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HOUSE BILL 168

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

AN ACT

RELATING TO PUBLIC FINANCE; LIMITING THE TYPE OF LOCAL PUBLIC BODY INTEREST RATE EXCHANGE AND OTHER CONTRACTS RELATED TO DEBT SERVICE ACCOUNTS THAT REQUIRE THE APPROVAL OF THE STATE BOARD OF FINANCE; AMENDING A SECTION OF THE PUBLIC SECURITIES SHORT-TERM INTEREST RATE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-18-8.1 NMSA 1978 (being Laws 1992, Chapter 96, Section 1, as amended) is amended to read:

"6-18-8.1. CONTRACTS TO EXCHANGE INTEREST RATES, CASH FLOWS OR LIMIT EXPOSURE. --

A. A public body that has issued or proposes to issue bonds may enter into contracts authorized in this section if the governing body of that public issuer finds that such a contract would be in the best interests of that public

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1 body and, for contracts of the type described in Subsections D
2 and E of this section, if the state board of finance reviews
3 and approves the contract and determines, in its discretion,
4 that the contract results in a long-term financial benefit for
5 the public body.

6 B. A public body may enter into any contract that
7 the governing body determines to be necessary or appropriate
8 regarding the debt service payable on the bond obligations of
9 the governing body, in whole or in part on the interest rate,
10 cash flow or other basis desired by the governing body,
11 including, without limitation, contracts commonly known as
12 interest rate swap contracts, forward payment conversion
13 contracts, futures, or contracts providing for payments based
14 on levels of or changes in interest rates, or contracts to
15 exchange cash flows or a series of payments, or contracts
16 including, without limitation, options, puts or calls to hedge
17 payment, rate, price spread or similar exposure. A public
18 body may also enter into any contract that provides collateral
19 for securities. Contracts shall be governed by the terms and
20 conditions established by the governing body, subject to the
21 provisions of Subsection C of this section.

22 C. A public body may enter into a contract
23 pursuant to this section only if:

24 (1) the long-term obligations of the person
25 with whom the public body enters the contract are rated in one

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1 of the two top rating categories of a nationally recognized
2 rating agency, without regard to any modification of the
3 rating; or

4 (2) the obligations pursuant to the contract
5 of the person with whom the [~~municipality~~] public body enters
6 the contract are either:

7 (a) guaranteed by a person whose long-
8 term debt obligations are rated in either of the two highest
9 rating categories of [~~the rating of~~] a nationally recognized
10 rating agency, without regard to any modification of the
11 rating; or

12 (b) collateralized by obligations
13 deposited with the public body or an agent of the public body
14 that are rated in either of the two highest rating categories
15 of a nationally recognized rating agency, without regard to
16 any modification of the rating, and that have a market value
17 at the time the contract is made of not less than one hundred
18 percent of the principal amount upon which the exchange of
19 interest rates or other contract permitted by this section is
20 based.

21 D. A public body may agree, with respect to bonds
22 that the public body has issued or proposes to issue bearing
23 interest at a variable rate, to pay sums equal to interest at
24 a fixed rate or rates or at a different variable rate
25 determined pursuant to a formula set forth in the contract on

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1 an amount not to exceed the principal amount of the bonds with
2 respect to which the contract is made in exchange for a
3 contract to pay sums equal to interest on the same principal
4 amount at a variable rate determined pursuant to a formula set
5 forth in the contract. Such contracts may provide for a
6 minimum rate or a maximum rate or both.

7 E. A public body may agree, with respect to bonds
8 that the public body has issued or proposes to issue bearing
9 interest at a fixed rate or rates, to pay sums equal to
10 interest at a variable rate determined pursuant to a formula
11 set forth in the contract on an amount not to exceed the
12 outstanding principal amount of the bonds with respect to
13 which the contract is made in exchange for a contract to pay
14 sums equal to interest on the same principal amount at a fixed
15 rate or rates set forth in the contract. Such contracts may
16 provide for a minimum rate or a maximum rate or both.

17 F. The term of a contract shall not exceed the
18 term of the bonds of the public body with respect to which the
19 contract was made.

20 G. A contract entered into pursuant to this
21 section is not an indebtedness of the public body, and in no
22 case shall the principal amount of any outstanding
23 indebtedness of the public body be increased as a result of
24 the contract.

25 H. The terms of Section 6-18-14 NMSA 1978

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1 regarding limitations of interest rates and net effective
2 interest rates are applicable to interest rates and net
3 effective interest rates required to be paid by a public body
4 entering into a contract.

5 I. A public body that has entered into a contract
6 may treat the amount or rate of interest on those bonds as the
7 amount or rate of interest payable after giving effect to the
8 contract for the purpose of calculating:

9 (1) rates and charges of a revenue-producing
10 enterprise whose revenues are pledged to or used to pay the
11 bonds of the public body;

12 (2) statutory requirements concerning revenue
13 coverage that are applicable to bonds of the public body;

14 (3) tax levies and collections to pay debt
15 service on bonds of the public body; and

16 (4) any other amounts that are based upon the
17 rate of interest of bonds of the public body.

18 J. Any payments required to be made by the public
19 body under the contract may be made from money pledged to pay
20 debt service on the bonds with respect to which the contract
21 was made or from any other legally available source.

22 K. Any contract entered into by a public body
23 pursuant to this section shall not impair the contract of that
24 public body with, or impair adversely, the owners of bonds
25 issued by that public body. "

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