove of the structured financing  
25 transaction as included in each preliminary report submitted in  
26 accordance with subsection a. of this section. The committee shall  
27 approve or disapprove the transaction within 10 business days after  
28 physical receipt of the report. The committee shall notify the State  
29 Treasurer in writing of the approval or disapproval as expeditiously as  
30 possible.

31       c. No structured financing transaction shall be entered into unless  
32 the preliminary report has been submitted to and approved by the Joint  
33 Budget Oversight Committee, or its successor, as set forth in  
34 subsection b. of this section.

35       d. <sup>2</sup> The State Treasurer shall, within 60 days after completing a  
36 structured financing agreement, submit a <sup>2</sup>final<sup>2</sup> report prepared  
37 pursuant to this section to the Joint Budget Oversight Committee and  
38 a copy of the <sup>2</sup>final<sup>2</sup> report to the Director of the Division of Budget  
39 and Accounting in the Department of the Treasury.

40       <sup>2</sup>[b.] e. <sup>2</sup> A <sup>2</sup>final<sup>2</sup> report for a structured financing agreement shall  
41 include a detailed explanation of the terms of the structured financing  
42 agreement including, but not limited to, the investor's obligations, the  
43 State assets, the amount of the State receipt, transaction charges and  
44 service agreements entered into as part of the structured financing  
45 transaction and the names of the parties to those agreements and  
46 those persons providing the services of counsel, financial advisors,

1 payment bank, rating agencies, trustee, credit enhancement, liquidity  
2 facility; and the fees charged for those services.

3  
4 7. Nothing in this act shall be deemed or construed as to limit, alter  
5 or impair in any way the rights and obligations of the State, a State  
6 agency or a State authority under the provisions of contracts made  
7 with the holders from time to time of bonds, notes and other  
8 obligations heretofore or hereafter issued by the State, a State agency  
9 or a State authority with respect to assets that are the subject of a  
10 structured financing transaction.

11  
12 8. No State Treasurer or any officer, director or employee of any  
13 State agency or State authority executing a structured financing  
14 agreement pursuant to this act shall be personally liable for any debt,  
15 obligation or other liability of the State, State agency, or State  
16 authority incurred by or on behalf of the State, State agency or State  
17 authority arising from a structured financing agreement.

18  
19 9. The exercise of the powers granted by this act shall constitute  
20 the performance of an essential governmental function and no person  
21 shall be required to pay taxes or assessments upon or in respect of a  
22 State asset. The entry into, filing, and performance of a structured  
23 financing transaction and a structured financing agreement shall be free  
24 from taxation by any unit of local government including, without  
25 limitation, taxation imposed upon the filing of a structured financing  
26 agreement. No person shall be deemed to be doing business, or  
27 employing or owning capital or property in this State, for purposes of  
28 P.L.1945, c.162 (C.54:10A-1 et seq.), by reason of the entry into and  
29 performance of a structured financing agreement.

30  
31 <sup>1</sup>10. Notwithstanding any law to the contrary, the State Treasurer  
32 shall establish procedures under which a county or municipal  
33 governing board or a board of education may undertake structured  
34 financing agreements involving local assets in a manner similar to that  
35 provided for State assets.<sup>1</sup>

36  
37 <sup>1</sup>~~10.~~ 11.<sup>1</sup> This act shall be deemed to provide an additional,  
38 alternative and complete method for the doing of the things authorized  
39 hereby and shall be deemed and construed to be supplemental and  
40 additional to any powers conferred by other laws on public entities and  
41 not in derogation of any such powers now existing, provided that, it  
42 is the intent of the Legislature that in the event of any conflict or  
43 inconsistency in this act and any other law, general, special, or local  
44 now in existence or hereafter (unless with specific reference to this  
45 act) adopted, pertaining to matters herein established or provided, to  
46 the extent of the conflict or inconsistency, the provisions of this act



1 shall be enforced and the provisions of the other acts shall be of no  
2 effect.

3

4 <sup>1</sup>~~11.~~ 12.<sup>1</sup> If any clause, sentence, paragraph, section or part of  
5 this act shall be adjudged by any court of competent jurisdiction to be  
6 invalid, the judgment shall not affect, impair or invalidate the  
7 remainder thereof, but shall be confined in its operation to the clause,  
8 sentence, paragraph, section or part thereof directly involved in the  
9 controversy in which the judgement shall have been rendered.

10

11 <sup>1</sup>~~12.~~ 13.<sup>1</sup> This act shall be construed liberally to effectuate the  
12 legislative intent and the purposes of this act as complete and  
13 independent authority for the performance of each and every act and  
14 thing herein authorized and all powers herein granted shall be broadly  
15 interpreted to effectuate such intent and purposes and not as a  
16 limitation of powers.

17

18 <sup>1</sup>~~13.~~ 14.<sup>1</sup> This act shall take effect immediately.

19

20

21

22

23 \_\_\_\_\_  
The "Structured Financing Act."

# ASSEMBLY, No. 2964

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 15, 1999

**Sponsored by:**

**Assemblyman RICHARD H. BAGGER**

**District 22 (Middlesex, Morris, Somerset and Union)**

**Assemblyman JOEL WEINGARTEN**

**District 21 (Essex and Union)**

**SYNOPSIS**

The "Structured Financing Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/19/1999)**

1 AN ACT authorizing the undertaking by the State of structured  
2 financing transactions, supplementing Title 52 of the Revised  
3 Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. This act shall be known and may be cited as the "Structured  
9 Financing Act."

10  
11 2. The Legislature finds and declares that:

12 a. In this era of limited sources of State revenues coupled with the  
13 increasing demands placed on State government to fulfill its  
14 governmental functions, the need exists to maximize the value of the  
15 State's assets;

16 b. One possible way of maximizing such value is to utilize new and  
17 innovative financing structures which take advantage of the State's  
18 existing assets;

19 c. A new and innovative financing structure that has been  
20 developed is the structured financing transaction whereby a  
21 governmental entity, such as the State, can obtain additional revenues  
22 by conveying its interest in its assets to other parties and by so  
23 conveying such interests, transfer certain benefits which the State  
24 enjoys in connection with its assets, which would have value to the  
25 other party but of which the State cannot take advantage;

26 d. Entry into such structured financing transactions is not intended  
27 to interfere with the State's ownership, occupation or use of its assets,  
28 although under the terms of a structured financing transaction, upon  
29 the occurrence of certain events, the other party may have the right to  
30 exercise certain rights and remedies and to acquire certain interests  
31 which may interfere with the State's ownership, occupation or use of  
32 its assets;

33 e. By the State entering into such structured financing transactions,  
34 the State can obtain additional revenues required to carry out its  
35 governmental functions without affecting the use by the State of its  
36 assets for its governmental functions;

37 f. It is in the best interests of the State to authorize the State  
38 Treasurer to enter into structured financing transactions and to  
39 provide the State Treasurer with flexibility in designing these  
40 transactions to realize the greatest benefit to the State.

