

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

B. A public body may enter into any contract that the governing body determines to be necessary or appropriate regarding the debt service payable on the bond obligations of the governing body, in whole or in part on the interest rate,

cash flow or other basis desired by the governing body, including, without limitation, contracts commonly known as interest rate swap contracts, forward payment conversion contracts, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts including, without limitation, options, puts or calls to hedge payment, rate, price spread or similar exposure. A public body may also enter into any contract that provides collateral for securities. Contracts shall be governed by the terms and conditions established by the governing body, subject to the provisions of Subsection C of this section.

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

(1) the long-term obligations of the person with whom the public body enters the contract are rated in one of the two top rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(2) the obligations pursuant to the contract of the person with whom the public body enters the contract are either:

(a) guaranteed by a person whose long-term debt obligations are rated in either of the two highest rating categories of a nationally recognized rating agency,

without regard to any modification of the rating; or

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

D. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a variable rate, to pay sums equal to interest at a fixed rate or rates or at a different variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a variable rate determined pursuant to a formula set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

E. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a fixed rate or rates, to pay sums equal to interest at a variable rate determined pursuant to a formula

set forth in the contract on an amount not to exceed the outstanding principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a fixed rate or rates set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

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

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

H. The terms of Section 6-18-14 NMSA 1978 regarding limitations of interest rates and net effective interest rates are applicable to interest rates and net effective interest rates required to be paid by a public body entering into a contract.

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

- (1) rates and charges of a revenue-producing

enterprise whose revenues are pledged to or used to pay the bonds of the public body;

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

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

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

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

K. Any contract entered into by a public body pursuant to this section shall not impair the contract of that public body with, or impair adversely, the owners of bonds issued by that public body.” \_\_\_\_\_

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