

GEORGIA STATE FINANCING AND INVESTMENT COMMISSION (GSFIC)

Policy and Procedures, Owner Finance

Policy Title/Number State Authorities Debt Issuance Approval Policy and Underwriter Selection Procedures FI-07-01-001

Effective Date: August 4, 2004

Revises Previous Effective Date:

References: Constitution of the State of Georgia, as amended – Article VII, Section IV, Paragraph VII
O.C.G.A. §50-17-20 et seq.
O.C.G.A. §50-17-21 et seq. sections (3) and (9)
O.C.G.A. §50-17-22 et seq. section (f) (1)
Governmental Accounting Standards Board (GASB), Section L20
U.S. Treasury, Internal Revenue Service

1. Introduction

The Georgia State Financing and Investment Commission was created November 1972 by the Constitutional Amendment under Article VII, Section IV, Paragraph VII, and Georgia Code (O.C.G.A.) Section 50-17-20

2. Applicability

State Authorities

3. Policy Statement

O.C.G.A. §50-17-22 et seq. section (f) (1)

“The Commission is vested with complete and exclusive authority and jurisdiction in all financial matters relating to the issuance and incurrence of debt by State Authorities as defined in paragraph (9) of Code Section 50-17-21; and no such State Authority shall be authorized, without the approval of the Commission, to employ other financial or investment advisory counsel in any matter whatsoever or to incur debt without the specific approval of the Commission.”

The purpose of this policy is to provide guidance regarding:

1. Procedures for obtaining approval for incurring State and Authority debt from the Georgia State Financing and Investment Commission (GSFIC).
2. Appointment of financial or investment advisors or bond underwriters.
3. Equal opportunity for minorities and women.

Unless the Commission finds extraordinary circumstances that justify deviation from this policy, all Authority debt transactions must be in compliance with this policy. Any deviation from this policy will be in the Commission's sole discretion.

This policy covers State Authorities that are:

- First-time or infrequent issuers of debt, and
- Frequent issuers of debt (those Authorities that have an average of two or more bond issues per year over a three-year period).

4. Definitions

Debt: Any obligation, whatever structure or form, resulting from borrowing money, including but not limited to bonds, notes, bank loans, letters of credit and leases.

Leases: Any lease which meets the criteria for capital lease as defined in the Codification of Governmental Accounting and Financial Reporting Standards Section L20, promulgated by the Governmental Accounting Standards Board (GASB) or any lease which purports to provide tax-exempt interest income to any party to the transaction.

Financial Advisory Matters: “means all matters pertaining to the issuance of State debt and State Authority bonds and the investment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to State Authorities of a financial plan which will provide State Authorities with required funds.”

State Authorities: “means the instrumentalities of the State: Georgia Building Authority (GBA), Georgia Building Authority (Hospital), Georgia Building Authority (Penal), Georgia Building Authority (Markets), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island – State Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the State created by the General Assembly and authorized to issue debt and not specifically exempt from this article.”

5. Procedure

I. GSFIC Role and Responsibilities

To fulfill its statutory mission, the staff of the Commission will:

- a. Present all financial intermediaries to be used for all issues of Authority debt for Commission approval.
- b. Select financial advisors and underwriters for all issuers of Authority debt and assure equal opportunity for minorities and women.
- c. Monitor the results of minority and female applicants meeting baseline minimum criteria for participation as financial advisors and their participation as underwriters and report the results of such participation to the Commission at least on an annual basis.

II. Conditions of Issuance

A. Presumption of Competitive Sale

Unless otherwise approved by the Commission, Authority debt including guaranteed revenue debt will be sold by competitive bid.

B. Conditions of Negotiated Sale

While the presumptive method of sale shall be the competitive method, conditions may warrant that a negotiated sale is necessary to minimize the cost and risks of borrowing. In such cases, the Commission may provide for the sale of Authority debt by negotiating the terms and conditions of the sale, including prices, interest rates, credit facilities, underwriting fees and Commissions.

Examples of such sales include:

- debt issuance is so large that the number of potential bidders would be too limited to provide that Authority with truly competitive bids;
- debt issuance requiring the ability to react quickly to sudden changes in interest rates such as an advanced or current refunding; and
- debt issuance requiring intensive marketing efforts to establish investor acceptance, such as the issuance of single family mortgage revenue bonds.

When a negotiated sale of debt is proposed for cases other than those listed above, any State Authority proposing a negotiated sale of debt must provide written justification to the Commission for such method of sale.

In such cases where a negotiated method of sale is approved, the staff of the Financing and Investment Division of the Commission will strictly implement the following practices:

- a. Ensure fairness by using a competitive selection process through a request for proposal process which will establish a standing pool of qualified underwriters for a designated period of time or another form of solicitation that ensures that multiple proposals are fairly considered;
- b. Remain actively involved in each step of the negotiation and sale processes to uphold the public trust;
- c. Avoid conflicts of interest, by prohibiting a financial advisor retained for a particular bond issue to participate as an underwriter of same bond issue;
- d. Require that financial professionals disclose the name(s) of any person or firm, including attorneys, lobbyists and public relations professionals compensated to promote the selection of their professional services; and
- e. Require all financial professionals submitting joint proposals or intending to enter into joint accounts or any fee-splitting

arrangements in connection with a bond issue to fully disclose the financing professionals with whom the sharing is proposed, the method used to calculate fees to be earned, and any changes thereto.

III. Ratings

A public offering or private placement of Authority debt must secure a minimum rating of one letter grade below the State's general obligation bond rating from at least one of the nationally recognized bond rating Agencies. This may be accomplished on its own credit, through bond insurance or bank letter of credit.

IV. First Time or Infrequent Issuers Processes

A. Debt Approval Process

State Authorities that are first time or infrequent issuers proposing to incur debt must obtain both initial and final approval from the Commission. This requires the State Authority to be included on the Commission's agenda at two separate meetings.

Any State Authority proposing to issue or incur debt shall file with the Executive Secretary of the Commission a request to be placed on the official agenda for the next called meeting to request approval to incur such debt. If the Authority is contemplating a negotiated transaction, in addition to the written justification for such a method of sale, approval should also be requested to employ a financial advisor and/or underwriter(s) in accordance with the guidelines in Section IV, VIII, and IX of this policy.

The governing board of the State Authority proposing to issue or incur debt must give its final approval at least fourteen days before the second meeting of the Commission at which final approval of a State Authority's issuance of debt is to be sought. The State Authority proposing the debt shall file a request with the Executive Secretary of the Commission to be placed on the official Board agenda not less than ten days before said meeting.

The requesting Authority shall also submit to the Executive Secretary all documentation regarding to proposed issuance which is to become a part of the Commission's official record, with a copy of all such documentation to be sent to the Director of the Financing and Investment Division of the Commission. Such documentation pertaining to the issuance of debt, shall be in substantially final draft form, and shall include but not limited to:

- a. Any and all resolutions adopted by governing board of the Authority.
- b. Any trust indenture to be executed.

- c. Any bond purchase agreement or other such similar agreement to be executed.
- d. Any yield or cash flow tests, projections, or assumptions prepared in connection with the structuring of the finance plan.
- e. Any paying agent or registrar agreement to be executed.
- f. Any preliminary official Statement, offering circular or other disclosure document to be used in connection with the offer and sale of the Authority's debt.
- g. Any letter of credit, issuance policy, or other form of credit or liquidity enhancement, together with any and all attendant documents.
- h. Any legal opinions to be issued.
- i. A written Statement of the financing plan to be used.
- j. A written statement of criteria used to select any credit or liquidity enhancement provider in a negotiated sale and the name and address of the provider recommended to be used.
- k. A listing of the recommended underwriting team.

A. Selection of Underwriters

To provide for the negotiated issuance of State debt for first time or infrequent issuers, the Commission's staff will select for the Authority a team of qualified underwriters and will afford equal opportunity for minorities and women in that selection. The selections will be based on a competitive evaluation of objective criteria as submitted in response to a request for proposals. Among underwriters selected to the team, the best qualified firm will be designated as lead underwriter. The underwriting team will be presented to the Commission for approval.

V. Frequent Issuers Processes

A. Debt Approval Process

Any frequent issuer proposing to incur debt shall file with the Executive Secretary of the Commission a request to be placed on the official Board agenda for the next called meeting to request approval to incur debt. The request for approval can, at the sole discretion of the Commission, be granted on an annual basis, for a specified "not to exceed" amount. This allows the requesting Authority to plan bond issues to coincide with their needs. Approval to engage a Senior Managing Underwriter(s) should be requested at the same time as the approval to incur debt. The guidelines in Section VII, described below should have been followed and the Authority recommendations should be presented to the Commission for approval.

With respect to each and every offering of bonds to be made from the aggregate amount authorized for the issuance by the Commission, at least seven days before the day of pricing of the offering, the Executive Director of the Authority shall deliver to each member of the Commission, or his

designee appointed for this purpose, a copy of the Preliminary Official Statement to be used in said offering. The Executive Director of the Authority shall file with the Executive Secretary of the Commission a copy of the draft Preliminary Official Statement that was delivered to the Commission members, or their respective designees, with a Statement certifying that he has personally delivered said Preliminary Official Statement to the Commission members, or their respective designees, in accordance with directions of this policy.

B. Selection of Underwriters

The selection by the issuer and approval by the Commission of underwriters will be done for each issue on an issue-by-issue basis. The Commission, in its sole discretion, may make an exception to this requirement for a State Authority that issues negotiated debt on a frequent basis and that formally request in advance of its need that the Commission permit and approve the employment of an underwriter or underwriting team for a designated period, not to exceed three years, that may include more than one bond issue. However, the approval for the underwriting team for each issue shall be requested and approved by the Commission prior to each bond sale.

The selection of Senior Manager(s) must be accomplished by using a request for proposal method, unless specifically approved otherwise by the Commission. Any State Authority not familiar with the request for proposal method should seek the advice of the Financing and Investment Division staff in drafting any such request.

VI. Primary Objectives for Selection of the Underwriting Team

The primary objectives in forming an underwriting team should include but not limited to:

1. To develop a financing team with firms capable of structuring a quality bond issue that meets the objectives of the issuing Authority and capable of distributing bonds in a manner that will provide the lowest cost of borrowing to the issuing Authority.
2. To create a selection and review process that will provide an opportunity to diverse types of firms desiring to become members of the financing team.
3. To promote the inclusion of Georgia-based firms, including small, minority and women-owned firms that have a proven ability to distribute bonds within the State of Georgia as well as regionally.
4. To promote the inclusion of firms that have a strong presence in the State of Georgia with in-state offices that have proven ability to distribute bonds within the State as well as regionally.
5. To reward quality performance of firms on the financing team.
6. To provide for the removal of any firm whose performance does not meet the standards established by the issuing Authority.

VII. Criteria for Underwriter(s) Selection

The underwriting team should consist of the following categories of participation:

- a. Senior Manager(s);
- b. Co-Managers; and
- c. Selling Group (Optional category based on issuance size)

Selection criteria for Senior Manager(s) should include the following:

- a. Their ability to present bond financing structures, as complex or as simple as the issues warrant, that provide the lowest cost of borrowing to the issuer.
- b. Their ability to lead and manage the underwriting team.
- c. Their ability to provide current market advice, as well as on going financial advice, to Authorities that are frequent issuers.
- d. Their experience and reputation in the type of financing to be undertaken.
- e. Their willingness to provide sufficient personnel with extensive experience for issuers that have complex bond structures.
- f. Their ability to distribute bonds.
- g. Their financial strength and willingness to underwrite an unsold balance of the issue, if necessary.
- h. Their willingness to allocate bonds to members of the underwriting group in a fair and equitable manner.