41  
42 3. As used in this act,

43 "Assets" means all property, both real, personal or mixed, tangible  
44 or intangible, of any type and all rights, easements, privileges or  
45 interests of any kind or description in, relating to, or connected with  
46 property, including but not limited to, land, buildings, plants,

1 structures, institutions, water supply facilities, resource recovery  
2 facilities, sewage treatment facilities, wastewater treatment facilities,  
3 transportation facilities, highways, parking facilities, equipment, motor  
4 vehicles, rolling stock, machinery, furniture, leasehold improvements,  
5 fixtures, space rights, development rights, and air rights.

6 “Benefits” means benefits, including but not limited to tax benefits,  
7 which the State enjoys as a result of its ownership, use or occupancy  
8 of its assets of which the State cannot take advantage but which would  
9 have value to an investor if those assets were transferred to the  
10 investor.

11 “Investor” means a person who enters into a structured financing  
12 transaction pursuant to which the investor agrees to pay consideration  
13 to the State in return for the transfer to the investor of the State’s  
14 benefits enjoyed in connection with certain State assets.

15 “Land” means real property, including improvements thereof or  
16 thereon, rights-of-way, lands under water, water, riparian and other  
17 rights, easements, privileges and all other rights or interest of any kind  
18 or description in, relating to or connected with real property.

19 “Net receipt” means the State receipt less the amount deposited  
20 into the State payment account.

21 “Payment bank” means a bank, trust company, savings bank,  
22 investment company, financial institution or any other person carrying  
23 on a banking or financial business which may be selected by the State  
24 to hold the State payment account in connection with a structured  
25 financing transaction.

26 “State asset” means any asset that the State owns, or leases,  
27 operates or otherwise has a property interest therein in conjunction  
28 with other State agencies and State authorities.

29 “State receipt” means an amount of money paid to the State by the  
30 investor representing the consideration paid by the investor to the  
31 State pursuant to a structured financing agreement.

32 “State payment account” means an account to be established with  
33 a payment bank by the State and used to pay the State’s payment  
34 obligations under a structured financing agreement.

35 “State authority” means a public body established by statute as an  
36 instrumentality of the State exercising public and essential  
37 governmental functions.

38 “State agency” means a department, division, commission, board,  
39 bureau or agency of the State.

40 “Structured financing agreement” means an agreement, contract or  
41 action taken to authorize, implement and finance a structured financing  
42 transaction including, but not limited to, lease and sublease  
43 agreements, State payment account agreements, escrow deposit  
44 agreements, mortgages, security agreements, pledge agreements, trust  
45 agreements, service agreements, letter of credit agreements, operating  
46 agreements, financing agreements including credit agreements, line of

1 credit agreements, revolving credit agreements, interest rate exchange  
2 agreements, insurance contracts, surety bonds, purchase or sale  
3 agreement, or commitments or other contracts or agreements entered  
4 into in connection with a structured financing transaction.

5 “Structured financing transaction” means a transaction, or series of  
6 transactions, evidenced by one or more structured financing  
7 agreements, pursuant to which the State conveys to an investor in  
8 return for a State receipt all or a portion of its interest in State assets,  
9 including but not limited to the conveyance of the State’s property  
10 interests in State assets, in order that the investor receives all or a  
11 portion of the benefits in the State assets. A structured financing  
12 transaction shall not include the conveyance of fee simple title interest  
13 to real property.

14  
15 4. Notwithstanding any other provisions of law to the contrary:

16 a. The State Treasurer is authorized to enter into a structured  
17 financing transaction, on such terms, covenants and conditions and at  
18 such times as the State Treasurer may determine, to enter into, execute  
19 and deliver a structured financing agreement, and to do any act  
20 necessary or convenient to carrying out a structured financing  
21 transaction; provided that the State Treasurer shall not enter into a  
22 structured financing transaction relating to any State assets that are  
23 otherwise restricted by law, regulation or contract with respect to the  
24 transfer of the State’s interest in those assets. A structured financing  
25 transaction shall not result in a change in the use or occupancy by the  
26 State of the assets that are the subject of a structured financing  
27 transaction; provided however, that the structured financing  
28 transaction may permit that, upon the occurrence of certain events, the  
29 investor may have the right to exercise certain rights and remedies and  
30 to acquire certain interests which may interfere with or terminate the  
31 State’s ownership, occupation or use of the assets.

32 b. No consent or approval of any State agency or State authority,  
33 other than the approval as required by subsection a. and subsection c.  
34 of this section, shall be required to effectuate a structured financing  
35 transaction and to enter into, execute, deliver and perform a structured  
36 financing agreement.

37 c. If with respect to assets that are the subject of a structured  
38 financing agreement, the participation of a State agency or State  
39 authority is required, the State Treasurer shall not enter into that  
40 structured financing agreement without the consent of the participating  
41 State agency or State authority, as the case may be, and upon such  
42 consent if given, such State agency or State authority is hereby  
43 authorized, notwithstanding any other law to the contrary, to enter  
44 into, execute, deliver and perform a structured financing agreement  
45 upon such terms and conditions as such State agency, State authority  
46 and the State Treasurer shall determine; and no consent or approval of

1 any other State agency or State authority, except as otherwise required  
2 by this section, shall be required to authorize entry into, execution,  
3 delivery and performance of a structured financing agreement.  
4 Notwithstanding anything to the contrary, the entry into, execution,  
5 delivery and performance of a structured financing agreement by the  
6 New Jersey Building Authority established pursuant to the "New  
7 Jersey Building Authority Act," P.L.1981, c.120 (C.52:18A-78.1 et  
8 seq.) shall not constitute a "project" for the purposes of the "New  
9 Jersey Building Authority Act."

10 d. The State Treasurer is authorized to select the investors for  
11 structured financing transactions in such manner as the State Treasurer  
12 deems appropriate.

13 e. The State Treasurer is authorized to engage, in such manner as  
14 the State Treasurer may determine, the services of financial advisors  
15 and experts, placement agents, underwriters, appraisers, and such  
16 other advisors, consultants and agents as may be necessary in the State  
17 Treasurer's judgment to assist the State Treasurer in carrying out a  
18 structured financing transaction.

19 f. An obligation of the State to make payments pursuant to a  
20 structured financing transaction shall not constitute a general  
21 obligation of the State or a debt or a liability within the meaning of the  
22 State Constitution. An obligation of the State to make payments  
23 pursuant to a structured financing agreement shall be subject to and  
24 dependent upon appropriations being made by the Legislature for the  
25 purposes of this act. The net receipt made in connection with a  
26 structured financing transaction and received by the State Treasurer  
27 shall be deposited in the General Fund of the State.

