

AN ACT concerning finance.

WHEREAS, The General Assembly takes note that governmental units in the State must borrow funds in the current bond market, and the issuance of bonds or other obligations as what are commonly referred to as variable rate demand bonds, auction bonds, or commercial paper bonds is ever increasing, and is frequently the most advisable and economic means of borrowing; and

WHEREAS, It is sometimes most advantageous in connection with such borrowings to enter into cap, collar, swap, or other derivative transactions relating to interest rates which serve to hedge interest rate risk and it is frequently necessary to procure credit enhancement in the forms commonly referred to as municipal bond insurance, letters of credit, lines of credit, standby bond purchase agreements, or surety bonds, and the like, in such demand bond and similar transactions; and

WHEREAS, Existing law authorizes such transactions, but it is advisable for the law to be more fully stated to accommodate same, expressly permitting certain aspects of such transactions; therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 3. The State Finance Act is amended by changing Section 6z-45 as follows:

(30 ILCS 105/6z-45)

Sec. 6z-45. The School Infrastructure Fund.

(a) The School Infrastructure Fund is created as a special fund in the State Treasury.

In addition to any other deposits authorized by law, beginning January 1, 2000, on the first day of each month, or as soon thereafter as may be practical, the State Treasurer and State Comptroller shall transfer the sum of \$5,000,000 from the General Revenue Fund to the School Infrastructure Fund; provided, however, that no such transfers shall be made from July 1, 2001 through June 30, 2003.

(b) Subject to the transfer provisions set forth below, money in the School Infrastructure Fund shall, if and when the State of Illinois incurs any bonded indebtedness for the construction of school improvements under the School Construction Law, be set aside and used for the purpose of paying and discharging annually the principal and interest on that bonded indebtedness then due and payable, and for no other purpose.

In addition to other transfers to the General Obligation Bond Retirement and Interest Fund made pursuant to Section 15 of the General Obligation Bond Act, upon each delivery of bonds issued for construction of school improvements under the School Construction Law, the State Comptroller shall compute and certify to the State Treasurer the total amount of principal of, interest on, and premium, if any, on such bonds during the then current and each succeeding fiscal year. With respect to the interest payable on variable rate bonds, such certifications shall be calculated at the maximum rate of interest that may be payable during the fiscal year, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for that period.

On or before the last day of each month, the State Treasurer and State Comptroller shall transfer from the School Infrastructure Fund to the General Obligation Bond Retirement and Interest Fund an amount sufficient to pay the aggregate of the principal of, interest on, and premium, if

any, on the bonds payable on their next payment date, divided by the number of monthly transfers occurring between the last previous payment date (or the delivery date if no payment date has yet occurred) and the next succeeding payment date. Interest payable on variable rate bonds shall be calculated at the maximum rate of interest that may be payable for the relevant period, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for that period. Interest for which moneys have already been deposited into the capitalized interest account within the General Obligation Bond Retirement and Interest Fund shall not be included in the calculation of the amounts to be transferred under this subsection.

(c) The surplus, if any, in the School Infrastructure Fund after the payment of principal and interest on that bonded indebtedness then annually due shall, subject to appropriation, be used as follows:

First - to make 3 payments to the School Technology Revolving Loan Fund as follows:

Transfer of \$30,000,000 in fiscal year 1999;

Transfer of \$20,000,000 in fiscal year 2000; and

Transfer of \$10,000,000 in fiscal year 2001.

Second - to pay the expenses of the State Board of Education and the Capital Development Board in administering programs under the School Construction Law, the total expenses not to exceed \$1,200,000 in any fiscal year.

Third - to pay any amounts due for grants for school construction projects and debt service under the School Construction Law.

Fourth - to pay any amounts due for grants for school maintenance projects under the School Construction Law.

(Source: P.A. 91-38, eff. 6-15-99; 91-711, eff. 7-1-00; 92-11, eff. 6-11-01; 92-600, eff. 6-28-02.)

