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No

P.L. 2003, CHAPTER 106, *approved July 1, 2003*
Assembly, No. 3701

1 **AN ACT** authorizing the extension, to entities participating in
2 structured financing transactions, of rights to immunity from or
3 indemnification for certain legal liabilities, amending P.L.1999,
4 c.157.

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

8
9 1. Section 4 of P.L.1999, c.157 (C.52:31C-4) is amended to read
10 as follows:

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

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

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

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

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.

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 through a public bidding procedure.

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

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

27 g. A structured financing agreement may, upon the determination
28 of the State Treasurer, provide that an entity taking part in a
29 structured financing transaction shall be immune from liability in the
30 same manner and to the same extent as is the State under the
31 provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.,
32 and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

33 h. A structured financing agreement may provide that an entity
34 taking part in a structured financing transaction, and the officers,
35 directors and employees of that entity, shall have a right of
36 indemnification from the State or the State agency or State authority
37 with which the agreement is made for any claim or judgment arising
38 out of assets that are the subject of the structured financing agreement,
39 except that the State, State agency or State authority, as appropriate,
40 shall not indemnify or agree to indemnify such an entity, officer,
41 director or employee for any act or omission to act that constitutes
42 gross negligence, actual malice, actual fraud, willful misconduct or a
43 crime, or that relates to any financial decisions made by the entity and
44 its officers, directors and employees in connection with the structured
45 financing transaction. The State or State agency or State authority
46 may agree to indemnify any entity taking part in a structured financing
47 transaction, and the officers, directors and employees of that entity,

1 for punitive damages for a violation of civil law if such damages do
2 not arise from actions that constitute gross negligence, actual malice,
3 actual fraud or willful misconduct. The State Treasurer may set forth
4 a provision for indemnity under this paragraph in the structured
5 financing agreement upon such terms and conditions as the State
6 Treasurer shall determine.

7 (cf: P.L.1999, c.157, s.4)

8

9 2. Section 10 of P.L.1999, c.157 (C.52:31C-10) is amended to
10 read as follows:

11 10. Notwithstanding any law to the contrary, the State Treasurer
12 shall establish procedures under which a county or municipal
13 governing board, a board of education, a sewerage authority created
14 pursuant to the "sewerage authorities law," P.L.1946, c.138
15 (C.40:14A-1 et seq.), a utilities authority created pursuant to the
16 "municipal and county utilities authorities law," P.L.1957, c.183
17 (C.40:14B-1 et seq.), or the Passaic Valley Sewerage Commissioners,
18 continued pursuant to R.S.58:14-2 may undertake structured financing
19 agreements involving local assets in a manner similar to that provided
20 for State assets, including procedures for the incorporation in such
21 agreements of provisions that accord entities participating in
22 structured financing transactions such rights of immunity and
23 indemnification as the State Treasurer, under paragraphs g. and h. of
24 section 4 of P.L.1999, c.157 (C.52:31C-4), may deem appropriate to
25 be established for entities participating in a structured financing
26 transaction with the State.

27 (cf: P.L.2000, c.54, s.1)

28

29 3. This act shall take effect immediately.

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STATEMENT

33

34 This bill authorizes the State Treasurer to include, in a structured
35 financing agreement authorized under N.J.S.A.52:31C-1 et seq.,
36 provisions establishing for entities participating in a structured
37 financing transaction the same rights of immunity that public entities
38 enjoy under the "New Jersey Tort Claims Act" and the "New Jersey
39 Contractual Liability Act." The bill also allows the State Treasurer to
40 include in such an agreement provisions establishing a participating
41 entity's right to indemnification for claims that, if brought against a
42 public entity, would generally be barred by those acts. Finally, the bill
43 provides that the State Treasurer's authority to establish procedures
44 for local governments to use in undertaking structured financing
45 agreements shall include procedures for the incorporation in such
46 agreements of provisions giving entities participating in structured
47 financing transactions the same rights of immunity and indemnification

1 that may be given to entities participating in structured financing
2 transactions with the State.

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6

7 Authorizes extension of rights of immunity and indemnification to
8 entities participating in structured financing transactions.

ASSEMBLY, No. 3701

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 12, 2003

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Co-Sponsored by:

Senator Sacco

SYNOPSIS

Authorizes extension of rights of immunity and indemnification to entities participating in structured financing transactions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/1/2003)

A3701 WISNIEWSKI

2

1 AN ACT authorizing the extension, to entities participating in
2 structured financing transactions, of rights to immunity from or
3 indemnification for certain legal liabilities, amending P.L.1999,
4 c.157.

5

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

8

9 1. Section 4 of P.L.1999, c.157 (C.52:31C-4) is amended to read
10 as follows:

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

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

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

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

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.

1 delivery and performance of a structured financing agreement.
2 Notwithstanding anything to the contrary, the entry into, execution,
3 delivery and performance of a structured financing agreement by the
4 New Jersey Building Authority established pursuant to the "New
5 Jersey Building Authority Act," P.L.1981, c.120 (C.52:18A-78.1 et
6 seq.) shall not constitute a "project" for the purposes of the "New
7 Jersey Building Authority Act."

