

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:5A-3 "Local Authorities Fiscal Control Law-- amends)
LAWS OF: 1987 **CHAPTER:** 319
Bill No: S2093
Sponsor(s): Lynch
Date Introduced: May 5, 1986
Committee: **Assembly:** Independent and Regional Authorities
Senate: County and Municipal Government
Amended during passage: Yes Amendments during passage denoted by asterisks.
Date of Passage: **Assembly:** November 23, 1987
Senate: October 30, 1986
Date of Approval: December 16, 1987
Following statements are attached if available:
Sponsor statement: Yes
Committee statement: **Assembly** Yes
Senate Yes
Fiscal Note: No
Veto Message: No
Message on Signing: ~~Yes~~ No
Following were printed:
Reports: No
Hearings: No

[OFFICIAL COPY REPRINT]
SENATE, No. 2093

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1986

By Senator LYNCH

Referred to Committee on County and Municipal Government

AN ACT to amend and supplement the "Local Authorities Fiscal Control Law," approved August 26, 1983 (P. L. 1983, c. 313).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 3 of P. L. 1983, c. 313 (C. 40A:5A-3) is amended to
2 read as follows:

3 3. As used in this act:

4 a. "Authority" means a body, public and corporate, created by
5 one or more municipalities or counties ***[to provide public facil-**
6 **ities]*** pursuant to any law authorizing that creation, which law
7 provides that the public body so created has at least the following
7a powers:

8 (1) To adopt and use a corporate seal;

9 (2) To sue and be **[used]** *sued*;

10 (3) To acquire and hold real or personal property for its pur-
11 poses; and

12 (4) To provide for and secure the payment of its bonds or other
13 obligations, or to provide for the assessment of a tax on real prop-
14 erty within its district, or to impose charges for the use of its
15 facilities, or any combination thereof;

16 but shall not include any public body for which federal or State
17 fiscal controls differing from those imposed by this act have been
18 explicitly established by law, but only to the extent of that differ-
19 ence.

20 b. "Director" means the Director of the Division of Local Gov-
21 ernment Services in the Department of Community Affairs.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted October 2, 1986.

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5 one or more municipalities or counties ***[to provide public facil-**
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18 explicitly established by law, but only to the extent of that differ-
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Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted October 2, 1986.

22 c. “[Financing agreement] *Service contract*” means an agree-
 23 ment of a local unit or units intended to provide security for an
 24 issue of obligations of an authority, including, but not limited to,
 25 a contract providing for payments by a local unit or units with
 26 respect to “[use, services or provision of]” a project, facility or
 27 public improvement of an authority or payments for debt service
 27A therefor.

28 d. “Local Finance Board” means the Local Finance Board in
 29 the Division of Local Government Services in the Department of
 30 Community Affairs.

31 e. “Local unit or units” means a county or municipality which
 32 created or joined in the creation of an authority, or which proposes
 33 to create or join in the creation thereof, of which proposes to enter
 34 into a [financing agreement] *service contract* with an authority.

35 f. “Project financing” means the financing by an authority of
 36 a *public* facility for the benefit of the inhabitants of a local unit
 37 or units *and for which the financing costs will be paid, directly*
 37A *or indirectly, by those inhabitants* and includes payment for the
 37B design and plan for the *public* facility.

38 g. “[Security agreement] *Bond resolution*” means a bond re-
 39 solution of an authority, or a trust indenture to be executed by an
 40 authority[, or other similar proceeding or document]*, *or other*
 41 *similar proceeding or document*.*

1 2. Section 6 of P. L. 1983, c. 313 (C. 40A:5A-6) is amended to
 2 read as follows:

3 6. Prior to the [adoption of a security agreement] *[*undertak-*
 4 *ing*]* *adoption* of a *[project]* *bond resolution* by an au-
 5 thority, or *the adoption* of an ordinance or resolution of a local unit
 6 or units authorizing a [financing agreement] *service contract* *that*
 7 *is part of a project financing**, the proposed project financing shall
 7A be submitted to the Local Finance Board for its review. The Local
 8 Finance Board shall, in the course of its review, give considera-
 9 tion to:

10 a. The nature, purpose, and scope of the proposed project
 11 financing;

12 b. The engineering and feasibility studies prepared in connec-
 13 tion therewith;

14 c. The terms and provisions of the proposed [financing agree-
 15 ments, security agreements and, in the instance of a negotiated
 16 offering, the proposed or maximum terms and conditions of sale]
 17 *service* *[contract]* *contracts, bond resolutions and, in the in-*
 17A *stance of a negotiated offering, the proposed or maximum terms*
 17B *and conditions of sale**;

18 d. **【The proposed or maximum schedule】** *An estimate *of the*
 19 *proposed or maximum schedule** of debt service payments re-
 20 quired, and the impact thereof on the budget and financial condition
 20A of the authority and of the local unit;

21 e. The estimate of the annual cost of operating and maintaining
 22 the project as set forth in the engineering report or feasibility
 23 studies; and

24 f. The initial rate, rent, fee, or charge schedule proposed by the
 25 authority, or any other proposed method of raising the amounts
 26 required to finance the operations and payments of debt service
 27 on the obligations of the authority.

28 The Local Finance Board may examine the estimates, computa-
 29 tions or calculations made in connection with the submission, may
 30 require the production of papers, documents, witnesses or infor-
 31 mation, may make or cause to be made an audit or investigation
 32 and may take any other action which it may deem necessary to
 33 its review of the submission.

