

Senate Bill 515

By: Senators Cagle of the 49th, Starr of the 44th and Lee of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 17 of Title 50 of the Official Code of Georgia Annotated, relating to state
2 debt, investment, and depositories, so as to provide for the issuance of cap, collar, swap, and
3 other derivative transactions regarding interest rates that hedge interest rate risk with respect
4 to the issuance of certain bonds; to provide for definitions; to provide for procedures,
5 conditions, and limitations; to provide for powers, duties, and authority of the Georgia State
6 Financing and Investment Commission; to provide for related matters; to provide an effective
7 date; to repeal conflicting laws; and for other purposes.

8

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10

SECTION 1.

11 Chapter 17 of Title 50 of the Official Code of Georgia Annotated, relating to state debt,
12 investment, and depositories, is amended by adding a new article at the end thereof, to be
13 designated Article 4, to read as follows:

14

"ARTICLE 4

15 50-17-80.

16 As used in this article, the term:

17 (1) 'Commission' means the Georgia State Financing and Investment Commission as
18 defined in paragraph (1) of Code Section 50-17-21, as amended.

19 (2) 'Counterparty' means the party entering into a qualified interest rate management
20 agreement with the public body. A counterparty must be a bank, insurance company, or
21 other financial institution duly qualified to do business in the state that has, at the time
22 of entering into a qualified interest rate management agreement and for the entire term
23 thereof, a long-term unsecured debt rating or financial strength rating in one of the top
24 two ratings categories, without regard to any refinement or gradation of rating category
25 by numerical modifier or otherwise, assigned by Moody's Investors Service, Inc.,
26 Standard & Poors Ratings Service, a division of The McGraw-Hill Companies, Inc.,

1 Fitch, Inc., or such other nationally recognized ratings service approved by the
2 commission.

3 (3) 'Debt' shall include bonds, including, but not limited to, general obligation bonds,
4 guaranteed revenue bonds and revenue bonds, notes, warrants, certificates, or other
5 evidences of indebtedness for borrowed money.

6 (4) 'Independent financial adviser' means a person or entity experienced in the financial
7 aspects and risks of interest rate management agreements that is retained to render advice
8 with respect to a qualified interest rate management agreement and that has been
9 approved by the commission. The independent financial adviser may not be the
10 counterparty or an affiliate or agent of the counterparty on a qualified interest rate
11 management agreement with respect to which the independent financial adviser is
12 advising the public body.

13 (5) 'Interest rate management plan' means a written plan prepared or reviewed by an
14 independent financial adviser with respect to a qualified interest rate management
15 agreement that has been approved by the commission.

16 (6) 'Public body' means the state; any state authority; any governmental body as defined
17 in Code Section 36-82-61, as amended; and any agency or instrumentality of or any
18 public body corporate and politic established by or for any of the foregoing which has the
19 power to incur indebtedness or borrow money.

20 (7) 'Qualified interest rate management agreement' means an agreement, including a
21 confirmation evidencing a transaction effected under a master agreement, entered into by
22 the public body in accordance with, and fulfilling the requirements of, Code Section
23 50-17-81 which agreement in the judgment of the public body is designed to manage
24 interest rate risk or interest cost of the public body on any debt the public body is
25 authorized to incur, including, but not limited to, interest rate swaps or exchange
26 agreements, interest rate caps, collars, corridors, ceiling, floor, and lock agreements,
27 forward agreements, float agreements, and other interest rate hedging agreements which,
28 in the judgment of the public body, will assist the public body in managing the interest
29 rate risk or interest cost of the state, authority, or governmental body.

30 50-17-81.

31 (a) The commission is authorized to and shall establish guidelines, rules, or regulations
32 with respect to the procedures for approving interest rate management plans and with
33 respect to any requirements for qualified interest rate management agreements. Such
34 guidelines, rules, and regulations shall not constitute a rule within the meaning of Chapter
35 13 of this title, the 'Georgia Administrative Procedure Act,' including, without limitation,

1 the term 'rule' as defined in paragraph (6) of Code Section 50-13-2 and used in Code
2 Section 50-13-4.

3 (b) With respect to all or any portion of any debt, either issued or anticipated to be issued
4 by the public body, at any time during the term of the debt, the public body may enter into
5 a qualified interest rate management agreement under such terms and conditions as the
6 public body may determine, including, without limitation, provisions permitting the public
7 body to pay to or receive from any person or entity any loss of benefits under such
8 agreement upon early termination thereof or default under such agreement.

9 50-17-82.

10 Prior to executing and delivering any qualified interest rate management agreement, the
11 public body shall adopt an interest rate management plan that includes:

12 (1) A schedule listing the amount of debt outstanding for each outstanding debt issue of
13 the public body and the expected annual debt service on that debt. In the case of variable
14 rate debt, the schedule shall set forth the estimated annual debt service thereon and annual
15 debt service on the debt calculated at the maximum rate specified for the variable rate
16 debt.

17 (2) A schedule listing the notional amount outstanding of each previously executed
18 qualified interest rate management agreement which is then in effect.