Section 5. The Bond Authorization Act is amended by changing Sections 7, 9, 14 and 15 as follows:

(30 ILCS 305/7) (from Ch. 17, par. 6607)

Sec. 7. Interest rate swaps. For purposes of this Section, terms are as defined in the Local Government Debt Reform Act. With respect to all or part of any currently outstanding or proposed issue of its bonds, a governmental unit public--corporation whose aggregate principal amount of bonds outstanding or proposed exceeds \$10,000,000 may, without prior appropriation, enter into agreements or contracts with any necessary or appropriate person (the counter party) that will have the benefit of providing to the governmental unit: (i) public-corporation an interest rate basis, cash flow basis, or other basis different from that provided in the bonds for the payment of interest or (ii) with respect to a future delivery of bonds, one or more of a guaranteed interest rate, interest rate basis, cash flow basis, or purchase price. Such agreements or contracts include without limitation agreements or contracts commonly known as "interest rate swap, collar, cap, or derivative agreements", "forward payment conversion agreements", interest rate locks, forward bond purchase agreements, bond warrant agreements, or bond purchase option agreements and also include agreements or contracts providing for payments based on levels of or changes in interest rates, including a change in an interest rate index, to exchange cash flows or a series of payments, or to hedge payment, rate spread, or similar exposure (such agreements or contracts, collectively, being "swaps"). Without limiting other permitted terms which may be included in swaps, the following provisions may or, if hereinafter so required, shall apply:

(a) Payments made pursuant to a swap (the swap payments) which are to be made by the governmental unit may be paid by

such governmental unit, without limitation, from proceeds of the bonds, including bonds for future delivery, identified to such swaps, or from bonds issued to refund such bonds, or from whatever enterprise revenues or revenue source, including taxes pledged or to be pledged to the payment of such bonds, which enterprise revenues or revenue source may be increased to make such swap payments, and swap payments to be received by the governmental unit, which may be periodic, up-front, or on termination, shall be used solely for and limited to any lawful corporate purpose of the governmental unit.

(b) Up-front or periodic net swap payments to be paid by the governmental unit under the swaps (the standard swap payments) such--agreements--or--contracts shall be treated as interest for the purpose of calculating any interest rate limit applicable to the bonds, provided, however, that for purposes of making such standard swap payments only (and not with respect to the bonds so issued or to be issued), the bonds shall be deemed not exempt from income taxation under the Internal Revenue Code for purposes of State law, as contained in this Bond Authorization Act, relating to the permissible rate of interest to be borne thereon, and, provided further, that if payments of any standard swap payments are to be made by the governmental unit and the counterparty on different dates, the net effect of such payments for purposes of such interest rate limitation shall be determined using a true interest cost (yield) calculation.

(c) Any such agreement or contract and the swap payments to be made thereunder shall not be taken into account with respect to any debt limit applicable to the governmental unit public-corporation.

(d) Swap payments upon the termination of any swap may be paid to a counterparty upon any terms customary for swaps, including, without limitation, provisions using market

quotations available for giving the net benefit of the swap at the time of termination to the persons entitled thereto (viz., the governmental unit or the counterparty) or reasonable fair market value determinations of the value at termination made in good faith by either such persons.

(e) The term of the swap shall not exceed the term of any currently outstanding bonds identified to such swap or, for bonds to be delivered, not greater than 5 years plus the term of years proposed for such bonds to be delivered, but in no event longer than 40 years, plus, in each case, any time period necessary to cure any defaults under such swap.

(f) The choice of law for enforcement of swaps as to any counterparty may be made for any state of these United States, but the law which shall apply to the obligations of the governmental unit shall be the law of the State of Illinois, and jurisdiction to enforce the swaps as against the governmental units shall be exclusively in the courts of the State of Illinois or in the applicable federal court having jurisdiction and located within the State of Illinois.

(g) Governmental units, in entering into swaps, may not waive any sovereign immunities from time to time available under the laws of the State of Illinois as to jurisdiction, procedures, and remedies, but such swaps shall otherwise be fully enforceable as valid and binding contracts as and to the extent provided herein and by other applicable law.