Co-Managers should consist of firms that:

- a. Are capable of providing market advice on the issue being sold.
- b. Have an in-state and/or regional network of offices with personnel with proven capabilities to distribute bonds at the lowest current market rates.
- c. Have the ability and willingness to provide substantive and useful marketing input to the senior manager(s).
- d. Are financially sound and willing to underwrite their proportionate share of the issue, if necessary.

Preference should be given first, to firms headquartered in Georgia, to firms with offices in and a strong presence in Georgia that meet criteria above for senior manager and co-manager.

Selling should consist of firms that:

1. Are reputable and have demonstrated the ability to sell bonds successfully to Georgia retail customers.
2. Are smaller Georgia-based or regional firms that have insufficient capital to qualify for Co-Manager but have a strong desire to be part of the underwriting team.
3. Are willing to provide a performance level that would allow them to be considered for the Co-Manager category.

Inclusion of this category in an underwriting transaction is optional, ultimately depending on the size of the issue and the number of firms previously listed in categories 1 and 2 above.

VIII. Selection of Financial Advisor

The staff of the Commission will select a financial advisor obtained through a competitive evaluation of proposals submitted in response to a request for proposal and will afford equal opportunity for minorities and women in that selection. The final selection for the financial advisor will be presented to the Commission for approval.

The criteria to be used in evaluating and selecting a financial advisor should include:

- a. Experience in providing formal financial advisory services to major municipal issuers.
- b. Experience with diverse financial structuring requirements of major municipal issuers.
- c. Experience and reputation of assigned personnel.
- d. Fees and expenses.

Assistance to be provided by a financial advisor will include, but not be limited to:

1. monitoring market opportunities;
2. evaluating proposals submitted to the Commission and the issuers;
3. analyzing the costs and risks of debt issuances; and
4. structuring and pricing debt issuances.

A financial advisor under contract with the State of Georgia will not purchase or sell any State debt until underwriting accounts are closed or debt is freed from underwriter pricing restrictions, whichever occurs first. In such circumstance, financial advisors must comply with all legal and disclosure restrictions, whichever occurs first. In such circumstance, financial advisors must comply with all legal and disclosure restrictions, including but not limited to Municipal Securities Rulemaking Board (MSRB) Rule G-23.

IX. Expense Reimbursements for All Financial Intermediaries

With respect to reasonable and necessary out-of-pocket expenses incurred while performing financial services under the agreement, the financial intermediary shall submit detailed invoices in accordance with the agreement, including details of such expenses. Such expenses may include but not be limited to cost of travel, communications, and deliveries incurred in connection with services under the agreement. The reimbursement of such expenses shall be subject to the current Statewide Travel Regulations issued by the State of Georgia Department of Audits and Accounts and the Office of Planning and Budget. A copy of the statewide travel regulations shall be delivered to any financial intermediaries as a part of the agreement.

X. Private Placement Offerings

A private placement of an issue of securities represents a negotiated sale in which the new issue securities are sold directly to an institutional or private investor(s) rather than through a public offering.

Any State Authority proposing to issue or incur debt through a private placement of its debt or other types of borrowing, must adhere to the same approval process as provided in Section IV and Section VI of this policy.

Debt proposed to be issued by an Authority through private placement or other borrowing will be considered for approval on an individual basis when the debt to be incurred is \$5,000,000 or less. Requests for amounts in excess of \$5,000,000 will be given consideration if special circumstances can be demonstrated.

XI. Post Issuance Reporting Requirements

The Authority shall submit, not later than thirty days after the closing of each bond issue, a report to the Director of the Financing and Investment Division of the Commission which demonstrates the performance of each member of the underwriting team on the latest bond issue.

For each negotiated sale this report should include:

- final official statement,
- final debt services schedule,
- priority bond orders,
- priority allotments,
- non-priority bond orders,
- non-priority allotments,
- total bond orders,
- total allotment,
- management fee distribution for each member,
- compensation for each member for the bond allotted (takedown X bond Allotment), and the
- total compensation for each member.

For each competitive sale this report should include:

- final official statement,
- debt service schedule,
- tabulation of all bids, and the
- listing of firms in the winning syndicate.

The Director of the Financing and Investment Division of GSFIC shall then disseminate this report to all members of the Commission and the Executive Secretary of the Commission.

6. Attachment

Reference Material 1: Constitution of the State of Georgia, as amended

Reference Material 2: O.C.G.A. §50-17-20 et seq.

Reference Material 2: O.C.G.A. §50-17-21 et seq. Sections (3) and (9)

Reference Material 2: O.C.G.A. §50-17-22 et seq. Section (f) (1)

Reference Material 3: Governmental Accounting Standards Board (GASB),
Section L20

7. Record Retention

Non-Applicable

State Authorities Debt Issuance Policy Reference Documents

State of Georgia Constitution

ARTICLE VII - SECTION IV.

Paragraph VII. *Georgia State Financing and Investment Commission; duties.*

(a) There shall be a Georgia State Financing and Investment Commission. The commission shall consist of the Governor, the President of the Senate, the Speaker of the House of Representatives, the State Auditor, the Attorney General, the director, Fiscal Division, Department of Administrative Services, or such other officer as may be designated by law, and the Commissioner of Agriculture. The commission shall be responsible for the issuance of all public debt and for the proper application, as provided by law, of the proceeds of such debt to the purposes for which it is incurred; provided, however, the proceeds from guaranteed revenue obligations shall be paid to the issuer thereof and such proceeds and the application thereof shall be the responsibility of such issuer. Debt to be incurred at the same time for more than one purpose may be combined in one issue without stating the purpose separately but the proceeds thereof must be allocated, disbursed and used solely in accordance with the original purpose and without exceeding the principal amount authorized for each purpose set forth in the authorization of the General Assembly and to the extent not so used shall be used to purchase and retire public debt. The commission shall be responsible for the investment of all proceeds to be administered by it and, as provided by law, the income earned on any such investments may be used to pay operating expenses of the commission or placed in a common debt retirement fund and used to purchase and retire any public debt, or any bonds or obligations issued by any public agency, public corporation or authority which are secured by a contract to which the provisions of the second paragraph of Paragraph I(a) of Section VI, Article IX of the Constitution of 1976 are applicable. The commission shall have such additional responsibilities, powers, and duties as are provided by law.

(b) Notwithstanding subparagraph (a) of this Paragraph, proceeds from general obligation debt issued for making loans to local government entities for water or sewerage facilities or systems or for regional or multijurisdictional solid waste recycling or solid waste facilities or systems as provided in Paragraph I(e) of this section shall be paid or transferred to and administered and invested by the unit of state government or state authority made responsible by law for such activities, and the proceeds and investment earnings thereof shall be applied and disbursed by such unit or authority.

O.C.G.A. §50-17-20 et seq.

This article shall be known and may be cited as the 'Georgia State Financing and Investment Commission Act.'

O.C.G.A. §50-17-21 et seq.

As used in this article, the term:

(1) 'Commission' means the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution, consisting of the Governor, the President of the Senate, the Speaker of the House of Representatives, the state auditor, the Attorney General, the director of the Office of Treasury and Fiscal Services, and the Commissioner of Agriculture, and declared an agency and instrumentality of the state.

(2) 'Constitution' means the Constitution of the State of Georgia of 1983.

(3) 'Financial advisory matters' means all matters pertaining to the issuance of state debt and state authority bonds and the investment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to state authorities of a financial plan which will provide state authorities with required funds.

(4) 'Fiscal officer of the state' means the director of the Office of Treasury and Fiscal Services or such other officer as may be designated by a valid Act of the General Assembly to perform the functions of such director with respect to public debt.

(5) 'General obligation debt' means obligations of this state issued pursuant to this article to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945, adopted November 8, 1960, for which the full faith, credit, and taxing power of the state are pledged for the payment thereof. 'General obligation debt' also means obligations of this state issued to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. 'General obligation debt' further means debt incurred to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems.

(6) 'Guaranteed revenue debt' means revenue obligations issued by an instrumentality of the state pursuant to this article to finance toll bridges, toll roads, and any other land public transportation facilities or systems and water

and sewer facilities or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes, the payment of which has been guaranteed by the state as provided in this article.

(7) 'Public debt' means any debt authorized by Article VII, Section IV of the Constitution.

(8) 'Sinking fund' means the State of Georgia General Obligation Debt Sinking Fund established by this article.

(9) 'State authorities' means the following instrumentalities of the state: Georgia Building Authority, Georgia Building Authority (Hospital), Georgia Building Authority (Penal), Georgia Building Authority (Markets), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island—State Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the state created by the General Assembly and authorized to issue debt and not specifically exempt from this article.

O.C.G.A. §50-17-22 et seq.

(a) *Responsibilities.* Subject to the limitations contained in this article, the commission shall be responsible for the issuance of all public debt incurred hereunder, for the proper application of the proceeds of such debt to the purposes for which it is incurred, for the proper application of an appropriation to the commission for capital outlay to the purpose for which it is appropriated, and for the application and administration of this article; provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the issuer thereof, and such proceeds and the application thereof shall be the responsibility of the issuer. The commission shall also be responsible for the proper disbursement of an appropriation to it for public school capital outlay, and the commission and the State Board of Education will be concurrently responsible for its proper application. The commission shall be responsible for the issuance of guaranteed revenue debt, except that bonds themselves evidencing such debt shall be in the name of the instrumentality of this state issuing the same and shall be issued and executed in accordance with the laws relative to such instrumentality and the applicable provisions of this article.

(b) *Organization.*

(1) The Governor shall serve as the chairman and chief executive officer; the presiding officer of the Senate shall serve as the vice-chairman of the commission; and the state auditor shall serve as secretary and treasurer. The chairman or vice-chairman or secretary and treasurer shall be the presiding officer at each meeting of the commission.

(2) There shall be a construction division of the commission administered by a director who shall not be a member of the commission and who shall also serve as the executive secretary for the commission. The director and the staff of the

construction division shall be appointed by and serve at the pleasure of the commission, shall provide administrative support for all personnel of the commission, and shall account for and keep all records pertaining to the operation and administration of the commission and its staff. The director, as executive secretary, shall prepare agenda and keep minutes of all meetings of the commission. In construction and construction related matters, the construction division shall act in accordance with the policies, resolutions, and directives of the Georgia Education Authority (Schools) and the Georgia Education Authority (University) until such time as such policies, resolutions, or directives are changed or modified by the commission. In carrying out its responsibilities in connection with the application of any funds under its control, including the proceeds of any debt or any appropriation made directly to it for construction purposes, the commission is specifically authorized to acquire and construct projects for the benefit of any department or agency of the state or to contract with any such department or agency for the acquisition or construction of projects under policies, standards, and operating procedures to be established by the commission; provided, however, that the commission shall contract with the Department of Transportation or the Georgia Highway Authority or the State Road and Tollway Authority or any combination of the foregoing for the supervision of and contracting for design, planning, building, rebuilding, constructing, reconstructing, surfacing, resurfacing, laying out, grading, repairing, improving, widening, straightening, operating, owning, maintaining, leasing, and managing any public roads and bridges for which general obligation debt has been authorized. The construction division also shall perform such construction related services and grant administration services for state agencies and instrumentalities and for local governments, instrumentalities of local governments, and other political subdivisions as may be assigned to the commission or to the construction division by executive order of the Governor.

