

By: Representatives Howell, Chism, Davis,  
Guice, Morris, Smith (39th), Watson

To: Ways and Means

HOUSE BILL NO. 1191

1 AN ACT TO AMEND SECTIONS 52 THROUGH 63, CHAPTER 522, LAWS OF  
2 2003, TO INCREASE THE AMOUNT OF VARIABLE RATE DEBT INSTRUMENTS  
3 THAT THE STATE MAY ISSUE; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** Sections 52 through 63, Chapter 522, Laws of  
6 2003, are amended as follows:

7 Section 52. As used in Sections 52 through 63 of this act,  
8 the following words shall have the meanings ascribed herein unless  
9 the context clearly requires otherwise:

10 (a) "Variable rate bonds" shall mean state-supported  
11 debt which bears interest at a rate or rates which vary from time  
12 to time and shall include variable rate refunding bonds.

13 (b) "Interest rate exchange or similar agreement" shall  
14 mean a written contract entered into by the state with a  
15 counterparty in connection with state-supported debt to provide  
16 for an exchange of payments based upon fixed and/or variable  
17 rates, shall include interest rates, caps, collars, floors and  
18 similar agreements and options on each of the foregoing, and shall  
19 be for exchanges in currency of the United States of America only  
20 with such terms determined by the commission to be in the  
21 financial best interest of the state.

22 (c) "State-supported debt" shall mean any bonds or  
23 notes, including bonds or notes issued to fund reserve funds and  
24 costs of issuance and refunding bonds or refunding notes,  
25 currently outstanding or authorized to be issued by the state for  
26 which the state is or will be constitutionally obligated to pay  
27 debt service or is or will be contractually obligated to pay debt

28 service subject to an appropriation; however, this definition  
29 shall not apply to debt issued by the Mississippi Development Bank  
30 or similar state agencies or authorities.

31 (d) "Counterparty" shall mean the provider of or other  
32 party to an interest rate exchange or similar agreement.

33 (e) "State" shall mean the State of Mississippi.

34 (f) "Commission" shall mean the State Bond Commission  
35 of the state.

36 (g) "Variable rate debt instruments" shall mean  
37 variable rate bonds, variable rate refunding bonds and interest  
38 rate exchange or similar agreements which result in the state  
39 effectively paying interest at a rate or rates which vary from  
40 time to time.

41 (h) "Excluded agreements" shall mean the total notional  
42 amount of interest rate exchange or similar agreements entered  
43 into for the purpose of reducing, reversing or unwinding another  
44 interest rate exchange or similar agreement or eliminating a  
45 situation of risk or exposure under an existing interest rate  
46 exchange or similar agreement, including, but not limited to, a  
47 counterparty downgrade, default, or other actual or potential  
48 economic loss.

49 Section 53. The purpose of Sections 52 through 63 of this  
50 act is to provide full and complete authority for the state,  
51 acting by and through the commission, to issue or enter into  
52 variable rate debt instruments. No procedure or proceedings,  
53 publications, notices, consents, limitations, approvals, orders,  
54 acts or things, other than those required by Sections 52 through  
55 63 of this act, shall be required to issue or enter into any  
56 variable rate debt instruments or to do any act or perform  
57 anything under Sections 52 through 63 of this act except as  
58 otherwise may be prescribed in Sections 52 through 63 of this act.  
59 The powers conferred by Sections 52 through 63 of this act shall  
60 be in addition and supplemental to, and not in substitution for,

61 and the limitations imposed by Sections 52 through 63 of this act  
62 shall not affect the powers conferred by any other law. Sections  
63 52 through 63 of this act are remedial in nature and shall be  
64 liberally construed.

65 Section 54. (1) Notwithstanding any other provision of law  
66 to the contrary, any otherwise authorized state-supported debt may  
67 be issued as variable rate bonds. Except as otherwise provided in  
68 Sections 52 through 63 of this act or when in conflict with the  
69 provisions in Sections 52 through 63 of this act, such variable  
70 rate bonds shall be subject to the terms and provisions of the  
71 legislation authorizing the issuance of such state-supported debt.