(Source: P.A. 87-1176.)

(30 ILCS 330/9) (from Ch. 127, par. 659)

Sec. 9. Conditions for Issuance and Sale of Bonds -
Requirements for Bonds.

(a) Bonds shall be issued and sold from time to time, in one or more series, in such amounts and at such prices as may be directed by the Governor, upon recommendation by the Director of the Bureau of the Budget. Bonds shall be in such

form (either coupon, registered or book entry), in such denominations, payable within 30 years from their date, subject to such terms of redemption with or without premium, bear interest payable at such times and at such fixed or variable rate or rates, and be dated as shall be fixed and determined by the Director of the Bureau of the Budget in the order authorizing the issuance and sale of any series of Bonds, which order shall be approved by the Governor and is herein called a "Bond Sale Order"; provided however, that interest payable at fixed or variable rates shall not exceed that permitted in the Bond Authorization Act, as now or hereafter amended. Said Bonds shall be payable at such place or places, within or without the State of Illinois, and may be made registrable as to either principal or as to both principal and interest, as shall be specified in the Bond Sale Order. Bonds may be callable or subject to purchase and retirement or tender and remarketing as fixed and determined in the Bond Sale Order.

In the case of any series of Bonds bearing interest at a variable interest rate ("Variable Rate Bonds"), in lieu of determining the rate or rates at which such series of Variable Rate Bonds shall bear interest and the price or prices at which such Variable Rate Bonds shall be initially sold or remarketed (in the event of purchase and subsequent resale), the Bond Sale Order may provide that such interest rates and prices may vary from time to time depending on criteria established in such Bond Sale Order, which criteria may include, without limitation, references to indices or variations in interest rates as may, in the judgment of a remarketing agent, be necessary to cause Variable Rate Bonds of such series to be remarketable from time to time at a price equal to their principal amount, and may provide for appointment of a bank, trust company, investment bank, or other financial institution to serve as remarketing agent in

that connection. The Bond Sale Order may provide that alternative interest rates or provisions for establishing alternative interest rates, different security or claim priorities, or different call or amortization provisions will apply during such times as Variable Rate Bonds of any series are held by a person providing credit or liquidity enhancement arrangements for such Bonds as authorized in subsection (b) of this Section. The Bond Sale Order may also provide for such variable interest rates to be established pursuant to a process generally known as an auction rate process and may provide for appointment of one or more financial institutions to serve as auction agents and broker-dealers in connection with the establishment of such interest rates and the sale and remarketing of such Bonds.

(b) In connection with the issuance of any series of Bonds, the State may enter into arrangements to provide additional security and liquidity for such Bonds, including, without limitation, bond or interest rate insurance or letters of credit, lines of credit, bond purchase contracts, or other arrangements whereby funds are made available to retire or purchase Bonds, thereby assuring the ability of owners of the Bonds to sell or redeem their Bonds. The State may enter into contracts and may agree to pay fees to persons providing such arrangements, but only under circumstances where the Director of the Bureau of the Budget certifies that he or she reasonably expects the total interest paid or to be paid on the Bonds, together with the fees for the arrangements (being treated as if interest), would not, taken together, cause the Bonds to bear interest, calculated to their stated maturity, at a rate in excess of the rate that the Bonds would bear in the absence of such arrangements.

The State may, with respect to Bonds issued or anticipated to be issued, participate in and enter into arrangements with respect to interest rate protection or

exchange agreements, guarantees, or financial futures contracts for the purpose of limiting or restricting interest rate risk. The arrangements may be executed and delivered by the Director of the Bureau of the Budget on behalf of the State. Net payments for such arrangements shall constitute interest on the Bonds and shall be paid from the General Obligation Bond Retirement and Interest Fund. The Director of the Bureau of the Budget shall at least annually certify to the Governor and the State Comptroller his or her estimate of the amounts of such net payments to be included in the calculation of interest required to be paid by the State.