(3) There shall also be a financing and investment division of the commission administered by a director who shall not be a member of the commission. The director shall be appointed by and serve at the pleasure of the commission. The financing and investment division shall perform all services relating to issuance of public debt, the investment and accounting of all proceeds derived from incurring general obligation debt or such other amounts as may be appropriated from time to time to the commission for capital outlay purposes, the guaranteed revenue debt and the proceeds thereof as may be directed by the commission and the issuer, the management of all other state debt, and such financial advisory matters and general accounting duties as are not specifically assigned to the executive secretary in paragraph (2) of this subsection and in subsection (g) of this Code section. The director of the financing and investment division shall report directly to the commission on all matters pertaining to the functions and duties assigned to the division.

(4) Members of the commission shall serve without compensation but shall receive actual expenses incurred by them in the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees.

(c) *Meetings.* The commission shall hold regular meetings as it deems necessary, but, in any event, not less than one meeting shall be held in each calendar quarter. The commission shall meet at the call of the chairman, vice-chairman, or secretary and treasurer or a majority of the members of the commission. Meetings of the commission shall be subject to Chapter 14 of this title, and its records shall be subject to Code Sections 50-18-70 and 50-18-71. The commission shall approve the issuance of public debt, as hereinafter provided, adopt and amend bylaws, and establish salaries and wages of employees of the commission only upon the affirmative vote of a majority of its members; all other actions of the commission may be taken upon the affirmative vote of a majority of a quorum present. A quorum shall consist of a majority of the members of the commission. If any vote is less than unanimous, the vote shall be recorded in the minutes of the commission.

(d) *Powers.* The commission shall have those powers set forth in the Constitution and the powers necessary and incidental thereto. In addition to such powers, the commission shall have power:

- (1) To have a seal and alter the same at pleasure;
- (2) To make contracts and to execute all instruments necessary or convenient, including contracts with any and all political subdivisions, institutions, or agencies of the state and state authorities, upon such terms and for such purposes as it deems advisable; and such political subdivisions, institutions, or agencies of the state and state authorities are authorized and empowered to enter into and perform such contracts;
- (3) To employ such other experts, agents, and employees as may be in the commission's judgment necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge the same;
- (4) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this article; and
- (5) To make reasonable regulations or adopt the standard specifications or regulations of the Department of Transportation or the state authorities, or parts thereof, for the construction, reconstruction, building, rebuilding, renovating, surfacing, resurfacing, acquiring, leasing, maintaining, repairing, removing, installing, planning, or disposing of projects for which public debt has been authorized, or for such other purposes as deemed necessary by the commission.

(e) *Records.* Except for those records specifically designated in this article to be kept by the fiscal officer of the state, the commission shall be responsible for keeping the records provided for in this article and such other records as it deems necessary or convenient for the administration of this article.

(f) *Advisory and service function.*

- (1) The commission is further vested with complete and exclusive authority and jurisdiction in all financial advisory matters relating to the issuance or incurrence of debt by state authorities as defined in paragraph (9) of Code Section 50-17-21; and no such state authority shall be authorized, without the approval of the commission, to employ other financial or investment advisory counsel in any matter whatsoever or to incur debt without the specific approval of the

commission.

(2) When the commission performs financial advisory or construction related services, the state authority or state agency requiring such services shall reimburse the commission for such services.

(g) *Budget unit; budget.*

(1) The commission is designated a budget unit and shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act.'

(2) The executive secretary shall prepare, under the direction and supervision of the commission, any budgets, requests, estimates, records, or other documents deemed necessary or efficient for compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' to provide for the payment of personnel services and administration and otherwise carry out this article, provided that it is expressly declared by the General Assembly that this subsection is only intended to provide that the commission shall receive an appropriation for personnel and administrative services. The commission need not receive an appropriation for the costs of issuance, validation, and delivery of obligations to be incurred, including, but not limited to, trustee's fees, paying agent fees, printing fees, bond counsel fees, district attorney fees, clerk of the superior court fees, architect fees, and engineering fees, which costs and fees are dependent on the principal amount of the obligations incurred and are determined to be appropriate costs of the project or projects for which such obligations are incurred and are authorized to be paid from bond proceeds. The commission need not receive an appropriation for expenditures made for fees and expenses incurred in safeguarding and protecting public health, life, and property in connection with projects for which general obligation debt has been incurred.

(h) *Retirement system.* All officers and employees of the commission shall be qualified to be and shall become members of the Employees' Retirement System of Georgia; provided, however, that any such officer or employee who was on April 13, 1973, an officer or employee of any state agency, authority, department, or instrumentality and a member or participant in any annuity or retirement program other than the Employees' Retirement System of Georgia, which person hereinafter is referred to as a 'present employee,' may elect to remain under such other annuity or retirement program or to transfer membership to the Employees' Retirement System of Georgia. The commission is authorized to perform and shall perform all obligations of employer if such present employee shall elect to remain under such other annuity or retirement program. A present employee electing to transfer membership to the Employees' Retirement System of Georgia under this article shall give notice of electing to transfer membership to the Board of Trustees of the Employees' Retirement System of Georgia and simultaneously therewith shall give to the governing body of the other annuity or retirement program notice that it shall transfer to the Board of Trustees of the Employees' Retirement System of Georgia the employer's and employee's contributions standing to his account. From and after the date of transfer of contributions, the present employee electing to transfer membership shall be a member of the Employees' Retirement System of Georgia with membership service and prior service credits equivalent to those he would have accrued had

he been a member of the Employees' Retirement System of Georgia throughout the period of transferred creditable service. In lieu of the foregoing election, any present employee wishing to retain his rights under any private annuity or retirement program may assume responsibility for the payment of all costs of such program and may elect to become a member of the Employees' Retirement System of Georgia effective the date upon which he becomes an officer or employee of the commission. Any present employee so electing to retain his rights may also receive membership service credit and prior service credit under the Employees' Retirement System of Georgia for all or part of his service with any state agency, authority, department, or instrumentality, plus military service credit as otherwise provided by law, by paying to the Board of Trustees of the Employees' Retirement System of Georgia, on terms acceptable to the Board of Trustees, all the employee's contributions, plus regular interest thereon, which would have stood to his credit had he been a member of the Employees' Retirement System of Georgia during the period of creditable service sought to be established. In the event of the latter election, the commission shall pay all employer's contributions, plus regular interest thereon, attributable to the creditable service sought to be established. Any elections under this subsection shall be made in writing within six months from the date of appointment to office or employment by the commission.

(i) *Surety bonds.* All members and officers of the commission and such employees as the commission may designate shall be surety bonded in such amounts as determined by the commission.

(j) *Exemptions from laws.* The commission shall not be subject to the following:

- (1) Articles 3 and 4 of Chapter 5 of this title;
- (2) Subpart 2 of Part 2 of Article 4 of Chapter 12 of Title 45, relating to approval of contracts;
- (3) Article 1 of Chapter 20 of Title 45; or
- (4) Code Sections 45-12-82, 45-12-83, 45-12-89, and 45-12-92.

O.C.G.A. §50-17-23 et seq.

(a) *General obligation debt.* General obligation debt may not be incurred until the General Assembly has enacted legislation stating the purposes, in general or specific terms, for which such issue of debt is to be incurred, specifying the maximum principal amount of the issue, and appropriating an amount at least sufficient to pay the highest annual debt service requirements for the issue. Appropriations made in each fiscal year, as provided in this subsection, for debt service purposes shall not lapse for any reason and shall continue in effect until the debt for which such appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the incurring of such debt. Following the incurring of debt in any fiscal year for any purpose for which an appropriation has been made, there shall be deposited in the sinking fund provided for in paragraph (1) of this subsection an amount equal to the highest annual debt service requirements for such debt coming due in any succeeding fiscal year. On or prior to the end of such fiscal year, the

commission shall certify to the fiscal officer of the state the amount of the appropriation for any purpose which has been transferred to the sinking fund and the amount of the anticipated highest annual debt service requirement of debt authorized to be issued in such fiscal year for any purpose by resolution of the commission but which actually will be incurred in the next succeeding fiscal year. The remaining appropriation for any purpose, after deducting the aggregate amounts described in the preceding sentence, shall lapse, except that any such amount attributable to an appropriation to general obligation debt for the construction and improvement of public roads and bridges shall not lapse but shall be paid to the Department of Transportation. The General Assembly may provide in an appropriation of highest annual debt service requirements that if the commission determines not to incur the debt so authorized, the commission may expend the appropriation as capital outlay for the purposes specified in the appropriation. The appropriation as capital outlay shall lapse at the end of the fiscal year of the appropriation unless committed as provided by law. The appropriation as highest annual debt service shall expire as authorization for debt when the funds are committed as capital outlay but shall otherwise lapse as provided by law.

(1) **SINKING FUND.** The General Assembly shall appropriate to a special trust fund designated 'State of Georgia General Obligation Debt Sinking Fund' such amounts as are necessary to pay annual debt service requirements on all general obligation debt incurred hereunder. The sinking fund shall be used solely for retirement of general obligation debt payable therefrom.

(2) **FAILURE TO APPROPRIATE; INSUFFICIENT MONEYS IN SINKING FUND.** If the General Assembly shall fail to make any appropriation or if for any reason the moneys in the sinking fund are insufficient to make all payments required with respect to such general obligation debt as and when the same becomes due, the director of the Office of Treasury and Fiscal Services shall set apart from the first revenues thereafter received, applicable to the general fund of the state, such amounts as are necessary to cure any such deficiencies and shall immediately deposit the same into the sinking fund. The director of the Office of Treasury and Fiscal Services may be required to set aside and apply such revenues as aforesaid at the action of any holder of any general obligation debt incurred under this article. The obligation to make such sinking fund deposits shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976.

(3) **SINKING FUND INVESTMENTS.** The moneys in the sinking fund shall be as fully invested as practical, consistent with the requirements to make current principal and interest payments. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from date of purchase.

(4) **HIGHWAY APPROPRIATIONS.** Appropriations to the sinking fund for debt service requirements attributable to public debt incurred or to be incurred for

construction, reconstruction, and improvement of public roads and bridges shall be considered as an appropriation for activities incident to providing and maintaining an adequate system of public roads and bridges in this state for the purpose of Article III, Section IX, Paragraph VI(b) of the Constitution.

(b) *Guaranteed revenue debt.* Guaranteed revenue debt may not be incurred until the General Assembly has enacted legislation authorizing the guarantee of the specific issue of revenue obligations then proposed, reciting that the General Assembly has determined such obligations will be self-liquidating over the life of the issue, which determination shall be conclusive, specifying the maximum principal amount of such issue, and appropriating an amount at least equal to the highest annual debt service requirements for such issue. After the General Assembly has enacted legislation authorizing the guarantee of a specific issue of revenue bonds by an instrumentality of the state or state authority, the commission shall approve the issuance of such bonds and thereafter such instrumentality or state authority shall actually authorize the issuance of its revenue bonds in accordance with the Act of the General Assembly, including amendments thereto, authorizing the issuance of revenue bonds by such instrumentality or state authority and the applicable provisions of this article.