1 3. Section 7 of P. L. 1983, c. 313 (C. 40A:5A-7) is amended to
 2 read as follows:

3 7. **At the time of submission of the proposed project financing*
 4 *to the Local Finance Board, the authority shall notify each*
 5 *participating local unit of that submission.** The Local Finance
 6 Board shall, within **【31】** ***【45】*** **31** days of its receipt of the
 7 proposed project financing, hold a hearing at which any interested
 8 party may furnish additional information regarding the proposal.
 9 ***【The notice of the hearing shall be published at least 20 days**
 10 *prior to the date of the hearing, and shall request interested per-*
 11 *sons to submit written notice of intent to appear at the hearing to*
 12 *the director at least 10 days prior to the date of the hearing. If on*
 13 *that date no interested person has provided notice, the director*
 14 *may waive the hearing requirement, and the board may proceed to*
 15 *issue its findings and recommendations.】** Within 10 days after
 16 the hearing ***【or waiver thereof】***, the board shall issue its find-
 17 ings on the proposed financing including therein its findings as to
 18 whether: (a) the project cost has been determined by reasonable
 19 and accepted methods; ***【and】*** (b) the method proposed for the
 20 funding of **【or】** the project cost**【, proposed or maximum terms and**
 21 *provisions of the financing】**, *proposed or maximum terms and*
 21A *provisions of the financing** and of a proposed **【financing agree-**
 21B **ment】** *service contract* are not unreasonable nor impracticable,
 21C and would not impose an undue and unnecessary financial burden
 21D on the inhabitants of the local unit or units, which have created

22 or have joined in the creation of the authority or which may enter
 23 into a **[financing agreement]** *service contract* with the authority,
 24 or would not materially impair the ability of the local unit or units
 25 or the authority to pay promptly the principal of and interest on
 26 the outstanding indebtedness thereof or to provide essential public
 27 services to the inhabitants thereof**;** and (c) in the case of a nego-
 28 tiated offering, the proposed or maximum terms and conditions of
 29 sale are, in light of current market conditions for obligations of
 30 similar quality, reasonable**];** *and (c) in the case of a negotiated*
 31 *offering, the proposed or maximum terms and conditions of sale*
 32 *are, in light of current market conditions for obligations of similar*
 32A *quality, reasonable**. The findings shall be in writing and shall be
 32B filed with the clerk or clerks of the local unit or units and with the
 32C secretary of the authority.

33 The times set forth in this section may be extended by mutual
 34 agreement of the authority and the Local Finance Board.

35 The *members of the governing body* of the authority shall, within
 36 **[15]** **[30]** **45** days of receipt of the Local Finance Board's
 37 findings and recommendations on the proposed project financing,
 38 certify **[by resolution]** *, by resolution** to the Local Finance
 39 Board that each member thereof has personally reviewed the
 40 findings and recommendations and has evidenced same by **[group]**
 41 **group** affidavit **signed by a majority of the full membership of*
 42 *the authority** in the form prescribed by the Local Finance Board.
 43 **[No bond resolution shall be adopted, or temporary obligations*
 44 *issued pursuant to section 24 of P. L. 1983, c. 313 (C. 40A:5A-24),*
 45 *prior to certification by the authority members.]**

46 Failure to comply with this paragraph may subject the members
 47 of the authority to the penalty provisions of section 52 of P. L.
 48 1947, c. 151 (C. 52:27BB-52).

1 4. Section 8 of P. L. 1983, c. 313 (C. 40A:5A-8) is amended to
 2 read as follows:

3 8. The Local *Finance* Board may recommend in its findings with
 4 respect to a proposed project financing:

5 a. That the debt service reserve fund in an amount established
 6 by the board be funded from the proceeds of the sale of the au-
 7 thority's bonds;

8 b. The incurrence of indebtedness and the issuance of obliga-
 9 tions by the local unit or units to finance a portion of the proposed
 10 project cost. Except as otherwise provided in this act, these obli-
 11 gations shall be authorized and issued in the manner provided for
 12 in Title 40 of the Revised Statutes or Title 40A of the New Jersey
 13 Statutes;

14 c. That the local unit or units execute a **【financing agreement】**
15 *service contract* with the authority;

16 d. That the local unit or units not execute a **【financing agree-**
17 **ment】** *service contract* with the authority, if the Local Finance
18 Board determines that the **【agreement】** *contract* would impose an
19 inappropriate risk on the local unit;

20 e. That an amount not to exceed the outstanding principal each
21 year for the proposed financing of the authority be included in
22 the net debt of a local unit, under N. J. S. 40A:2-1 et seq., if the
23 local unit executes a **【financing agreement】** *service contract* with
24 the authority;

25 f. In addition to the above, any other conditions that the Local
26 Finance Board considers appropriate to provide sound financial
27 support for the project financing.

1 5. Section 10 of P. L. 1983, c. 313 (C. 40A:5A-10) is amended
2 to read as follows:

3 10. a. Each authority shall submit a budget for each fiscal year
4 to the director prior to its adoption thereof. The budget shall
5 comply with the terms and provisions of any **【security agree-**
6 **ments】** *bond resolutions*, and shall be in such form and detail as
7 to items of revenue, expenditure and other content as shall be re-
8 quired by law or by rules and regulations of the Local Finance
9 Board.

10 b. The Local Finance Board shall prescribe by rule or regula-
11 tion the procedure for the adoption of budgets by authorities. The
12 rules and regulations may include or be similar to any provisions
13 of the "Local Budget Law" (N. J. S. 40A:4-1 et seq.) which the
14 Local Finance Board shall deem to be practicable or necessary,
15 and may further include any other provisions and requirements
16 which the Local Finance Board shall deem appropriate or neces-
17 sary. The rules and regulations shall provide for approval or
18 disapproval of a budget within 45 days of the director's receipt
19 thereof.

20 c. The Local Finance Board shall also prescribe by rule or
21 regulation the procedures and requirements for execution of any
22 budget after adoption, and for the administration of financial
23 affairs of authorities. The rules and regulations may include,
24 without limitation, any provisions of the "Local Budget Law"
25 (N. J. S. 40A:4-1 et seq.), and the "Local Fiscal Affairs Law"
26 (N. J. S. 40A:5-1 et seq.), which the Local Finance Board shall
27 deem to be practicable and necessary.

