

PUBLIC ACTS, 1999

CHAPTER NO. 426

HOUSE BILL NO. 1317

By Representative Kisber

Substituted for: Senate Bill No. 1398

By Senator Rochelle

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 10, relative to the issuance, sale and terms of bonds, refunding bonds and related contracts and to the execution, delivery, and term of leases, loan agreements, sales contracts, operating contracts and other related contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-10-111, is hereby amended by adding the following new subsections:

(j) The board of an authority may enter into an agreement to sell its bonds and its refunding bonds providing for delivery on a date greater than ninety (90) days and not greater than five (5) years (or such greater period of time if approved by the Comptroller or his designee) in the case of bonds and not greater than the later of the first date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the Comptroller of the Treasury or his designee finding that such an agreement or contract is in compliance with the guidelines, rules or regulations adopted or promulgated by the State Funding Board in accordance with the provisions of Section 12-10-111(l) hereof. Agreements to sell bonds or refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement to sell the bonds or refunding bonds do not require a report of the Comptroller of the Treasury or his designee pursuant to Section 12-10-111(l).

(k) With respect to all or any portion of any issue of bonds and refunding bonds issued hereunder, at any time during the term of the bonds or refunding bonds, and upon receipt of a report of the Comptroller of the Treasury or his designee finding that the contracts and agreements authorized in this subsection are in compliance with the guidelines, rules or regulations adopted or promulgated by the State Funding Board, as set forth in subsection (m) hereof, an authority, by resolution, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the board of the authority may determine, including, without limitation, provisions permitting the authority to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement. Such a contract or agreement to be entered into by an authority with respect to bonds or refunding bonds issued to fund or finance a lease agreement, loan agreement or operating contract with a municipal corporation must also be approved by the governing body of the municipal corporation.

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(l) The State Funding Board shall establish guidelines, rules or regulations with respect to the agreements and contracts referenced in subsections (j) and (k) hereof and Section 12-10-116(c), which may include, but shall not be limited to, the following:

- (1) the conditions under which such agreements or contracts can be entered into;
- (2) the methods by which such contracts are to be solicited and procured;
- (3) the form and content such contracts shall take;
- (4) the aspects of risk exposure associated with such contracts;
- (5) the standards and procedures for counterparty selection, including rating criteria;
- (6) the procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts or agreements;
- (7) the methods of securing the financial interest in such contracts;
- (8) the methods to be used to reflect such contracts in the authority's or municipal corporation's financial statements;
- (9) financial monitoring and periodic assessment of such contracts by the authority or municipal corporation;
- (10) the application and source of non-periodic payments; and
- (11) educational requirements for officials of the authority or the municipal corporation responsible for approving any such contract or agreement.

Prior to the adoption by the governing body of the authority or the governing body of the municipal corporation of a resolution authorizing such contract or agreement, a request shall be submitted to the Comptroller of the Treasury or his designee for a report finding that such contract or agreement is in compliance with the guidelines, rules or regulations of the State Funding Board. Within fifteen (15) days of receipt of the request, the Comptroller or his designee shall determine whether the contract or agreement substantially complies with the guidelines and shall report thereon to the authority or municipal corporation. If the report of the Comptroller or his designee finds that the contract or agreement complies with the guidelines, rules or regulations of the State Funding Board or the Comptroller shall fail to report within said fifteen (15) day period, then the authority or the municipal corporation may take such action with respect to the proposed contract or agreement as it deems advisable in accordance with the provisions of this section and the guidelines, rules or regulations of the State Funding Board. If the report of the Comptroller or his designee finds that such contract or agreement is not in compliance with the guidelines, rules or regulations, then the authority or the municipal corporation is not authorized to enter into such contract or agreement. The guidelines,

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rules or regulations shall provide for an appeal process to a determination of noncompliance.

(m) When entering into any contracts or agreements facilitating the issuance and sale of bonds or refunding bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds or refunding bonds evidencing a transaction bearing a reasonable relationship to this State and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this State or the laws of such other state or nation; provided, however, jurisdiction over any authority or municipal corporation against which an action on such a contract or agreement is brought shall lie solely in a court located in Tennessee which would otherwise have jurisdiction of actions brought in contract against such authority or municipal corporation.

SECTION 2. Tennessee Code Annotated, Section 12-10-116, is hereby amended by adding a new subsection (c) as follows:

(c) With respect to all or any portion of any lease, loan agreement, sales contract or operating contract described in this chapter, at any time during the term of the lease, loan agreement or operating contract, and upon receipt of a report of the Comptroller of the Treasury or his designee finding that the contracts and agreements authorized in this subsection are in compliance with the guidelines, rules or regulations adopted or promulgated by the State Funding Board, as set forth in Tennessee Code Annotated. Section 12-10-111(l), hereof, a municipal corporation, by resolution, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the governing body of the municipal corporation may determine, including, without limitation, provisions permitting the municipal corporation to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such lease, loan agreement or operating contract.

SECTION 3. Tennessee Code Annotated, Section 12-10-122, is hereby amended by redesignating the existing language as subsection (a) and by adding the following language as a new subsection (b):

Prior to the adoption or promulgation by the State Funding Board of guidelines, rules or regulations with respect to the contracts and agreements authorized in Tennessee Code Annotated, Sections 12-10-111(j) and (k) and Tennessee Code Annotated, Section 12-10-116(c), hereof, a municipal corporation or authority may enter into such contracts or agreements to the extent otherwise authorized in this chapter or in any other law notwithstanding Tennessee Code Annotated, Sections 12-10-111(j) and (k) and 12-10-116(c) is intended to alter any existing authority in this chapter or in any other law otherwise providing authority for a municipal corporation or authority to enter into the contracts or agreements described in Tennessee Code Annotated, Sections 12-10-111(j) and 12-10-116(c), heretofore entered into or entered into prior to the adoption or promulgation by the State Funding Board of guidelines, rules or regulations.

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SECTION 4. Tennessee Code Annotated, Section 12-10-111(f), is hereby amended by adding the words "or any other authority" after the first time the word "authority" appears in such subsection.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared severable.

SECTION 6. This act shall take effect July 1, 1999, the public welfare requiring it.

PASSED: May 27, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON SUNDQUIST, GOVERNOR