

Local Government Borrowing Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Local Government Borrowing Bill as reported from the Local Government and Environment Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, and Part 1
 - the Local Government (Auckland Council) Amendment Bill (No 2) comprising Part 2.
-

Hon Rodney Hide

Local Government Borrowing Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
	<i>Preliminary provisions</i>	
3	Purpose	2
4	Interpretation	3
5	Application	3
6	Part binds the Crown	3
	<i>Application of Reserve Bank of New Zealand Act 1989</i>	
7	Part 5D of Reserve Bank of New Zealand Act 1989 does not apply to Funding Agency	3
	<i>Application of Securities Act 1978</i>	
8	Securities Act 1978 applies to Funding Agency as if it were local authority	3
	<i>Application of Local Government Act 2002</i>	
9	Exemption from prohibitions and restrictions applying to council-controlled trading organisations	3
10	Additional requirements to be specified in local authority's financial strategy	4
11	Exemption from prohibition on borrowing in foreign currency	5
12	Certain arrangements and transactions to be treated as incidental arrangements and protected transactions under Local Government Act 2002	5

	<i>Amendments to Income Tax Act 2007</i>	
13	Principal Act amended	5
14	Definitions	5
	<i>Crown relationship with Funding Agency</i>	
15	Crown may lend money to Funding Agency	6
16	No Crown guarantee for debts of Funding Agency	6
	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government Borrowing Act **2011**.

2 Commencement

- (1) This Act comes into force on the day after the Funding Agency is registered under the Companies Act 1993. 5
- (2) However, this Act is repealed on the day that is 12 months after the date on which it receives the Royal assent if the Funding Agency has not been registered by that date.

Preliminary provisions

3 Purpose 10

- (1) The purpose of this **Part** is to facilitate the operation of the New Zealand Local Government Funding Agency Limited.
- (2) To this end, this **Part**—
 - (a) exempts the Funding Agency from certain regulatory or taxation criteria that would otherwise apply to it; and 15
 - (b) applies certain regulatory or taxation criteria to the Funding Agency that would otherwise not apply to it; and
 - (c) authorises local authorities to deal with the Funding Agency in a manner in which they would otherwise not be authorised to do so; and 20
 - (d) authorises or requires local authorities, in certain situations, to act in a manner in which they would otherwise not be authorised or required to act.

4 Interpretation

- (1) In this **Part**, unless the context requires another meaning,—
Funding Agency means the New Zealand Local Government Funding Agency Limited, a limited liability company registered under Part 2 of the Companies Act 1993 5
Minister has the meaning given by section 2(1) of the Public Finance Act 1989.
- (2) A term defined in the Local Government Act 2002 that is used but not defined in this **Part** has the same meaning as in the Local Government Act 2002. 10

5 Application

This **Part** applies to the Funding Agency only while the Funding Agency is a council-controlled organisation.

6 Part binds the Crown

This **Part** binds the Crown. 15

Application of Reserve Bank of New Zealand Act 1989

7 Part 5D of Reserve Bank of New Zealand Act 1989 does not apply to Funding Agency

Part 5D of the Reserve Bank of New Zealand Act 1989 does not apply to the Funding Agency. 20

Application of Securities Act 1978

8 Securities Act 1978 applies to Funding Agency as if it were local authority

The Securities Act 1978 applies to the Funding Agency as if it were a local authority. 25

Application of Local Government Act 2002

9 Exemption from prohibitions and restrictions applying to council-controlled trading organisations

- (1) This section applies only if the Funding Agency is also a council-controlled trading organisation. 30

- (2) Despite section 62 of the Local Government Act 2002, a local authority may give a guarantee, an indemnity, or a security in respect of the performance of any obligation by the Funding Agency.
- (3) Despite section 63 of the Local Government Act 2002, a local authority may lend money, or provide any other financial accommodation, to the Funding Agency on terms and conditions that are more favourable to the Funding Agency than those that would apply if the local authority were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation. 5 10
- (4) **Subsection (5)** applies if a local authority gives a guarantee, an indemnity, or a security, or lends money or provides any other financial accommodation, under **subsection (2) or (3)** while the Funding Agency is a council-controlled trading organisation and, subsequently, the Funding Agency ceases to be a council-controlled trading organisation. 15
- (5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obligations and rights of the local authority in respect of the guarantee, indemnity, security, loan, or other financial accommodation continue to apply, despite the Funding Agency no longer being a council-controlled trading organisation. 20
- 10 Additional requirements to be specified in local authority's financial strategy** 25
- (1) This section applies to a local authority if it has adopted a financial strategy under section 101A of the Local Government Act 2002 and it gives a guarantee in relation to—
- (a) any indebtedness of the Funding Agency:
- (b) another local authority's indebtedness to the Funding Agency. 30
- (2) The local authority must specify in its financial strategy its policy on the giving of any securities that secure obligations under the guarantee.

- 11 Exemption from prohibition on borrowing in foreign currency**
 Section 113(1) of the Local Government Act 2002 does not apply in relation to a guarantee by a local authority of any indebtedness of the Funding Agency. 5
- 12 Certain arrangements and transactions to be treated as incidental arrangements and protected transactions under Local Government Act 2002**
- (1) This section applies to the following arrangements:
- (a) a guarantee by a local authority of any indebtedness owed by another local authority to the Funding Agency: 10
 - (b) a guarantee by a local authority of any indebtedness of the Funding Agency:
 - (c) a commitment by a local authority to contribute equity to the Funding Agency: 15
 - (d) a commitment by a local authority to lend money to the Funding Agency.
- (2) The arrangements are—
- (a) incidental arrangements for the purposes of sections 114 and 115 of the Local Government Act 2002; and 20
 - (b) protected transactions for the purposes of sections 117 to 120 of the Local Government Act 2002.
- Amendments to Income Tax Act 2007*
- 13 Principal Act amended**
Section 14 amends the Income Tax Act 2007. 25
- 14 Definitions**
- (1) Paragraph (b) of the definition of **council-controlled organisation** in section YA 1 is amended by adding “or the New Zealand Local Government Funding Agency Limited”.
- (2) The definition of **local authority** in section YA 1 is amended by adding the following subparagraph: 30
- “(ix) the New Zealand Local Government Funding Agency Limited while it is a council-controlled organisation within the meaning of section 6(1) of the Local Government Act 2002”. 35

Crown relationship with Funding Agency

15 Crown may lend money to Funding Agency

- (1) The Minister, on behalf of the Crown, may lend money to the Funding Agency if—
 - (a) the Minister considers that—
 - (i) it is necessary or expedient in the public interest to do so; and
 - (ii) it is necessary to meet an exceptional and temporary liquidity shortfall affecting the Funding Agency; and
 - (b) the money is lent on commercial terms.
- (2) The Minister may lend money under **subsection (1)** without further appropriation than this section as long as the lending occurs not later than 10 years after the commencement of this **Part**.

16 No Crown guarantee for debts of Funding Agency

- (1) No debt of the Funding Agency is guaranteed by the Crown.
- (2) If the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown.
- (3) In this section, **incidental arrangement** means an arrangement that would, if the Funding Agency were a local authority, come within the meaning of that term in section 112 of the Local Government Act 2002.

.

Local Government Borrowing Bill

Legislative history

6 April 2011	Introduction (Bill 281-1)
17 May 2011	First reading and referral to Local Government and Environment Committee
19 July 2011	Reported from Local Government and Environment Committee (Bill 281-2)
6 September 2011	Second reading
8 September 2011	Divided from Local Government Borrowing Bill by committee of the whole House as Bill 281-3