1 6. Section 12 of P. L. 1983, c. 313 (C. 40A:5A-12) is amended
2 to read as follows:

3 12. The Local Finance Board shall have the power, in the case
 4 of a **[financing agreement]** *service contract* between an authority
 5 and a local unit or units, to enforce, by appropriate order, the
 6 terms and provisions thereof with respect to the funding of a
 7 deficit, whether in existence or anticipated. If the Local Finance
 8 Board has reason to believe that an authority is faced with financial
 9 difficulty, it shall have the power to order an increase in rents,
 10 rates, fees or other charges of the authority, and this order shall
 11 be valid and enforceable, notwithstanding any provisions to the
 12 contrary in R. S. 48:2-1 et seq. The Local Finance Board, before
 13 issuing this order, shall first hold a hearing consistent with section
 14 18 of this act. The Local Finance Board also shall have authority
 15 to provide that a requirement that a local unit or units pay a deficit
 16 under a **[financing agreement]** *service contract* be funded through
 17 the issuance of **[authority deficit funding]** notes as provided in
 18 *section 14* of this act (C. 40A:5A-14). Any order so issued shall
 19 be deemed conclusive and final, and upon receipt of this order all
 20 persons shall be estopped from contesting the order or the pro-
 21 visions thereof. Any authority or local unit or units affected by
 22 the order shall promptly take the action necessary to comply with
 23 this order.

1 7. Section 14 of P. L. 1983, c. 313 (C. 40A:5A-14) is amended
 2 to read as follows:

3 14. If the issuance of "Authority Temporary Funding Notes"
 4 is not permitted by the terms of a **[security agreement]** *bond reso-*
 5 *lution*, then the local unit or units, if obligated to make payments
 6 on account of a deficiency in revenues under the terms of a **[financ-**
 7 **ing agreement]** *service contract*, may issue emergency notes pur-
 8 suant to the provisions of sections 40A:4-46 through 40A:4-50 of
 9 the New Jersey Statutes to fund this payment or portions thereof.
 10 These obligations **[shall be designated "Authority Deficit Funding**
 11 **Notes" and]** shall be general obligations of the issuer. Each note
 12 shall be authorized by resolution of the governing body and may
 13 be renewed from time to time. All notes and the renewals thereof
 14 shall mature not later than the last day of the fiscal year next
 15 succeeding the fiscal year in which these notes were issued and the
 16 emergency appropriations authorized.

17 A local unit shall notify the Local Finance Board in writing of
 18 its intention to issue **["Authority Deficit Funding Notes"]** *notes*
 19 pursuant to this section at least 30 days prior to the issuance, or
 20 within such lesser time period as the Local Finance Board shall
 21 permit, including therein a statement of the deficit which the pro-
 22 ceeds of the notes are intended to fund, and a statement of the

23 manner in which the local unit plans to either retire or refinance
24 the notes on or before the close of the succeeding fiscal year.

1 8. Section 17 of P. L. 1983, c. 313 (C. 40A:5A-17) is amended
2 to read as follows:

3 17. The *members of the* governing body of each authority shall,
4 within 45 days of receipt of the annual audit, certify **【by resolu-**
5 **tion】** **by resolution** to the Local Finance Board that each mem-
6 ber thereof has personally reviewed the annual audit report, and
7 specifically the sections of the audit report entitled General Com-
8 ments and Recommendations, and has evidenced same by **【group】**
9 **group** affidavit **signed by a majority of the full membership of*
10 *the authority** in the form prescribed by the Local Finance Board.
11 Failure to comply with this provision may subject the members of
12 the authority to the penalty provisions of section 52 of P. L. 1947,
13 c. 151 (C. 52:27BB-52).

1 9. Section 20 of P. L. 1983, c. 313 (C. 40A:5A-20) is amended
2 to read as follows:

3 20. Notwithstanding the provisions of any other law to the con-
4 trary, the governing body of a local unit which has established an
5 authority shall have the power and is authorized by ordinance in
6 the case of a municipality, and ordinance or resolution, as appro-
7 priated, in the case of a county, to dissolve the authority, except
8 that the ordinance or resolution, as the case may be, shall be
9 approved by the Local Finance Board prior to adoption. Any
10 authority established by more than one municipality or county may
11 be dissolved by the adoption of parallel ordinances or resolutions,
12 as appropriate. The Local Finance Board shall approve the dis-
13 solution if it finds that the ordinance or resolution makes adequate
14 provision in accordance with a **【security agreement】** *bond resolu-*
15 *tion* or otherwise for the payment of all creditors or obligees of
16 the authority and that adequate provision is made for the assump-
17 tion of those services provided by the authority which are necessary
18 for the health, safety and welfare of the recipients of those services.
19 The ordinance or resolution shall be introduced and adopted in
20 the manner provided by law, shall take effect immediately after
21 final adoption, and shall not be subject to referendum. A copy of
22 the ordinance or resolution as adopted shall be filed immediately
23 with the Local Finance Board and with the Secretary of State. In
24 the event that an authority has obligations outstanding at the time
25 of the taking effect of the ordinance or resolution to dissolve the
26 authority, the local unit or units dissolving the authority are au-
27 thorized to issue obligations in furtherance of the dissolution, and
28 the obligations shall have a period of usefulness not exceeding 40

29 years from the date of issuance. The bonds shall be authorized
 30 by a bond ordinance to be introduced and adopted in accordance
 31 with the provisions of the "Local Bond Law" N. J. S. 40A:2-1
 32 et seq.), except for the provisions of sections 40A:2-11, 40A:2-26,
 33 40A:2-27 and 40A:2-31 of the New Jersey Statutes, and except
 34 that the bond ordinance shall take effect immediately after final
 35 adoption and shall not be subject to referendum. The bonds may
 36 be deducted from the gross debt of the local unit by action of the
 37 Local Finance Board in accordance with subsection d. of N. J. S.
 38 40A:2-7. Bonds issued for this purpose shall be sold under the
 39 direction and supervision of the Local Finance Board, and may be
 40 sold at either public or private sale as the board shall prescribe.