28

29 5. a. The State Treasurer may establish a State payment account  
30 for a structured financing transaction. If the State Treasurer  
31 determines that a State payment account should be established, the  
32 State Treasurer is authorized to:

33 (1) Select the payment bank in such manner as the State Treasurer  
34 may determine to be appropriate;

35 (2) Direct the deposit of monies to the payment bank to fund the  
36 State payment account; and

37 (3) Take any actions necessary or convenient in connection with  
38 the establishment of the State payment account.

39 b. There are appropriated such moneys as are required to be  
40 deposited in a State payment account for the purposes specified in the  
41 related structured financing agreement.

42

43 6. a. The State Treasurer shall, within 60 days after completing a  
44 structured financing agreement, submit a report prepared pursuant to  
45 this section to the Joint Budget Oversight Committee and a copy of  
46 the report to the Director of the Division of Budget and Accounting

1 in the Department of the Treasury.

2 b. A report for a structured financing agreement shall include a  
3 detailed explanation of the terms of the structured financing agreement  
4 including, but not limited to, the investor's obligations, the State  
5 assets, the amount of the State receipt, transaction charges and service  
6 agreements entered into as part of the structured financing transaction  
7 and the names of the parties to those agreements and those persons  
8 providing the services of counsel, financial advisors, payment bank,  
9 rating agencies, trustee, credit enhancement, liquidity facility; and the  
10 fees charged for those services.

11

12 7. Nothing in this act shall be deemed or construed as to limit, alter  
13 or impair in any way the rights and obligations of the State, a State  
14 agency or a State authority under the provisions of contracts made  
15 with the holders from time to time of bonds, notes and other  
16 obligations heretofore or hereafter issued by the State, a State agency  
17 or a State authority with respect to assets that are the subject of a  
18 structured financing transaction.

19

20 8. No State Treasurer or any officer, director or employee of any  
21 State agency or State authority executing a structured financing  
22 agreement pursuant to this act shall be personally liable for any debt,  
23 obligation or other liability of the State, State agency, or State  
24 authority incurred by or on behalf of the State, State agency or State  
25 authority arising from a structured financing agreement.

26

27 9. The exercise of the powers granted by this act shall constitute  
28 the performance of an essential governmental function and no person  
29 shall be required to pay taxes or assessments upon or in respect of a  
30 State asset. The entry into, filing, and performance of a structured  
31 financing transaction and a structured financing agreement shall be free  
32 from taxation by any unit of local government including, without  
33 limitation, taxation imposed upon the filing of a structured financing  
34 agreement. No person shall be deemed to be doing business, or  
35 employing or owning capital or property in this State, for purposes of  
36 P.L.1945, c.162 (C.54:10A-1 et seq.), by reason of the entry into and  
37 performance of a structured financing agreement.

38

39 10. This act shall be deemed to provide an additional, alternative  
40 and complete method for the doing of the things authorized hereby and  
41 shall be deemed and construed to be supplemental and additional to  
42 any powers conferred by other laws on public entities and not in  
43 derogation of any such powers now existing, provided that, it is the  
44 intent of the Legislature that in the event of any conflict or  
45 inconsistency in this act and any other law, general, special, or local  
46 now in existence or hereafter (unless with specific reference to this

1 act) adopted, pertaining to matters herein established or provided, to  
2 the extent of the conflict or inconsistency, the provisions of this act  
3 shall be enforced and the provisions of the other acts shall be of no  
4 effect.

5  
6 11. If any clause, sentence, paragraph, section or part of this act  
7 shall be adjudged by any court of competent jurisdiction to be invalid,  
8 the judgment shall not affect, impair or invalidate the remainder  
9 thereof, but shall be confined in its operation to the clause, sentence,  
10 paragraph, section or part thereof directly involved in the controversy  
11 in which the judgement shall have been rendered.

12  
13 12. This act shall be construed liberally to effectuate the legislative  
14 intent and the purposes of this act as complete and independent  
15 authority for the performance of each and every act and thing herein  
16 authorized and all powers herein granted shall be broadly interpreted  
17 to effectuate such intent and purposes and not as a limitation of  
18 powers.

19  
20 13. This act shall take effect immediately.

21  
22  
23 STATEMENT  
24

25 This bill authorizes the State Treasurer to enter into structured  
26 financing transactions, whereby the State Treasurer transfers an  
27 interest of the State in assets of the State, its departments and its  
28 authorities, to an investor in return for the receipt by the State of  
29 payment.

30 The structured financing transaction is a new and innovative  
31 financing technique. Government entities like the State of New Jersey  
32 own large inventories of real and tangible personal property assets.  
33 These assets often are associated with certain benefits that have value  
34 to private sector parties but that have no value to a government entity.  
35 A government entity can obtain additional revenue by transferring the  
36 assets and their benefits to a party that can use the benefits and then  
37 taking back just the asset. Such transactions include tax-oriented  
38 lease/leaseback arrangements.

39 The bill provides the State Treasurer with flexibility with respect to  
40 the types of transactions it authorizes, provided however, that these  
41 transactions cannot involve assets for which the transfer of any interest  
42 is otherwise restricted by law, regulation or contract. The assets that  
43 can be the subject of a structured financing transaction are broadly  
44 defined to include all types of property, including real, personal and  
45 mixed property and all rights, easements, privileges or interests of any  
46 kind relating to property. The entry into a structured financing



1 transaction shall not result in the change in the use or occupancy by  
2 the State of the assets that are the subject of a structured financing  
3 transaction, although the structured financing transaction may provide  
4 that upon the occurrence of certain events, the investor may have the  
5 right to exercise certain rights and remedies and to acquire certain  
6 interests which may interfere with the State's ownership, occupation  
7 or use of its assets.

8 The bill authorizes the State Treasurer to enter into a wide variety  
9 of structured financing agreements to implement a structured financing  
10 transaction. The State Treasurer may determine in the State  
11 Treasurer's judgment whether a payment account with a bank should  
12 be established to be funded by the investor and used to pay the State's  
13 payment obligations arising under a structured financing agreement,  
14 subject to the appropriation of the funds as appropriated by this bill.  
15 The bill authorizes the State Treasurer to select the investors, financial  
16 advisors, placement agents, underwriters, appraisers and such other  
17 advisors, consultants and agents as may be necessary to assist the  
18 State Treasurer in carrying out any structured financing transaction.