(c) Prior to the issuance of any Variable Rate Bonds pursuant to subsection (a), the Director of the Bureau of the Budget shall adopt an interest rate risk management policy providing that the amount of the State's variable rate exposure with respect to Bonds shall not exceed 20%. This policy shall remain in effect while any Bonds are outstanding and the issuance of Bonds shall be subject to the terms of such policy. The terms of this policy may be amended from time to time by the Director of the Bureau of the Budget but in no event shall any amendment cause the permitted level of the State's variable rate exposure with respect to Bonds to exceed 20%.

(Source: P.A. 91-39, eff. 6-15-99; 91-357, eff. 7-29-99; 92-16, eff. 6-28-01.)

(30 ILCS 330/14) (from Ch. 127, par. 664)

Sec. 14. Repayment.

(a) To provide for the manner of repayment of Bonds, the Governor shall include an appropriation in each annual State Budget of monies in such amount as shall be necessary and sufficient, for the period covered by such budget, to pay the interest, as it shall accrue, on all Bonds issued under this Act, to pay and discharge the principal of such Bonds as

shall, by their terms, fall due during such period, and to pay a premium, if any, on Bonds to be redeemed prior to the maturity date. Amounts included in such appropriations for the payment of interest on variable rate bonds shall be the maximum amounts of interest that may be payable for the period covered by the budget, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for such period. Amounts included in such appropriations for the payment of interest shall include the amounts certified by the Director of the Bureau of the Budget under subsection (b) of Section 9 of this Act.

(b) A separate fund in the State Treasury called the "General Obligation Bond Retirement and Interest Fund" is hereby created.

(c) The General Assembly shall annually make appropriations to pay the principal of, interest on, and premium, if any, on Bonds sold under this Act from the General Obligation Bond Retirement and Interest Fund. Amounts included in such appropriations for the payment of interest on variable rate bonds shall be the maximum amounts of interest that may be payable during the fiscal year, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for such period. Amounts included in such appropriations for the payment of interest shall include the amounts certified by the Director of the Bureau of the Budget under subsection (b) of Section 9 of this Act.

If for any reason there are insufficient funds in either the General Revenue Fund or the Road Fund to make transfers to the General Obligation Bond Retirement and Interest Fund as required by Section 15 of this Act, or if for any reason the General Assembly fails to make appropriations sufficient

to pay the principal of, interest on, and premium, if any, on the Bonds, as the same by their terms shall become due, this Act shall constitute an irrevocable and continuing appropriation of all amounts necessary for that purpose, and the irrevocable and continuing authority for and direction to the State Treasurer and the Comptroller to make the necessary transfers, as directed by the Governor, out of and disbursements from the revenues and funds of the State.

(d) If, because of insufficient funds in either the General Revenue Fund or the Road Fund, monies have been transferred to the General Obligation Bond Retirement and Interest Fund, as required by subsection (c) of this Section, this Act shall constitute the irrevocable and continuing authority for and direction to the State Treasurer and Comptroller to reimburse these funds of the State from the General Revenue Fund or the Road Fund, as appropriate, by transferring, at such times and in such amounts, as directed by the Governor, an amount to these funds equal to that transferred from them.

(Source: P.A. 83-1490.)

(30 ILCS 330/15) (from Ch. 127, par. 665)

Sec. 15. Computation of Principal and Interest; transfers.

(a) Upon each delivery of Bonds authorized to be issued under this Act, the Comptroller shall compute and certify to the Treasurer the total amount of principal of, interest on, and premium, if any, on Bonds issued that will be payable in order to retire such Bonds and the amount of principal of, interest on and premium, if any, on such Bonds that will be payable on each payment date according to the tenor of such Bonds during the then current and each succeeding fiscal year. With respect to the interest payable on variable rate bonds, such certifications shall be calculated at the maximum

rate of interest that may be payable during the fiscal year, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for such period pursuant to subsection (c) of Section 14 of this Act. With respect to the interest payable, such certifications shall include the amounts certified by the Director of the Bureau of the Budget under subsection (b) of Section 9 of this Act.

