

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 904 Session of 2013

INTRODUCED BY TEPLITZ, FOLMER, BLAKE, EICHELBERGER, BOSCOLA, YUDICHAK, WOZNIAK, SOLOBAY, BREWSTER, FARNESE AND WAUGH, JUNE 7, 2013

SENATOR EICHELBERGER, LOCAL GOVERNMENT, REPORTED AS AMENDED, NOVEMBER 19, 2013

AN ACT

1 ~~Amending the act of June 25, 1919 (P.L.581, No.274), entitled~~ <--
2 ~~"An act for the better government of cities of the first~~
3 ~~class of this Commonwealth," providing for a prohibition on~~
4 ~~interest rate swap agreements.~~

5 PROVIDING FOR REQUIREMENTS FOR INTEREST RATE MANAGEMENT <--
6 AGREEMENTS ENTERED INTO BY A CITY OR COUNTY OF THE FIRST
7 CLASS.

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

10 ~~Section 1. Article XVIII of the act of June 25, 1919~~ <--
11 ~~(P.L.581, No.274), referred to as the First Class City~~
12 ~~Government Law, is amended by adding a section to read:~~

13 ~~Section 10. No city of the first class may enter into an~~
14 ~~interest rate management agreement, including a swap, interest~~
15 ~~rate cap, collar, corridor, ceiling and floor agreement, forward~~
16 ~~agreement and float agreement.~~

17 ~~Section 2. The addition of section 10 of Article XVIII of~~
18 ~~the act shall not apply to qualified interest rate management~~
19 ~~agreements in effect prior to the effective date of this~~

1 ~~section.~~

2 ~~Section 3. This act shall take effect in 60 days.~~

3 SECTION 1. DEFINITIONS.

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4 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
5 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
6 CONTEXT CLEARLY INDICATES OTHERWISE:

7 "DEPARTMENT." THE DEPARTMENT OF COMMUNITY AND ECONOMIC
8 DEVELOPMENT OF THE COMMONWEALTH.

9 "INTEREST RATE MANAGEMENT AGREEMENT." AN AGREEMENT,
10 INCLUDING A CONFIRMATION EVIDENCING A TRANSACTION EFFECTED UNDER
11 A MASTER AGREEMENT, ENTERED INTO BY A FIRST CLASS CITY OR COUNTY
12 IN ACCORDANCE WITH AND FULFILLING THE REQUIREMENTS OF SECTION 2,
13 WHICH AGREEMENT IN THE JUDGMENT OF THE FIRST CLASS CITY OR
14 COUNTY IS DESIGNED TO MANAGE INTEREST RATE RISK OR INTEREST COST
15 OF THE FIRST CLASS CITY OR COUNTY ON ANY DEBT OR OTHER DEBT-
16 RELATED OBLIGATIONS A FIRST CLASS CITY OR COUNTY IS AUTHORIZED
17 TO INCUR, INCLUDING, BUT NOT LIMITED TO, SWAPS, INTEREST RATE
18 CAPS, COLLARS, CORRIDORS, CEILING AND FLOOR AGREEMENTS, FORWARD
19 AGREEMENTS, FLOAT AGREEMENTS AND OTHER SIMILAR ARRANGEMENTS
20 WHICH IN THE JUDGMENT OF THE FIRST CLASS CITY OR COUNTY WILL
21 ASSIST THE FIRST CLASS CITY OR COUNTY IN MANAGING THE INTEREST
22 RATE RISK OR INTEREST COST OF THE FIRST CLASS CITY OR COUNTY.

23 SECTION 2. INTEREST RATE MANAGEMENT AGREEMENT REQUIREMENTS.

24 (A) GENERAL RULE.--NOTWITHSTANDING ANY OTHER LAW TO THE
25 CONTRARY, ANY INTEREST RATE MANAGEMENT AGREEMENT ENTERED INTO BY
26 A FIRST CLASS CITY OR COUNTY SHALL COMPLY WITH THE PROVISIONS OF
27 THIS SECTION.

28 (B) REQUIREMENTS.--THE FOLLOWING REQUIREMENTS SHALL APPLY:

29 (1) A COUNTY OR CITY OF THE FIRST CLASS SHALL AUTHORIZE
30 AND AWARD BY RESOLUTION EACH INTEREST RATE MANAGEMENT

1 AGREEMENT OR ANY CONFIRMATION OF A TRANSACTION.

2 (2) NO PAYMENTS SHALL BE MADE TO OR ON BEHALF OF A FIRST
3 CLASS CITY OR COUNTY BY THE OTHER PARTY TO AN INTEREST RATE
4 MANAGEMENT AGREEMENT EXCEPT PERIODIC SCHEDULED PAYMENTS,
5 TERMINATION PAYMENTS AND ATTORNEY FEES AND OTHER CONSULTANT
6 FEES INCURRED IN CONNECTION WITH ENTERING INTO AN INTEREST
7 RATE MANAGEMENT AGREEMENT.