19 The bill clarifies that the obligation of the State to make payments  
20 pursuant to any structured financing transaction shall not constitute a  
21 general obligation of the State or a debt or a liability within the  
22 meaning of the State Constitution and any obligation of the State to  
23 make payments pursuant to a structured financing transaction shall be  
24 subject to and dependent upon appropriations being made by the  
25 Legislature for the purposes of this act. The net of the total State  
26 receipt by the State Treasurer (representing the consideration paid by  
27 the investor to the State in return for the transfer of the State's  
28 benefits enjoyed in connection with certain State assets) over the  
29 amount deposited into the State payment account (representing the  
30 amount required to generate the total of the State's payment  
31 obligations under a structured financing agreement) shall be deposited  
32 in the General Fund of the State. The entry into and performance of  
33 a structured financing transaction shall be exempt from all local taxes  
34 and shall not by itself establish State jurisdiction over an investor for  
35 corporation business tax purposes.

36 The act takes effect immediately.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2964

# STATE OF NEW JERSEY

DATED: MARCH 18, 1999

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2964.

Assembly Bill No. 2964 authorizes the State Treasurer to enter into structured financing transactions, whereby the State Treasurer transfers an interest of the State in assets of the State, its departments and its authorities, to an investor in return for the receipt by the State of payment.

Government entities like the State of New Jersey own large inventories of real and tangible personal property assets. These assets often are associated with certain benefits that have value to private sector parties but that have no value to a government entity. A government entity can obtain additional revenue by transferring the assets and their benefits to a party that can use the benefits and then taking back just the asset. Such transactions include tax-oriented lease/leaseback arrangements.

The bill provides the State Treasurer with flexibility with respect to the types of transactions it authorizes, provided however, that these transactions cannot involve assets for which the transfer of any interest is otherwise restricted by law, regulation or contract. The assets that can be the subject of a structured financing transaction are broadly defined to include all types of property, including real, personal and mixed property and all rights, easements, privileges or interests of any kind relating to property. The entry into a structured financing transaction shall not result in the change in the use or occupancy by the State of the assets that are the subject of a structured financing transaction, although the structured financing transaction may provide that upon the occurrence of certain events, the investor may have the right to exercise certain rights and remedies and to acquire certain interests which may interfere with the State's ownership, occupation or use of its assets.

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction. The State Treasurer may determine in the State Treasurer's judgment whether a payment account with a bank should be established to be funded by the investor and used to pay the State's payment obligations arising under a structured financing agreement, subject to the appropriation of the funds as appropriated by this bill.

The bill authorizes the State Treasurer to select the investors, financial advisors, placement agents, underwriters, appraisers and such other advisors, consultants and agents as may be necessary to assist the State Treasurer in carrying out any structured financing transaction.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction shall not constitute a general obligation of the State or a debt or a liability within the meaning of the State Constitution and any obligation of the State to make payments pursuant to a structured financing transaction shall be subject to and dependent upon appropriations being made by the Legislature for the purposes of this act. The net of the total State receipt by the State Treasurer (representing the consideration paid by the investor to the State in return for the transfer of the State's benefits enjoyed in connection with certain State assets) over the amount deposited into the State payment account (representing the amount required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund of the State. The entry into and performance of a structured financing transaction shall be exempt from all local taxes and shall not by itself establish State jurisdiction over an investor for corporation business tax purposes.

**FISCAL IMPACT:**

The Department of the Treasury has noted that structured financing transactions generally have a net yield after transaction costs of 5% of the value of the underlying asset. The department has identified properties appropriate for structured financing transactions having an asset value of approximately \$400 million, and the expected return from agreements concerning those assets is \$20 million.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 2964**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 20, 1999

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2964 (1R).

This bill authorizes the State Treasurer to enter into structured financing transactions whereby the State Treasurer transfers an interest of the State in assets of the State, its departments, or its authorities to an investor in return for payment of money to the State.

Government entities, such as the State of New Jersey, own large inventories of real and tangible personal property assets. These assets often are associated with certain benefits that have value to private sector parties but that have no value to a government entity. A government entity can obtain additional revenue by transferring the assets and their benefits to a party that can use the benefits and then taking back just the asset. Such transactions include tax-oriented lease/leaseback arrangements.

This bill gives the State Treasurer flexibility with respect to the types of transactions it authorizes, subject to the limitation that these transactions cannot involve assets for which the transfer of any interest is otherwise restricted by law, regulation or contract. The assets that may be the subject of a structured financing transaction are broadly defined to include all types of property, including real, personal and mixed property and all rights, easements, privileges or interests of any kind relating to property. The entry into a structured financing transaction shall not result in a change in the use or occupancy by the State of the assets that are the subject of the transaction, although the transaction agreement may provide that upon the occurrence of certain events, the investor may have the right to exercise certain rights and remedies and to acquire certain interests that may interfere with the State's ownership, occupation or use of its assets.

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction. The State Treasurer may determine whether a payment account with a bank should be established to be funded by the investor

and used to pay the State's payment obligations arising under a structured financing agreement, subject to the appropriation of the funds as appropriated by this bill. The bill authorizes the State Treasurer to select the investors, financial advisors, placement agents, underwriters, appraisers and such other advisors, consultants and agents as may be necessary to assist the State Treasurer in carrying out any structured financing transaction.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction shall not constitute a general obligation of the State or a debt or a liability within the meaning of the State Constitution, and any obligation of the State to make payments pursuant to a structured financing transaction shall be subject to and dependent upon appropriations made by the Legislature for the purposes of the legislation. The net of the total State receipt by the State Treasurer (representing the consideration paid by the investor to the State in return for the transfer of the State's benefits enjoyed in connection with certain State assets) over the amount deposited into the State payment account (representing the amount required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund of the State. The entry into and performance of a structured financing transaction shall be exempt from all local taxes and shall not by itself establish State jurisdiction over an investor for corporation business tax purposes.

The bill authorizes the State Treasurer to establish procedures under which a county, municipality, or school district could undertake structured financing agreements similar to the kind of agreement that the bill allows the State to make.

As amended, this bill is identical to Senate Bill No. 1790 (1R).

#### COMMITTEE AMENDMENTS

Committee amendments to the bill require that, prior to entering into a structured financing transaction involving assets of a State entity, the State Treasurer shall submit a preliminary report of the proposed transaction to the Legislature's Joint Budget Oversight Committee for its approval.

#### FISCAL IMPACT

The Department of the Treasury has noted that structured financing transactions generally have a net yield after transaction costs of 5% of the value of the underlying asset. The department has identified properties appropriate for structured financing transactions having an asset value of approximately \$400 million, and the expected return from agreements concerning those assets is \$20 million.

STATEMENT TO  
**ASSEMBLY, No. 2964**

with Assembly Floor Amendments  
(Proposed By Assemblymen BAGGER and SULIGA)

ADOPTED: MARCH 29, 1999

These amendments provide that the State Treasurer shall develop procedures under which local governmental units and boards of education may also enter into structured financing agreements. In addition the amendments provide that the selection of investors must be made through a public bidding procedure. The amendments further provide that the agreement shall not result in a change of the operation or name of the asset.