On or before the last day of each month the State Treasurer and Comptroller shall transfer from (1) the Road Fund with respect to Bonds issued under paragraph (a) of Section 4 of this Act or Bonds issued for the purpose of refunding such bonds, and from (2) the General Revenue Fund, with respect to all other Bonds issued under this Act, to the General Obligation Bond Retirement and Interest Fund an amount sufficient to pay the aggregate of the principal of, interest on, and premium, if any, on Bonds payable, by their terms on the next payment date divided by the number of full calendar months between the date of such Bonds and the first such payment date, and thereafter, divided by the number of months between each succeeding payment date after the first. Such computations and transfers shall be made for each series of Bonds issued and delivered. Interest payable on variable rate bonds shall be calculated at the maximum rate of interest that may be payable for the relevant period, after taking into account any credits permitted in the related indenture or other instrument against the amount of such interest required to be appropriated for such period pursuant to subsection (c) of Section 14 of this Act. Computations of interest shall include the amounts certified by the Director of the Bureau of the Budget under subsection (b) of Section 9 of this Act. Interest for which moneys have already been deposited into the capitalized interest account within the General Obligation Bond Retirement and Interest Fund shall

not be included in the calculation of the amounts to be transferred under this subsection.

The transfer of monies herein and above directed is not required if monies in the General Obligation Bond Retirement and Interest Fund are more than the amount otherwise to be transferred as herein above provided, and if the Governor or his authorized representative notifies the State Treasurer and Comptroller of such fact in writing.

(b) After the effective date of this Act, the balance of, and monies directed to be included in the Capital Development Bond Retirement and Interest Fund, Anti-Pollution Bond Retirement and Interest Fund, Transportation Bond, Series A Retirement and Interest Fund, Transportation Bond, Series B Retirement and Interest Fund, and Coal Development Bond Retirement and Interest Fund shall be transferred to and deposited in the General Obligation Bond Retirement and Interest Fund. This Fund shall be used to make debt service payments on the State's general obligation Bonds heretofore issued which are now outstanding and payable from the Funds herein listed as well as on Bonds issued under this Act.

(c) The unused portion of federal funds received for a capital facilities project, as authorized by Section 3 of this Act, for which monies from the Capital Development Fund have been expended shall be deposited upon completion of the project in the General Obligation Bond Retirement and Interest Fund. Any federal funds received as reimbursement for the completed construction of a capital facilities project, as authorized by Section 3 of this Act, for which monies from the Capital Development Fund have been expended shall be deposited in the General Obligation Bond Retirement and Interest Fund.

(Source: P.A. 93-2, eff. 4-7-03.)

Section 10. The Local Government Credit Enhancement Act

is amended by changing Sections 2 and 3 as follows:

(50 ILCS 410/2) (from Ch. 85, par. 4302)

Sec. 2. For the purposes of this Act, terms are as defined in the Local Government Debt Reform Act. ~~unless--the context--requires--otherwise:~~

~~{a}--"Unit--of--local--government"--shall--have--the--meaning ascribed--to--it--in--Article--VII,--Section--1--of--the--Illinois Constitution.~~

~~{b}--"School--district"--means--any--public--school--district organized--under--the--School--Code--or--prior--law--and--includes--any dual--or--unit--school--district,--high--school--district,--special charter--district--and--non--high--school--district.---"School district"--also--means--any--community--college--district--organized under--the--Public--Community--College--Act--or--prior--law.~~

~~{c}--"Governing--board"--means--the--corporate--authorities--of the--municipality,--county--board,--board--of--trustees,--board--of education,--board--of--school--directors,--or--other--governing--body of--the--unit--of--local--government--or--school--district.~~

(Source: P.A. 83-1536.)