8 (3) PERIODIC SCHEDULED PAYMENTS ON AN INTEREST RATE
9 MANAGEMENT AGREEMENT MUST COMMENCE NOT LATER THAN THREE YEARS
10 AFTER THE DATE OF THE CONFIRMATION ASSOCIATED WITH THE
11 INTEREST RATE MANAGEMENT AGREEMENT.

12 (4) THE INDEX OR BASIS USED FOR CALCULATING THE PERIODIC
13 SCHEDULED PAYMENTS RECEIVABLE BY THE FIRST CLASS CITY OR
14 COUNTY ON AN INTEREST RATE MANAGEMENT AGREEMENT SHALL BE
15 SUBSTANTIALLY SIMILAR TO THE INDEX OR BASIS USED FOR
16 CALCULATING THE INTEREST DUE ON THE ASSOCIATED DEBT OR OTHER
17 DEBT-RELATED OBLIGATIONS OF THE FIRST CLASS CITY OR COUNTY.

18 (5) AT THE TIME AN INTEREST RATE MANAGEMENT AGREEMENT IS
19 ENTERED INTO, THE SUM OF THE NOTIONAL AMOUNT THEREOF, WITHOUT
20 DUPLICATION FOR THE NOTIONAL AMOUNT OF ANY OFFSETTING
21 TRANSACTIONS, AND ALL OTHER INTEREST RATE MANAGEMENT
22 AGREEMENTS ENTERED INTO OR GUARANTEED, AND THEN IN EFFECT OF
23 A FIRST CLASS CITY OR COUNTY, SHALL NOT EXCEED 30% OF THE
24 TOTAL PRINCIPAL AMOUNT OF THE AGGREGATE GENERAL OBLIGATION
25 DEBT AND OTHER DEBT-RELATED OBLIGATIONS PAYABLE FROM OR
26 SUPPORTED BY ITS GENERAL FUND THEN OUTSTANDING. IF AN
27 INTEREST RATE MANAGEMENT AGREEMENT IS PAYABLE FROM OR
28 SUPPORTED BY ANOTHER SPECIFIED FUND OR REVENUES, THE
29 LIMITATION SHALL APPLY BASED SOLELY ON INTEREST RATE
30 MANAGEMENT AGREEMENTS AND DEBT AND OTHER DEBT-RELATED

1 OBLIGATIONS PAYABLE FROM OR SUPPORTED BY THE SPECIFIED FUND
2 OR REVENUES.

3 (6) SCHEDULED PERIODIC PAYMENTS AND TERMINATION PAYMENTS
4 RECEIVED BY A FIRST CLASS CITY OR COUNTY ON AN INTEREST RATE
5 MANAGEMENT AGREEMENT SHALL BE DEPOSITED IN A PAYMENT ACCOUNT
6 TO:

7 (I) PAY PERIODIC SWAP PAYMENTS OR TO PAY PRINCIPAL
8 AND INTEREST ON THE DEBT OR DEBT-RELATED OBLIGATIONS
9 RELATED TO THE INTEREST RATE MANAGEMENT AGREEMENT.

10 (II) IF THE INTEREST RATE MANAGEMENT AGREEMENT
11 DESCRIBED UNDER SUBPARAGRAPH (I) HAS BEEN TERMINATED AND
12 NONE OF THE RELATED DEBT OR DEBT-RELATED OBLIGATIONS ARE
13 OUTSTANDING, PAY PERIODIC SWAP PAYMENTS ON INTEREST RATE
14 MANAGEMENT AGREEMENTS OR PRINCIPAL AND INTEREST ON DEBT
15 OR DEBT-RELATED OBLIGATIONS PAYABLE FROM OR SUPPORTED BY
16 THE SAME FUND OR REVENUES AS THE INTEREST RATE MANAGEMENT
17 AGREEMENT DESCRIBED UNDER SUBPARAGRAPH (I).

18 (III) IF ALL OF THE INTEREST RATE MANAGEMENT
19 AGREEMENTS DESCRIBED UNDER SUBPARAGRAPH (II) HAVE BEEN
20 TERMINATED AND NO DEBT OR DEBT-RELATED OBLIGATIONS
21 DESCRIBED UNDER SUBPARAGRAPH (II) ARE OUTSTANDING, PAY
22 ANY OTHER OBLIGATIONS OF THE FIRST CLASS CITY OR COUNTY.

23 (7) THE SCHEDULED EXPIRATION DATE OF AN INTEREST RATE
24 MANAGEMENT AGREEMENT SHALL NOT EXCEED TEN YEARS FROM THE DATE
25 OF THE RELATED CONFIRMATION UNLESS THE INTEREST RATE
26 MANAGEMENT AGREEMENT CONTAINS A PROVISION ALLOWING THE FIRST
27 CLASS CITY OR COUNTY TO TERMINATE THE SAME AT ANY TIME AFTER
28 TEN YEARS FROM THE DATE OF THE RELATED CONFIRMATION WITHOUT
29 MAKING A TERMINATION PAYMENT.