# LEGISLATIVE FISCAL ESTIMATE

## ASSEMBLY, No. 2964

# STATE OF NEW JERSEY

## 208th LEGISLATURE

DATED: APRIL 23, 1999

Assembly Bill No. 2964 of 1999 authorizes the State Treasurer to enter into "structured financing transactions."

The State of New Jersey owns inventories of real and tangible personal property assets that are associated with certain benefits that have value to private sector parties but that have no value to a government entity. The bill authorizes a structured transaction that has the effect of allowing the sale of just those benefits that have value to other parties. The bill does this by authorizing the transfer of the whole package, the State asset and its benefits, and structuring a transaction that allows the State to, in effect, take back the asset and leave the benefit with the other party. Transactions of this kind include tax-oriented lease/leaseback arrangements.

The bill provides the State Treasurer with flexibility with respect to the types of transactions it authorizes. However, these transactions cannot involve assets the transfer of which is otherwise restricted by law, regulation or contract, and entry into a transaction may not result in the change in the use or occupancy by the State of the subject asset (although the transaction may provide contingent investor rights that may interfere with the State's use of its assets).

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction. The State Treasurer may determine whether to establish a payment account to be funded by the investor and used to pay the State's payment obligations arising under a structured financing agreement. The bill authorizes the State Treasurer to select the professionals necessary to assist the State Treasurer in carrying out any structured financing transaction.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction is not a general obligation of the State within the meaning of the State Constitution and that any payments pursuant to a structured financing transaction are dependent upon appropriations being made by the Legislature. The net of the total State receipt by the State Treasurer (the investor payment for the transfer of the State's benefits in a State asset) over the amount deposited into the State payment account (the amount

required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund.

The bill exempts the entry into and performance of a structured financing transaction from all local taxes and provides that the entry does not by itself establish State jurisdiction over an investor for corporation business tax purposes.

**FISCAL IMPACT**

The Department of the Treasury has noted that structured financing transactions generally have a net yield after transaction costs of 5 percent of the value of the underlying asset. The department has identified properties appropriate for structured financing transactions having an asset value of approximately \$400 million, and the expected return from agreements concerning those assets is \$20 million.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.



# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## **ASSEMBLY, No. 2964**

# **STATE OF NEW JERSEY**

## **208th LEGISLATURE**

DATED: MAY 3, 1999

Assembly Bill No. 2964 (1R) of 1999 authorizes the State Treasurer, county and municipal governing boards and boards of education to enter into "structured financing transactions."

The State of New Jersey and other government units own inventories of real and tangible personal property assets that are associated with certain benefits that have value to private sector parties but that have no value to a government entity. The bill authorizes a structured transaction that has the effect of allowing the sale of just those benefits that have value to other parties. The bill does this by authorizing the transfer of the whole package, the asset and its benefits, and structuring a transaction that allows the State or local government unit to, in effect, take back the asset and leave the benefit with the other party. Transactions of this kind include tax-oriented lease/leaseback arrangements.

The bill provides the State Treasurer, who determines the procedures to apply to local government units and has responsibility for implementing structured financing transactions for State assets, with flexibility with respect to the types of transactions authorized. However, these transactions cannot involve assets the transfer of which is otherwise restricted by law, regulation or contract, and entry into a transaction may not result in the change in the use, occupancy, operation or name of the subject asset (although the transaction may provide contingent investor rights that may interfere with the State's or local government unit's use of its assets).

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction involving State assets, provided however that the selection of investors must be through a public bidding procedure. The State Treasurer may determine whether to establish a payment account to be funded by the investor and used to pay the State's payment obligations arising under a structured financing agreement. The bill authorizes the State Treasurer to select the professionals necessary to assist the State Treasurer in carrying out any structured financing transaction

involving a State asset.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction concerning a State asset is not a general obligation of the State within the meaning of the State Constitution and that any payments pursuant to a structured financing transaction concerning a State asset are dependent upon appropriations being made by the Legislature. The net of the total State receipt by the State Treasurer (the investor payment for the transfer of the State's benefits in a State asset) over the amount deposited into the State payment account (the amount required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund.

The bill exempts the entry into and performance of a structured financing transaction from all local taxes and provides that the entry does not by itself establish State jurisdiction over an investor for corporation business tax purposes.

The bill requires the State Treasurer to establish procedures under which a county or municipal governing board or a board of education may undertake structured financing agreements involving local assets in a manner similar to that provided for State assets.

#### **FISCAL IMPACT**

The Department of the Treasury has identified four State properties appropriate for structured financing transactions, that is, having a substantial asset value unencumbered by current financing or bond restrictions with substantial depreciation potential, having a total asset value of approximately \$400 million. The department has noted that structured financing transactions concerning such property generally have a net yield after transaction costs of 5% of the value of the underlying asset, so the department identifies expected returns from agreements concerning those assets at \$20 million.

No identification of county, municipal or a board of education properties appropriate for structured financing transactions is currently available; the local government units would be expected to have fewer properties with average asset value of \$100 million. No information is currently available concerning relative transaction costs for lower-valued assets. According to the United States General Accounting Office report Tax Policy: Tax-exempt Bond Issuance Costs (December, 1989), the costs of issues of state and local government tax-exempt debt varied from 2 percent to 7 percent of the of the face amount of the debt issues studied. The reported differences in issuance costs were identified by the report as being largely a function of the size of the debt issue relative to the fixed costs, largely professional services, of debt issue. If similar size effects occur in the costs of structured financing transactions, it is possible that net yields from structured financing transactions involving lower valued assets

would be minimal.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**SENATE, No. 1790**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED MARCH 22, 1999

**Sponsored by:**

**Senator WILLIAM L. GORMLEY**

**District 2 (Atlantic)**

**SYNOPSIS**

The "Structured Financing Act."

**CURRENT VERSION OF TEXT**

As introduced.



S1790 GORMLEY

2

1 AN ACT authorizing the undertaking by the State of structured  
2 financing transactions, supplementing Title 52 of the Revised  
3 Statutes.

4

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

7

8 1. This act shall be known and may be cited as the "Structured  
9 Financing Act."

10

11 2. The Legislature finds and declares that:

12 a. In this era of limited sources of State revenues coupled with the  
13 increasing demands placed on State government to fulfill its  
14 governmental functions, the need exists to maximize the value of the  
15 State's assets;

16 b. One possible way of maximizing such value is to utilize new and  
17 innovative financing structures which take advantage of the State's  
18 existing assets;

19 c. A new and innovative financing structure that has been  
20 developed is the structured financing transaction whereby a  
21 governmental entity, such as the State, can obtain additional revenues  
22 by conveying its interest in its assets to other parties and by so  
23 conveying such interests, transfer certain benefits which the State  
24 enjoys in connection with its assets, which would have value to the  
25 other party but of which the State cannot take advantage;

26 d. Entry into such structured financing transactions is not intended  
27 to interfere with the State's ownership, occupation or use of its assets,  
28 although under the terms of a structured financing transaction, upon  
29 the occurrence of certain events, the other party may have the right to  
30 exercise certain rights and remedies and to acquire certain interests  
31 which may interfere with the State's ownership, occupation or use of  
32 its assets;

33 e. By the State entering into such structured financing transactions,  
34 the State can obtain additional revenues required to carry out its  
35 governmental functions without affecting the use by the State of its  
36 assets for its governmental functions;

37 f. It is in the best interests of the State to authorize the State  
38 Treasurer to enter into structured financing transactions and to  
39 provide the State Treasurer with flexibility in designing these  
40 transactions to realize the greatest benefit to the State.