(50 ILCS 410/3) (from Ch. 85, par. 4303)

Sec. 3. In connection with the issuance of its bonds and notes, a governmental unit ~~of--local--government--or--school district~~ may enter into agreements (credit agreements) arrangements to provide additional security or and liquidity, or both, for the bonds and notes. These may include, without limitation, municipal bond insurance, letters of credit, lines of credit, standby bond purchase agreements, surety bonds, and the like, by which the governmental unit ~~of--local government--or--school--district~~ may borrow funds to pay or redeem or purchase and hold its bonds and a governmental unit may enter into agreements for the purchase or remarketing of bonds (remarketing agreements) arrangements for providing a

mechanism for remarketing bonds tendered for purchase in accordance with their terms. The term of such credit agreements or remarketing agreements shall not exceed the term of the bonds, plus any time period necessary to cure any defaults under such agreements assuring-the-ability-of-owners of-the-issuing-local-government's-or-school-district's--bonds to--sell--or-to-have-redeemed-their-bonds.--The-unit-of-local government-or-school-district-may-enter--into--contracts--and may-agree-to-pay-fees-to-persons-providing-such-arrangements, including-from-bond-proceeds.

Without limiting the terms which may be included in any such credit agreements or remarketing agreements, the ordinance ~~The--resolution-of-the-governing-board-authorizing the-issuance-of-the-bonds~~ may or, if hereinafter so required, shall provide as follows:

(a) that Interest rates on the bonds may vary from time to time depending upon criteria established by the governing body board, which may include, without limitation: (i), a variation in interest rates as may be necessary to cause bonds to be remarketed remarketable from time to time at a price equal to their principal amount plus any accrued interest; (ii) rates set by auctions; or (iii) rates set by formula. ~~and-may-provide-for-appointment-of,~~

(b) A national banking association, bank, trust company, investment banker or other financial institution may be appointed to serve as a remarketing agent in that connection, and such remarketing agent may be delegated authority by the governing body to determine interest rates in accordance with criteria established by the governing body. ~~The-resolution-of-the-governing-board-authorizing-the-issuance-of-the--bonds may-provide-that~~

(c) Alternative interest rates or provisions may will apply during such times as the bonds are held by the a person or persons (financial providers) providing a credit agreement

or remarketing agreement letter-of-credit--or--other--credit enhancement--arrangement for those bonds and during such times, the interest on the bonds may be deemed not exempt from income taxation under the Internal Revenue Code for purposes of State law, as contained in the Bond Authorization Act, relating to the permissible rate of interest to be borne thereon.

(d) Fees may be paid to the financial providers, including all reasonably related costs, including therein costs of enforcement and litigation (all such fees and costs being financial provider payments) and financial provider payments may be paid, without limitation, from proceeds of the bonds being the subject of such agreements, or from bonds issued to refund such bonds, or from whatever enterprise revenues or revenue source, including taxes, pledged to the payment of such bonds, which enterprise revenues or revenue source may be increased to make such financial provider payments, and such financial provider payments shall be made subordinate to the payments on the bonds.

(e) The bonds need not be held in physical form by the financial providers when providing funds to purchase or carry the bonds from others but may be represented in uncertificated form in the credit agreements or remarketing agreements.

(f) The debt or obligation of the governmental unit represented by a bond tendered for purchase to or otherwise made available to the governmental unit and thereupon acquired by either such governmental unit or a financial provider shall not be deemed to be extinguished for purposes of State law until cancelled by the governmental unit or its agent.

(g) The choice of law for the obligations of a financial provider may be made for any state of these United States, but the law which shall apply to the obligations of the

governmental unit shall be the law of the State of Illinois, and jurisdiction to enforce such credit agreement or remarketing agreement as against the governmental unit shall be exclusively in the courts of the State of Illinois or in the applicable federal court having jurisdiction and located within the State of Illinois.

(h) The governmental unit may not waive any sovereign immunities from time to time available under the laws of the State of Illinois as to jurisdiction, procedures, and remedies, but any such credit agreement and remarketing agreement shall otherwise be fully enforceable as valid and binding contracts as and to the extent provided by applicable law.

(i) Such credit agreement or remarketing agreement may provide for acceleration of the principal amounts due on the bonds, provided, however, that such acceleration shall be deferred for not less than 18 months from the time any such bond is acquired pursuant to any such agreement.

(Source: P.A. 83-1536.)

Section 99. Effective date. This Act takes effect upon becoming law.