

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 2274 (Gordon) – As Introduced: February 21, 2014

SUBJECT: The California Debt and Investment Advisory Commission.

SUMMARY: Modifies the reporting requirements an issuer of debt is required to make to the California Debt and Investment Advisory Commission (CDIAC) before a proposed sale of debt issue. Specifically, this bill:

- 1) Decreases the number of days from 45 to 21 that the issuer after the sale of debt shall submit a report of final sale.
- 2) Expands the CDIAC's authority to charge fees relating to the principal amount of a debt issue to a lender.

EXISTING LAW

- 1) Creates CDIAC consisting of nine members and provides information, education and technical assistance on debt issuance and public fund investments to local public agencies and other public finance professionals. CDIAC was created in 1981 with the passage of Chapter 1088, Statutes of 1981 (Assembly Bill (AB) 1192, Costa). This legislation established the California Debt Advisory Commission as the State's clearinghouse for public debt issuance information and required it to assist state and local agencies with the monitoring, issuance and management of public debt. The Commission's name was changed to the California Debt and Investment Advisory Commission with the passage of Chapter 833, Statutes of 1996 (AB 1197, Takasugi), and its mission was expanded to cover public investments. Among other functions specified in statute, CDIAC:
 - a) Collects information on all state and local debt issuance in California and serves as a statistical clearinghouse;
 - b) Provides technical assistance and continuing education to state and local government officials on the practices and strategies for public debt issuance and investing public funds;
 - c) Undertakes or commissions studies on methods to reduce the costs of debt and improve credit ratings;
 - d) Publishes a monthly newsletter;
 - e) Recommends Legislative changes to improve the sale and servicing of state and local debt;
 - f) Collects reports of annual fiscal status, bond reserve draws and bond defaults for Mello-Roos Community Facilities Districts and Marks-Roos Bond Pools; and,

g) Assists state financing authorities and commissions to carry out their responsibilities.
[Government Code, Section 8855]

2) Allows the CDIAC to collect fee to the lead underwriter or the purchaser in an amount equal to one-fortieth of 1 percent of the principal amount of the issue, but not to exceed \$5,000 for any one issue. Amount received will be deposited in the CDIAC Fund which is created in the State Treasury.

FISCAL EFFECT: Unknown.

COMMENTS:

According to the sponsor, California State Treasurer, Bill Lockyer, AB 2274 will better align CDIAC's debt information collection process with current municipal financing practices while also improving the timelines of reports of debt issuance by public agencies in California.

CDIAC was created to provide information, education and technical assistance on debt issuance and public fund investments to local public agencies and other public finance professionals. One of its responsibilities is to collect information on all state and local debt issuance in California, as well as, serve as a statistical clearinghouse.

Specific language in CDIAC's statute referring to methods of a sale or issuance, bond purchase contracts, and bid acceptance, among others, have led some to form the opinion that only authorized and issued bonds or instruments that are issued similarly to bonds should be reported to CDIAC. Bonds are only one form of debt issued by state and local entities. And with an evolving market, the language prevents CDIAC from collecting information on new and future types of borrowing made by municipal issuers.

The municipal industry has seen an increasing trend of municipal issuers taking on non-traditional financing for capital projects in the form of direct loans from banks. Prior to this, the financing of these projects was done with a bond. This new type of borrowing allows public officials to obtain new debt without disclosure to municipal bondholders. This is problematic because bondholders and rating agencies do not have an accurate picture of the entity's total indebtedness. More importantly, CDIAC, the state's clearinghouse for debt information, is unable to capture important data that the Legislature and others rely on for comprehensive information on state and local government debt.

AB 2274 accomplishes three things:

1) Removing terminology that can be interpreted to be specific to a debt type or method of sale. The authorizing statute that defined CDIAC's mission, roles, and responsibilities. Government Code Section 8855(i) and 8855(j) does not define the term "debt." While the lack of a definition has allowed CDIAC to administratively adapt its data collection methods to the changing varieties of state and local debt, it has left CDIAC vulnerable to the challenges from issuers over the types of debt and debt-like obligations they must report. This problem is exacerbated by the aforementioned Government Code Sections which use terminology related to the filing of debt information with CDIAC that can be more strictly interpreted to apply to bonds only.

- 2) Reducing the time for reporting bond sale information to CDIAC, from 45 days to 21 days to improve the usefulness of reports. Government Code Section 8855(j) required that a report of final sale be submitted to CDIAC 45 days after the bond purchase contract is signed and the bid accepted. This timeframe is inconsistent with the reporting timeframe used by the Municipal Securities Rulemaking Board (MSRB) and Securities and Exchange Commission (SEC) (MSRB requires underwriters notification within 2 hours; the SEC requires 10 days). The current 45 day period causes CDIAC's data to be inconsistent with other widely referenced market sources.
- 3) Adding the term "lender" as another entity responsible for remitting CDIAC's filing fee to capture non-traditional debt such as direct loans. Government Code Section 8856(a) placed the responsibility for remitting CDIAC's filing fee upon the "lead underwriter" or "the purchaser," and such debt-type specific terminology creates ambiguity for issuers of non-traditional indebtedness and causes conflict between CDIAC staff and an issuer's lender regarding who must pay the filing fee.

RECOMMENDED AMENDMENTS:

- 1) On page 3, line 14, delete "new"
- 2) On page 4, line 15, delete, "by mail, postage prepaid or"
- 3) On page 4, line 16 delete "other"
- 4) On page 5, delete lines 9-13

REGISTERED SUPPORT / OPPOSITION:

Support

California State Treasurer (Sponsor)

Opposition

None on file.

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