

1 AN ACT concerning finance.

2 WHEREAS, The General Assembly takes note that
3 governmental units in the State must borrow funds in the
4 current bond market, and the issuance of bonds or other
5 obligations as what are commonly referred to as variable rate
6 demand bonds, auction bonds, or commercial paper bonds is
7 ever increasing, and is frequently the most advisable and
8 economic means of borrowing; and

9 WHEREAS, It is sometimes most advantageous in connection
10 with such borrowings to enter into cap, collar, swap, or
11 other derivative transactions relating to interest rates
12 which serve to hedge interest rate risk and it is frequently
13 necessary to procure credit enhancement in the forms commonly
14 referred to as municipal bond insurance, letters of credit,
15 lines of credit, standby bond purchase agreements, or surety
16 bonds, and the like, in such demand bond and similar
17 transactions; and

18 WHEREAS, Existing law authorizes such transactions, but
19 it is advisable for the law to be more fully stated to
20 accommodate same, expressly permitting certain aspects of
21 such transactions; therefore

22 Be it enacted by the People of the State of Illinois,
23 represented in the General Assembly:

24 Section 5. The Bond Authorization Act is amended by
25 changing Section 7 as follows:

26 (30 ILCS 305/7) (from Ch. 17, par. 6607)

27 Sec. 7. Interest rate swaps. For purposes of this
28 Section, terms are as defined in the Local Government Debt
29 Reform Act. With respect to all or part of any currently

1 outstanding or proposed issue of its bonds, a governmental
2 unit public--corporation whose aggregate principal amount of
3 bonds outstanding or proposed exceeds \$10,000,000 may,
4 without prior appropriation, enter into agreements or
5 contracts with any necessary or appropriate person (the
6 counter party) that will have the benefit of providing to the
7 governmental unit: (i) public-corporation an interest rate
8 basis, cash flow basis, or other basis different from that
9 provided in the bonds for the payment of interest or (ii)
10 with respect to a future delivery of bonds, one or more of a
11 guaranteed interest rate, interest rate basis, cash flow
12 basis, or purchase price. Such agreements or contracts
13 include without limitation agreements or contracts commonly
14 known as "interest rate swap, collar, cap, or derivative
15 agreements", "forward payment conversion agreements",
16 interest rate locks, forward bond purchase agreements, bond
17 warrant agreements, or bond purchase option agreements and
18 also include agreements or contracts providing for payments
19 based on levels of or changes in interest rates, including a
20 change in an interest rate index, to exchange cash flows or a
21 series of payments, or to hedge payment, rate spread, or
22 similar exposure (such agreements or contracts, collectively,
23 being "swaps"). Without limiting other permitted terms which
24 may be included in swaps, the following provisions may or, if
25 hereinafter so required, shall apply:

26 (a) Payments made pursuant to a swap (the swap payments)
27 which are to be made by the governmental unit may be paid by
28 such governmental unit, without limitation, from proceeds of
29 the bonds, including bonds for future delivery, identified to
30 such swaps, or from bonds issued to refund such bonds, or
31 from whatever enterprise revenues or revenue source,
32 including taxes pledged or to be pledged to the payment of
33 such bonds, which enterprise revenues or revenue source may
34 be increased to make such swap payments, and swap payments to

1 be received by the governmental unit, which may be periodic,
2 up-front, or on termination, shall be used solely for and
3 limited to any lawful corporate purpose of the governmental
4 unit.

5 (b) Up-front or periodic net swap payments to be paid by
6 the governmental unit under the swaps (the standard swap
7 payments) such--agreements--or--contracts shall be treated as
8 interest for the purpose of calculating any interest rate
9 limit applicable to the bonds, provided, however, that for
10 purposes of making such standard swap payments only (and not
11 with respect to the bonds so issued or to be issued), the
12 bonds shall be deemed not exempt from income taxation under
13 the Internal Revenue Code for purposes of State law, as
14 contained in this Bond Authorization Act, relating to the
15 permissible rate of interest to be borne thereon, and,
16 provided further, that if payments of any standard swap
17 payments are to be made by the governmental unit and the
18 counterparty on different dates, the net effect of such
19 payments for purposes of such interest rate limitation shall
20 be determined using a true interest cost (yield) calculation.

