

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 903 Session of 2013

INTRODUCED BY FOLMER, TEPLITZ, EICHELBERGER, BLAKE, BOSCOLA, BROWNE, YUDICHAK, WOZNIAK AND SOLOBAY, JUNE 7, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JULY 1, 2014

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, in municipal authorities, providing
3 for interest rate risk and interest cost management; and, in
4 indebtedness and borrowing, further providing for
5 definitions; and expanding the scope of provisions relating
6 to interest rate risk and interest cost management to include
7 first class counties and cities and authorities. <--

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Title 53 of the Pennsylvania Consolidated
11 Statutes is amended by adding a section to read:
12 § 5608.1. Interest rate risk and interest rate cost management.
13 Notwithstanding any other provision of this chapter,
14 municipal authorities shall be subject to the provisions of
15 Subchapter F of Chapter 82 (relating to interest rate risk and
16 interest cost management).

17 Section 2. The definitions of "interest rate management
18 plan" and "local government unit" in section 8002(c) of Title 53
19 are amended to read:
20 § 8002. Definitions.

1 * * *

2 (c) Other definitions.--Subject to additional definitions
3 contained in subsequent provisions of this subpart which are
4 applicable to specific provisions of this subpart, the following
5 words and phrases when used in this subpart shall have the
6 meanings given to them in this section unless the context
7 clearly indicates otherwise:

8 * * *

9 "Interest rate management plan." A written plan prepared or
10 reviewed by an independent financial advisor with respect to a
11 qualified interest rate management agreement, which includes:

12 (1) A schedule listing the amount of debt outstanding
13 for each outstanding debt issue of the local government unit
14 and the expected annual debt service on that debt. In the
15 case of variable rate debt, the schedule shall set forth the
16 estimated annual debt service thereon and annual debt service
17 on the debt calculated at the maximum rate specified for the
18 variable rate debt.

19 (2) A schedule listing the notional amounts outstanding
20 of each previously executed qualified interest rate
21 management agreement which is then in effect.

22 (3) A schedule [listing] illustrating the following:

23 (i) In dollars, all consulting, advisory, brokerage
24 or similar fees, paid or payable by the local government
25 unit in connection with the qualified interest rate
26 management agreement, and [a schedule of] any finder's
27 fees, consulting fees or brokerage fees, paid or payable
28 by the other party in connection with the qualified
29 interest rate management agreement.

30 (ii) The maximum counterparty margin or spread to be

1 included on the qualified interest rate management
2 agreement and a calculation of the present value thereof.

3 (4) A schedule listing the estimated and maximum
4 periodic scheduled payments to be paid by the local
5 government unit and to be received by the local government
6 unit from the other party in each year during the term of the
7 qualified interest rate management agreement.

8 (5) An analysis of the interest rate risk, basis risk,
9 termination risk, credit risk, market-access risk and other
10 risks of entering into the qualified interest rate management
11 agreement. This paragraph includes schedules of the estimated
12 and maximum scheduled periodic payments which would be due
13 under the qualified interest rate management agreement.

14 (6) An analysis of the interest rate risk, basis risk,
15 termination risk, credit risk, market-access risk and other
16 risks to the local government unit of the net payments due
17 for all debt outstanding and all qualified interest rate
18 management agreements of the local government unit. This
19 paragraph includes schedules of the estimated and maximum net
20 payments of total debt service and scheduled, periodic, net
21 payments, which would be due under all of the qualified
22 interest rate management agreements.

23 (7) The local government unit's plan to monitor interest
24 rate risk, basis risk, termination risk, credit risk, market-
25 access risk and other risks. This paragraph includes the
26 valuation of the market or termination value of all
27 outstanding qualified interest rate management agreements.

28 * * *

29 "Local government unit." A county, county institution
30 district, city, borough, incorporated town, township, school

1 district or any similar, general or limited purpose unit of
2 local government or any unit created by joint action of two or
3 more local government units which is authorized to be created by
4 law. †The† TERM DOES NOT INCLUDE A CITY OR COUNTY OF THE FIRST <--
5 CLASS. Except as otherwise provided under Subchapter F of
6 Chapter 82 (relating to interest rate risk and interest cost
7 management) the term does not include [a city or county of the <--
8 first class,] an authority as defined in this section or any <--
9 unit created by joint action of two or more local government
10 units which have not been granted by statute the power to issue
11 bonds. The term includes school districts of the first class
12 presently operating under a home rule charter or home rule
13 charter supplement, and the provisions of this subpart shall
14 govern over inconsistent charter provisions.

15 * * *

16 Section 3. Section 8281(a)(1), (b)(2) and (c)(4) of Title 53
17 are amended, subsections (a) and (c) are amended by adding
18 paragraphs and the section is amended by adding a subsection to
19 read:

20 § 8281. Qualified interest rate management agreements.

21 (a) General rule.--

22 (1) Except as set forth in paragraph (4),
23 notwithstanding any other law to the contrary, a local
24 government unit may negotiate and enter into qualified
25 interest rate management agreements consistent with the
26 provisions of this subchapter. A local government unit may
27 only authorize a qualified interest rate management agreement
28 under this subchapter.