(1) **COMMON RESERVE FUND.** Appropriations made in connection with guaranteed revenue debt shall be paid, upon the issuance of the obligations, into a special trust fund to be designated 'State of Georgia Guaranteed Revenue Debt Common Reserve Fund' to be held together with all other sums similarly appropriated as a common reserve for any payments which may be required by virtue of any guarantee entered into in connection with any issue of guaranteed revenue obligations. This Guaranteed Revenue Debt Common Reserve Fund shall be held and administered by the director of the Office of Treasury and Fiscal Services. All such appropriations for the benefit of guaranteed revenue debt shall not lapse for any reason and shall continue in effect until the debt for which the appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the payment of the same into the common reserve fund.

(2) **INSUFFICIENT MONEYS IN COMMON RESERVE FUND.** If any payments are required to be made from the State of Georgia Guaranteed Revenue Debt Common Reserve Fund to meet debt service requirements on guaranteed revenue obligations by virtue of an insufficiency of revenues, the director of the Office of Treasury and Fiscal Services shall pay to the designated paying agent, upon certification by the issuing instrumentality as to the insufficiency of such revenues, from the common reserve fund, the amount necessary to cure such deficiency. The director of the Office of Treasury and Fiscal Services shall then reimburse such fund from the general funds of the state within ten days following the commencement of any fiscal year of the state for any amounts so paid. The director of the Office of Treasury and Fiscal Services may be required to apply such funds as aforesaid with respect to guaranteed revenue debt at the action of any holder of any such guaranteed revenue obligations. The obligation to make any such reimbursements shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX,

Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and shall also be subordinate to the obligation hereinabove imposed upon the director of the Office of Treasury and Fiscal Services to make sinking funds deposits for the benefit of general obligation debt.

(3) **MINIMUM BALANCE REQUIRED; EXCESS MONEYS; INVESTMENTS.** The amount to the credit of the common reserve fund shall at all times be at least equal to the aggregate highest annual debt service requirements on all outstanding guaranteed revenue obligations entitled to the benefit of such fund. If at the end of any fiscal year of the state the fund is in excess of the required amount, the director of the Office of Treasury and Fiscal Services, upon certification of the state auditor, shall transfer such excess to the general funds of the state, free of such trust. The funds in the common reserve shall be as fully invested as is practical, consistent with the requirements of guaranteeing the principal and interest payments on the revenue obligations guaranteed by the state. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from the date of purchase.

(c) *Requirement for taxation.* The General Assembly shall raise by taxation each fiscal year, in addition to the sums necessary to make all payments required to be made under contracts entitled to the protection of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and to pay public expenses, such amounts as are necessary to pay debt service requirements in such fiscal year on all general obligation debt incurred hereunder and to maintain at all times the Guaranteed Revenue Debt Common Reserve Fund in the full amount required by the Constitution and this article.

O.C.G.A. §50-17-23 et seq.

(a) *General obligation debt.* General obligation debt may not be incurred until the General Assembly has enacted legislation stating the purposes, in general or specific terms, for which such issue of debt is to be incurred, specifying the maximum principal amount of the issue, and appropriating an amount at least sufficient to pay the highest annual debt service requirements for the issue. Appropriations made in each fiscal year, as provided in this subsection, for debt service purposes shall not lapse for any reason and shall continue in effect until the debt for which such appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the incurring of such debt. Following the incurring of debt in any fiscal year for any purpose for which an appropriation has been made, there shall be deposited in the sinking fund provided for in paragraph (1) of this subsection an amount equal to the highest annual debt service requirements for such debt coming due in any succeeding fiscal year. On or prior to the end of such fiscal year, the commission shall certify to the fiscal officer of the state the amount of the appropriation for any purpose which has been transferred to the sinking fund and

the amount of the anticipated highest annual debt service requirement of debt authorized to be issued in such fiscal year for any purpose by resolution of the commission but which actually will be incurred in the next succeeding fiscal year. The remaining appropriation for any purpose, after deducting the aggregate amounts described in the preceding sentence, shall lapse, except that any such amount attributable to an appropriation to general obligation debt for the construction and improvement of public roads and bridges shall not lapse but shall be paid to the Department of Transportation. The General Assembly may provide in an appropriation of highest annual debt service requirements that if the commission determines not to incur the debt so authorized, the commission may expend the appropriation as capital outlay for the purposes specified in the appropriation. The appropriation as capital outlay shall lapse at the end of the fiscal year of the appropriation unless committed as provided by law. The appropriation as highest annual debt service shall expire as authorization for debt when the funds are committed as capital outlay but shall otherwise lapse as provided by law.

(1) SINKING FUND. The General Assembly shall appropriate to a special trust fund designated 'State of Georgia General Obligation Debt Sinking Fund' such amounts as are necessary to pay annual debt service requirements on all general obligation debt incurred hereunder. The sinking fund shall be used solely for retirement of general obligation debt payable therefrom.

(2) FAILURE TO APPROPRIATE; INSUFFICIENT MONEYS IN SINKING FUND. If the General Assembly shall fail to make any appropriation or if for any reason the moneys in the sinking fund are insufficient to make all payments required with respect to such general obligation debt as and when the same becomes due, the director of the Office of Treasury and Fiscal Services shall set apart from the first revenues thereafter received, applicable to the general fund of the state, such amounts as are necessary to cure any such deficiencies and shall immediately deposit the same into the sinking fund. The director of the Office of Treasury and Fiscal Services may be required to set aside and apply such revenues as aforesaid at the action of any holder of any general obligation debt incurred under this article. The obligation to make such sinking fund deposits shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976.

(3) SINKING FUND INVESTMENTS. The moneys in the sinking fund shall be as fully invested as practical, consistent with the requirements to make current principal and interest payments. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from date of purchase.

(4) HIGHWAY APPROPRIATIONS. Appropriations to the sinking fund for debt service requirements attributable to public debt incurred or to be incurred for construction, reconstruction, and improvement of public roads and bridges shall be considered as an appropriation for activities incident to providing and

maintaining an adequate system of public roads and bridges in this state for the purpose of Article III, Section IX, Paragraph VI(b) of the Constitution.

(b) *Guaranteed revenue debt.* Guaranteed revenue debt may not be incurred until the General Assembly has enacted legislation authorizing the guarantee of the specific issue of revenue obligations then proposed, reciting that the General Assembly has determined such obligations will be self-liquidating over the life of the issue, which determination shall be conclusive, specifying the maximum principal amount of such issue, and appropriating an amount at least equal to the highest annual debt service requirements for such issue. After the General Assembly has enacted legislation authorizing the guarantee of a specific issue of revenue bonds by an instrumentality of the state or state authority, the commission shall approve the issuance of such bonds and thereafter such instrumentality or state authority shall actually authorize the issuance of its revenue bonds in accordance with the Act of the General Assembly, including amendments thereto, authorizing the issuance of revenue bonds by such instrumentality or state authority and the applicable provisions of this article.

(1) **COMMON RESERVE FUND.** Appropriations made in connection with guaranteed revenue debt shall be paid, upon the issuance of the obligations, into a special trust fund to be designated 'State of Georgia Guaranteed Revenue Debt Common Reserve Fund' to be held together with all other sums similarly appropriated as a common reserve for any payments which may be required by virtue of any guarantee entered into in connection with any issue of guaranteed revenue obligations. This Guaranteed Revenue Debt Common Reserve Fund shall be held and administered by the director of the Office of Treasury and Fiscal Services. All such appropriations for the benefit of guaranteed revenue debt shall not lapse for any reason and shall continue in effect until the debt for which the appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the payment of the same into the common reserve fund.

(2) **INSUFFICIENT MONEYS IN COMMON RESERVE FUND.** If any payments are required to be made from the State of Georgia Guaranteed Revenue Debt Common Reserve Fund to meet debt service requirements on guaranteed revenue obligations by virtue of an insufficiency of revenues, the director of the Office of Treasury and Fiscal Services shall pay to the designated paying agent, upon certification by the issuing instrumentality as to the insufficiency of such revenues, from the common reserve fund, the amount necessary to cure such deficiency. The director of the Office of Treasury and Fiscal Services shall then reimburse such fund from the general funds of the state within ten days following the commencement of any fiscal year of the state for any amounts so paid. The director of the Office of Treasury and Fiscal Services may be required to apply such funds as aforesaid with respect to guaranteed revenue debt at the action of any holder of any such guaranteed revenue obligations. The obligation to make any such reimbursements shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and shall also be subordinate to the obligation hereinabove imposed upon the director of the

Office of Treasury and Fiscal Services to make sinking funds deposits for the benefit of general obligation debt.

(3) **MINIMUM BALANCE REQUIRED; EXCESS MONEYS; INVESTMENTS.** The amount to the credit of the common reserve fund shall at all times be at least equal to the aggregate highest annual debt service requirements on all outstanding guaranteed revenue obligations entitled to the benefit of such fund. If at the end of any fiscal year of the state the fund is in excess of the required amount, the director of the Office of Treasury and Fiscal Services, upon certification of the state auditor, shall transfer such excess to the general funds of the state, free of such trust. The funds in the common reserve shall be as fully invested as is practical, consistent with the requirements of guaranteeing the principal and interest payments on the revenue obligations guaranteed by the state. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from the date of purchase.

(c) *Requirement for taxation.* The General Assembly shall raise by taxation each fiscal year, in addition to the sums necessary to make all payments required to be made under contracts entitled to the protection of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and to pay public expenses, such amounts as are necessary to pay debt service requirements in such fiscal year on all general obligation debt incurred hereunder and to maintain at all times the Guaranteed Revenue Debt Common Reserve Fund in the full amount required by the Constitution and this article.

O.C.G.A. §50-17-24 et seq.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as provided in this article.

(b) *Purposes for debt.*

(1) Public debt without a limit may be incurred to repel invasion, suppress insurrection, and defend the state in time of war.

(2) Public debt may be incurred to supply such temporary deficit as may exist in the state treasury in any fiscal year because of necessary delay in collecting the taxes of that year, but the debt so incurred shall not exceed, in the aggregate, 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which such debt is incurred; and any debt so incurred shall be repaid out of the taxes levied for the fiscal year in which the loan is made. Such debt shall be payable on or before the last day of the fiscal year in which it is incurred, and no such debt may be incurred in any fiscal year under this paragraph if there is then outstanding unpaid debt from any previous fiscal year which was incurred under this paragraph.

(3) Public debt for public purposes may be either general obligation debt or guaranteed revenue debt. General obligation debt may be incurred by issuing obligations to acquire, construct, develop, extend, enlarge, or improve land,

waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment adopted November 8, 1960, to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945. General obligation debt may also be incurred to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. General obligation debt may also be incurred in order to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. It shall not be necessary for the state or a state authority to hold title to or otherwise be the owner of such facilities or systems. General obligation debt for these purposes may be authorized and incurred for administration and disbursement by a state authority created and activated before, on, or after November 8, 1960.

