

The Senate Finance Committee offered the following substitute to SB 515:

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 4

50-17-80.

As used in this article, the term:

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

(2) 'Counterparty' means the party entering into a qualified interest rate management agreement with the public body. A counterparty must be a bank, insurance company, or other financial institution duly qualified to do business in the state that either:

(A) Has, or whose obligations are guaranteed by an entity that has, at the time of entering into a qualified interest rate management agreement and for the entire term thereof, a long-term unsecured debt rating or financial strength rating in one of the top two ratings categories, without regard to any refinement or gradation of rating category by numerical modifier or otherwise, assigned by any two of the following: Moody's

1 Investors Service, Inc., Standard & Poors Ratings Service, a division of The
2 McGraw-Hill Companies, Inc., Fitch, Inc., or such other nationally recognized ratings
3 service approved by the commission; or

4 (B) Has collateralized its obligations under a qualified interest rate management
5 agreement in a manner approved by the commission.

6 (3) 'Debt' shall include bonds, including, but not limited to, general obligation bonds,
7 guaranteed revenue bonds and revenue bonds, notes, warrants, certificates, or other
8 evidences of indebtedness for borrowed money issued or to be issued by any public body.

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

16 (5) 'Interest rate management plan' means a written plan prepared or reviewed by an
17 independent financial adviser with respect to a qualified interest rate management
18 agreement that has been approved by the commission or by a designated officer of the
19 commission.

20 (6) 'Local governmental entity' means any governmental body as defined in Code Section
21 36-82-61, as amended; provided, however, that such term shall only include authorities
22 which are local public authorities included in the definition thereof set forth in subsection
23 (c) of Code Section 36-82-61.

24 (7) 'Public body' means the state, any state authority, or any local governmental entity.

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

36 (9) 'State authority' means any state authority as defined in paragraph (9) of Code Section
37 50-17-21, as amended.

1 50-17-81.

2 (a) The commission is authorized to and shall establish guidelines, rules, or regulations
3 with respect to the procedures for approving interest rate management plans and with
4 respect to any requirements for qualified interest rate management agreements. Such
5 guidelines, rules, and regulations shall not constitute a rule within the meaning of Chapter
6 13 of this title, the 'Georgia Administrative Procedure Act,' including, without limitation,
7 the term 'rule' as defined in paragraph (6) of Code Section 50-13-2 and used in Code
8 Section 50-13-4.

9 (b) With respect to all or any portion of any debt, either issued or anticipated to be issued
10 by the public body, the public body may enter into, terminate, amend, or otherwise modify
11 a qualified interest rate management agreement under such terms and conditions as the
12 public body may determine, including, without limitation, provisions permitting the public
13 body to pay to or receive from any person or entity any loss of benefits under such
14 agreement upon early termination thereof or default under such agreement.

15 50-17-82.

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

18 (1) A schedule listing the amount of debt outstanding for each outstanding debt issue of
19 the public body and the expected annual debt service on that debt. In the case of variable
20 rate debt, the schedule shall set forth the estimated annual debt service thereon and annual
21 debt service on the debt calculated at the maximum rate specified for the variable rate
22 debt.

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

25 (3) An analysis of the interest rate risk, basis risk, termination risk, credit risk,
26 market-access risk, and other risks to the public body entering into qualified interest rate
27 management agreements.

28 (4) The public body's procedure for approving and executing interest rate management
29 agreements.

30 (5) The public body's plan to monitor interest rate risk, basis risk, termination risk, credit
31 risk, market-access risk, and other risks. The schedule shall include the valuation of the
32 market or termination value of all outstanding qualified interest rate management
33 agreements.

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

1 50-17-83.

2 (a) Each qualified interest rate management agreement shall meet the following
3 requirements:

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

13 (2) The public body must award a qualified interest rate management agreement to a
14 counterparty meeting the requirements set forth in paragraph (2) of Code Section
15 50-17-80.

16 (3) Prior to the execution and delivery by the public body of a qualified interest rate
17 management agreement, the commission shall issue a report finding that the interest rate
18 management plan is in compliance with the guidelines, rules, and regulations
19 promulgated by the commission under this article.

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

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

26 (b) A qualified interest rate management agreement may provide that it shall terminate
27 absolutely at the close of the fiscal year in which it was executed and at the close of each
28 succeeding fiscal year for which it may be renewed and may also provide for automatic
29 renewal unless positive action is taken by the public body to terminate such contract, and
30 the nature of such action shall be determined by the public body and specified in the
31 contract. No interest rate management agreement which includes the termination and
32 renewal provisions permitted by this subsection shall be deemed to create a debt of the
33 public body for the payment of any sum beyond the calendar year of execution or, in the
34 event of a renewal, beyond the calendar year of such renewal.

35 (c)(1) Any interest rate management agreement of a state authority or local governmental
36 entity may provide that it is an unconditional, limited recourse obligation of such state
37 authority or local governmental entity payable from a specified revenue source.

(2) A state authority or local governmental entity may, in any interest rate management agreement that constitutes a limited recourse obligation of the state authority or local governmental entity, pledge to the punctual payment of amounts due under the interest rate management agreement revenues from a specified revenue source, which shall not include any taxes, including, without limitation, collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such interest rate management agreement relates.

(d) An interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon any funds other than the revenue identified as the source of payment thereof, nor shall the state authority or local governmental entity entering into the same be subject to any pecuniary liability thereon. No counterparty under any such interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state authority or local governmental entity to pay any amount due under any such interest rate management agreement, nor to enforce payment thereof against any property of the state authority or local governmental entity, other than the specified revenue source; nor shall any such interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state authority or local governmental entity, other than the specified revenue source. Every such interest rate management agreement shall contain a recital setting forth the substance of this subsection.

(e) Any public body may enter into credit enhancement or liquidity agreements in connection with any interest rate management agreement containing such terms and conditions as the governing body determines are necessary or desirable, provided that any such agreement has the same source of payment as the related interest rate management agreement.

50-17-84.

Prior to the execution and delivery of a qualified interest rate management agreement by the public body, a request shall be submitted to the commission for a report finding that the interest rate management plan is in compliance with the guidelines, rules, or regulations promulgated by the commission under this article. Within 15 days of receipt of the request, the commission shall determine whether the interest rate management plan substantially complies with such guidelines, rules, and regulations and shall report thereon to the public body. If the report of the commission finds that the interest rate management plan complies with such guidelines, rules, and regulations, then the public body may authorize and award by resolution the qualified interest rate management agreement. If the report of the commission finds that the interest rate management plan is not in compliance with such

1 guidelines, rules, and regulations or the commission shall fail to report within the 15 day
2 period, then the public body shall not authorize and award a qualified interest rate
3 management agreement.

4 50-17-85.

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

10 50-17-86.

11 When entering into any qualified interest rate management agreement authorized under this
12 article, the public body may agree in the written contract or agreement that the rights and
13 remedies of the counterparty shall be governed by the laws of any state of these United
14 States, but the law which shall apply to the obligations of the public body shall be the law
15 of the State of Georgia and jurisdiction over the public body in any matter concerning a
16 qualified interest rate management agreement shall lie exclusively in the courts of the State
17 of Georgia or in the applicable federal court having jurisdiction and located within the State
18 of Georgia."

19 **SECTION 2.**

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

22 **SECTION 3.**

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