41

42 3. As used in this act,

43 "Assets" means all property, both real, personal or mixed, tangible  
44 or intangible, of any type and all rights, easements, privileges or  
45 interests of any kind or description in, relating to, or connected with  
46 property, including but not limited to, land, buildings, plants,

1 structures, institutions, water supply facilities, resource recovery  
2 facilities, sewage treatment facilities, wastewater treatment facilities,  
3 transportation facilities, highways, parking facilities, equipment, motor  
4 vehicles, rolling stock, machinery, furniture, leasehold improvements,  
5 fixtures, space rights, development rights, and air rights.

6 “Benefits” means benefits, including but not limited to tax benefits,  
7 which the State enjoys as a result of its ownership, use or occupancy  
8 of its assets of which the State cannot take advantage but which would  
9 have value to an investor if those assets were transferred to the  
10 investor.

11 “Investor” means a person who enters into a structured financing  
12 transaction pursuant to which the investor agrees to pay consideration  
13 to the State in return for the transfer to the investor of the State’s  
14 benefits enjoyed in connection with certain State assets.

15 “Land” means real property, including improvements thereof or  
16 thereon, rights-of-way, lands under water, water, riparian and other  
17 rights, easements, privileges and all other rights or interest of any kind  
18 or description in, relating to or connected with real property.

19 “Net receipt” means the State receipt less the amount deposited  
20 into the State payment account.

21 “Payment bank” means a bank, trust company, savings bank,  
22 investment company, financial institution or any other person carrying  
23 on a banking or financial business which may be selected by the State  
24 to hold the State payment account in connection with a structured  
25 financing transaction.

26 “State asset” means any asset that the State owns, or leases,  
27 operates or otherwise has a property interest therein in conjunction  
28 with other State agencies and State authorities.

29 “State receipt” means an amount of money paid to the State by the  
30 investor representing the consideration paid by the investor to the  
31 State pursuant to a structured financing agreement.

32 “State payment account” means an account to be established with  
33 a payment bank by the State and used to pay the State’s payment  
34 obligations under a structured financing agreement.

35 “State authority” means a public body established by statute as an  
36 instrumentality of the State exercising public and essential  
37 governmental functions.

38 “State agency” means a department, division, commission, board,  
39 bureau or agency of the State.

40 “Structured financing agreement” means an agreement, contract or  
41 action taken to authorize, implement and finance a structured financing  
42 transaction including, but not limited to, lease and sublease  
43 agreements, State payment account agreements, escrow deposit  
44 agreements, mortgages, security agreements, pledge agreements, trust  
45 agreements, service agreements, letter of credit agreements, operating  
46 agreements, financing agreements including credit agreements, line of

1 credit agreements, revolving credit agreements, interest rate exchange  
2 agreements, insurance contracts, surety bonds, purchase or sale  
3 agreement, or commitments or other contracts or agreements entered  
4 into in connection with a structured financing transaction.

5 “Structured financing transaction” means a transaction, or series of  
6 transactions, evidenced by one or more structured financing  
7 agreements, pursuant to which the State conveys to an investor in  
8 return for a State receipt all or a portion of its interest in State assets,  
9 including but not limited to the conveyance of the State’s property  
10 interests in State assets, in order that the investor receives all or a  
11 portion of the benefits in the State assets. A structured financing  
12 transaction shall not include the conveyance of fee simple title interest  
13 to real property.

14  
15 4. Notwithstanding any other provisions of law to the contrary:

16 a. The State Treasurer is authorized to enter into a structured  
17 financing transaction, on such terms, covenants and conditions and at  
18 such times as the State Treasurer may determine, to enter into, execute  
19 and deliver a structured financing agreement, and to do any act  
20 necessary or convenient to carrying out a structured financing  
21 transaction; provided that the State Treasurer shall not enter into a  
22 structured financing transaction relating to any State assets that are  
23 otherwise restricted by law, regulation or contract with respect to the  
24 transfer of the State’s interest in those assets. A structured financing  
25 transaction shall not result in a change in the use or occupancy by the  
26 State of the assets that are the subject of a structured financing  
27 transaction; provided however, that the structured financing  
28 transaction may permit that, upon the occurrence of certain events, the  
29 investor may have the right to exercise certain rights and remedies and  
30 to acquire certain interests which may interfere with or terminate the  
31 State’s ownership, occupation or use of the assets.

32 b. No consent or approval of any State agency or State authority,  
33 other than the approval as required by subsection a. and subsection c.  
34 of this section, shall be required to effectuate a structured financing  
35 transaction and to enter into, execute, deliver and perform a structured  
36 financing agreement.

37 c. If with respect to assets that are the subject of a structured  
38 financing agreement, the participation of a State agency or State  
39 authority is required, the State Treasurer shall not enter into that  
40 structured financing agreement without the consent of the participating  
41 State agency or State authority, as the case may be, and upon such  
42 consent if given, such State agency or State authority is hereby  
43 authorized, notwithstanding any other law to the contrary, to enter  
44 into, execute, deliver and perform a structured financing agreement  
45 upon such terms and conditions as such State agency, State authority  
46 and the State Treasurer shall determine; and no consent or approval of

**S1790 GORMLEY**

1 any other State agency or State authority, except as otherwise required  
2 by this section, shall be required to authorize entry into, execution,  
3 delivery and performance of a structured financing agreement.  
4 Notwithstanding anything to the contrary, the entry into, execution,  
5 delivery and performance of a structured financing agreement by the  
6 New Jersey Building Authority established pursuant to the "New  
7 Jersey Building Authority Act," P.L.1981, c.120 (C.52:18A-78.1 et  
8 seq.) shall not constitute a "project" for the purposes of the "New  
9 Jersey Building Authority Act."

10 d. The State Treasurer is authorized to select the investors for  
11 structured financing transactions in such manner as the State Treasurer  
12 deems appropriate.

13 e. The State Treasurer is authorized to engage, in such manner as  
14 the State Treasurer may determine, the services of financial advisors  
15 and experts, placement agents, underwriters, appraisers, and such  
16 other advisors, consultants and agents as may be necessary in the State  
17 Treasurer's judgment to assist the State Treasurer in carrying out a  
18 structured financing transaction.