Guaranteed revenue debt may be incurred by guaranteeing the payment of revenue obligations issued by an instrumentality of the state if such revenue obligations are issued to finance toll bridges, toll roads, or any other land public transportation facilities or systems, or water or sewage treatment facilities or systems, or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes; provided, however, that in no event shall general obligation debt or guaranteed revenue debt be incurred for water or sewage treatment facilities or systems for counties or municipalities unless such facilities are financed in whole or in part through an instrumentality of the state created by the General Assembly for the purpose of assisting the state, counties, or municipalities in the financing of water or sewage treatment facilities or systems for the benefit of the citizens of Georgia. General obligation debt or guaranteed revenue debt may be incurred to fund or refund any such debt or to fund or refund any obligations issued upon the security of contracts to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable.

(c) *Limitations.* No debt may be incurred under paragraph (3) of subsection (b) of this Code section at any time when the highest aggregate annual debt service requirements for the then current year or any subsequent year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt, and the highest aggregate annual payments for the then current year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable exceed 10 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred. Within such limitation, the following limitations shall also be applicable:

(1) No guaranteed revenue debt may be incurred to finance water or sewage treatment facilities or systems when the highest aggregate annual debt service requirements for the then current year or any subsequent fiscal year of the state for outstanding or proposed guaranteed revenue debt for water or sewage

treatment facilities or systems exceed 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred;

(2) The aggregate principal amount of guaranteed revenue debt incurred to make loans to citizens of the state for educational purposes that may be outstanding at any time shall not exceed \$18 million and the aggregate principal amount of guaranteed revenue debt incurred to make or purchase, or to lend or deposit against the security of, loans to citizens of the state for educational purposes that may be outstanding at any time shall not exceed \$72 million; and

(3) The issuance of any funding or refunding debt pursuant to this Code section shall be subject to the 10 percent limitation provided for in this subsection to the same extent as debt incurred under this article; provided, however, that in making such computation the annual debt service requirements and annual contract payments remaining on the debt or obligations being funded or refunded shall not be taken into account.

(d) *Annual debt service requirements.* For the purposes of subsection (c) of this Code section, annual debt service requirements shall mean the total principal and interest coming due in any fiscal year of the state; provided, however, that with regard to any issue of debt incurred wholly or in part on a term basis, annual debt service requirements shall mean an amount equal to the total principal and interest payments required to retire such issue in full divided by the number of years from its issue date to its maturity date.

O.C.G.A. §50-17-25 et seq.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) *Resolutions.*

(1)(A) All actions of the commission shall be taken by resolution. Each resolution adopted in connection with authorizing public debt shall be reduced to writing; and the executive secretary shall maintain a full and correct record of each step or proceeding had or taken in the course of authorizing and contracting public debt. Each authorizing resolution shall state each purpose of the debt it authorizes, which statement need not be more specific but shall not be more general than those purposes in or pursuant to law and the maximum principal amount authorized for each purpose. Public debt may be contracted and evidences of indebtedness issued therefor pursuant to one or more authorizing resolutions, unless otherwise provided in the resolution at any time and from time to time for any combination of purposes, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions deemed by the commission to be necessary or useful. Unless debt is sooner incurred or unless a shorter period is provided in such resolution, every authorizing resolution shall expire one year after the date of its adoption if the debt authorized by such resolution has not been issued in whole or in part.

(B) In the event it is determined by the commission that it is to the best interest of

the state to fund or refund any such public debt or obligation, the same may be accomplished by resolution of the commission without any action on the part of the General Assembly. Any appropriation made or required to be made with respect to the debt being funded or refunded shall immediately attach and inure to the benefit of the obligations to be issued in connection with such funding or refunding, to the same extent and with the same effect as though the obligation to be issued had originally been authorized by action of the General Assembly, provided that the debt incurred in connection with any such funding or refunding shall be the same as that originally authorized by the General Assembly (except that general obligation debt may be incurred to fund or refund obligations issued upon the security of contracts to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable and the continuing appropriation required to be made under such provisions of the Constitution shall immediately attach and inure to the benefit of the obligation to be issued in connection with such funding and refunding with the same force and effect as though the obligation so funded or refunded had originally been issued as a general obligation debt authorized hereunder); and provided, further, that the term of the funding or refunding issue shall not extend beyond the term of the original debt or obligation, and the total interest on the funding or refunding issue shall not exceed the total interest to be paid on the original debt or obligation. The principal amount of any debt issued in connection with such funding or refunding may exceed the principal amount being funded or refunded to the extent necessary to provide for the payment of any premium thereby incurred.

(2) An authorizing resolution may authorize the negotiation of a loan or loan agreement of any type, upon any terms, with any bank authorized to transact business in this state or with any agency of the United States government.

(3) An authorizing resolution may authorize the issuance and sale of notes or it may authorize the issuance and sale of bonds at public or private sale in such manner and for such price as the commission may determine to be for the best interests of the state.

(c) *Notice and sale.* The commission may adopt resolutions providing for the sale of evidences of indebtedness, which resolutions may provide the manner and methods of making the sale, acceptance of bids, delivery dates, and such other actions deemed necessary by the commission in the sale and delivery of the evidences of indebtedness.

(d) *Form of obligations.*

(1) Every loan agreement and every evidence of indebtedness under a loan agreement shall be executed in the name of and for the state by the chairman and secretary of the commission. Every other evidence of indebtedness, except those issued in connection with the incurring of guaranteed revenue debt, shall be executed in the name of the state by the chairman and secretary of the commission and shall be sealed with the official seal of the commission or a facsimile thereof. Coupons shall be executed by the chairman of the commission. The facsimile signature of either the chairman or the secretary, or both, may be imprinted in lieu of the manual signature if the commission so directs, and the

facsimile of the chairman's signature shall be used on coupons; provided, however, that the executive secretary may sign as secretary if the commission so directs. Evidence of indebtedness and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding the fact that before or after the delivery thereof such person ceased to hold such office.

(2) Each bond representing guaranteed revenue debt shall have stamped or printed thereon a certificate reading as follows:

'I hereby certify that the State of Georgia guarantees full payment of this obligation and the interest hereon in accordance with its terms and has pledged the full faith, credit, and taxing power of the state to such payment.'

Immediately below the certificate shall appear the facsimile signature of the secretary of the commission.

(3) Debt to be incurred at the same time for more than one purpose may be combined in one issue without stating the purposes separately, but the proceeds thereof must be allocated, disbursed, and used solely in accordance with the original purposes and without exceeding the principal amount authorized for each purpose set forth in the authorization of the General Assembly and to the extent not so used shall be used to purchase and retire public debt.

(4) Every evidence of indebtedness shall be dated not later than the date the same was issued; shall contain a reference by date of the appropriate authorizing resolution pursuant to which the same was issued; and may, but need not, state the purpose for which the debt is being incurred. When debt is being incurred at the same time for more than one purpose, the statement 'for various purposes' shall be authorized.

(5) Bonds issued as evidence of general obligation debt or guaranteed revenue debt shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County, stating the date on which the bonds were validated as hereinafter provided, and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. The bonds may be sealed with the official seal of the Superior Court of Fulton County or a facsimile thereof.

(6) The commission is authorized to use a standardized registered bond certificate. Such bond certificate may bear the facsimile signatures of the chairman and secretary of the commission and a manual authorizing signature of the registrar or transfer agent or an agent of the registrar or transfer agent.

(e) *Validation of bonds.* Bonds issued to evidence guaranteed revenue debt shall be validated in the Superior Court of Fulton County as provided in the Act creating the instrumentality issuing guaranteed revenue debt. Bonds issued to evidence general obligation debt shall be validated in the Superior Court of Fulton County as provided herein, notwithstanding any provisions of Article 3 of Chapter 82 of Title 36, the 'Revenue Bond Law,' to the contrary.

(1) NOTICE TO DISTRICT ATTORNEY. The commission shall give notice to the Fulton County district attorney of its intention to incur general obligation debt, setting forth the principal amount of issue, the terms of the debt, the purpose, either in general or specific terms, and other terms of the debt to be incurred;

provided, however, that the notice, in the discretion of the commission, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the notice or that in the event the bonds are to bear different rates of interest for different maturity dates that none of such rates will exceed the maximum rate specified in the notice. The notice, signed by the chairman, vice-chairman, or secretary shall be served to the district attorney.

(2) DISTRICT ATTORNEY TO FILE ACTION. Within 20 days from the date of service of the notice provided for in paragraph (1) of this subsection, the district attorney shall prepare and file in the office of the clerk of the Superior Court of Fulton County a complaint directed to the superior court, in the name of the state and against the commission, setting forth service of the notice, the amount of the bonds to be issued, for what purpose or purposes to be issued, what interest rate or rates they are to bear, or the maximum rate or rates of interest, how much principal and interest is to be paid annually, and when the bonds are to be paid in full; and shall obtain from the judge of the court an order requiring the commission, by its proper officers, to appear at such time and place within 20 days from the filing of the complaint, as the judge may direct, and show cause, if any exists, why the bonds should not be confirmed and validated, which complaint and order shall be served upon the commission in the manner provided by law; and to such complaint the commission shall make sworn answer within the time prescribed in this paragraph.

(3) NOTICE OF HEARING. Prior to the hearing of the case, the clerk of the Superior Court of Fulton County shall publish in a newspaper, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing of the case the same will be heard. Such newspaper shall be the official organ of the county in which the sheriff's advertisements appear.

(4) TRIAL OF CASE; PARTIES; JUDGMENT; APPEAL. Within the time prescribed in the order, or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereon. Any citizen of this state may become a party to the proceedings at or before the time set for the hearing; and any party thereto dissatisfied with the judgment of the court confirming and validating issuance of the bonds, or refusing to confirm and validate the issuance of the bonds, may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from such judgment. In the event no appeal is filed within the time prescribed by law or, if filed, the judgment is affirmed on appeal, the judgment of the superior court, so confirming and validating the issuance of the bonds and the security therefor, shall forever be conclusive upon the validity of the bonds.

(5) Costs. The commission shall reimburse the district attorney for his actual costs of the case, if any. The fees payable to the clerk of the Superior Court of

Fulton County for validation and confirmation shall be for each \$5,000.00 bond as follows:

First 100 bonds	\$ 1.00
Bonds 101 through 500	0.25
All bonds over 500	0.10

(f) Civil claims and actions.

(1) Any other provisions of law to the contrary notwithstanding, this article shall govern all civil claims, proceedings, and actions respecting public debt.

(2) If the state fails to pay any public debt in accordance with its terms, an action to compel such payment may be commenced against the state by delivering a copy of the summons and the complaint to the Attorney General of the state. The place of trial of any such action shall be the Superior Court of Fulton County. If there is final judgment against the state in the action, it shall be paid as provided in Code Section 50-17-23, together with interest thereon at the rate of 7 percent per annum from the date such payment was judged to have been due until the date of payment of the judgment.

O.C.G.A. §50-17-26 et seq.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) *Registration, prepayment, cancellation, destruction, etc.*

(1) REGISTRAR. The fiscal officer of the state or his agent shall act as registrar for evidences of indebtedness registrable as to principal or interest or both. No transfer of a registered evidence of indebtedness is valid unless made on the register maintained by the fiscal officer of the state or his agent for that purpose, and the state shall be entitled to treat the registered owner as the owner of such instrument for all purposes. Payment of principal and interest, when registered as to interest, of registered instruments shall be by check to the registered owner as it appears on the register unless the commission has otherwise provided. The commission may make such other provisions respecting registration as it deems necessary or useful. The fiscal officer of the state may employ out-of-state transfer agents or in-state transfer agents, or both, to perform registration duties or payment duties, or both, as agents of the fiscal officer of the state.