29 * * *

30 (5) No payments shall be made to or on behalf of a local

1 government unit by the other party to a qualified interest
2 rate management agreement except periodic scheduled payments
3 and termination payments.

4 (6) Periodic scheduled payments on a qualified interest
5 rate management agreement must commence not later than one <--
6 year after the effective date of the qualified interest rate
7 management agreement. THREE YEARS AFTER THE DATE OF EXECUTION <--
8 OF ANY CONFIRMATION ASSOCIATED WITH THE QUALIFIED INTEREST
9 RATE MANAGEMENT AGREEMENT.

10 (7) The index or basis used for calculating the periodic
11 scheduled payments receivable by the local government unit on
12 a qualified interest rate management agreement shall be a
13 fixed or variable rate of interest determined using either an
14 index published by the Securities Industry and Financial
15 Markets Association or an index that references the London
16 Interbank Offered Rate. PERIODIC SCHEDULED PAYMENTS BASED <--
17 UPON A LONDON INTERBANK OFFERED RATE INDEX OR OTHER INDEX ARE
18 NOT PERMITTED UNLESS THE INTEREST RATE ON THE ASSOCIATED DEBT
19 IS ALSO BASED ON THE SAME INDEX OR THE INDEX IS BASED ON THE
20 SAME TYPE OF DEBT AS THE ASSOCIATED DEBT.

21 (8) At the time a qualified interest rate management
22 agreement is entered into, the sum of the notional amount
23 thereof and all other qualified interest rate management
24 agreements entered into or guaranteed, and then in effect of
25 a local government unit, shall not exceed 50% of the total
26 principal amount of the aggregate nonelectoral debt plus
27 lease rental debt CAPACITY of the local government unit then <--
28 outstanding.

29 (9) Scheduled periodic payments and termination payments
30 received by a local government unit on a qualified interest

1 rate management agreement shall be deposited in a payment
2 account to pay periodic swap payments or to pay principal and
3 interest on the debt related to the qualified interest rate
4 management agreement.

5 (10) The scheduled expiration date of a qualified
6 interest rate management agreement shall not exceed ten years
7 from the date of the related confirmation unless the
8 qualified interest rate management agreement contains a
9 provision allowing the local government unit to terminate the
10 same at any time after ten years from the date of the related
11 confirmation without making a termination payment.

12 (b) Requirements for resolution.--The resolution authorizing
13 and awarding a qualified interest rate management agreement or
14 authorizing a transaction under the agreement must include in
15 the resolution or as an appendix to the resolution all of the
16 following:

17 * * *

18 (2) The interest rate management plan meeting the
19 requirements under this subpart:

20 (i) [adopted] approved by the local government unit
21 not less than ten days prior to the date of the
22 resolution; or

23 (ii) if the local government unit is incurring
24 indebtedness under this chapter which has or will be
25 issued to a public authority that has entered into or
26 will enter into an interest rate management agreement
27 meeting the requirements of a qualified interest rate
28 management agreement under this subpart, [adopted]
29 approved by that public authority not less than ten days
30 prior to the date of the adoption of the resolution.

1 * * *

2 (c) Contents of qualified interest rate management
3 agreements.--In addition to other provisions approved by the
4 local government unit, a qualified interest rate management
5 agreement must contain all of the following:

6 * * *

7 (4) A provision requiring the termination of the
8 agreement [if] when all debt to which the qualified interest
9 rate management agreement relates is no longer outstanding.

10 * * *

11 (10) A certification by the other party to the qualified
12 interest rate management agreement in which the other party
13 does all of the following:

14 (i) Acknowledges and agrees that the local
15 government unit which is entering into the qualified
16 interest rate management agreement under this subpart is
17 a political subdivision of the Commonwealth.

18 (ii) Acknowledges that it has read this subpart.

19 (iii) Acknowledges and agrees that a local
20 government unit may only enter into a qualified interest
21 rate management agreement to manage interest rate risk or
22 interest cost of the local government unit on debt of the
23 local government unit.

24 ~~(iv) Certifies that the information provided to the~~ <--
25 ~~local government unit, whether in solicitations or in~~
26 ~~response to requests for information from the local~~
27 ~~government unit as to potential positive or negative~~
28 ~~impacts of entering into the qualified interest rate~~
29 ~~management agreement, is mathematically correct and~~
30 ~~conforms to Title VII of the Dodd Frank Wall Street~~

~~Reform and Consumer Financial Protection Act (Public Law
111-203, 124 Stat. 1641).~~

~~(IV) CERTIFIES THAT IN EXECUTING THE TRANSACTIONS
UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT,
IT HAS COMPLIED IN ALL MATERIAL ASPECTS WITH THE
APPLICABLE RULES AND REGULATIONS OF THE COMMODITY FUTURES
TRADING COMMISSION, THE SECURITIES AND EXCHANGE
COMMISSION AND THE MUNICIPAL SECURITIES RULEMAKING BOARD
TO WHICH IT IS SUBJECT.~~ <--