19 f. An obligation of the State to make payments pursuant to a  
20 structured financing transaction shall not constitute a general  
21 obligation of the State or a debt or a liability within the meaning of the  
22 State Constitution. An obligation of the State to make payments  
23 pursuant to a structured financing agreement shall be subject to and  
24 dependent upon appropriations being made by the Legislature for the  
25 purposes of this act. The net receipt made in connection with a  
26 structured financing transaction and received by the State Treasurer  
27 shall be deposited in the General Fund of the State.

28

29 5. a. The State Treasurer may establish a State payment account  
30 for a structured financing transaction. If the State Treasurer  
31 determines that a State payment account should be established, the  
32 State Treasurer is authorized to:

33 (1) Select the payment bank in such manner as the State Treasurer  
34 may determine to be appropriate;

35 (2) Direct the deposit of monies to the payment bank to fund the  
36 State payment account; and

37 (3) Take any actions necessary or convenient in connection with  
38 the establishment of the State payment account.

39 b. There are appropriated such moneys as are required to be  
40 deposited in a State payment account for the purposes specified in the  
41 related structured financing agreement.

42

43 6. a. The State Treasurer shall, within 60 days after completing a  
44 structured financing agreement, submit a report prepared pursuant to  
45 this section to the Joint Budget Oversight Committee and a copy of  
46 the report to the Director of the Division of Budget and Accounting



1 in the Department of the Treasury.

2 b. A report for a structured financing agreement shall include a  
3 detailed explanation of the terms of the structured financing agreement  
4 including, but not limited to, the investor's obligations, the State  
5 assets, the amount of the State receipt, transaction charges and service  
6 agreements entered into as part of the structured financing transaction  
7 and the names of the parties to those agreements and those persons  
8 providing the services of counsel, financial advisors, payment bank,  
9 rating agencies, trustee, credit enhancement, liquidity facility; and the  
10 fees charged for those services.

11

12 7. Nothing in this act shall be deemed or construed as to limit, alter  
13 or impair in any way the rights and obligations of the State, a State  
14 agency or a State authority under the provisions of contracts made  
15 with the holders from time to time of bonds, notes and other  
16 obligations heretofore or hereafter issued by the State, a State agency  
17 or a State authority with respect to assets that are the subject of a  
18 structured financing transaction.

19

20 8. No State Treasurer or any officer, director or employee of any  
21 State agency or State authority executing a structured financing  
22 agreement pursuant to this act shall be personally liable for any debt,  
23 obligation or other liability of the State, State agency, or State  
24 authority incurred by or on behalf of the State, State agency or State  
25 authority arising from a structured financing agreement.

26

27 9. The exercise of the powers granted by this act shall constitute  
28 the performance of an essential governmental function and no person  
29 shall be required to pay taxes or assessments upon or in respect of a  
30 State asset. The entry into, filing, and performance of a structured  
31 financing transaction and a structured financing agreement shall be free  
32 from taxation by any unit of local government including, without  
33 limitation, taxation imposed upon the filing of a structured financing  
34 agreement. No person shall be deemed to be doing business, or  
35 employing or owning capital or property in this State, for purposes of  
36 P.L.1945, c.162 (C.54:10A-1 et seq.), by reason of the entry into and  
37 performance of a structured financing agreement.

38

39 10. This act shall be deemed to provide an additional, alternative  
40 and complete method for the doing of the things authorized hereby and  
41 shall be deemed and construed to be supplemental and additional to  
42 any powers conferred by other laws on public entities and not in  
43 derogation of any such powers now existing, provided that, it is the  
44 intent of the Legislature that in the event of any conflict or  
45 inconsistency in this act and any other law, general, special, or local  
46 now in existence or hereafter (unless with specific reference to this

1 act) adopted, pertaining to matters herein established or provided, to  
2 the extent of the conflict or inconsistency, the provisions of this act  
3 shall be enforced and the provisions of the other acts shall be of no  
4 effect.

5  
6 11. If any clause, sentence, paragraph, section or part of this act  
7 shall be adjudged by any court of competent jurisdiction to be invalid,  
8 the judgment shall not affect, impair or invalidate the remainder  
9 thereof, but shall be confined in its operation to the clause, sentence,  
10 paragraph, section or part thereof directly involved in the controversy  
11 in which the judgement shall have been rendered.

12  
13 12. This act shall be construed liberally to effectuate the legislative  
14 intent and the purposes of this act as complete and independent  
15 authority for the performance of each and every act and thing herein  
16 authorized and all powers herein granted shall be broadly interpreted  
17 to effectuate such intent and purposes and not as a limitation of  
18 powers.

19  
20 13. This act shall take effect immediately.

21  
22  
23 STATEMENT  
24

25 This bill authorizes the State Treasurer to enter into structured  
26 financing transactions, whereby the State Treasurer transfers an  
27 interest of the State in assets of the State, its departments and its  
28 authorities, to an investor in return for the receipt by the State of  
29 payment.

30 The structured financing transaction is a new and innovative  
31 financing technique. Government entities like the State of New Jersey  
32 own large inventories of real and tangible personal property assets.  
33 These assets often are associated with certain benefits that have value  
34 to private sector parties but that have no value to a government entity.  
35 A government entity can obtain additional revenue by transferring the  
36 assets and their benefits to a party that can use the benefits and then  
37 taking back just the asset. Such transactions include tax-oriented  
38 lease/leaseback arrangements.

39 The bill provides the State Treasurer with flexibility with respect to  
40 the types of transactions it authorizes, provided however, that these  
41 transactions cannot involve assets for which the transfer of any interest  
42 is otherwise restricted by law, regulation or contract. The assets that  
43 can be the subject of a structured financing transaction are broadly  
44 defined to include all types of property, including real, personal and  
45 mixed property and all rights, easements, privileges or interests of any  
46 kind relating to property. The entry into a structured financing

1 transaction shall not result in the change in the use or occupancy by  
2 the State of the assets that are the subject of a structured financing  
3 transaction, although the structured financing transaction may provide  
4 that upon the occurrence of certain events, the investor may have the  
5 right to exercise certain rights and remedies and to acquire certain  
6 interests which may interfere with the State's ownership, occupation  
7 or use of its assets.

8 The bill authorizes the State Treasurer to enter into a wide variety  
9 of structured financing agreements to implement a structured financing  
10 transaction. The State Treasurer may determine in the State  
11 Treasurer's judgment whether a payment account with a bank should  
12 be established to be funded by the investor and used to pay the State's  
13 payment obligations arising under a structured financing agreement,  
14 subject to the appropriation of the funds as appropriated by this bill.  
15 The bill authorizes the State Treasurer to select the investors, financial  
16 advisors, placement agents, underwriters, appraisers and such other  
17 advisors, consultants and agents as may be necessary to assist the  
18 State Treasurer in carrying out any structured financing transaction.