41 Nothing contained in this section or in this act shall limit the
 42 powers accorded under any other law to any county or municipi-
 43 pality to dissolve any authority which it has created or of which
 44 it has joined in the creation, nor limit any general reorganization
 45 powers accorded under law to any county or municipality to alter
 46 or abolish its agencies, but the provisions of this section and this
 47 act shall be supplementary to the powers accorded under any other
 48 law.

1 10. Section 21 of P. L. 1983, c. 313 (C. 40A:5A-21) is amended
 2 to read as follows:

3 21. The Local Finance Board may order the dissolution of a
 4 local authority if, after holding a hearing consistent with sec-
 5 tion 18 of this act, it determines that, due to financial difficulties
 6 or mismanagement, the dissolution of an authority will be in the
 7 public interest and will serve the health, welfare, or convenience
 8 of the inhabitants of the local unit or units, and the dissolution
 9 will achieve a more efficient means for providing and financing
 10 local public facilities, except that an order dissolving an authority
 11 shall assure adequate provision in accordance with a [security
 12 agreement] *bond resolution* or otherwise for all creditors or
 13 obligees of the authority. Any order so adopted by the Local
 14 Finance Board to provide for the dissolution of an authority shall
 15 take effect only upon its approval by the Commissioner of the
 16 Department of Community Affairs, the State Treasurer and the
 17 Attorney General. Upon approval, the order shall be immediately
 18 transmitted to the authority, to the clerk of the governing body of
 19 the local unit or units, and to the Secretary of State.

1 11. Section 24 of P. L. 1983, c. 313 (C. 40A:5A-24) is amended
 2 to read as follows:

3 24. Notwithstanding any other law to the contrary, any authority,
 4 in anticipation of the issuance of bonds, may borrow money and

5 issue temporary obligations **[if the security agreement so provides]**
 6 **[as authorized pursuant to section 13 of this amendatory and sup-*
 7 *plementary act (C.)]** **if the bond resolution so pro-*
 8 *vides**. A temporary obligation shall be designated “bond anticipa-
 9 tion note” or “project note” and shall contain a recital that it is
 10 issued in anticipation of the issuance of bonds. **[The notes may*
 11 *be issued for a period of not exceeding five years, or the period of*
 12 *construction as certified by the consulting engineer plus 12*
 13 *months, whichever shall be less, and may be renewed from time to*
 14 *time [with]. Any renewal occurring more than five years after the*
 15 *date of authorization]** **At any time within three years of the date*
 16 *of the original note issue, the authority may renew the notes, pro-*
 17 *vided that a form prescribed by the director listing the terms and*
 18 *conditions of the renewals is submitted to the director and the direc-*
 19 *tor fails to disapprove the renewal in writing within 10 days of the*
 20 *date of its receipt. If the renewal is disapproved by the director,*
 21 *the Local Finance Board shall hold a hearing as set forth in section*
 22 *7 of P. L. 1983, c. 313 (C. 40A:5A-7). Any application for a re-*
 23 *newal after three years from the date of the original issue* shall be*
 24 **submitted and* subject to the approval *and conditions* of the*
 25 Local Finance Board.

1 12. Section 27 of P. L. 1983, c. 313 (C. 40A:5A-27) is amended
 2 to read as follows:

3 27. The Local Finance Board, the director, and local units and
 4 local authorities shall not act under this act in a manner incon-
 5 sistent with a **[security or financing agreement]** *bond resolution*
 6 *or service contract* in effect at the time of the action.

1 **[13. (New section) Upon the certification to the Local Finance*
 2 *Board of personal review by the authority members pursuant to*
 3 *section 7 of P. L. 1983, c. 313 (C. 40A:5A-7), the authority may*
 4 *issue temporary obligations pursuant to section 24 of P. L. 1983,*
 5 *c. 313 (C. 40A:5A-24) to the extent and subject to the conditions*
 6 *prescribed therein.*

1 14. (New section) At least 15 days prior to the adoption by an
 2 authority of a bond resolution providing permanent financing on
 3 a project financing previously reviewed by the Local Finance
 4 Board, the authority shall file with the director the proposed bond
 5 resolution and a report setting forth the ways in which the bond
 6 resolution does and does not conform with the project financing
 7 previously reviewed by the board, and in which the proposed or
 8 maximum terms and conditions of sale are reasonable, in light of
 9 current market conditions for obligations of similar quality. The
 10 director shall review the proposed bond resolution and report, and

11 within 10 days of his receipt of the bond resolution and report,
12 issue written findings as to whether or not another review by the
13 Local Finance Board of the project financing is required prior to
14 the adoption of the bond resolution. The director shall require
15 another review by the board of the project financing only if the
16 director finds that the project cost of the method for funding the
17 project financing has so significantly altered from that previously
18 reviewed by the board as to require new findings by the board
19 regarding the matters set forth in (a) and (b) of section 7 of P. L.
20 1983, c. 313 (C. 40A:5A-7). If the director finds that another re-
21 view by the board is necessary, the bond resolution shall not be
22 adopted by the authority until the board's findings and recom-
23 mendations on that review are certified by affidavit in the manner
24 prescribed in section 7 (C. 40A:5A-7).

25 No bond resolution subject to submission to the voters shall be
26 subject to the provisions of this section.】*

1 *【15.】* *13.* This act shall take effect immediately.

LOCAL BUDGET AND FINANCE

Makes various revisions of the "Local Authorities Fiscal Control
Law" to facilitate administration by the Local Finance Board.

SENATE, No. 2093
STATE OF NEW JERSEY

INTRODUCED MAY 5, 1986

By Senator LYNCH

Referred to Committee on County and Municipal Government

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5 one or more municipalities or counties *to provide public facilities*
6 pursuant to any law authorizing that creation, which law provides
7 that the public body so created has at least the following powers:

8 (1) To adopt and use a corporate seal;

9 (2) To sue and be **[used]** *sued*;

10 (3) To acquire and hold real or personal property for its pur-
11 poses; and

12 (4) To provide for and secure the payment of its bonds or other
13 obligations, or to provide for the assessment of a tax on real prop-
14 erty within its district, or to impose charges for the use of its
15 facilities, or any combination thereof;

16 but shall not include any public body for which federal or State
17 fiscal controls differing from those imposed by this act have been
18 explicitly established by law, but only to the extent of that differ-
19 ence.