~~(v) Certifies that it acted in good faith and made
full and fair disclosure of the material facts and any
conflicts of interest regarding the qualified interest
management agreement.~~

~~(vi) Believes that the interest rate management
agreement is consistent with the policy of the
Commonwealth that a local government unit not enter into
the agreement if it involves unreasonable speculation.~~ <--

~~(vii) Represents and warrants that its pricing of
the qualified interest rate management agreement is fair
and honest and in line with market standards.~~

~~(viii) (Reserved).~~

~~(VI) REPRESENTS AND WARRANTS THAT THE RATE OR RATES
USED TO CALCULATE AMOUNTS PAYABLE BY THE LOCAL GOVERNMENT
UNIT PURSUANT TO THE QUALIFIED INTEREST RATE MANAGEMENT
AGREEMENT IS COMPARABLE TO THE RATE OR RATES THAT IT
WOULD HAVE QUOTED TO RECEIVE FROM OR PAY TO, AS
APPLICABLE, A SIMILARLY SITUATED COUNTERPARTY TO ENTER
INTO A REASONABLY COMPARABLE QUALIFIED INTEREST RATE
MANAGEMENT AGREEMENT TAKING INTO FULL ACCOUNT THE TERMS
AND CONDITIONS OF THE QUALIFIED INTEREST RATE MANAGEMENT~~ <--

1 AGREEMENT.

2 ~~(ix)~~ (VII) Acknowledges and agrees that it will <--
3 notify the department, in writing, promptly upon the
4 payment to the other party ITS RECEIPT of a termination <--
5 payment by the local government unit, including the date
6 and amount of the payment and the identity of the
7 qualified interest rate management agreement under which
8 the payment was made.

9 * * *

10 (f) Definition.--As used in this section, the term "local
11 government unit" has the same meaning as under section 8002
12 (relating to definitions), except that the term includes an
13 authority.

14 Section 4. Sections 8282, 8283 and 8284 of Title 53 are
15 amended by adding subsections to read:

16 § 8282. Covenant to pay amounts due under qualified interest
17 rate management agreements.

18 * * *

19 (d) Definition.--As used in this section, the term "local
20 government unit" has the same meaning as under section 8002
21 (relating to definitions), except that the term includes an
22 authority.

23 § 8283. Remedies.

24 * * *

25 (d) Definition.--As used in this section, the term "local
26 government unit" has the same meaning as under section 8002
27 (relating to definitions), except that the term includes an
28 authority.

29 § 8284. Notice and retention of records.

30 * * *

1 (c) Definition.--As used in this section, the term "local
2 government unit" has the same meaning as under section 8002
3 (relating to definitions), except that the term includes an
4 authority.

5 Section 5. Section 8285 of Title 53 is amended to read:
6 § 8285. Financial reporting.

7 (a) General rule.--A local government unit which has entered
8 into a qualified interest rate management agreement shall
9 include in its annual financial statements information with
10 respect to each qualified interest rate management agreement it
11 has authorized or entered into, including any information
12 required pursuant to any statement issued by the Governmental
13 Accounting Standards Board.

14 (b) Quarterly report.--A local government unit that
15 authorizes a qualified interest rate management agreement shall
16 report on the performance of the qualified interest rate
17 management agreement quarterly at a public meeting. At a
18 minimum, the reporting shall include a current mark to market
19 valuation of the agreement.

20 (c) Definition.--As used in this section, the term "local
21 government unit" has the same meaning as under section 8002
22 (relating to definitions), except that the term includes an
23 authority.

24 ~~Section 6. Applicability.~~

<--

25 ~~The following shall apply:~~

26 ~~(1) This act shall apply to all interest rate management~~
27 ~~agreements entered into on or after the effective date of~~
28 ~~this act.~~

29 ~~(2) This act shall not apply to any amendment,~~
30 ~~termination or novation of an interest rate management~~

1 ~~agreement where the interest rate management agreement was~~
2 ~~entered into prior to the effective date of this act as long~~
3 ~~as the term of the interest rate management agreement is not~~
4 ~~extended.~~

5 SECTION 6. THE AMENDMENT OR ADDITION OF 53 PA.C.S. §§ <--
6 5608.1, 8002(C), 8281, 8282, 8283, 8284 AND 8285:

7 (1) SHALL APPLY TO ALL QUALIFIED INTEREST RATE
8 MANAGEMENT AGREEMENTS ENTERED INTO ON OR AFTER THE EFFECTIVE
9 DATE OF THIS SECTION.

10 (2) SHALL NOT APPLY TO ANY AMENDMENT, TERMINATION OR
11 NOVATION OF AN INTEREST RATE MANAGEMENT AGREEMENT WHERE THE
12 INTEREST RATE MANAGEMENT AGREEMENT WAS ENTERED INTO PRIOR TO
13 THE EFFECTIVE DATE OF THIS SECTION AS LONG AS THE TERM OF THE
14 INTEREST RATE MANAGEMENT AGREEMENT IS NOT EXTENDED.

15 Section 7. This act shall take effect in 60 days.