8 d. The State Treasurer is authorized to select the investors for
9 structured financing transactions through a public bidding procedure.

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

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

25 g. A structured financing agreement may, upon the determination
26 of the State Treasurer, provide that an entity taking part in a
27 structured financing transaction shall be immune from liability in the
28 same manner and to the same extent as is the State under the
29 provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.,
30 and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

31 h. A structured financing agreement may provide that an entity
32 taking part in a structured financing transaction, and the officers,
33 directors and employees of that entity, shall have a right of
34 indemnification from the State or the State agency or State authority
35 with which the agreement is made for any claim or judgment arising
36 out of assets that are the subject of the structured financing agreement,
37 except that the State, State agency or State authority, as appropriate,
38 shall not indemnify or agree to indemnify such an entity, officer,
39 director or employee for any act or omission to act that constitutes
40 gross negligence, actual malice, actual fraud, willful misconduct or a
41 crime, or that relates to any financial decisions made by the entity and
42 its officers, directors and employees in connection with the structured
43 financing transaction. The State or State agency or State authority
44 may agree to indemnify any entity taking part in a structured financing
45 transaction, and the officers, directors and employees of that entity,
46 for punitive damages for a violation of civil law if such damages do
47 not arise from actions that constitute gross negligence, actual malice,

1 actual fraud or willful misconduct. The State Treasurer may set forth
2 a provision for indemnity under this paragraph in the structured
3 financing agreement upon such terms and conditions as the State
4 Treasurer shall determine.

5 (cf: P.L.1999, c.157, s.4)

6

7 2. Section 10 of P.L.1999, c.157 (C.52:31C-10) is amended to
8 read as follows:

9 10. Notwithstanding any law to the contrary, the State Treasurer
10 shall establish procedures under which a county or municipal
11 governing board, a board of education, a sewerage authority created
12 pursuant to the "sewerage authorities law," P.L.1946, c.138
13 (C.40:14A-1 et seq.), a utilities authority created pursuant to the
14 "municipal and county utilities authorities law," P.L.1957, c.183
15 (C.40:14B-1 et seq.), or the Passaic Valley Sewerage Commissioners,
16 continued pursuant to R.S.58:14-2 may undertake structured financing
17 agreements involving local assets in a manner similar to that provided
18 for State assets, including procedures for the incorporation in such
19 agreements of provisions that accord entities participating in
20 structured financing transactions such rights of immunity and
21 indemnification as the State Treasurer, under paragraphs g. and h. of
22 section 4 of P.L.1999, c.157 (C.52:31C-4), may deem appropriate to
23 be established for entities participating in a structured financing
24 transaction with the State.

25 (cf: P.L.2000, c.54, s.1)

26

27 3. This act shall take effect immediately.

28

29

30

STATEMENT

31

32 This bill authorizes the State Treasurer to include, in a structured
33 financing agreement authorized under N.J.S.A.52:31C-1 et seq.,
34 provisions establishing for entities participating in a structured
35 financing transaction the same rights of immunity that public entities
36 enjoy under the "New Jersey Tort Claims Act" and the "New Jersey
37 Contractual Liability Act." The bill also allows the State Treasurer to
38 include in such an agreement provisions establishing a participating
39 entity's right to indemnification for claims that, if brought against a
40 public entity, would generally be barred by those acts. Finally, the bill
41 provides that the State Treasurer's authority to establish procedures
42 for local governments to use in undertaking structured financing
43 agreements shall include procedures for the incorporation in such
44 agreements of provisions giving entities participating in structured
45 financing transactions the same rights of immunity and indemnification
46 that may be given to entities participating in structured financing
47 transactions with the State.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3701

STATE OF NEW JERSEY

DATED: JUNE 16, 2003

The Assembly Budget Committee reports favorably Assembly Bill No. 3701.

Assembly Bill No. 3701 authorizes the State Treasurer to include, in a structured financing agreement authorized under N.J.S.A.52:31C-1 et seq., provisions establishing for entities participating in a structured financing transaction the same rights of immunity that public entities enjoy under the "New Jersey Tort Claims Act" and the "New Jersey Contractual Liability Act." The bill also allows the State Treasurer to include in such an agreement provisions establishing a participating entity's right to indemnification for claims that, if brought against a public entity, would generally be barred by those acts. Finally, the bill provides that the State Treasurer's authority to establish procedures for local governments to use in undertaking structured financing agreements shall include procedures for the incorporation in such agreements of provisions giving entities participating in structured financing transactions the same rights of immunity and indemnification that may be given to entities participating in structured financing transactions with the State.

FISCAL IMPACT:

There are no data available to estimate the costs of the extension of indemnification to entities participating in a structured financing transaction; costs will depend on the number, complexity, and dollar value of structured financing arrangements that have not yet been entered.