20 b. "Director" means the Director of the Division of Local Gov-
21 ernment Services in the Department of Community Affairs.

22 c. **[Financing agreement]** *Service contract* means an agree-
23 ment of a local unit or units intended to provide security for an
24 issue of obligations of an authority, including, but not limited to,

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Matter printed in italics thus is new matter.

25 a contract providing for payments by a local unit or units with
 26 respect to use, services or provision of a project, facility or public
 27 improvement of an authority or payments for debt service therefor.

28 d. "Local Finance Board" means the Local Finance Board in
 29 the Division of Local Government Services in the Department of
 30 Community Affairs.

31 e. "Local unit or units" means a county or municipality which
 32 created or joined in the creation of an authority, or which proposes
 33 to create or join in the creation thereof, of which proposes to enter
 34 into a [financing agreement] *service contract* with an authority.

35 f. "Project financing" means the financing by an authority of
 36 a facility for the benefit of the inhabitants of a local unit or units
 37 and includes payment for the design and plan for the facility.

38 g. "[Security agreement] *Bond resolution*" means a bond re-
 39 solution of an authority, or a trust indenture to be executed by an
 40 authority, or other similar proceeding or document].

1 2. Section 6 of P. L. 1983, c. 313 (C. 40A:5A-6) is amended to
 2 read as follows:

3 6. Prior to the [adoption of a security agreement] *undertaking*
 4 *of a project* by an authority, or *the adoption of* an ordinance or
 5 resolution of a local unit or units authorizing a [financing agree-
 6 ment] *service contract*, the proposed project financing shall be sub-
 7 mitted to the Local Finance Board for its review. The Local
 8 Finance Board shall, in the course of its review, give considera-
 9 tion to:

10 a. The nature, purpose, and scope of the proposed project
 11 financing;

12 b. The engineering and feasibility studies prepared in connec-
 13 tion therewith;

14 c. The terms and provisions of the proposed [financing agree-
 15 ments, security agreements and, in the instance of a negotiated
 16 offering, the proposed or maximum terms and conditions of sale]
 17 *service contract*;

18 d. [The proposed or maximum schedule] *An estimate* of debt
 19 service payments required, and the impact thereof on the budget
 20 and financial condition of the authority and of the local unit;

21 e. The estimate of the annual cost of operating and maintaining
 22 the project as set forth in the engineering report or feasibility
 23 studies; and

24 f. The initial rate, rent, fee, or charge schedule proposed by the
 25 authority, or any other proposed method of raising the amounts
 26 required to finance the operations and payments of debt service
 27 on the obligations of the authority.

28 The Local Finance Board may examine the estimates, computa-

29 tions or calculations made in connection with the submission, may
 30 require the production of papers, documents, witnesses or infor-
 31 mation, may make or cause to be made an audit or investigation
 32 and may take any other action which it may deem necessary to
 33 its review of the submission.

1 3. Section 7 of P. L. 1983, c. 313 (C. 40A:5A-7) is amended to
 2 read as follows:

3 7. The Local Finance Board shall, within [31] 45 days of its
 4 receipt of the proposed project financing, hold a hearing at which
 5 any interested party may furnish additional information regarding
 6 the proposal. *The notice of the hearing shall be published at least*
 7 *20 days prior to the date of the hearing, and shall request inter-*
 8 *ested persons to submit written notice of intent to appear at the*
 9 *hearing to the director at least 10 days prior to the date of the*
 10 *hearing. If on that date no interested person has provided notice,*
 11 *the director may waive the hearing requirement, and the board*
 12 *may proceed to issue its findings and recommendations.* Within 10
 13 days after the hearing or waiver thereof, the board shall issue its
 14 findings on the proposed financing including therein its findings
 15 as to whether: (a) the project cost has been determined by reason-
 16 able and accepted methods; and (b) the method proposed for the
 17 funding of [or] the project cost[, proposed or maximum terms and
 18 provisions of the financing] and of a proposed [financing agree-
 19 ment] service contract are not unreasonable nor impracticable,
 20 and would not impose an undue and unnecessary financial burden
 21 on the inhabitants of the local unit or units, which have created
 22 or have joined in the creation of the authority or which may enter
 23 into a [financing agreement] service contract with the authority,
 24 or would not materially impair the ability of the local unit or units
 25 or the authority to pay promptly the principal of and interest on
 26 the outstanding indebtedness thereof or to provide essential public
 27 services to the inhabitants thereof[; and (c) in the case of a nego-
 28 tiated offering, the proposed or maximum terms and conditions of
 29 sale are, in light of current market conditions for obligations of
 30 similar quality, reasonable]. The findings shall be in writing and
 31 shall be filed with the clerk or clerks of the local unit or units and
 32 with the secretary of the authority.

33 The times set forth in this section may be extended by mutual
 34 agreement of the authority and the Local Finance Board.

35 The members of the governing body of the authority shall, within
 36 [15] 30 days of receipt of the Local Finance Board's findings and
 37 recommendations on the proposed project financing, certify [by
 38 resolution] to the Local Finance Board that each member thereof
 39 has personally reviewed the findings and recommendations and has

40-41 evidenced same by [group] affidavit in the form prescribed by the
 42 Local Finance Board. *No bond resolution shall be adopted, or*
 43 *temporary obligations issued pursuant to section 24 of P. L. 1983,*
 44 *c. 313 (C. 40A:5A-24), prior to certification by the authority mem-*
 45 *bers.*

46 Failure to comply with this paragraph may subject the members
 47 of the authority to the penalty provisions of section 52 of P. L.
 48 1947, c. 151 (C. 52:27BB-52).