19 (3) A schedule listing all consulting, advisory, brokerage, or other fees paid or payable
20 by the public body in connection within the qualified interest rate management agreement
21 and a schedule of any finder's fees, consulting fees, or brokerage fees paid or payable to
22 the counterparty in connection with the qualified interest rate management agreement.

23 (4) A schedule listing the estimated and maximum periodic scheduled payments to be
24 paid by the public body, and to be received by the public body from the counterparty, in
25 each year during the term of the qualified interest rate management agreement.

26 (5) An analysis of the interest rate risk, basis risk, termination risk, credit risk,
27 market-access risk, and other risks of entering into the qualified interest rate management
28 agreement.

29 (6) An analysis of the interest rate risk, basis risk, termination risk, credit risk,
30 market-access risk, and other risks to the public body of the net payments due for all debt
31 outstanding and all qualified interest rate management agreements of the public body.
32 The schedule shall include the estimated and maximum net payments of total debt service
33 and scheduled periodic net payments that would be due under all of the qualified interest
34 rate management agreements.

35 (7) The public body's plan to monitor interest rate risk, basis risk, termination risk, credit
36 risk, market-access risk, and other risks. The schedule shall include the valuation of the

1 market or termination value of all outstanding qualified interest rate management
2 agreements.

3 (8) Such other provisions as may from time to time be required by the commission.

4 50-17-83.

5 (a) Each qualified interest rate management agreement shall meet the following
6 requirements:

7 (1) Subject to subsection (b) of this Code section, the maximum term, including any
8 renewal periods, of any qualified interest rate management agreement may not exceed
9 ten years unless a longer term has been approved by the commission, in the case of a
10 qualified interest rate management agreement entered into by a public body other than
11 a governmental body, or by the governing body of any governmental body in the case of
12 a qualified interest rate management agreement entered into by that governmental body;
13 provided, however, that in no case may the term of the qualified interest rate management
14 agreement exceed the latest maturity date of the bonds, notes, or debt referenced in the
15 qualified interest rate management agreement.

16 (2) The public body must award a qualified interest rate management agreement to a
17 counterparty meeting the requirements set forth in paragraph (2) of Code Section
18 50-17-80.

19 (3) Prior to the adoption of a resolution by the public body authorizing a qualified
20 interest rate management agreement, the commission shall issue a report finding that the
21 interest rate management plan is in compliance with the guidelines, rules, and regulations
22 promulgated by the commission under this article.

23 (4) Unless otherwise approved in writing by the commission, any qualified interest rate
24 management agreement shall be payable only in the currency of the United States of
25 America.

26 (5) Unless otherwise approved in writing by the commission, the notional amount of any
27 qualified interest rate management agreement shall not exceed the outstanding principal
28 amount of the debt to which such agreement relates.

29 (b) A qualified interest rate management agreement may provide that it shall terminate
30 absolutely at the close of the fiscal year in which it was executed and at the close of each
31 succeeding fiscal year for which it may be renewed and may also provide for automatic
32 renewal unless positive action is taken by the public body to terminate such contract, and
33 the nature of such action shall be determined by the public body and specified in the
34 contract.

1 50-17-84.

2 Prior to the adoption of a resolution authorizing a qualified interest rate management
3 agreement by the public body, a request shall be submitted to the commission for a report
4 finding that the interest rate management plan is in compliance with the guidelines, rules,
5 or regulations promulgated by the commission under this article. Within 15 days of receipt
6 of the request, the commission shall determine whether the interest rate management plan
7 substantially complies with such guidelines, rules, and regulations and shall report thereon
8 to the public body. If the report of the commission finds that the interest rate management
9 plan complies with such guidelines, rules, and regulations, then the public body may
10 authorize and award by resolution the qualified interest rate management agreement. If the
11 report of the commission finds that the interest rate management plan is not in compliance
12 with such guidelines, rules, and regulations or the commission shall fail to report within the
13 15 day period, then the public body shall not authorize and award a qualified interest rate
14 management agreement.

15 50-17-85.

16 The public body that has entered into a qualified interest rate management agreement shall
17 include in its annual financial statements information with respect to each qualified interest
18 rate management agreement it has authorized or entered into, including any information
19 required pursuant to any statement issued by the Governmental Accounting Standards
20 Board.

21 50-17-86.

22 When entering into any qualified interest rate management agreement authorized under this
23 article and evidencing a transaction bearing a reasonable relationship to the State of
24 Georgia and also to another state, the public body may agree in the written contract or
25 agreement that the rights and remedies of the parties thereto shall be governed by the laws
26 of the State of Georgia or the laws of such other state notwithstanding the conflicts of law
27 provisions of either state or any other rules directing referral to foreign law; provided,
28 however, that jurisdiction over the public body in any matter concerning such a qualified
29 interest rate management agreement shall lie solely in the Superior Court of Fulton County,
30 Georgia."

31 **SECTION 2.**

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

1 **SECTION 3.**

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