

## CHAPTER 106

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

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

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

C.52:31C-4 Authority to enter into structured financing transaction.

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

- a. The State Treasurer is authorized to enter into a structured financing transaction, on such terms, covenants and conditions and at such times as the State Treasurer may determine, to enter into, execute and deliver a structured financing agreement, and to do any act necessary or convenient to carrying out a structured financing transaction; provided that the State Treasurer shall not enter into a structured financing transaction relating to any State assets that are otherwise restricted by law, regulation or contract with respect to the transfer of the State's interest in those assets. 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 a structured financing transaction; provided however, that the structured financing transaction may permit 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 or terminate the State's ownership, occupation or use of the assets.

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

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

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

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

- f. An obligation of the State to make payments pursuant to a 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. An obligation of the State to make payments pursuant to a structured financing agreement shall be subject to and dependent upon appropriations being made by the Legislature for the purposes of this act. The net receipt made in connection with a structured financing transaction and received by the State Treasurer shall be deposited in the General Fund of the State.

- g. A structured financing agreement may, upon the determination of the State Treasurer, provide that an entity taking part in a structured financing transaction shall be immune from liability in the same manner and to the same extent as is the State under the provisions of the

"New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., and the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

h. A structured financing agreement may provide that an entity taking part in a structured financing transaction, and the officers, directors and employees of that entity, shall have a right of indemnification from the State or the State agency or State authority with which the agreement is made for any claim or judgment arising out of assets that are the subject of the structured financing agreement, except that the State, State agency or State authority, as appropriate, shall not indemnify or agree to indemnify such an entity, officer, director or employee for any act or omission to act that constitutes gross negligence, actual malice, actual fraud, willful misconduct or a crime, or that relates to any financial decisions made by the entity and its officers, directors and employees in connection with the structured financing transaction. The State or State agency or State authority may agree to indemnify any entity taking part in a structured financing transaction, and the officers, directors and employees of that entity, for punitive damages for a violation of civil law if such damages do not arise from actions that constitute gross negligence, actual malice, actual fraud or willful misconduct. The State Treasurer may set forth a provision for indemnity under this subsection in the structured financing agreement upon such terms and conditions as the State Treasurer shall determine.

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

C.52:31C-10 Procedures for undertaking structured financing agreements by public agencies other than the State.

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

3. This act shall take effect immediately.

Approved July 1, 2003.