19 The bill clarifies that the obligation of the State to make payments  
20 pursuant to any structured financing transaction shall not constitute a  
21 general obligation of the State or a debt or a liability within the  
22 meaning of the State Constitution and any obligation of the State to  
23 make payments pursuant to a structured financing transaction shall be  
24 subject to and dependent upon appropriations being made by the  
25 Legislature for the purposes of this act. The net of the total State  
26 receipt by the State Treasurer (representing the consideration paid by  
27 the investor to the State in return for the transfer of the State's  
28 benefits enjoyed in connection with certain State assets) over the  
29 amount deposited into the State payment account (representing the  
30 amount required to generate the total of the State's payment  
31 obligations under a structured financing agreement) shall be deposited  
32 in the General Fund of the State. The entry into and performance of  
33 a structured financing transaction shall be exempt from all local taxes  
34 and shall not by itself establish State jurisdiction over an investor for  
35 corporation business tax purposes.

36 The act takes effect immediately.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1790**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 20, 1999

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1790.

This bill authorizes the State Treasurer to enter into structured financing transactions whereby the State Treasurer transfers an interest of the State in assets of the State, its departments, or its authorities to an investor in return for payment of money to the State.

Government entities, such as the State of New Jersey, own large inventories of real and tangible personal property assets. These assets often are associated with certain benefits that have value to private sector parties but that have no value to a government entity. A government entity can obtain additional revenue by transferring the assets and their benefits to a party that can use the benefits and then taking back just the asset. Such transactions include tax-oriented lease/leaseback arrangements.

This bill gives the State Treasurer flexibility with respect to the types of transactions it authorizes, subject to the limitation that these transactions cannot involve assets for which the transfer of any interest is otherwise restricted by law, regulation or contract. The assets that may be the subject of a structured financing transaction are broadly defined to include all types of property, including real, personal and mixed property and all rights, easements, privileges or interests of any kind relating to property. The entry into a structured financing transaction shall not result in a change in the use or occupancy by the State of the assets that are the subject of the transaction, although the transaction agreement may provide that upon the occurrence of certain events, the investor may have the right to exercise certain rights and remedies and to acquire certain interests that may interfere with the State's ownership, occupation or use of its assets.

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction. The State Treasurer may determine whether a payment account with a bank should be established to be funded by the investor and used to pay the State's payment obligations arising under a structured financing agreement, subject to the appropriation of the funds as appropriated by this bill. The bill authorizes the State

Treasurer to select the investors, financial advisors, placement agents, underwriters, appraisers and such other advisors, consultants and agents as may be necessary to assist the State Treasurer in carrying out any structured financing transaction.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction shall not constitute a general obligation of the State or a debt or a liability within the meaning of the State Constitution, and any obligation of the State to make payments pursuant to a structured financing transaction shall be subject to and dependent upon appropriations made by the Legislature for the purposes of the legislation. The net of the total State receipt by the State Treasurer (representing the consideration paid by the investor to the State in return for the transfer of the State's benefits enjoyed in connection with certain State assets) over the amount deposited into the State payment account (representing the amount required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund of the State. The entry into and performance of a structured financing transaction shall be exempt from all local taxes and shall not by itself establish State jurisdiction over an investor for corporation business tax purposes.

The bill authorizes the State Treasurer to establish procedures under which a county, municipality, or school district could undertake structured financing agreements similar to the kind of agreement that the bill allows the State to make.

As amended, this bill is identical to Assembly Bill No. 2964 (2R).

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) incorporate the provision authorizing the State Treasurer to establish procedures under which a county, municipality, or school district could undertake structured financing agreements involving local assets similar to those that the bill allows the State to make with respect to State assets; (2) prohibit the inclusion in a structured financing agreement of a change in the operation or name of the subject asset; (3) require that a public bidding procedure be used to select investors in structured financing transactions; and (4) require that, prior to entering into a structured financing transaction involving assets of a State entity, the State Treasurer shall submit a preliminary report of the proposed transaction to the Legislature's Joint Budget Oversight Committee for its approval.

#### FISCAL IMPACT

The Department of the Treasury has noted that structured financing transactions generally have a net yield after transaction costs of 5% of the value of the underlying asset. The department has identified properties appropriate for structured financing transactions having an asset value of approximately \$400 million, and the expected return from agreements concerning those assets is \$20 million.

# LEGISLATIVE FISCAL ESTIMATE

## SENATE, No. 1790

# STATE OF NEW JERSEY

## 208th LEGISLATURE

DATED: MAY 4, 1999

Senate Bill No. 1790 of 1999 authorizes the State Treasurer to enter into "structured financing transactions."

The State of New Jersey owns inventories of real and tangible personal property assets that are associated with certain benefits that have value to private sector parties but that have no value to a government entity. The bill authorizes a structured transaction that has the effect of allowing the sale of just those benefits that have value to other parties. The bill does this by authorizing the transfer of the whole package, the State asset and its benefits, and structuring a transaction that allows the State to, in effect, take back the asset and leave the benefit with the other party. Transactions of this kind include tax-oriented lease/leaseback arrangements.

The bill provides the State Treasurer with flexibility with respect to the types of transactions it authorizes. However, these transactions cannot involve assets the transfer of which is otherwise restricted by law, regulation or contract, and entry into a transaction may not result in the change in the use or occupancy by the State of the subject asset (although the transaction may provide contingent investor rights that may interfere with the State's use of its assets).

The bill authorizes the State Treasurer to enter into a wide variety of structured financing agreements to implement a structured financing transaction. The State Treasurer may determine whether to establish a payment account to be funded by the investor and used to pay the State's payment obligations arising under a structured financing agreement. The bill authorizes the State Treasurer to select the professionals necessary to assist the State Treasurer in carrying out any structured financing transaction.

The bill clarifies that the obligation of the State to make payments pursuant to any structured financing transaction is not a general obligation of the State within the meaning of the State Constitution and that any payments pursuant to a structured financing transaction are dependent upon appropriations being made by the Legislature. The net of the total State receipt by the State Treasurer (the investor payment for the transfer of the State's benefits in a State asset) over the amount deposited into the State payment account (the amount

required to generate the total of the State's payment obligations under a structured financing agreement) shall be deposited in the General Fund.

The bill exempts the entry into and performance of a structured financing transaction from all local taxes and provides that the entry does not by itself establish State jurisdiction over an investor for corporation business tax purposes.

**FISCAL IMPACT**

The Department of the Treasury has noted that structured financing transactions generally have a net yield after transaction costs of 5 percent of the value of the underlying asset. The department has identified properties appropriate for structured financing transactions having an asset value of approximately \$400 million, and the expected return from agreements concerning those assets is \$20 million.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.