

Article 13.

Interest Rate Swap Agreements for Governmental Units.

§ 159-193. Definitions.

The following definitions apply in this Article:

- (1) Governmental unit. – Any of the following:
 - a. A unit of local government as defined in G.S. 159-44.
 - b. A municipality as defined in G.S. 159-81.
 - c. A joint agency as defined in G.S. 159B-3.
 - d. Any department, agency, board, commission, or authority of the State that is authorized by law to issue bonds.
 - e. The State Treasurer in connection with the issuance, incurrence, carrying, or securing of obligations for or on behalf of the State pursuant to an act of the General Assembly.
- (2) Obligations. – Any of the following:
 - a. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by a governmental unit.
 - b. Lease purchase or installment financing agreements entered into by a governmental unit.
- (3) Swap agreement. – Any of the following:
 - a. An agreement, including terms and conditions incorporated by reference in the agreement, that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, rate cap agreement, rate floor agreement, rate collar agreement, or other similar agreement, including any option to enter into or terminate any of the foregoing.
 - b. Any combination of the agreements described in sub-subdivision a. of this subdivision.
 - c. A master agreement for any of the agreements described in sub-subdivisions a. and b. of this subdivision, together with all supplements.
 - d. One or more transactions entered into pursuant to a master agreement. (2003-388, s. 4; 2005-403, s. 4.)

§ 159-194. Swap agreements.

(a) Subject to the provisions of this Article, a governmental unit may from time to time purchase, enter into, modify, amend, or terminate one or more swap agreements that it determines are necessary or desirable in connection with the issuance, incurrence, carrying, or securing of obligations. This authorization also includes the authority to enter into modifications or reversals of a swap agreement previously entered into by the governmental unit and the authority to enter into a swap agreement that modifies the interest rate payment calculation method under a swap agreement previously entered into to another interest rate calculation method or that reverses, in whole or in part, the effect of a prior swap agreement on the governmental unit's interest rate cost or risk. A swap agreement entered into by a governmental unit may contain any provisions, including provisions regarding payments, term, termination payments, security, default, and remedies, and may be with any parties, that the governmental unit determines are necessary or desirable.

(b) No governmental unit shall enter into a swap agreement pursuant to this Article other than for the primary purpose of managing interest rate risk on or interest rate costs of its

obligations. A swap agreement may provide that the payments thereunder are based upon a fixed or variable interest rate calculation method. A governmental unit shall not engage in the business of acting as a dealer in swap agreements. A swap agreement may be entered into in connection with specific obligations of the governmental unit, which may consist of multiple series or issues of obligations as specified by the governmental unit. The swap agreement may be entered into at a time before, at the same time as, or after, the obligations are issued or incurred by the governmental unit. Each swap agreement may be entered for a notional amount up to, but not exceeding, the principal amount of the obligations with respect to which the swap agreement is entered. A swap agreement may have a term as long as, or less than, the term of the obligations with respect to which the swap agreement is entered.

(c) In connection with entering into a swap agreement, a governmental unit may enter into credit enhancement agreements to secure the obligations of the governmental unit under the swap agreement, with any payment, security, default, remedy, and other terms and conditions that the governmental unit determines, including entering into binding agreements to deliver collateral, either at the time the swap agreement is entered into or at future times under conditions set forth in the swap agreement. (2003-388, s. 4.)

§ 159-195. Nature of duties of a governmental unit under a swap agreement.

The duty of a governmental unit to make the payments required and to perform the other duties of the governmental unit under a swap agreement shall constitute a continuing contractual obligation of the governmental unit, enforceable in accordance with applicable law for the enforcement of contractual obligations of that governmental unit. A governmental unit may limit its duties under a swap agreement to designated property or a designated source of revenues or receipts of the governmental unit, such as the revenues of a specified utility or other public service enterprise system of the governmental unit. If a governmental unit enters into a swap agreement in connection with obligations that are secured by a designated form of security, then, subject to the terms of the bond order or resolution, trust indenture or trust agreement, installment contract or lease purchase agreement, or similar instrument pursuant to which the obligations are issued or incurred, the governmental unit may pledge, mortgage, or grant a security interest in the revenues of the utility or other public service enterprise system, program, receipts, property, or similar arrangement securing the obligations to secure the payment and performance of its duties under the swap agreement. Any pledge of assets, revenues, or receipts to secure the duties of a governmental unit under a swap agreement shall become effective in the same manner and to the same extent as a pledge of those assets, revenues, or receipts to secure the obligations with respect to which the swap agreement is entered. (2003-388, s. 4.)

§ 159-196. Approval by Commission.

(a) Approval Required. – If either of the following conditions is met, a governmental unit shall not enter into a swap agreement unless the Commission first approves the governmental unit's entering into the swap agreement:

- (1) The unit is a unit of local government as defined in G.S. 159-44, a municipality as defined in G.S. 159-81, or a joint agency as defined in G.S. 159B-3.
- (2) The sale, issuance, or incurrence of the obligations with respect to which the swap agreement is entered into is subject to the approval of the Commission.

(b) Factors. – The Commission may consider all of the following factors in determining whether to approve the swap agreement:

- (1) The nature and amount of the outstanding debt of the governmental unit proposing to enter the swap agreement.
- (2) The governmental unit's debt management procedures and policies.
- (3) To the extent applicable, the governmental unit's compliance with the Local Government Budget and Fiscal Control Act.
- (4) Whether the governmental unit is in default in any of its debt service obligations.
- (5) The credit rating of the governmental unit.

(c) Amendments. – If a swap agreement is subject to approval by the Commission pursuant to this section and is approved, then the governmental unit shall not enter into any amendment to the swap agreement that terminates or changes the time period covered by the swap agreement, changes the interest rate calculation method under the swap agreement, or changes the notional amounts covered by the swap agreement without the prior approval of the Secretary of the Commission.

(d) Approval Not Required. – A swap agreement is not subject to approval by the Commission except as provided in this section. This section does not require the approval of the Commission of a swap agreement entered into by a private entity receiving the benefit of financing through the issuance of obligations by a governmental unit. (2003-388, s. 4.)

§ 159-197. Additional method.

This Article provides an additional and alternative method for the doing of the things authorized by it and is supplemental to powers conferred by other laws. This Article does not derogate any existing powers. (2003-388, s. 4.)

§ 159-198. Severability.

If any provision of this Article or its application is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable. (2003-388, s. 4.)

§ 159-199. Validation of preexisting swap agreements.

All proceedings taken by the governing bodies of governmental units in connection with the authorization of swap agreements and all swap agreements entered into by governmental units before the effective date of this Article are ratified. (2003-388, s. 4.)

§ 159-200. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (2003-388, s. 4.)

§§ 159-201 through 159-209: Reserved for future codification purposes.