

NEW YORK STATE

VARIABLE RATE DEBT AND SWAPS STATUTORY FRAMEWORK

New York State Swaps and Variable Rate Debt Statute

NEW YORK STATE FINANCE LAW -- ARTICLE 5-D
VARIABLE RATE DEBT INSTRUMENTS

Introduction: Article 5-D of the State Finance Law authorizes the use of variable rate debt and swaps in association with State-supported bond issuances and provides limitations on their use. The statute which follows provides the details of these limitations, which includes limiting net variable rate debt and swaps to 15 percent of total state-supported debt outstanding.

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ARTICLE 5-D
VARIABLE RATE DEBT INSTRUMENTS

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§ 69-a. Definitions. As used throughout this article, the following terms shall have the following meanings:

1. "Variable rate bonds" shall mean any State-supported debt which bears interest at a rate or rates which varies from time to time.

2. "Interest rate exchange or similar agreement" shall mean a written contract entered into in connection with the issuance of State-supported debt, or in connection with such State-supported debt already outstanding, with a counterparty to provide for an exchange of payments based upon fixed and/or variable interest rates, and shall be for exchanges in currency of the United States of America only.

3. "State-supported debt" shall mean all debt included in subdivision one of section sixty-seven-a of this chapter.

4. "Authorized issuer" shall mean the state or any state public corporation which is authorized to issue State-supported debt.

5. "Governing board" shall mean, for each state public corporation which is authorized to issue State-supported debt, its board of directors or, in the absence of a board of directors, its other appropriate supervising body and, in relation to state general obligation debt, the state comptroller.

6. "Variable rate debt instruments" shall mean, for any calculation purpose, (i) variable rate bonds or (ii) any state-supported debt and related interest rate exchange or similar agreements which, when considered together, result in an authorized issuer effectively paying interest at a rate or rates which varies from time to time, but shall not include any variable rate bonds, or any state-supported debt considered together with related interest rate exchange or similar agreements issued on or before July first, two thousand five, during any period that such instrument or instruments provide for payment by the authorized issuer of a fixed rate throughout the then current fiscal year of the state.

7. "Excluded agreements" shall mean the total notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of risk or exposure under an existing interest rate exchange or similar agreement, including, but not limited to a counterparty downgrade, default, or other actual or potential economic loss; provided, however, that for agreements entered into on and after April first, two thousand seven "excluded agreements" shall mean the total notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of imminent risk under an existing interest rate exchange or similar agreement, including, but not limited to a counterparty downgrade, default, or other actual or imminent economic loss.

§ 69-b. Limitation on amount of variable rate debt instruments. As of the initial date of each issuance of variable rate bonds or the date of entering into any other variable rate debt instruments, or for debt issued on or before July first, two thousand five upon conversion of any state-supported debt to variable rate debt instruments, the total of the principal and notional amounts of such variable rate debt instruments outstanding and in effect shall not exceed an amount equal to fifteen percent of the total principal amount of state-supported debt outstanding.

§ 69-c. Variable rate bonds. Notwithstanding any other provision of law to the contrary, any State-supported debt may be issued as variable rate bonds.

Notwithstanding any other provision of law to the contrary, for purposes of calculating the present value of debt service and calculating savings in connection with the issuance of refunding indebtedness, (i) the effective interest rate and debt service payable on variable rate bonds in connection with which, and to the extent that, an authorized issuer has entered into an interest rate exchange or similar agreement pursuant to which the authorized issuer makes payments based on a fixed rate and receives payments based on a variable rate that is reasonably expected by such authorized issuer to be equivalent over time to the variable rate paid on the related variable rate bonds, shall be calculated assuming that the rate of interest on such variable rate bonds is the fixed rate payable by the authorized issuer on such interest rate exchange or similar agreement for the scheduled term of such agreement; (ii) the effective interest rate and debt service on variable rate bonds in connection with which, and to the extent that, an authorized issuer has not entered into such an interest rate exchange or similar agreement shall be calculated assuming that interest on such variable interest rate bonds is payable at a rate or rates reasonably assumed by the authorized issuer; (iii) the effective interest rate and debt service on any bonds subject to optional or mandatory tender shall be a rate or rates reasonably assumed by the authorized issuer; (iv) any variable rate bonds that are converted or refunded to a fixed rate, whether or not financed on an interim basis with bond anticipation notes, shall be assumed to generate a present value savings; and (v) otherwise, the effective interest rate and debt service on any bonds shall be calculated at a rate or rates reasonably assumed by the authorized issuer. Notwithstanding any other provision of law to the contrary, for calculating the present value of debt service and calculating savings in connection with the issuance of refunding indebtedness, the refunding of variable rate debt instruments with new variable rate debt instruments shall be excluded from any such requirements, if effectuated for sound business purposes.

§ 69-d. Interest rate exchange or similar agreements. 1. Authorized issuer; powers. In connection with the issuance of State-supported debt, or in connection with such State-supported debt already outstanding, an authorized issuer shall have the power to:

(a) enter into interest rate exchange or similar agreements with any person under such terms and conditions as the authorized issuer may determine, including provisions as to default or early termination and indemnification by the authorized issuer or any other party thereto for loss of benefits as a result thereof;

(b) procure insurance, letters of credit or other credit enhancement

with respect to agreements described in paragraph (a) of this subdivision;

(c) provide security for the payment or performance of its obligations with respect to agreements described in paragraph (a) of this subdivision from such sources and with the same effect as is authorized by applicable law with respect to security for its bonds, notes or other obligations, provided, however, that any payment or performance of obligations with respect to agreements described in paragraph (a) of this subdivision in connection with debt obligations which carry the full faith and credit of the state shall be subject to appropriation;

(d) the state, acting through the director of the budget or other state officials who are so authorized by applicable law with respect to such bonds, notes or other obligations, shall also be authorized to enter into or amend agreements related to such State-supported debt to provide for payment, subject to appropriation, to such authorized issuer of any amounts required to be paid by such authorized issuer under any such interest rate exchange or similar agreement;

(e) if such funds are available, provide collateral for its own obligations under any such interest rate exchange or similar agreement; and

(f) modify, amend, or replace, such agreements.