(2) PREPAYMENT. The commission may authorize debt having any provision for prepayment deemed necessary or useful, including the payment of any premium.

(3) DESTROYED BONDS. If any evidence of indebtedness becomes mutilated or is destroyed, lost, or stolen, the commission shall execute and deliver a new bond or note of like date of issue, maturity date, principal amount, and interest rate per annum as the bond or note so mutilated, destroyed, lost, or stolen, upon exchange and substitution for such mutilated bond or note and in lieu of and substitution for the bond or note destroyed, lost, or stolen, upon filing with the commission evidence satisfactory to it that such bond or note has been destroyed, lost, or stolen and proof of ownership thereof and upon furnishing the commission with indemnity satisfactory to it and upon complying with other reasonable rules of the commission and paying expenses connected therewith.

Any bond or note surrendered for exchange shall be canceled. As provided in connection with the issuance of replacement bonds or notes under this Code section, the commission shall have authority to print the new bonds with a validation certificate bearing the facsimile signature of the clerk of the superior court then in office; and such certificate shall have the same force and effect as in the first instance. All responsibility with respect to the issuance of any such new bonds shall be on the commission and not on the clerk, and the clerk shall have no liability in the event an overissuance occurs.

(4) **INTEREST.** Interest shall cease to accrue on public debt on the date that the debt becomes due for payment if the payment is made or duly provided for; but such debt and the accrued interest thereon shall continue to be public debt until 20 years overdue for payment. At that time, unless demand for their payment has been made, they shall be extinguished and shall be deemed no longer outstanding.

(5) **CANCELLATION.** Unless otherwise directed by the commission, every evidence of indebtedness and interest coupon paid or otherwise retired shall forthwith be marked 'canceled' and shall be delivered by the paying agent accepting payment thereof to the commission, which shall destroy them and provide a certificate of destruction to the fiscal officer of the state.

(6) **RECORDS.** The fiscal officer of the state or his agent shall maintain records containing a full and correct description of each evidence of indebtedness issued, identifying it and showing its date, issue, amount, interest rate, payment dates, payments made, registration, destruction, and every other relevant transaction. The use of depositories or immobilized or book-entry delivery systems, or both, may be authorized by the commission.

(7) **CONFIDENTIALITY.** Records maintained by the commission, the fiscal officer of the state or his agents, or by any paying agent appointed by the commission which reveal the names or identities of registered holders of bonds or notes shall not be deemed public records. Any information concerning the identity or the name of registered holders of bonds or notes shall be released only upon direction or authorization by the commission.

(c) *Paying agent.* The commission may appoint one or more paying agents for each issue of bonds or notes. The fiscal officer of the state may be designated the sole paying agent or a copaying agent for any issue of bonds or notes. Every other such paying agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust business. There may be deposited with a paying agent, in a special account for such purposes only, a sum estimated to be sufficient to enable the paying agent to pay the principal and interest on public debt which will come due not more than 15 days after the date of the deposit. The commission may make such other provisions respecting paying agents as it deems necessary or useful and may enter into a contract with any paying agents containing such terms, including its compensation and conditions in regard to the paying agents, as it deems necessary or useful.

(d) *Executory contracts.* After adoption of an authorizing resolution for a purpose which is to be accomplished wholly or in part through performance of an

executory contract by some other contracting party, the contract may be entered into prior to the contracting of the debt authorized by the resolution with like effect as if the funds necessary for payments on the contract were readily available. In such cases, the debt authorized by the resolution shall be deemed to have been contracted pursuant to the resolution in the amount necessary to make such payments on the date the contract is entered into, and the authority of the resolution shall promptly thereafter be exercised.

(e) *Money borrowed.* All money borrowed shall be lawful money of the United States and all debts shall be payable in such money.

(f) *Evidences of indebtedness held by state funds.* All evidences of indebtedness owned or held by any state fund shall be deemed to be outstanding in all respects, and the agency having such fund under its control shall have the same rights with respect to such evidences of indebtedness as a private party; but, if any sinking fund acquires bonds which give rise to such fund, such bond shall be deemed paid for all purposes and no longer outstanding and together with any interest coupons appurtenant thereto shall be canceled. All evidence of indebtedness owned by any state fund shall be registered to the fullest extent registrable.

(g) *Audits.* The commission, together with all funds established in connection with public debt, shall be audited no less frequently than annually by an independent certified public accountant to be selected by a majority of the commission. Copies of such audit shall be given to both houses of the General Assembly and shall be available upon request to interested parties, including, specifically but without limitation, the holders of evidences of indebtedness.

(h) *Legal services.* The Attorney General shall provide legal services for the commission, and in connection therewith the provisions of reimbursement for legal services of Code Sections 45-15-13 through 45-15-16 shall be fully applicable; provided, however, that the chairman of the commission shall be the one to provide the advance approval for the amount of such services and expenses.

O.C.G.A. §50-17-27 et seq.

(a) The commission shall be responsible for the proper application of the proceeds of public debt issued under this article to the purposes for which it is incurred; provided, however, that the proceeds from guaranteed revenue obligations shall be paid to the issuer thereof, and the proceeds and the application thereof shall be the responsibility of the issuer.

(b) Proceeds received from the sale of bonds evidencing general obligation debt shall be held in trust by the commission and disbursed promptly by the commission in accordance with the original purpose set forth in the authorization of the General Assembly and in accordance with rules and regulations established by the commission. Bond proceeds and other proceeds held by the commission shall be as fully invested as is practical, consistent with the proper application of such proceeds for the purposes intended. Investments shall be limited to general obligations of the United States or of subsidiary corporations of

the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or to tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government, or to prime bankers' acceptances, or to the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described above, or to the shares of any mutual fund the investments of which are limited to securities of the type described above and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others. Income earned on any such investments or otherwise earned by the commission shall be retained by the commission and used to purchase and retire any public debt or any bonds or obligations issued by any public agency, public corporation, or authority which are secured by a contract to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable and may be used to pay operating expenses of the commission. However, in order to provide for contingencies, efficiency, and flexibility, the commission may agree by contract or grant agreement with county and independent school systems that income earned during grant administration on a direct appropriation of state funds to the commission for public school capital outlay will be applied to the capital outlay purposes of the appropriation. Otherwise, the interest on direct appropriations to the commission shall be deposited into the treasury.

(c) Notwithstanding subsections (a) and (b) of this Code section, the Georgia Environmental Facilities Authority shall be the state authority responsible for the proper application of the proceeds of public debt issued under this article for the purpose of making loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. Proceeds from the sale of such bonds shall be paid to the authority, which shall hold them in trust for their original purposes as set forth in the authorization of the General Assembly, as provided by law and in accordance with the rules and regulations established by the authority. Bond proceeds held by the authority shall be as fully invested as is practicable, consistent with the proper application of such proceeds for the purposes intended, and the authority shall contract with the Georgia State Financing and Investment Commission for the purpose of investing any such bond proceeds and the income therefrom. Investments shall be limited to those permitted to the authority or the Georgia State Financing and Investment Commission in the laws providing for their creation and activities. Income earned on any such

investments of bond proceeds or the income therefrom shall be retained by the authority and used by it for its public purposes as provided by law.

O.C.G.A. §50-17-28 et seq.

The state and all institutions, departments, and agencies of the state are prohibited from entering into any contract, except contracts pertaining to guaranteed revenue debt, with any public agency, public corporation, authority, or similar entity if the contract is intended to constitute security for bonds or other obligations issued by any such public agency, public corporation, or authority; and, from and after September 1, 1974, in the event any contract between the state, or any institution, department, or agency of the state, and any public agency, public corporation, authority, or similar entity, or any revenues from any such contract, is pledged or assigned as security for the repayment of bonds or other obligations, then and in either such event the appropriation or expenditure of any funds of the state for the payment of obligations under any such contract shall likewise be prohibited; provided, however, that all contracts entered into prior to September 1, 1974, shall continue to have the benefit of the protection afforded by the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 as fully and completely as though this article had not been adopted and for as long as any such contract shall remain in force and effect. Furthermore, nothing in this article is intended directly or by implication to have any effect upon any provision of any such contract establishing lien rights, priorities regarding revenues, or otherwise providing protection to the holders of obligations secured by such contracts.

O.C.G.A. §50-17-29 et seq.

(a) *Full faith and credit.* The full faith, credit, and taxing powers of the state are pledged to the payment of all public debt, and the interest thereon, incurred under this article; and all such debt and the interest thereon shall be exempt from taxation.

(b) *Negotiability.* Every evidence of indebtedness issued under this article shall be, and the same is held to have all the rights and incidences of, negotiable instruments, anything in law to the contrary notwithstanding.

(c) *Legal investments; securities for deposit.* General obligation debt and guaranteed revenue debt herein authorized are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. Such

debt is further made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state may be authorized.

(d) *State employees.* Notwithstanding the provisions of any other law, employees of the state are authorized to hold, purchase, and own bonds representing general obligation debt or guaranteed revenue debt issued under this article.

(e) *Exemption from taxation.*

(1) Except as otherwise provided in paragraph (2) of this subsection, no city, county, municipality, or other political subdivision of this state shall impose any tax, assessment, levy, license fee, or other fee upon any contractors or subcontractors as a condition to or result of the performance of a contract, work, or services by such contractors or subcontractors in connection with any project being constructed, repaired, remodeled, enlarged, serviced, or destroyed for, or on behalf of, the state or any of its agencies, boards, bureaus, commissions, and authorities; nor shall any city, county, municipality, or other political subdivision of this state include the contract price of or value of such contract, work, or services performed on such projects in computing the amount of any tax, assessment, levy, license fee, or other fee authorized to be imposed on any contractors or subcontractors.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply to any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(3)(A) As used in this paragraph, the term:

(i) 'Building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(ii) 'Local sales and use tax' means any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(B) No local sales and use tax which became applicable subsequent to the time of entering into a contract as described in this subparagraph shall be collected by a county or municipality upon the sale or use of building and construction

materials when the contract pursuant to which the materials are purchased or used was entered into on December 19, 1994, and a prior claim for a refund of such sales and use taxes was filed with the department on or before January 22, 1998.

(C)(i) Notwithstanding any other provision of this title or any other title to the contrary, the provisions of this subparagraph shall provide the exclusive remedy and procedure for seeking and obtaining any and all refunds for local sales and use taxes paid on the sale or use of building and construction materials. No refund shall be allowed for any such taxes or payments unless expressly authorized by this subparagraph.

(ii) The commissioner shall issue refunds for local sales and use taxes paid or due with respect to a contract specified under subparagraph (B) of this paragraph when it is shown to the satisfaction of the commissioner that local sales and use taxes were paid pursuant to paragraph (2) of this subsection.

(D) No person shall receive a refund for local sales and use taxes paid in any case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the person seeking a refund. When a claimant is issued a refund for taxes paid, in every case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the claimant, the claimant shall refund to the purchaser or customer an amount equal to the refund allowed by the commissioner.