21 (c) Any such agreement or contract and the swap payments
22 to be made thereunder shall not be taken into account with
23 respect to any debt limit applicable to the governmental unit
24 public-corporation.

25 (d) Swap payments upon the termination of any swap may
26 be paid to a counterparty upon any terms customary for swaps,
27 including, without limitation, provisions using market
28 quotations available for giving the net benefit of the swap
29 at the time of termination to the persons entitled thereto
30 (viz., the governmental unit or the counterparty) or
31 reasonable fair market value determinations of the value at
32 termination made in good faith by either such persons.

33 (e) The term of the swap shall not exceed the term of
34 any currently outstanding bonds identified to such swap or,

1 for bonds to be delivered, not greater than 5 years plus the
2 term of years proposed for such bonds to be delivered, but in
3 no event longer than 40 years, plus, in each case, any time
4 period necessary to cure any defaults under such swap.

5 (f) The choice of law for enforcement of swaps as to any
6 counterparty may be made for any state of these United
7 States, but the law which shall apply to the obligations of
8 the governmental unit shall be the law of the State of
9 Illinois, and jurisdiction to enforce the swaps as against
10 the governmental units shall be exclusively in the courts of
11 the State of Illinois or in the applicable federal court
12 having jurisdiction and located within the State of Illinois.

13 (g) Governmental units, in entering into swaps, may not
14 wave any sovereign immunities from time to time available
15 under the laws of the State of Illinois as to jurisdiction,
16 procedures, and remedies, but such swaps shall otherwise be
17 fully enforceable as valid and binding contracts as and to
18 the extent provided herein and by other applicable law.

19 (Source: P.A. 87-1176.)

20 Section 10. The Local Government Credit Enhancement Act
21 is amended by changing Sections 2 and 3 as follows:

22 (50 ILCS 410/2) (from Ch. 85, par. 4302)

23 Sec. 2. For the purposes of this Act, terms are as
24 defined in the Local Government Debt Reform Act. ~~unless--the~~
25 ~~context--requires--otherwise:~~

26 ~~{a}--"Unit--of--local--government"--shall--have--the--meaning~~
27 ~~ascribed--to--it--in--Article--VII,--Section--1--of--the--Illinois~~
28 ~~Constitution.~~

29 ~~{b}--"School--district"--means--any--public--school--district~~
30 ~~organized--under--the--School--Code--or--prior--law--and--includes--any~~
31 ~~dual--or--unit--school--district,--high--school--district,--special~~
32 ~~charter--district--and--non-high--school--district.---"School~~

1 district"-also-means-any-community-college-district-organized
2 under-the-Public-Community-College-Act-or-prior-law.

3 (e)--"Governing-board"-means-the-corporate-authorities-of
4 the-municipality, county-board, board-of-trustees,--board--of
5 education, board-of-school-directors, or-other-governing-body
6 of-the-unit-of-local-government-or-school-district.

7 (Source: P.A. 83-1536.)

8 (50 ILCS 410/3) (from Ch. 85, par. 4303)

9 Sec. 3. In connection with the issuance of its bonds and
10 notes, a governmental unit of--local-government-or-school
11 district may enter into agreements (credit agreements)
12 arrangements to provide additional security or and liquidity,
13 or both, for the bonds and notes. These may include, without
14 limitation, municipal bond insurance, letters of credit,
15 lines of credit, standby bond purchase agreements, surety
16 bonds, and the like, by which the governmental unit of--local
17 government-or-school-district may borrow funds to pay or
18 redeem or purchase and hold its bonds and a governmental unit
19 may enter into agreements for the purchase or remarketing of
20 bonds (remarketing agreements) arrangements for providing a
21 mechanism for remarketing bonds tendered for purchase in
22 accordance with their terms. The term of such credit
23 agreements or remarketing agreements shall not exceed the
24 term of the bonds, plus any time period necessary to cure any
25 defaults under such agreements assuring-the-ability-of-owners
26 of-the-issuing-local-government's-or-school-district's--bonds
27 to--sell--or-to-have-redeemed-their-bonds,--The-unit-of-local
28 government-or-school-district-may-enter--into--contracts--and
29 may-agree-to-pay-fees-to-persons-providing-such-arrangements,
30 including-from-bond-proceeds.