72 (2) Variable rate bonds issued by the state pursuant to the  
73 provisions of subsections (1) of this section or Section 55 of  
74 this act, shall be issued pursuant to an authorizing resolution of  
75 the commission. Such variable rate bonds may be issued in one or  
76 more series, may bear such date or dates, may bear interest at  
77 such rate or rates, varying from time to time, not to exceed that  
78 allowed by law for the class of bonds being issued, may be in such  
79 denominations, may be subject to such terms of redemption (with or  
80 without premium) may be sold at private sale with a competitive  
81 element (which sale shall be on such terms and in such manner as  
82 the commission shall determine) and may contain such other terms  
83 and covenants (including, without limitation, covenants for the  
84 security and better marketability of such variable rate bonds), as  
85 may be provided by resolution of the commission. Pursuant to the  
86 provisions of Sections 52 through 63 of this act, the commission  
87 may enter into such agreements as may be necessary in connection  
88 with the issuance of such variable rate bonds.

89 Section 55. (1) This section and other applicable  
90 provisions of Sections 52 through 63 of this act, without  
91 reference to any other statute, shall be deemed full and complete  
92 authority for the issuance of variable rate refunding bonds by the

93 state, and shall be construed as an additional and alternative  
94 method therefor.

95 (2) The state, acting by and through the commission, may  
96 refund outstanding bonds through the issuance of variable rate  
97 refunding bonds. Any such refunding may be effected whether or  
98 not the bonds to be refunded shall have then matured or shall  
99 thereafter mature.

100 (3) Variable rate refunding bonds issued pursuant to  
101 Sections 52 through 63 of this act may be secured by a pledge of:  
102 (a) the same source of security as the bonds to be refunded, or  
103 (b) such other security as the state may lawfully pledge, or both;  
104 all as may be provided by resolution of the commission.

105 (4) At the time of the issuance of such variable rate  
106 refunding bonds, the commission shall find by resolution that at  
107 the time of such refunding, such refunding is expected to result  
108 in an overall net present value savings to maturity of not less  
109 than two percent (2%) of the bonds being refunded.

110 Section 56. In connection with state-supported debt, the  
111 commission shall have the power to:

112 (a) Enter into interest rate exchange or similar  
113 agreements with any person under such terms and conditions as the  
114 commission may determine, including, but not limited to,  
115 provisions as to default or early termination;

116 (b) Procure insurance, letters of credit or other  
117 credit enhancement with respect to agreements described in  
118 paragraph (a) of this section;

119 (c) Provide security for the payment or performance of  
120 its obligations with respect to agreements described in paragraph  
121 (a) of this section from such sources and with the same effect as  
122 is authorized by applicable law with respect to security for its  
123 bonds, notes or other obligations; however, any payment or  
124 performance of obligations with respect to agreements described in  
125 paragraph (a) of this section in connection with debt obligations

126 which carry the full faith and credit of the state shall be  
127 subject to appropriation;

128 (d) Modify, amend, or replace, such agreements  
129 described in paragraph (a) of this section; and

130 (e) Because of the complexity of agreements described  
131 in paragraph (a) of this section, the commission may solicit the  
132 provision of such agreements on a competitive or negotiated basis  
133 with a competitive element included.

134 Section 57. Any interest rate exchange or similar agreements  
135 entered into pursuant to Section 56 of this act shall be subject  
136 to the following limitations:

137 (a) The counterparty thereto shall have credit ratings  
138 from at least one nationally recognized statistical rating agency  
139 that is within the two (2) highest investment grade categories and  
140 ratings which are obtained from any other nationally recognized  
141 statistical rating agencies shall also be within the three (3)  
142 highest investment grade categories, or the payment obligations of  
143 the counterparty shall be unconditionally guaranteed by an entity  
144 with such credit ratings;