1 4. Section 8 of P. L. 1983, c. 313 (C. 40A:5A-8) is amended to
 2 read as follows:

3 8. The Local *Finance* Board may recommend in its findings with
 4 respect to a proposed project financing:

5 a. That the debt service reserve fund in an amount established
 6 by the board be funded from the proceeds of the sale of the au-
 7 thority's bonds;

8 b. The incurrence of indebtedness and the issuance of obliga-
 9 tions by the local unit or units to finance a portion of the proposed
 10 project cost. Except as otherwise provided in this act, these obli-
 11 gations shall be authorized and issued in the manner provided for
 12 in Title 40 of the Revised Statutes or Title 40A of the New Jersey
 13 Statutes;

14 c. That the local unit or units execute a [financing agreement]
 15 *service contract* with the authority;

16 d. That the local unit or units not execute a [financing agree-
 17 ment] *service contract* with the authority, if the Local Finance
 18 Board determines that the [agreement] *contract* would impose an
 19 inappropriate risk on the local unit;

20 e. That an amount not to exceed the outstanding principal each
 21 year for the proposed financing of the authority be included in
 22 the net debt of a local unit, under N. J. S. 40A:2-1 et seq., if the
 23 local unit executes a [financing agreement] *service contract* with
 24 the authority;

25 f. In addition to the above, any other conditions that the Local
 26 Finance Board considers appropriate to provide sound financial
 27 support for the project financing.

1 5. Section 10 of P. L. 1983, c. 313 (C. 40A:5A-10) is amended
 2 to read as follows:

3 10. a. Each authority shall submit a budget for each fiscal year
 4 to the director prior to its adoption thereof. The budget shall
 5 comply with the terms and provisions of any [security agree-
 6 ments] *bond resolutions*, and shall be in such form and detail as
 7 to items of revenue, expenditure and other content as shall be re-
 8 quired by law or by rules and regulations of the Local Finance
 9 Board.

10 b. The Local Finance Board shall prescribe by rule or regula-
11 tion the procedure for the adoption of budgets by authorities. The
12 rules and regulations may include or be similar to any provisions
13 of the "Local Budget Law" (N. J. S. 40A:4-1 et seq.) which the
14 Local Finance Board shall deem to be practicable or necessary,
15 and may further include any other provisions and requirements
16 which the Local Finance Board shall deem appropriate or neces-
17 sary. The rules and regulations shall provide for approval or
18 disapproval of a budget within 45 days of the director's receipt
19 thereof.

20 c. The Local Finance Board shall also prescribe by rule or
21 regulation the procedures and requirements for execution of any
22 budget after adoption, and for the administration of financial
23 affairs of authorities. The rules and regulations may include,
24 without limitation, any provisions of the "Local Budget Law"
25 (N. J. S. 40A:4-1 et seq.), and the "Local Fiscal Affairs Law"
26 (N. J. S. 40A:5-1 et seq.), which the Local Finance Board shall
27 deem to be practicable and necessary.

1 6. Section 12 of P. L. 1983, c. 313 (C. 40A:5A-12) is amended
2 to read as follows:

3 12. The Local Finance Board shall have the power, in the case
4 of a **[financing agreement]** *service contract* between an authority
5 and a local unit or units, to enforce, by appropriate order, the
6 terms and provisions thereof with respect to the funding of a
7 deficit, whether in existence or anticipated. If the Local Finance
8 Board has reason to believe that an authority is faced with financial
9 difficulty, it shall have the power to order an increase in rents,
10 rates, fees or other charges of the authority, and this order shall
11 be valid and enforceable, notwithstanding any provisions to the
12 contrary in R. S. 48:2-1 et seq. The Local Finance Board, before
13 issuing this order, shall first hold a hearing consistent with section
14 18 of this act. The Local Finance Board also shall have authority
15 to provide that a requirement that a local unit or units pay a deficit
16 under a **[financing agreement]** *service contract* be funded through
17 the issuance of **[authority deficit funding]** notes as provided in
18 *section 14* of this act (C. 40A:5A-14). Any order so issued shall
19 be deemed conclusive and final, and upon receipt of this order all
20 persons shall be estopped from contesting the order or the pro-
21 visions thereof. Any authority or local unit or units affected by
22 the order shall promptly take the action necessary to comply with
23 this order.

1 7. Section 14 of P. L. 1983, c. 313 (C. 40A:5A-14) is amended
2 to read as follows:

3 14. If the issuance of "Authority Temporary Funding Notes"
 4 is not permitted by the terms of a [security agreement] *bond reso-*
 5 *lution*, then the local unit or units, if obligated to make payments
 6 on account of a deficiency in revenues under the terms of a [financ-
 7 ing agreement] *service contract*, may issue emergency notes pur-
 8 suant to the provisions of sections 40A:4-46 through 40A:4-50 of
 9 the New Jersey Statutes to fund this payment or portions thereof.
 10 These obligations [shall be designated "Authority Deficit Funding
 11 Notes" and] shall be general obligations of the issuer. Each note
 12 shall be authorized by resolution of the governing body and may
 13 be renewed from time to time. All notes and the renewals thereof
 14 shall mature not later than the last day of the fiscal year next
 15 succeeding the fiscal year in which these notes were issued and the
 16 emergency appropriations authorized.

17 A local unit shall notify the Local Finance Board in writing of
 18 its intention to issue ["Authority Deficit Funding Notes"] *notes*
 19 pursuant to this section at least 30 days prior to the issuance, or
 20 within such lesser time period as the Local Finance Board shall
 21 permit, including therein a statement of the deficit which the pro-
 22 ceeds of the notes are intended to fund, and a statement of the
 23 manner in which the local unit plans to either retire or refinance
 24 the notes on or before the close of the succeeding fiscal year.