2. Interest rate exchange; limitations. Any interest rate exchange or similar agreements entered into pursuant to subdivision one of this section shall be subject to the following limitations:

(a) the counterparty thereto shall have credit ratings from at least one nationally recognized statistical rating agency that is within the two highest investment grade categories and ratings which are obtained from any other nationally recognized statistical rating agencies shall also be within the three highest investment grade categories, or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings;

(b) the written contract shall require that should the rating: (i) of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or (ii) of the entity unconditionally guaranteeing its payment obligations, if so secured, fall below the rating required by paragraph (a) of this subdivision, that the obligations of such counterparty shall be fully and continuously collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, with a net market value of at least one hundred two percent of the net market value of the contract to the authorized issuer and such collateral shall be deposited with the authorized issuer or an agent thereof;

(c) the total notional amount of all interest rate exchange or similar agreements for all authorized issuers to be in effect shall not exceed an amount equal to fifteen percent of the total amount of state-supported debt outstanding as of the initial date of entering into each new agreement; provided, however, that such total notional amount shall not include any excluded agreements.

(d) no interest rate exchange or similar agreement shall have a maturity exceeding the maturity of the related State-supported debt;

(e) each interest rate exchange or similar agreement shall be subject to an independent finding that its terms and conditions reflect a fair market value of such agreement as of the date of its execution, regardless of whether such agreement was solicited on a competitive or negotiated basis; and

(f) each interest rate exchange or similar agreement, including the

modification or termination thereof, shall be subject to the approval of the director of the budget, the governing board of such authorized issuer, and shall not be considered a project for the purposes of article one-A of the public authorities law.

3. Guidelines and reports. (a) Prior to authorizing the approval of any contract for interest rate exchange or similar agreement pursuant to subdivision one of this section, the authorized issuer's governing board shall adopt guidelines for the use of interest rate exchange or similar agreements which shall include, but not be limited to the following:

- (i) the conditions under which such contracts can be entered into;
- (ii) the methods by which such contracts are to be solicited and procured;
- (iii) the form and content such contracts shall take;
- (iv) the aspects of risk exposure associated with such contracts;
- (v) standards and procedures for counterparty selection;
- (vi) standards for the procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts;
- (vii) provisions for collateralization or other requirements for securing the financial interest in such contracts;
- (viii) the long-term implications associated with entering into such agreements, such as costs of borrowing, historical trends, use of capacity for variable rate bonds and related credit enhancements, and any potential impact on the future ability to call bonds, including opportunities to refund related debt obligations, and similar considerations;
- (ix) the methods to be used to reflect such contracts in the authorized issuer's financial statements;
- (x) financial monitoring and periodic assessment of such contracts by the authorized issuer; and
- (xi) such other matters relating thereto as the governing board shall deem necessary and proper.

(b) The guidelines to be adopted pursuant to paragraph (a) of this subdivision shall be developed in consultation with and subject to the approval of the director of the budget.

(c) The authorized issuer shall issue a monthly report to the director of the budget, the chairs of the senate finance committee and the assembly ways and means committee, and the state comptroller, on or before the fifteenth day of each month in any state fiscal year in which it enters into or continues to be a party to a contract for interest rate exchange or similar agreement, which shall list all such contracts entered into pursuant to this section, and shall include, but not be limited to, the following information for each such contract, as applicable:

- (i) a description of the contract, including a summary of the terms and conditions, rates, maturity, the estimated market value of each agreement, and other provisions thereof and the method of procurement;
- (ii) any amounts which were required to be paid and received, and any amounts which actually were paid and received thereunder;
- (iii) any credit enhancement, liquidity facility or reserves associated therewith including an accounting of all costs and expenses incurred, whether or not in conjunction with the procurement of credit enhancement or liquidity facilities;
- (iv) a description of each counterparty;
- (v) an assessment of the counterparty risk, termination risk, and other risks associated therewith; and
- (vi) such report shall include a copy of the guidelines required by

paragraph (a) of this subdivision in the month after they are adopted or subsequently modified.

(d) In addition, the director of the budget shall issue and make public on or before October thirtieth of each year an annual performance report for the prior state fiscal year on interest rate exchange and similar agreements to the chairs of the senate finance committee and the assembly ways and means committee, which shall list all such interest rate exchange or similar agreements entered into pursuant to this section and in effect, and shall include, but not be limited to their annual and cumulative performance, including the net impact of the related variable rate debt instruments, support and related costs, and, for any excluded agreement entered into during such state fiscal year, an independent finding on how it reduced or eliminated a situation of risk or exposure under an existing interest rate exchange or similar agreement. The authorized issuers shall be required to provide such information in a timely manner on their respective interest rate exchange and similar agreements as the director of the budget determines necessary for the purpose of producing such annual performance report.

§ 69-e. Applicability. Nothing in this article shall be construed as to apply to or limit any debt obligation or related instrument of the state, state public corporations, or any other issuers except those obligations or instruments which are or relate to State-supported debt.