30 (8) AN INTEREST RATE MANAGEMENT AGREEMENT SHALL CONTAIN

1 A CERTIFICATION BY THE OTHER PARTY TO THE INTEREST RATE
2 MANAGEMENT AGREEMENT IN WHICH THE OTHER PARTY DOES ALL OF THE
3 FOLLOWING:

4 (I) ACKNOWLEDGES THAT THE FIRST CLASS CITY OR COUNTY
5 WHICH IS ENTERING INTO THE INTEREST RATE MANAGEMENT
6 AGREEMENT UNDER THIS SUBPART IS A POLITICAL SUBDIVISION
7 OF THIS COMMONWEALTH.

8 (II) ACKNOWLEDGES THAT IT HAS READ THIS ACT.

9 (III) ACKNOWLEDGES THAT A FIRST CLASS CITY OR COUNTY
10 MAY ONLY ENTER INTO AN INTEREST RATE MANAGEMENT AGREEMENT
11 TO MANAGE INTEREST RATE RISK OR INTEREST COST OF THE
12 FIRST CLASS CITY OR COUNTY ON DEBT OR OTHER DEBT-RELATED
13 OBLIGATIONS OF THE FIRST CLASS CITY OR COUNTY.

14 (IV) ACKNOWLEDGES AND AGREES THAT IT WILL NOTIFY THE
15 DEPARTMENT, IN WRITING, PROMPTLY UPON THE PAYMENT TO THE
16 OTHER PARTY OF A TERMINATION PAYMENT BY THE FIRST CLASS
17 CITY OR COUNTY, INCLUDING THE DATE AND AMOUNT OF THE
18 PAYMENT AND THE IDENTITY OF THE INTEREST RATE MANAGEMENT
19 AGREEMENT UNDER WHICH THE PAYMENT WAS MADE.

20 SECTION 3. NOTICE AND RETENTION OF RECORDS.

21 (A) NOTICE.--WITHIN 15 DAYS FOLLOWING THE ADOPTION OF A
22 RESOLUTION AUTHORIZING AN INTEREST RATE MANAGEMENT AGREEMENT, A
23 FIRST CLASS CITY OR COUNTY SHALL FILE WITH THE DEPARTMENT
24 CERTIFIED COPIES OF THE RESOLUTION, INCLUDING ANY APPENDIX TO
25 THE RESOLUTION TOGETHER WITH AN ITEMIZED STATEMENT OF ALL
26 ATTORNEY FEES, CONSULTANT FEES AND ANY OTHER COSTS EXPECTED TO
27 BE PAID ON BEHALF OF A FIRST CLASS CITY OR COUNTY BY THE OTHER
28 PARTY TO SUCH INTEREST RATE MANAGEMENT AGREEMENT.

29 (B) RECORDS.--THE DEPARTMENT SHALL KEEP COPIES OF ALL
30 DOCUMENTS FILED WITH THE DEPARTMENT UNDER THIS SECTION AS LONG

1 AS AN INTEREST RATE MANAGEMENT AGREEMENT IS IN EFFECT.

2 SECTION 4. FINANCIAL REPORTING.

3 A FIRST CLASS CITY OR COUNTY WHICH HAS ENTERED INTO AN
4 INTEREST RATE MANAGEMENT AGREEMENT SHALL INCLUDE IN ITS ANNUAL
5 FINANCIAL STATEMENTS INFORMATION WITH RESPECT TO EACH INTEREST
6 RATE MANAGEMENT AGREEMENT IT HAS AUTHORIZED OR ENTERED INTO,
7 INCLUDING ANY INFORMATION REQUIRED PURSUANT TO ANY STATEMENT
8 ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

9 SECTION 5. APPLICABILITY.

10 THE FOLLOWING SHALL APPLY:

11 (1) THIS ACT SHALL APPLY TO ALL INTEREST RATE MANAGEMENT
12 AGREEMENTS ENTERED INTO BY A FIRST CLASS CITY OR COUNTY ON OR
13 AFTER THE EFFECTIVE DATE OF THIS ACT.

14 (2) THIS ACT SHALL NOT APPLY TO ANY AMENDMENT,
15 TERMINATION OR NOVATION OF AN INTEREST RATE MANAGEMENT
16 AGREEMENT WHERE SUCH INTEREST RATE MANAGEMENT AGREEMENT WAS
17 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS ACT AS LONG
18 AS THE TERM OF THE INTEREST RATE MANAGEMENT AGREEMENT IS NOT
19 EXTENDED.

20 SECTION 6. EFFECTIVE DATE.

21 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.