1 8. Section 17 of P. L. 1983, c. 313 (C. 40A:5A-17) is amended
 2 to read as follows:

3 17. The *members of the* governing body of each authority shall,
 4 within 45 days of receipt of the annual audit, certify [by resolu-
 5 tion] to the Local Finance Board that each member thereof has
 6 personally reviewed the annual audit report, and specifically the
 7 sections of the audit report entitled General Comments and Recom-
 8 mendations, and has evidenced same by [group] affidavit in the
 9 form prescribed by the Local Finance Board. Failure to comply
 10 with this provision may subject the members of the authority to
 11 the penalty provisions of section 52 of P. L. 1947, c. 151 (C.
 12 52:27BB-52).

1 9. Section 20 of P. L. 1983, c. 313 (C. 40A:5A-20) is amended
 2 to read as follows:

3 20. Notwithstanding the provisions of any other law to the con-
 4 trary, the governing body of a local unit which has established an
 5 authority shall have the power and is authorized by ordinance in
 6 the case of a municipality, and ordinance or resolution, as appro-
 7 priated, in the case of a county, to dissolve the authority, except
 8 that the ordinance or resolution, as the case may be, shall be
 9 approved by the Local Finance Board prior to adoption. Any

10 authority established by more than one municipality or county may
11 be dissolved by the adoption of parallel ordinances or resolutions,
12 as appropriate. The Local Finance Board shall approve the dis-
13 solution if it finds that the ordinance or resolution makes adequate
14 provision in accordance with a [security agreement] *bond resolu-*
15 *tion* or otherwise for the payment of all creditors or obligees of
16 the authority and that adequate provision is made for the assump-
17 tion of those services provided by the authority which are necessary
18 for the health, safety and welfare of the recipients of those services.
19 The ordinance or resolution shall be introduced and adopted in
20 the manner provided by law, shall take effect immediately after
21 final adoption, and shall not be subject to referendum. A copy of
22 the ordinance or resolution as adopted shall be filed immediately
23 with the Local Finance Board and with the Secretary of State. In
24 the event that an authority has obligations outstanding at the time
25 of the taking effect of the ordinance or resolution to dissolve the
26 authority, the local unit or units dissolving the authority are au-
27 thorized to issue obligations in furtherance of the dissolution, and
28 the obligations shall have a period of usefulness not exceeding 40
29 years from the date of issuance. The bonds shall be authorized
30 by a bond ordinance to be introduced and adopted in accordance
31 with the provisions of the "Local Bond Law" N. J. S. 40A:2-1
32 et seq.), except for the provisions of sections 40A:2-11, 40A:2-26,
33 40A:2-27 and 40A:2-31 of the New Jersey Statutes, and except
34 that the bond ordinance shall take effect immediately after final
35 adoption and shall not be subject to referendum. The bonds may
36 be deducted from the gross debt of the local unit by action of the
37 Local Finance Board in accordance with subsection d. of N. J. S.
38 40A:2-7. Bonds issued for this purpose shall be sold under the
39 direction and supervision of the Local Finance Board, and may be
40 sold at either public or private sale as the board shall prescribe.

41 Nothing contained in this section or in this act shall limit the
42 powers accorded under any other law to any county or municipi-
43 pality to dissolve any authority which it has created or of which
44 it has joined in the creation, nor limit any general reorganization
45 powers accorded under law to any county or municipality to alter
46 or abolish its agencies, but the provisions of this section and this
47 act shall be supplementary to the powers accorded under any other
48 law.

1 10. Section 21 of P. L. 1983, c. 313 (C. 40A:5A-21) is amended
2 to read as follows:

3 21. The Local Finance Board may order the dissolution of a
4 local authority if, after holding a hearing consistent with sec-

5 tion 18 of this act, it determines that, due to financial difficulties
 6 or mismanagement, the dissolution of an authority will be in the
 7 public interest and will serve the health, welfare, or convenience
 8 of the inhabitants of the local unit or units, and the dissolution
 9 will achieve a more efficient means for providing and financing
 10 local public facilities, except that an order dissolving an authority
 11 shall assure adequate provision in accordance with a [security
 12 agreement] *bond resolution* or otherwise for all creditors or
 13 obligees of the authority. Any order so adopted by the Local
 14 Finance Board to provide for the dissolution of an authority shall
 15 take effect only upon its approval by the Commissioner of the
 16 Department of Community Affairs, the State Treasurer and the
 17 Attorney General. Upon approval, the order shall be immediately
 18 transmitted to the authority, to the clerk of the governing body of
 19 the local unit or units, and to the Secretary of State.

1 11. Section 24 of P. L. 1983, c. 313 (C. 40A:5A-24) is amended
 2 to read as follows:

3 24. Notwithstanding any other law to the contrary, any authority,
 4 in anticipation of the issuance of bonds, may borrow money and
 5 issue temporary obligations [if the security agreement so provides]
 6 *as authorized pursuant to section 13 of this amendatory and sup-*
 7 *plementary act (C.). A temporary obligation shall be*
 8 *designated "bond anticipation note" or "project note" and shall*
 9 *contain a recital that it is issued in anticipation of the issuance*
 10 *of bonds. The notes may be issued for a period of not exceeding*
 11 *five years, or the period of construction as certified by the con-*
 12 *sulting engineer plus 12 months, whichever shall be less, and may*
 13 *be renewed from time to time [with]. Any renewal occurring*
 14 *more than five years after the date of authorization shall be sub-*
 15 *ject to the approval of the Local Finance Board.*

1 12. Section 27 of P. L. 1983, c. 313 (C. 40A:5A-27) is amended
 2 to read as follows:

3 27. The Local Finance Board, the director, and local units and
 4 local authorities shall not act under this act in a manner incon-
 5 sistent with a [security or financing agreement] *bond resolution*
 6 *or service contract* in effect at the time of the action.

1 13. (New section) Upon the certification to the Local Finance
 2 Board of personal review by the authority members pursuant to
 3 section 7 of P. L. 1983, c. 313 (C. 40A:5A-7), the authority may
 4 issue temporary obligations pursuant to section 24 of P. L. 1983,
 5 c. 313 (C. 40A:5A-24) to the extent and subject to the conditions
 6 prescribed therein.