(E) No refund for taxes paid shall be allowed unless a refund claim is filed with the commissioner pursuant to subparagraph (F) of this paragraph. If, in the opinion of the commissioner, a refund claim of taxes paid pursuant to this subsection contains a false statement, the claim shall be denied. In no event shall interest be allowed on any refund under this paragraph.

(F) Each refund claim shall be filed in writing with the commissioner in the form and containing such information as the commissioner may require. The commissioner shall consider information contained in the refund claim, together with such other information as may be available, and shall approve or disapprove the refund claim and notify the claimant of such action. Any claimant whose claim is denied by the commissioner or whose claim is not decided by the commissioner within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of such county. No action or proceeding for the recovery of a refund shall be commenced before the expiration of one year from the date of filing the refund claim unless the commissioner renders a decision on the refund claim within that time, nor shall any action or proceeding be commenced after the occurrence of the earlier of (i) the expiration of one year from the date the claim is denied, or (ii) the expiration of two years from the date the refund claim was filed. The time for filing an action for the recovery of a refund may be extended for such period as may be agreed upon in writing between the claimant and the commissioner during the period authorized for bringing an action or any extension thereof. In the event any refund claim is approved and the taxpayer has not paid other state taxes which have become due, as determined by the commissioner, the commissioner may set off the unpaid taxes against the refund. When the setoff authorized in this

Code section is exercised, the refund shall be deemed granted and the amount of the setoff shall be considered for all purposes as a payment toward the particular tax debt which is being set off. Any excess refund properly allowable under this paragraph which remains after the setoff has been applied may be refunded to the taxpayer.

O.C.G.A. §50-17-30et seq.

Any public officer or employee and any surety on his official bond or any other person participating in any direct or indirect impairment of any fund established in connection with public debt shall be liable in any action brought by the Attorney General in the name of the state, or by any taxpayer of the state, or by the holder of any evidence of indebtedness payable in whole or in part, directly or indirectly, out of such fund to restore to such fund all diversions therefrom.

Governmental Accounting Standards Board (GASB) Section L20

L20 — LEASES

Sources: NCGA Statement 5
 GASB Statement 13
 GASB Statement 14
 GASB Statement 34
 GASB Statement 38

See also: Section 1400, "Reporting Capital Assets"

Background

L20.101

.101 In determining the accounting and financial reporting treatment for lease agreements of state and local governments, consideration must be given to the accounting and reporting of capital assets and long-term liabilities in both the fund and the government-wide financial statements. Section 1400 provides that:

A clear distinction should be made between general capital assets and capital assets of proprietary and fiduciary funds. Capital assets of proprietary funds should be reported in both the government-wide and fund financial statements. Capital assets of fiduciary funds (and similar component units) should be reported only in the statement of fiduciary net assets. All other capital assets of the governmental unit are general capital assets. They should not be reported as assets in governmental funds but should be reported in the governmental activities column in the government-wide statement of net assets.

[NCGAS 5, ¶15, as amended by GASBS 34, ¶6, ¶80, and ¶82]

L20.102

.102 Similarly, Section 1500, "Reporting Liabilities," provides that:

A clear distinction should be made between fund long-term liabilities and general long-term liabilities. Long-term liabilities directly related to and expected to be paid from proprietary funds should be reported in the proprietary fund statement of net assets and in the government-wide statement of net assets. Long-term liabilities directly related to and expected to be paid from fiduciary funds (and similar component units) should be reported in the statement of fiduciary net assets. All other unmatured general long-term liabilities of the governmental unit should not be reported as liabilities in governmental funds but should be reported in the governmental activities column in the government-wide statement of net assets.

[NCGAS 5, ¶6]

Accounting and Financial Reporting for Lease Agreements

L20.103

.103 Subject to the accounting and financial reporting distinctions of governmental funds, the criteria of FASB Statement No. 13, Accounting for Leases, as amended and interpreted [as of November 30, 1989], should be the guidelines for accounting and financial reporting for lease agreements, except for operating leases with scheduled rent increases, as provided in paragraphs .104 through .108. FASB Statement 13, as amended and interpreted, should be consulted for specific guidance concerning detailed criteria referenced in this section. [NCGAS 5, ¶11, as amended by GASBS 13, ¶5 and ¶6 and GASBS 34, ¶69]

Operating Leases with Scheduled Rent Increases

L20.104

.104 This section establishes standards of accounting and financial reporting by state and local governmental entities for operating leases with scheduled rent increases. It applies to all state and local governmental entities, including public benefit corporations and authorities, public employee retirement systems, and governmental utilities, hospitals [and other healthcare providers], colleges, and universities. Scheduled rent increases are increases that are fixed by contract. They take place with the passage of time and are not contingent on future events. The rent increases may, for example, be based on such factors as anticipated increases in costs or anticipated appreciation in property values, but the amount of the increase is specified in the lease agreement. In contrast, in leases with contingent rentals, the changes in lease payments are based on changes in specific economic factors, for example, future sales volume, future inflation (for example, tied to a specific economic indicator), and so forth. [GASBS 13, ¶1 and ¶4, as amended by GASBS 34, ¶13]

Measurement Criteria

L20.105

.105 Transactions arising from operating leases with scheduled rent increases should be measured based on the terms of the lease contract when the pattern of the payment requirements, including the increases, is systematic and rational. Following are examples of payment schedules that are considered systematic and rational.

- a. Lease agreements specify scheduled rent increases over the lease term that are intended to cover (and are reasonably associated with) economic factors relating to the property, such as the anticipated effects of property value appreciation¹ or increases in costs due to factors such as inflation. (See paragraph .901, Illustration 1.)

- b. Lease payments are required to be made on a basis that represents the time pattern in which the leased property is available for the use of the lessee.

[GASBS 13, ¶5]

L20.106

.106 Sometimes an operating lease with scheduled rent increases contains payment requirements in a particular year or years that are artificially low when viewed in the context of earlier or later payment requirements. This situation may take place, for example, when a lessor provides a rent reduction or "rent holiday" that constitutes a financing arrangement between the lessor and the lessee. As another example, a lessor may provide a lessee reduced rents as an inducement to enter into the lease. In these cases, the operating lease transactions should be measured using either of the following methods.

- a. The operating lease transactions may be measured on a straight-line basis over the lease term.
- b. The operating lease transactions may be measured based on the estimated fair value of the rental.² The implicit financing by the lessor of the lessee's cash flow should be accounted for using the interest method. That is, interest should be calculated for each period so that it results in a constant rate of interest over the lease term on the period's outstanding accrued lease receivable or payable. (See paragraph .901, Illustration 2.) [GASBS 13, ¶6]

Recognition in Government-wide, Proprietary, and Fiduciary Fund Financial Statements

L20.107

.107 Entities that report operating leases with scheduled rent increases in the government-wide financial statements and in proprietary and trust fund financial statements should recognize rental revenue or expense each period as it accrues over the lease term using the measurement criteria provided in paragraphs .105 and .106. If the fair-value measurement of paragraph .106b is used, the interest portion should be recognized as revenue (expense) each period using the interest method. [GASBS 13, ¶7, as amended by GASBS 34, ¶79; GASBS 34, ¶16, ¶92, and ¶107]

Recognition in Governmental Fund Financial Statements

L20.108

.108 Entities that report operating leases with scheduled rent increases in the governmental fund financial statements should recognize rental revenue or expenditures each period using the modified accrual basis of accounting. That is, the amount calculated in accordance with the measurement criteria in paragraphs .105 and .106 should be recognized as revenue to the extent it is available to finance expenditures of the fiscal period. Accrued receivables should be reported in the fund. Deferred revenue also should be reported for the portion

not yet recognized as revenue. The lessee should recognize expenditures and liabilities in governmental funds to the extent that the amounts are payable with expendable, available financial resources. [GASBS 13, ¶9, as amended by GASBS 34, ¶69; GASBS 34, ¶6, ¶79, ¶82, ¶83, and ¶119]

Capital Leases

L20.109

.109 If a lease agreement is a capital lease following the criteria of this section and FASB Statement 13, the lease agreement should be capitalized. [NCGAS 5, ¶12]

Accounting and Reporting in Government-wide Financial Statements

L20.110

.110 Capital lease accounting in the government-wide financial statements should follow FASB Statement 13, as amended and interpreted. [NCGAS 5, ¶16; GASBS 34, ¶17]

Accounting and Reporting in Proprietary and Fiduciary Fund Financial Statements

L20.111

.111 Capital lease accounting for proprietary and trust funds should follow FASB Statement 13, as amended and interpreted. All assets and liabilities of proprietary and fiduciary funds (and similar component units) are accounted for and reported in the respective funds. Therefore, transactions for proprietary or fiduciary fund capital leases are accounted for and reported entirely within those individual funds. [NCGAS 5, ¶16 and ¶17, as amended by GASBS 13, ¶4–¶7 and GASBS 34, ¶69; GASBS 34, ¶92, ¶93, ¶106, and ¶107]

Accounting and Reporting in Governmental Fund Financial Statements

Lessee accounting

L20.112

.112 In governmental funds, the primary emphasis is on the flow of financial resources, and expenditures are recognized on the modified accrual basis. Accordingly, if a lease agreement is to be financed from general government resources, it must be accounted for and reported on a basis consistent with governmental fund accounting principles. (See Section 1600, "Basis of Accounting.") [NCGAS 5, ¶13]

L20.113

.113 When a capital lease represents the acquisition or construction of a general capital asset, the acquisition or construction of that asset should be reflected as an expenditure and other financing source, consistent with the accounting and financial reporting for general obligation bonded debt. (General

capital assets and general long-term liabilities arising from governmental fund capital leases should be reported only in the governmental activities column in the government-wide statement of net assets. See paragraphs .101 and .102.) Subsequent governmental fund lease payments should be accounted for consistently with Section 1600, paragraphs .120 and .121, principles for general obligation debt. A debt service or capital projects fund is not necessary unless required by Section 1300, "Fund Accounting," paragraph .106 or .107. [NCGAS 5, ¶14; GASBS 34, ¶80 and ¶82]

Lessor accounting

L20.114

.114 In governmental fund financial statements, lease receivables and deferred amounts should be used to account for leases receivable when a state or local government is the lessor in a lease situation. Only the portion of lease receivables that represents other financing sources that are measurable and available³ should be recognized in governmental funds. The remainder of the receivable should be deferred. The noncurrent receivable created when a government is the lessor in a capital lease agreement is not considered a general capital asset and, therefore, should be reported in the governmental fund reporting the lease transactions. [NCGAS 5, ¶10 and ¶15, as amended by GASBS 34, ¶79, ¶80, ¶83, and ¶88]

Fiscal Funding or Cancellation Clauses

L20.115

.115 In applying the criteria of FASB Statement 13 to lease agreements of state and local governments, legal restrictions⁴ must be considered. One type of legal restriction relates to debt limitation and debt incurrence that prohibits governments from entering into obligations extending beyond the current budget year. Because of this type of restriction, governmental lease agreements typically contain a fiscal funding or cancellation clause that permits governmental lessees to terminate the agreement on an annual basis if funds are not appropriated to make required payments. [NCGAS 5, ¶18]

L20.116

.116 This type of legal restriction is discussed in FASB Technical Bulletin No. 79-10, Fiscal Funding Clauses in Lease Agreements, paragraph 3:

Paragraph 5(f) of Statement 13 requires that a cancelable lease, such as a lease containing a fiscal funding clause [a clause that generally provides that the lease is cancelable if the legislature or other funding authority does not appropriate the funds necessary for the governmental unit to fulfill its obligations under the lease agreement], be evaluated to determine whether the uncertainty of possible lease cancellation is a remote contingency. That paragraph states that "a lease which is cancelable (i) only upon occurrence of some remote

contingency . . . shall be considered 'noncancelable' for purposes of this definition" of lease term.

