

## 1                                   AMENDMENT TO SENATE BILL 1601

2           AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1601, on page 1,  
3 immediately below line 1, by inserting the following:

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

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

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

1 such transactions; therefore"; and

2 on page 1, by replacing lines 4 through 22 with the  
3 following:

4 "Section 5. The Bond Authorization Act is amended by  
5 changing Section 7 as follows:

6 (30 ILCS 305/7) (from Ch. 17, par. 6607)

7 Sec. 7. Interest rate swaps. For purposes of this  
8 Section, terms are as defined in the Local Government Debt  
9 Reform Act. With respect to all or part of any currently  
10 outstanding or proposed issue of its bonds, a governmental  
11 unit public--corporation whose aggregate principal amount of  
12 bonds outstanding or proposed exceeds \$10,000,000 may,  
13 without prior appropriation, enter into agreements or  
14 contracts with any necessary or appropriate person (the  
15 counter party) that will have the benefit of providing to the  
16 governmental unit: (i) public-corporation an interest rate  
17 basis, cash flow basis, or other basis different from that  
18 provided in the bonds for the payment of interest or (ii)  
19 with respect to a future delivery of bonds, one or more of a  
20 guaranteed interest rate, interest rate basis, cash flow  
21 basis, or purchase price. Such agreements or contracts  
22 include without limitation agreements or contracts commonly  
23 known as "interest rate swap, collar, cap, or derivative  
24 agreements", "forward payment conversion agreements",  
25 interest rate locks, forward bond purchase agreements, bond  
26 warrant agreements, or bond purchase option agreements and  
27 also include agreements or contracts providing for payments  
28 based on levels of or changes in interest rates, including a  
29 change in an interest rate index, to exchange cash flows or a  
30 series of payments, or to hedge payment, rate spread, or  
31 similar exposure (such agreements or contracts, collectively,  
32 being "swaps"). Without limiting other permitted terms which

1 may be included in swaps, the following provisions may or, if  
2 hereinafter so required, shall apply:

3 (a) Payments made pursuant to a swap (the swap payments)  
4 which are to be made by the governmental unit may be paid by  
5 such governmental unit, without limitation, from proceeds of  
6 the bonds, including bonds for future delivery, identified to  
7 such swaps, or from bonds issued to refund such bonds, or  
8 from whatever enterprise revenues or revenue source,  
9 including taxes pledged or to be pledged to the payment of  
10 such bonds, which enterprise revenues or revenue source may  
11 be increased to make such swap payments, and swap payments to  
12 be received by the governmental unit, which may be periodic,  
13 up-front, or on termination, shall be used solely for and  
14 limited to any lawful corporate purpose of the governmental  
15 unit.

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

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

1 public-corporation.

2 (d) Swap payments upon the termination of any swap may  
3 be paid to a counterparty upon any terms customary for swaps,  
4 including, without limitation, provisions using market  
5 quotations available for giving the net benefit of the swap  
6 at the time of termination to the persons entitled thereto  
7 (viz., the governmental unit or the counterparty) or  
8 reasonable fair market value determinations of the value at  
9 termination made in good faith by either such persons.

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

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

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

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

31 Section 10. The Local Government Credit Enhancement Act  
32 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

1 agreements or remarketing agreements shall not exceed the  
 2 term of the bonds, plus any time period necessary to cure any  
 3 defaults under such agreements ~~assuring the ability of owners~~  
 4 ~~of the issuing local government's or school district's bonds~~  
 5 ~~to sell or to have redeemed their bonds.~~ ~~The unit of local~~  
 6 ~~government or school district may enter into contracts and~~  
 7 ~~may agree to pay fees to persons providing such arrangements,~~  
 8 ~~including from bond proceeds.~~

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

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

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

30 (c) Alternative interest rates or provisions may will  
 31 apply during such times as the bonds are held by the a person  
 32 or persons (financial providers) providing a credit agreement  
 33 or remarketing agreement ~~letter of credit or other credit~~  
 34 ~~enhancement arrangement~~ for those bonds and during such

1 times, the interest on the bonds may be deemed not exempt  
2 from income taxation under the Internal Revenue Code for  
3 purposes of State law, as contained in the Bond Authorization  
4 Act, relating to the permissible rate of interest to be borne  
5 thereon.

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

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

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

30 (g) The choice of law for the obligations of a financial  
31 provider may be made for any state of these United States,  
32 but the law which shall apply to the obligations of the  
33 governmental unit shall be the law of the State of Illinois,  
34 and jurisdiction to enforce such credit agreement or

1 remarketing agreement as against the governmental unit shall  
2 be exclusively in the courts of the State of Illinois or in  
3 the applicable federal court having jurisdiction and located  
4 within the State of Illinois.

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

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

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