

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 544

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 82 of Title 36 of the Official Code of Georgia Annotated,
2 relating to revenue bonds, so as to provide governmental bodies the additional power and
3 authority to enter into, terminate, modify or amend an interest rate swap, cap, floor, collar,
4 or similar arrangement, or any combination thereof or option with respect thereto, as a hedge
5 with respect to the interest rate or rates on any bonds issued or authorized to be issued by
6 such governmental body pursuant to the Revenue Bond Law; to provide for definitions; to
7 provide for procedures, conditions, and limitations; to change certain provisions regarding
8 liability and recitations; to provide for related matters; to provide an effective date; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

11 Article 3 of Chapter 82 of Title 36 of the Official Code of Georgia Annotated, relating to
12 revenue bonds, is amended by adding three new paragraphs in Code Section 36-82-61,
13 relating to definitions, to be designated paragraphs (.1), (2.1), and (2.2), to read as follows:

14 "(.1) 'Eligible collateral' shall mean any investment eligible for the investment of bond
15 proceeds under Code Section 36-82-7, as amended, provided that the credit rating
16 assigned to such investment is at least 'Aa3' from Moody's Investors Service, Inc., or
17 'AA-' from Standard & Poors Ratings Service, a Division of The McGraw-Hill
18 Companies, Inc., or an equivalent rating from any other nationally-recognized securities
19 ratings agency."

20 "(2.1) 'Hedge contract' means any interest rate swap, cap, floor, collar, or other
21 arrangement similar to the foregoing, or any combination thereof or option with respect
22 thereto, entered into by a governmental body with a qualified hedge provider in
23 connection with the issuance, carrying, or refunding of any bonds issued or authorized
24 to be issued by the governmental body pursuant to this article.
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1 (2.2) 'Qualified hedge provider' means any bank, insurance company, or similar financial
 2 institution duly qualified to do business in this state, and which either:

3 (A) Has, at the time of entering into the hedge contract and for the entire term thereof,
 4 a long-term, unsecured debt rating or financial strength rating of at least 'Aa3' from
 5 Moody's Investors Service, Inc., or 'AA-' from Standard & Poors Ratings Services, a
 6 Division of the McGraw-Hill Companies, Inc., or an equivalent rating from any other
 7 nationally-recognized securities rating agency; or

8 (B) Provides to the governmental body eligible collateral with a value equal to the
 9 value of the hedge contract, with each such value determined simultaneously at least
 10 once each calendar month during the term of the hedge contract."

11 SECTION 2.

12 Said article is further amended in subsection (a) of Code Section 36-82-62, relating to powers
 13 as to undertakings and revenue bonds generally, by striking "and" at the end of paragraph (5);
 14 by striking the period at the end of paragraph (6), and inserting in its place "; and" and by
 15 adding a new paragraph (7) to read as follows:

16 "(7) To enter into, terminate, amend, or otherwise modify any hedge contract in
 17 connection with the issuance, carrying, or refunding of any bonds issued under this
 18 article, provided that the following conditions shall have been satisfied:

19 (A) The governmental body shall specify in reasonable detail the bonds which may be
 20 one series or multiple series and which specification may be changed from time to time;
 21 provided, however, the remaining conditions set forth in this paragraph are satisfied,
 22 to which such hedge contract relates, and shall make a determination, by resolution duly
 23 adopted, that the hedge contract is entered into in order to hedge or otherwise manage
 24 its interest rate risk in connection with the issuance, carrying, or refunding of such
 25 bonds; and

26 (B) The notional amount of the hedge contract does not exceed, at any time during the
 27 term thereof, the principal amount of bonds identified by the governmental body
 28 pursuant to subparagraph (A) of this paragraph outstanding at such time, and the term
 29 of such hedge contract does not exceed the latest maturity date of such bonds so
 30 identified."

31 SECTION 3.

32 Said article is further amended by adding a new subsection (c) at the end of Code Section
 33 36-82-65, relating to covenants, to read as follows:

34 "(c) Notwithstanding any provision of this article to the contrary, in connection with any
 35 hedge contract entered into by a governmental body pursuant to this article, such

1 governmental body may, in the resolution or resolutions authorizing the issuance of the
 2 related bonds, in any bond resolution, trust indenture or similar arrangement related thereto,
 3 or in the hedge contract itself:

4 (1) Pledge to the punctual payment of amounts due under the hedge contract the
 5 revenues of the related undertaking or any part thereof, which pledge may be on parity
 6 with or subordinate to any pledge of such revenues made to secure the punctual payment
 7 of amounts due with respect to the related bonds;

8 (2) Provide that amounts to be paid to the governmental body by the qualified hedge
 9 provider pursuant to the hedge contract shall be included in the revenues of the related
 10 undertaking; and

11 (3) Make any additional covenants described in subsection (a) of this Code section for
 12 the benefit of the qualified hedge provider as the governmental body may determine are
 13 reasonable and appropriate; provided, however, that any pledge of revenues made to or
 14 for the benefit of a qualified hedge provider to secure any amount due upon early
 15 termination of the related hedge agreement shall be expressly subordinate to any pledge
 16 made in favor of the holders of the related bonds. Any hedge contract entered into by a
 17 governmental body in connection with the issuance of bonds under this article may be
 18 included in the validation proceeding with respect to such bonds."

19 SECTION 4.

20 Said article is further amended by striking Code Section 36-82-66, relating to liability and
 21 recitations, and inserting in its place a new Code Section 36-82-66 to read as follows:

22 "36-82-66.

23 Revenue bonds issued under this article and any hedge contract entered into relating thereto
 24 shall not be payable from or charged upon any funds other than the revenue pledged to the
 25 payment thereof, nor shall the governmental body issuing or entering into the same be
 26 subject to any pecuniary liability thereon. No holder or holders of any such bonds nor any
 27 qualified hedge provider under any such hedge contract shall ever have the right to compel
 28 any exercise of the taxing power of the governmental body to pay any such bonds or the
 29 interest thereon or any amount due under any such hedge contract, nor to enforce payment
 30 thereof against any property of the governmental body; nor shall any such bonds or any
 31 such hedge contract constitute a charge, lien, or encumbrance, legal or equitable, upon any
 32 property of the governmental body. Every bond issued and every hedge contract entered
 33 into under this article shall contain a recital setting forth the substance of this Code
 34 section."

SECTION 5.

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2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

SECTION 6.

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5 All laws and parts of laws in conflict with this Act are repealed.