145 (b) The written contract shall require that should the  
146 rating: (i) of the counterparty, if its payment obligations are  
147 not unconditionally guaranteed by another entity, or (ii) of the  
148 entity unconditionally guaranteeing its payment obligations, if so  
149 secured, fall below the rating required by paragraph (a) of this  
150 section, that the obligations of such counterparty shall be fully  
151 and continuously collateralized by direct obligations of, or  
152 obligations the principal and interest on which are guaranteed by  
153 the United States of America with a net market value of at least  
154 one hundred two percent (102%) of the net market value of the  
155 contract of the authorized insurer and such collateral shall be  
156 deposited as agreed to by the commission;

157 (c) The counterparty has a net worth of at least One  
158 Hundred Million Dollars (\$100,000,000.00), or the counterparty's

159 obligations under the interest rate exchange or similar agreement  
160 are guaranteed by a person or entity having a net worth of at  
161 least One Hundred Million Dollars (\$100,000,000.00);

162 (d) The total notional amount of all interest rate  
163 exchange or similar agreements for the state to be in effect shall  
164 not exceed an amount equal to fifty percent (50%) of the total  
165 amount of state-supported debt outstanding as of the initial date  
166 of entering into each new agreement; however, such total notional  
167 amount shall not include any excluded agreements;

168 (e) No interest rate exchange or similar agreement  
169 shall have a maturity exceeding the maturity of the related  
170 state-supported debt;

171 (f) Each interest rate exchange or similar agreement  
172 shall be subject to a finding by the commission that its terms and  
173 conditions reflect a fair market value of such agreement as of the  
174 date of its execution, regardless of whether such agreement was  
175 solicited on a competitive or negotiated basis with a competitive  
176 element; and

177 (g) Each interest rate exchange or similar agreement,  
178 including the modification or termination thereof, shall be  
179 subject to the approval of the commission or its designee.

180 Section 58. (1) As of the initial date of each issuance of  
181 variable rate debt instruments, the total of the principal and  
182 notional amounts of such variable rate debt instruments  
183 outstanding and in effect shall not exceed an amount equal to  
184 fifty percent (50%) of the total principal amount of  
185 state-supported debt outstanding.

186 (2) The limitation contained in subsection (2) of this  
187 section shall not include any excluded agreements.

188 Section 59. Nothing in Sections 52 through 63 of this act  
189 shall be construed as to apply to or limit any debt obligation or  
190 related instrument of the state or any other issuers except those

191 obligations or instruments which are or relate to state-supported  
192 debt.

193 Section 60. Sections 52 through 63 of this act shall be  
194 deemed to be full and complete authority for the exercise of the  
195 powers herein granted, but Sections 52 through 63 of this act  
196 shall not be deemed to repeal or to be in derogation of any  
197 existing law of this state.

198 Section 61. All variable rate bonds issued under Sections 52  
199 through 63 of this act shall be fully negotiable in accordance  
200 with their terms and shall be "securities" within the meaning of  
201 Article 8 of the Uniform Commercial Code, subject to the  
202 provisions of such bonds pertaining to registration. It shall not  
203 be necessary to file financing statements or continuation  
204 statements to protect the lien and pledge granted by a  
205 governmental unit to the holders of any variable rate bonds issued  
206 under Sections 52 through 63 of this act.

207 Section 62. All variable rate bonds issued under the  
208 provisions of Sections 52 through 63 of this act and income  
209 therefrom shall be exempt from all taxation in the State of  
210 Mississippi.

211 Section 63. If any one or more sections, clauses, sentences  
212 or parts of Sections 52 through 63 of this act shall for any  
213 reason be questioned in any court and shall be adjudged  
214 unconstitutional or invalid, such judgment shall not affect,  
215 impair or invalidate the remaining provisions of Sections 52  
216 through 63 of this act, but shall be confined in its operations to  
217 the specific provisions so held invalid, and inapplicability or  
218 invalidity of any such section, clause, provision or part shall  
219 not be taken to affect or prejudice in any way the remaining part  
220 or parts of Sections 52 through 63 of this act.

221 **SECTION 2.** This act shall take effect and be in force from  
222 and after its passage.