1 14. (New section) At least 15 days prior to the adoption by an

2 authority of a bond resolution providing permanent financing on
 3 a project financing previously reviewed by the Local Finance
 4 Board, the authority shall file with the director the proposed bond
 5 resolution and a report setting forth the ways in which the bond
 6 resolution does and does not conform with the project financing
 7 previously reviewed by the board, and in which the proposed or
 8 maximum terms and conditions of sale are reasonable, in light of
 9 current market conditions for obligations of similar quality. The
 10 director shall review the proposed bond resolution and report, and
 11 within 10 days of his receipt of the bond resolution and report,
 12 issue written findings as to whether or not another review by the
 13 Local Finance Board of the project financing is required prior to
 14 the adoption of the bond resolution. The director shall require
 15 another review by the board of the project financing only if the
 16 director finds that the project cost of the method for funding the
 17 project financing has so significantly altered from that previously
 18 reviewed by the board as to require new findings by the board
 19 regarding the matters set forth in (a) and (b) of section 7 of P. L.
 20 1983, c. 313 (C. 40A:5A-7). If the director finds that another re-
 21 view by the board is necessary, the bond resolution shall not be
 22 adopted by the authority until the board's findings and recom-
 23 mendations on that review are certified by affidavit in the manner
 24 prescribed in section 7 (C. 40A:5A-7).

25 No bond resolution subject to submission to the voters shall be
 26 subject to the provisions of this section.

1 15. This act shall take effect immediately.

STATEMENT

This bill makes various revisions in the "Local Authorities Fiscal Control Law," P. L. 1983, c. 313 (C. 40A:5A-1 et seq.) which have become apparent as necessary for administrative ease since enactment. The principal revision is to require authority projects to be submitted to the Local Finance Board for hearing and review prior to undertaking the project rather than prior to adoption of a bond resolution. This provides for more meaningful review of the project by the board and for more flexibility in bond marketing by the authorities. After the initial review of the project, the bond resolution must be filed with the Director of Local Government Services, but no further review by the board would be required unless the project cost or method of financing has significantly changed.

In addition, the bill would:

1. Limit the authorities subject to the act to those which are authorized to undertake public facilities;

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2. Permit waiver of the hearing requirements in those instances where no interested person wishes to appear;

3. Permit authorities to engage in temporary financing for a five year period without board review of renewals of temporary obligations, once the project financing has been reviewed by the board;

4. Permit authority members to certify by individual affidavit to the board that the authority members have reviewed the board's findings and recommendations on a project and the annual audit of the authority; and,

5. Adjust the use of certain terms in the act to conform with their use in practice (bond resolution and service contract).

LOCAL BUDGET AND FINANCE

Makes various revisions of the "Local Authorities Fiscal Control Law" to facilitate administration by the Local Finance Board.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 2093

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 2, 1986

The Senate County and Municipal Government Committee reports favorably and with committee amendments Senate Bill No. 2093.

Senate Bill No. 2093 Sea makes various revisions in the "Local Authorities Fiscal Control Law," P. L. 1983, c. 313 (C. 40A:5A-1 et seq.). The principal revision clarifies the procedures by which authorities may renew temporary notes. Under the provisions of the amended bill, an authority may renew notes within three years of the date of the original note issue provided that renewal is not disapproved by the Director of the Division of Local Government Services within 10 days of notice of intention to renew by the authority. Any renewal after the three years must be submitted and subject to the approval and conditions of the Local Finance Board.

Other provisions of the amended bill:

1. Limit the review of project financing to financing for public facilities;
2. Clarify that service contracts concerned only with the provision of services are not subject to board review;
3. Require authorities to notify participating local units of submission of a project financing for review; and
4. Provide authorities with 45 days to certify review of board recommendations and permit the certification to be signed by a majority of the full membership of the authority.

ASSEMBLY INDEPENDENT AND REGIONAL
AUTHORITIES COMMITTEE

STATEMENT TO

SENATE, No. 2093

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MAY 21, 1987

The Assembly Independent and Regional Authorities Committee reports favorably Senate Bill No. 2093 (OCR).

As reported, this bill makes various revisions in the "Local Authorities Fiscal Control Law," P. L. 1983, c. 313 (C. 40A:5A-1 et seq.) to facilitate the administration and implementation of the law.

The principal revisions made by this bill are as follows:

(1) Authorities may renew temporary financing notes within three years of the date of the original note issue provided that renewal is not disapproved by the Director of the Division of Local Government Services within 10 days of notice of intention to renew by an authority. Any renewal application dated more than three years after the date of the original note issue must be submitted and subject to the approval and conditions of the Local Finance Board. Under current law, an authority must seek approval of the Local Finance Board for any renewal of temporary financing and there is no time limit specified for a response by the board;

(2) The definition of "project financing" is amended to limit the board's review to financing for public facilities for which the financing costs will be paid, directly or indirectly, by the inhabitants of a local unit who will benefit from the public facility. Under current law, project financing encompasses the financing by an authority of any facility for the benefit of inhabitants of a local unit;

(3) The terms "financing agreement" and "security agreement" are replaced by "service contract" and "bond resolution," respectively, to adjust the use of these terms to conform with their use in actual practice;

(4) The definition of "service contract" is amended to clarify that service contracts concerned only with the provision of services are not subject to review by the Local Finance Board;

(5) Authorities are required to notify participating local units of submission of a project financing at the time of submission of the pro-

posed project financing to the Local Finance Board. Under current law, the Local Finance Board is required only to send notice of a hearing to interested parties within 31 days of receipt of a proposed project financing;

(6) Authorities are provided with a period of 45 days within which to certify review of Local Finance Board recommendations and permit the certification to be signed by a majority of the full membership of the authority. Under current law, authorities are required to hold a meeting and execute, within 15 days after receipt of the board's findings, a group affidavit signed by the entire membership that the board's findings have been read.
