

Local Government Borrowing Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Local Government Borrowing Bill and recommends that it be passed with the amendments shown.

Introduction

The Local Government Borrowing Bill is an omnibus bill that seeks to provide for more cost-effective borrowing by local authorities. The bill would facilitate the operation of the New Zealand Local Government Funding Agency, a limited liability company, to be registered under Part 2 of the Companies Act 1993, and would allow the agency to issue debt on behalf of all participating local authorities. The operation of the agency would also aid the development of a liquid market in standardised local authority bonds, which would be valuable for New Zealand capital markets.

It is intended that Parts 1 and 2 of the bill will be divided into separate bills at the committee of the whole House stage.

Commencement

We recommend amending clause 2(1) so that Part 1 of the bill would come into force the day after the incorporation of the New Zealand Local Government Funding Agency. We also recommend inserting new clause 2(1A) so that Part 1 would be repealed if the funding agency were not incorporated within 12 months of Part 1 receiving the Royal assent.

Clause 2(1) provides for Part 1 to be brought into force by the Governor-General by Order in Council. This provision is intended to ensure that the funding agency is incorporated before Part 1 comes into force. The Regulations Review Committee recommends that the bill be amended to include a specified commencement date, as commencement of legislation by Order in Council should be used only in rare and exceptional circumstances.

The incorporation of the funding agency under the Companies Act is a necessary precondition to the commencement of Part 1, and the amendments we recommend to clause 2(1) would provide for this and reflect the recommendations of the Regulations Review Committee.

Council-controlled trading organisations

We recommend amending clause 9 by inserting new subclauses (4) and (5). These subclauses specify that any guarantee, indemnity, security, loan, or other financial accommodation given by a local authority in respect of the funding agency's obligations, while the agency is a council-controlled trading organisation (CCTO), would continue even if the funding agency ceased to be a CCTO.

We recommend these amendments to provide certainty for potential investors who might otherwise form the impression that there was a risk of key transactions being overturned if the funding agency ceased to be a CCTO.

Appendix

Committee process

The Local Government Borrowing Bill was referred to the committee on 17 May 2011. The closing date for submissions was 17 June 2011. We received and considered six submissions from interested groups and individuals. We heard four submissions.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership

Chris Auchinvole (Chairperson)

Brendon Burns

Dr Cam Calder

Hon Ruth Dyson

Rahui Katene

Nikki Kaye

Sue Kedgley

Hon Heather Roy

Phil Twyford

Louise Upston

Nicky Wagner

Local Government Borrowing Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Rodney Hide

Local Government Borrowing Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
New Zealand Local Government Funding Agency Limited		
<i>Preliminary provisions</i>		
3	Purpose	3
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	4
<i>Application of Securities Act 1978</i>		
8	Securities Act 1978 applies to Funding Agency as if it were local authority	4
<i>Application of Local Government Act 2002</i>		
9	Exemption from prohibitions and restrictions applying to council-controlled trading organisations	4
10	Additional requirements to be specified in local authority's financial strategy	5
11	Exemption from prohibition on borrowing in foreign currency	5

cl 1	Local Government Borrowing Bill	
<hr/>		
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	6
14	Definitions	6
	<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
Part 2		
Amendment to Local Government (Auckland Council) Act 2009		
17	Principal Act amended	7
18	New heading and section 107 inserted	7
	<i>Borrowing in foreign currency</i>	
107	Borrowing in foreign currency	7

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government Borrowing Act **2011**.
- 2 Commencement**
- (†) **Part 1** comes into force on a date appointed by the Governor-General by Order in Council. 5
- (1) **Part 1** comes into force on the day after the Funding Agency is registered under the Companies Act 1993.
- (1A) However, **Part 1** 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. 10
- (2) **Part 2** comes into force on the day after the date on which it receives the Royal assent.

Part 1
New Zealand Local Government Funding Agency Limited

Preliminary provisions

- 3 Purpose** 5
- (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 10
- (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 15
- (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** 20
- (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
- Minister** has the meaning given by section 2(1) of the Public Finance Act 1989. 25
- (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.
- 5 Application** 30
- 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.

*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. 5

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. 10

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. 15

(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. 20

(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. 25

(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. 30

(5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obliga- 35

tions 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.

- 10 Additional requirements to be specified in local authority's financial strategy** 5
- (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: 10
- (b) another local authority's indebtedness to the Funding Agency.
- (2) The local authority must specify in its financial strategy its policy on the giving of any securities that secure obligations under the guarantee. 15
- 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. 20
- 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: 25
- (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: 30
- (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 35

- (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. 5

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: 10
- “(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”. 15

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— 20
- (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 25
- (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**. 30

16 No Crown guarantee for debts of Funding Agency

- (1) No debt of the Funding Agency is guaranteed by the Crown.

Local Government Borrowing Bill

- (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. 5

Part 2
Amendment to Local Government 10
(Auckland Council) Act 2009

- 17 Principal Act amended**
This **Part** amends the Local Government (Auckland Council) Act 2009.

- 18 New heading and section 107 inserted** 15
The following heading and section is are inserted after section 106:

“Borrowing in foreign currency

- “107 Borrowing in foreign currency** 20
Despite section 113 of the Local Government Act 2002, the Auckland Council may borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.”

Legislative history

6 April 2011	Introduction (Bill 281–1)
17 May 2011	First reading and referral to Local Government and Environment Committee