[NCGAS 5, ¶19]

L20.117

.117 The economic substance of most lease agreements with fiscal funding or cancellation clauses is that they are essentially long-term contracts. The potential for cancellation of most government lease agreements is remote; that is, routine cancellations of such agreements would discourage potential lessors from entering into such lease agreements with the government in question and may have an adverse impact on the receptivity of investors with respect to other obligations of that government. In substance, notwithstanding the fiscal funding clause, the economic substance of lease agreements should be considered instead of the legal form. [NCGAS 5, ¶20]

L20.118

.118 Fiscal funding or cancellation clauses should not prohibit lease agreements from being capitalized. Therefore, if a lease agreement meets all other capitalization criteria except for the noncancelable criterion, the likelihood of the lease being canceled must be evaluated. If the possibility of cancellation is remote, the lease should be capitalized. [NCGAS 5, ¶21]

Leases between State and Local Governments and Public Authorities

L20.119

.119 In application of FASB Statement 13 to lease agreements of state and local governments, lease agreements between a state or local government and a public authority must be considered. Public authorities are created to issue bonds to provide financing for the construction or purchase of capital assets. Often the public authority takes title to the assets, leases them to the government, and transfers title to the state or local government at the end of the lease. [NCGAS 5, ¶22, as amended by GASBS 34, ¶80]

L20.120

.120 In accounting and financial reporting for lease agreements between state or local governments and public authorities, it must first be determined whether the public authority is part of the governmental reporting entity for financial reporting purposes. The authority may be either part of the primary government (because it has no separate legal standing or because it is a blended component unit) or a discretely presented component unit. The criteria of Section 2100, "Defining the Financial Reporting Entity," must be applied to make this determination. Section 2600, "Reporting Entity and Component Unit Presentation and Disclosure," provides guidance on whether component units should be presented by blending or discrete presentation. [NCGAS 5, ¶23, as amended by GASBS 14]

L20.121

.121 If under the criteria of Section 2100, the public authority is part of the primary government for financial reporting purposes, the criteria of FASB Statement 13 do not apply. Instead, the public authority's debt and assets should be reported as a form of the primary government's debt and assets. For example, the leased general capital assets would be reported as general capital assets in the government-wide statement of net assets and related debt would be reported as a general long-term liability in the government-wide statement of net assets. The debt service activity of the public authority would be reported as a debt service activity of the primary government. [NCGAS 5, ¶24; GASBS 14, ¶58, as amended by GASBS 34, ¶67; GASBS 34, ¶80 and ¶82]

L20.122

.122 Capital lease arrangements between the primary government and public authorities reported as discretely presented component units (or between those component units) should be treated in the same manner as any other lease agreement of a state or local government. These agreements, therefore, should be considered long-term contracts for accounting and financial reporting purposes and afforded capital lease treatment if they meet the criteria of this section and FASB Statement 13. However, related receivables and payables should not be combined with other amounts due to/from component units or with capital lease receivables and payables with organizations outside the reporting entity. [NCGAS 5, ¶24, as amended by GASBS 34, ¶61; GASBS 14, ¶58]

L20.123

.123 If under the criteria of Section 2100, paragraphs .119 through .140, the public authority is not part of the governmental unit's entity for financial reporting purposes, accounting and financial reporting for lease agreements between them should be treated in the same manner as any other lease agreement of a state or local government. These agreements, therefore, should be considered long-term contracts for accounting and financial reporting purposes and afforded capital lease treatment if they meet the criteria of this section and FASB Statement 13. [NCGAS 5, ¶25]

L20.124

.124 When lease arrangements exist between state and local governments and public authorities, the related-party considerations of FASB Statement 13, paragraph 29, should be considered to determine if there are special reporting and disclosure requirements. [NCGAS 5, ¶26]

Disclosure Requirements

L20.125

.125 The disclosure requirements of FASB Statement 13 should be followed for financial reporting purposes. Governments should disclose the future minimum payments for each of the five subsequent fiscal years and in five-year increments thereafter for their obligations under capital and noncancelable operating leases. The disclosures should be made by state and local governments in accordance

with Section 2300, "Notes to Financial Statements." [NCGAS 5, ¶27; GASBS 38, ¶11]

NONAUTHORITATIVE DISCUSSION

Illustration of the Calculation of Operating Lease Revenue and Expenditures/Expense L20.901

.901 This paragraph illustrates the calculations needed to apply the measurement criteria of paragraphs .105 and .106 of this section. The facts assumed in these examples are illustrative only and are not intended to modify or limit the requirements of the section or to indicate the GASB's endorsement of the situations illustrated.

L20.901 Illustration 1

Illustration 1. Measurement Based on Lease Contract Terms Assumptions

An airport authority, which reports as an enterprise fund, leases space in its airport to Carrier A. The operating lease has a ten-year term and the initial annual payment is \$100,000. The lease agreement requires annual increases of 5 percent to cover the anticipated effects of inflation.

Calculation of Lease Revenue

Lease revenue should be recognized each year equal to the payments required by the lease contract:

Payments/ Year	Revenue
1	100,000
2	105,000
3	110,250
4	115,762
5	121,551
6	127,628
7	134,010
8	140,710
9	147,745
10	155,133
	\$1,257,789

L20.901 Illustration 2

Illustration 2. Measurement Based on the Fair-Value Method Assumptions

The same airport authority discussed in Illustration 1 enters into a ten-year operating lease with Carrier B (Lease B). The terms of Lease B include a rent holiday during the first year (to relieve the lessee's cash flow difficulties) and scheduled rent increases during each of the remaining nine years. The airport

authority's operating lease agreement shown in Illustration 1 (Lease A) is for similar space. Therefore, the authority uses the lease with Carrier A to determine the estimated fair value of the rental to Carrier B and, thus, its measure of lease revenue (rather than using the straight-line option of paragraph .106). Payments on all of the authority's leases are due on the first day of the year. The interest rate at which the present values of Lease A's payment stream and Lease B's payment stream are equal is 5.80875 percent. Therefore, 5.80875 percent is the implicit financing rate for the rent holiday in Lease B.

Calculation of Lease and Interest Revenue

The following table shows the ten years of Lease B payments and the revenue and receivable that the airport authority should report each year. The interest portion of revenue is the implicit interest rate of 5.80875 percent multiplied by the receivable balance after the annual lease payment and the fair-value lease revenue have been posted to the account at the beginning of each year.

Year	Lease Payment	Receivable after Posting Lease Payment	Lease Revenue	Interest Revenue	Total and Revenue	End-of-Year Revenue
1	0	100,000	100,000	5,809	105,809	105,809
2	110,000	105,000	100,809	5,856	110,856	106,665
3	120,000	110,250	96,915	5,630	115,880	102,545
4	130,000	115,762	88,307	5,130	120,892	93,437
5	140,000	121,551	74,988	4,356	125,907	79,344
6	147,000	127,628	59,972	3,484	131,112	63,456
7	154,000	134,010	43,466	2,525	136,535	45,991
8	159,000	140,710	27,701	1,609	142,319	29,310
9	163,000	147,745	14,055	812	148,557	14,867
10	170,000	155,133	0	0	155,133	0
	1,293,000	1,257,789		\$35,211		\$1,293,000

[GASBS 13, ¶28]

Municipal Securities Rulemaking Board and Securities Exchange Commission Rules

Due to the size of the reference document for the Municipal Securities Rulemaking Board and the Securities Exchange Commission rule documents, you may access the current version of rules and regulations at the following web sites;

Municipal Securities Rulemaking Board

<http://www.msrb.org/msrb1/mfs/mfsresources.asp>

Securities Exchange Commission

<http://www.sec.gov/>

Municipal Securities Rule Making Board Rule G-23

Underwriters Prohibited from Serving as Financial Advisor

The Municipal Securities Rulemaking Board (MSRB) is the regulatory agency for firms involved in underwriting municipal bonds. Rule G-23, one of the MSRB's rules, precludes underwriters from simultaneously serving as a financial advisor. The rule was adopted in order to prevent conflicts of interest.

Prior to its adoption, on September 20, 1977, the MSRB filed a notice regarding Rule G-23 with the Securities and Exchange Commission. The notice describes the contrasting role of a financial advisor and an underwriter and was the rationale for adopting Rule G-23. The following was extracted from the notice.

Notice of Filing

"Proposed rule G-23 addresses certain aspects of the conduct of a municipal securities professional acting as a financial advisor or consultant to a state or local governmental unit. As a financial advisor, the municipal securities professional acts in a fiduciary capacity as agent for the governmental unit, assisting it in determining its debt structure, determining when and under what circumstances to market its securities, and preparing or assisting in the preparation of documents to be used in connection with the sale of its securities.....

The role and interests of a securities professional acting as financial advisor to a governmental unit are significantly different from the role and interests of a securities professional acting as an underwriter or as a purchaser in a private placement. For example, as agent for the issuer, a financial advisor would normally seek to achieve the lowest possible interest cost for the issuer, while an underwriter, acting as principal for its own account, would normally want to establish yields which make the securities attractive for resale to others. Other marketing features, important from an underwriting perspective, may conflict with an independent determination of the same matters from the perspective of the issuer. If the underwriter has customers for large amounts of the securities to be issued, the underwriter may be influenced to advocate a larger issue than might otherwise be in the best interests of the issuer; conversely, an underwriter might advocate a smaller issue if its own customers' interest is not strong. Maturities, redemption provisions and remedy covenants are other facets of an issue with respect to which a municipal securities professional may be influenced to give different advice, depending on whether the securities professional is acting as an underwriter or private placement purchaser of the securities, or solely as the issuer's agent. The size of the underwriting spread may also be affected by the arm's-length character of the relationship between the issuer and its agents, on the one hand, and the underwriter, on the other.

The Board believes that this prima facie conflict is mitigated in competitive bid situations, where the existence of competition among underwriters for award of the securities tends to introduce an arm's-length element into the establishment of the terms of the issue and the underwriting. In these situations, the Board believes that ordinary principles of agency law should apply. Thus, in the Board's view it is appropriate to require disclosure of the financial advisor's intent to bid on the securities in a competitive sale, and to require the prospective underwriter to obtain the consent of the issuer to the dual role.

In contrast, in a negotiated sale situation, the element of competition among prospective purchasers is absent, and the financial advisor who also acts as underwriter or purchaser in a private placement does so with a substantial conflict of interest. The Board believes that the existence of this conflict is contrary to the fiduciary obligations of the municipal securities professional as a financial advisor to the issuer and is not consistent with the public interest."

Statewide Travel Regulations

Due to the size of the Statewide Travel Regulations document, you may access the current approved version of the regulations at the following web site;

http://www.audits.state.ga.us/internet/nalgad/July_2004_Draft_of_Travel_Regulationsv3.pdf