31 Without limiting the terms which may be included in any
32 such credit agreements or remarketing agreements, the
33 ordinance The--resolution-of-the-governing-board-authorizing

1 the-issuance-of-the-bonds may or, if hereinafter so required,
2 shall provide as follows:

3 (a) that Interest rates on the bonds may vary from time
4 to time depending upon criteria established by the governing
5 body board, which may include, without limitation: (i), a
6 variation in interest rates as may be necessary to cause
7 bonds to be remarketed ~~remarketable~~ from time to time at a
8 price equal to their principal amount plus any accrued
9 interest; (ii) rates set by auctions; or (iii) rates set by
10 formula. ~~and may provide for appointment of,~~

11 (b) A national banking association, bank, trust company,
12 investment banker or other financial institution may be
13 appointed to serve as a remarketing agent in that connection,
14 and such remarketing agent may be delegated authority by the
15 governing body to determine interest rates in accordance with
16 criteria established by the governing body. ~~The resolution~~
17 ~~of the governing board authorizing the issuance of the bonds~~
18 ~~may provide that~~

19 (c) Alternative interest rates or provisions may will
20 apply during such times as the bonds are held by the a person
21 or persons (financial providers) providing a credit agreement
22 or remarketing agreement ~~letter of credit or other credit~~
23 ~~enhancement arrangement~~ for those bonds and during such
24 times, the interest on the bonds may be deemed not exempt
25 from income taxation under the Internal Revenue Code for
26 purposes of State law, as contained in the Bond Authorization
27 Act, relating to the permissible rate of interest to be borne
28 thereon.

29 (d) Fees may be paid to the financial providers,
30 including all reasonably related costs, including therein
31 costs of enforcement and litigation (all such fees and costs
32 being financial provider payments) and financial provider
33 payments may be paid, without limitation, from proceeds of
34 the bonds being the subject of such agreements, or from bonds

1 issued to refund such bonds, or from whatever enterprise
2 revenues or revenue source, including taxes, pledged to the
3 payment of such bonds, which enterprise revenues or revenue
4 source may be increased to make such financial provider
5 payments, and such financial provider payments shall be made
6 subordinate to the payments on the bonds.

7 (e) The bonds need not be held in physical form by the
8 financial providers when providing funds to purchase or carry
9 the bonds from others but may be represented in
10 uncertificated form in the credit agreements or remarketing
11 agreements.

12 (f) The debt or obligation of the governmental unit
13 represented by a bond tendered for purchase to or otherwise
14 made available to the governmental unit and thereupon
15 acquired by either such governmental unit or a financial
16 provider shall not be deemed to be extinguished for purposes
17 of State law until cancelled by the governmental unit or its
18 agent.

19 (g) The choice of law for the obligations of a financial
20 provider may be made for any state of these United States,
21 but the law which shall apply to the obligations of the
22 governmental unit shall be the law of the State of Illinois,
23 and jurisdiction to enforce such credit agreement or
24 remarketing agreement as against the governmental unit shall
25 be exclusively in the courts of the State of Illinois or in
26 the applicable federal court having jurisdiction and located
27 within the State of Illinois.

28 (h) The governmental unit may not waive any sovereign
29 immunities from time to time available under the laws of the
30 State of Illinois as to jurisdiction, procedures, and
31 remedies, but any such credit agreement and remarketing
32 agreement shall otherwise be fully enforceable as valid and
33 binding contracts as and to the extent provided by applicable
34 law.

1 (i) Such credit agreement or remarketing agreement may
2 provide for acceleration of the principal amounts due on the
3 bonds, provided, however, that such acceleration shall be
4 deferred for not less than 18 months from the time any such
5 bond is acquired pursuant to any such agreement.

6 (Source: P.A. 83-1536.)