SENATE, No. 2585

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 29, 2003

Sponsored by:

Senator NICHOLAS J. SACCO

District 32 (Bergen and Hudson)

SYNOPSIS

Authorizes extension of rights of immunity and indemnification to entities participating in structured financing transactions.

CURRENT VERSION OF TEXT

As introduced.



S2585 SACCO

2

1 AN ACT authorizing the extension, to entities participating in
2 structured financing transactions, of rights to immunity from or
3 indemnification for certain legal liabilities, amending P.L.1999,
4 c.157.

5

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

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9 1. Section 4 of P.L.1999, c.157 (C.52:31C-4) is amended to read
10 as follows:

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

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

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

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

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

Matter underlined thus is new matter.

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

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10 structured financing transactions through a public bidding procedure.

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

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

26 g. A structured financing agreement may, upon the determination
27 of the State Treasurer, provide that an entity taking part in a
28 structured financing transaction shall be immune from liability in the
29 same manner and to the same extent as is the State under the
30 provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.,
31 and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

32 h. A structured financing agreement may provide that an entity
33 taking part in a structured financing transaction, and the officers,
34 directors and employees of that entity, shall have a right of
35 indemnification from the State or the State agency or State authority
36 with which the agreement is made for any claim or judgment arising
37 out of assets that are the subject of the structured financing agreement,
38 except that the State, State agency or State authority, as appropriate,
39 shall not indemnify or agree to indemnify such an entity, officer,
40 director or employee for any act or omission to act that constitutes
41 gross negligence, actual malice, actual fraud, willful misconduct or a
42 crime, or that relates to any financial decisions made by the entity and
43 its officers, directors and employees in connection with the structured
44 financing transaction. The State or State agency or State authority
45 may agree to indemnify any entity taking part in a structured financing
46 transaction, and the officers, directors and employees of that entity,

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1 for punitive damages for a violation of civil law if such damages do
2 not arise from actions that constitute gross negligence, actual malice,
3 actual fraud or willful misconduct. The State Treasurer may set forth
4 a provision for indemnity under this paragraph in the structured
5 financing agreement upon such terms and conditions as the State
6 Treasurer shall determine.

7 (cf: P.L.1999, c.157, s.4)

8

9 2. Section 10 of P.L.1999, c.157 (C.52:31C-10) is amended to
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11 10. Notwithstanding any law to the contrary, the State Treasurer
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19 agreements involving local assets in a manner similar to that provided
20 for State assets, including procedures for the incorporation in such
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22 structured financing transactions such rights of immunity and
23 indemnification as the State Treasurer, under paragraphs g. and h. of
24 section 4 of P.L.1999, c.157 (C.52:31C-4), may deem appropriate to
25 be established for entities participating in a structured financing
26 transaction with the State.

27 (cf: P.L.2000, c.54, s.1)

28

29 3. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill authorizes the State Treasurer to include, in a structured
35 financing agreement authorized under N.J.S.A.52:31C-1 et seq.,
36 provisions establishing for entities participating in a structured
37 financing transaction the same rights of immunity that public entities
38 enjoy under the "New Jersey Tort Claims Act" and the "New Jersey
39 Contractual Liability Act." The bill also allows the State Treasurer to
40 include in such an agreement provisions establishing a participating
41 entity's right to indemnification for claims that, if brought against a
42 public entity, would generally be barred by those acts. Finally, the bill
43 provides that the State Treasurer's authority to establish procedures
44 for local governments to use in undertaking structured financing
45 agreements shall include procedures for the incorporation in such
46 agreements of provisions giving entities participating in structured

S2585 SACCO

5

- 1 financing transactions the same rights of immunity and indemnification
- 2 that may be given to entities participating in structured financing
- 3 transactions with the State.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2585

STATE OF NEW JERSEY

DATED: JUNE 17, 2003

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2585.

This bill provides for the extension of rights of immunity and indemnification to entities that participate in structured financing transactions.

Under the bill:

(1) The State Treasurer would be authorized to include, in a structured financing agreement authorized under N.J.S.A.52:31C-1 et seq., provisions establishing for entities participating in a structured financing transaction the same rights of immunity that public entities enjoy under the "New Jersey Tort Claims Act" and the "New Jersey Contractual Liability Act;"

(2) The Treasurer would also be authorized to include in such an agreement provisions establishing a participating entity's right to indemnification for claims that, if brought against a public entity, would generally be barred by those acts; and

(3) The Treasurer's authority to establish procedures for local governments to use in undertaking structured financing agreements is extended to include procedures for the incorporation in such agreements of provisions giving entities participating in structured financing transactions the same rights of immunity and indemnification that may be given to entities participating in structured financing transactions with the State.

FISCAL IMPACT

There are no data available to estimate the costs of the extension of indemnification to entities participating in a structured financing transaction; costs will depend on the number, complexity, and dollar value of structured financing arrangements that have not yet been entered.