

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 342 Session of 2015

INTRODUCED BY FOLMER, BLAKE, EICHELBERGER, TEPLITZ, VULAKOVICH, VANCE, YUDICHAK, SCHWANK, GORDNER, BOSCOLA, BROWNE AND SCAVELLO, FEBRUARY 20, 2015

SENATOR HUTCHINSON, LOCAL GOVERNMENT, AS AMENDED, OCTOBER 28, 2015

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 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 OR ANY OTHER LAW TO THE CONTRARY, <--

15 AUTHORITIES, EXCEPT AN AUTHORITY OR A MUNICIPAL AUTHORITY IN

16 EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION, FORMED BY TWO

17 OR MORE LOCAL GOVERNMENT UNITS FOR THE PURPOSE OF PROVIDING LOAN

18 PROGRAMS FOR THE BENEFIT OF LOCAL GOVERNMENT UNITS AND OTHER

19 AUTHORITIES OR MUNICIPAL AUTHORITIES shall be subject to the

1 provisions of Subchapter F of Chapter 82 (relating to interest
2 rate risk and interest cost management).

3 Section 2. The definitions of "interest rate management
4 plan" and "local government unit" in section 8002(c) of Title 53
5 are amended to read:

6 § 8002. Definitions.

7 * * *

8 (c) Other definitions.--Subject to additional definitions
9 contained in subsequent provisions of this subpart which are
10 applicable to specific provisions of this subpart, the following
11 words and phrases when used in this subpart shall have the
12 meanings given to them in this section unless the context
13 clearly indicates otherwise:

14 * * *

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

18 (1) A schedule listing the amount of debt outstanding
19 for each outstanding debt issue of the local government unit
20 and the expected annual debt service on that debt. In the
21 case of variable rate debt, the schedule shall set forth the
22 estimated annual debt service thereon and annual debt service
23 on the debt calculated at the maximum rate specified for the
24 variable rate debt.

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

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

29 (i) In dollars, all consulting, advisory, brokerage
30 or similar fees, paid or payable by the local government

1 unit in connection with the qualified interest rate
2 management agreement, and [a schedule of] any finder's
3 fees, consulting fees or brokerage fees, paid or payable
4 by the other party in connection with the qualified
5 interest rate management agreement.

6 (ii) The maximum counterparty margin or spread to be
7 included on the qualified interest rate management
8 agreement and a calculation of the present value thereof.

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

14 (5) An analysis of the interest rate risk, basis risk,
15 termination risk, credit risk, market-access risk and other
16 risks of entering into the qualified interest rate management
17 agreement. This paragraph includes schedules of the estimated
18 and maximum scheduled periodic payments which would be due
19 under the qualified interest rate management agreement.

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

29 (7) The local government unit's plan to monitor interest
30 rate risk, basis risk, termination risk, credit risk, market-

1 access risk and other risks. This paragraph includes the
2 valuation of the market or termination value of all
3 outstanding qualified interest rate management agreements.

4 * * *

5 ~~"Local government unit." A county, county institution~~ <--

6 "LOCAL GOVERNMENT UNIT." AS FOLLOWS: <--

7 (1) A COUNTY, COUNTY INSTITUTION district, city,
8 borough, incorporated town, township, school district or any
9 similar, general or limited purpose unit of local government
10 or any unit created by joint action of two or more local
11 government units which is authorized to be created by law. <--

12 [The]

13 (2) THE term does not include a city or county of the <--
14 first class. Except as otherwise provided under Subchapter F <--
15 of Chapter 82 (relating to interest rate risk and interest
16 cost management) the OR AN AUTHORITY OR A MUNICIPAL AUTHORITY <--
17 IN EXISTENCE ON THE EFFECTIVE DATE OF THIS PARAGRAPH, FORMED
18 BY TWO OR MORE LOCAL GOVERNMENT UNITS FOR THE PURPOSE OF
19 PROVIDING LOAN PROGRAMS FOR THE BENEFIT OF LOCAL GOVERNMENT
20 UNITS AND OTHER AUTHORITIES OR MUNICIPAL AUTHORITIES.

21 (3) EXCEPT AS PROVIDED UNDER PARAGRAPH (4), THE term
22 does not include [a city or county of the first class,] an
23 authority as defined in this section or any unit created by
24 joint action of two or more local government units which have
25 not been granted by statute the power to issue bonds. [The <--
26 term]

27 (4) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), FOR THE <--
28 PURPOSES OF SUBCHAPTER F OF CHAPTER 82 (RELATING TO INTEREST
29 RATE RISK AND INTEREST COST MANAGEMENT), THE TERM SHALL
30 INCLUDE AN AUTHORITY.

1 (5) THE TERM includes school districts of the first
2 class presently operating under a home rule charter or home
3 rule charter supplement, and the provisions of this subpart
4 shall govern over inconsistent charter provisions.

5 * * *

6 Section 3. Section 8281(a)(1), (b)(2) and (c)(4) of Title 53
7 are amended, AND subsections (a) and (c) are amended by adding <--
8 paragraphs ~~and the section is amended by adding a subsection to~~ <--
9 read:

10 § 8281. Qualified interest rate management agreements.

11 (a) General rule.--

12 (1) Except as set forth in paragraph (4),
13 notwithstanding any other law to the contrary, a local
14 government unit may negotiate and enter into qualified
15 interest rate management agreements consistent with the
16 provisions of this subchapter. A local government unit may
17 only authorize a qualified interest rate management agreement
18 under this subchapter.

19 * * *

20 (5) No payments shall be made to or on behalf of a local
21 government unit by the other party to a qualified interest
22 rate management agreement except periodic scheduled payments
23 and termination payments.

24 (6) Periodic scheduled payments on a qualified interest
25 rate management agreement must commence not later than three
26 years after the date of execution of any confirmation
27 associated with the qualified interest rate management
28 agreement.

29 (7) The index or basis used for calculating the periodic
30 scheduled payments receivable by the local government unit on

1 a qualified interest rate management agreement shall be a
2 fixed or variable rate of interest determined using either an
3 index published by the Securities Industry and Financial
4 Markets Association or an index that references the London
5 Interbank Offered Rate. Periodic scheduled payments based
6 upon a London InterBank Offered Rate index or other index are
7 not permitted unless the interest rate on the associated debt
8 is also based on the same index or the index is based on the
9 same type of debt as the associated debt.

10 (8) At the time a qualified interest rate management
11 agreement is entered into, the sum of the notional amount
12 thereof and all other qualified interest rate management
13 agreements entered into or guaranteed, and then in effect of
14 a local government unit, shall not exceed 50% of the total
15 principal amount of the aggregate nonelectoral debt plus
16 lease rental debt capacity of the local government unit then
17 outstanding.

18 (9) Scheduled periodic payments and termination payments
19 received by a local government unit on a qualified interest
20 rate management agreement shall be deposited in a payment
21 account to pay periodic swap payments or to pay principal and
22 interest on the debt related to the qualified interest rate
23 management agreement.

24 (10) The scheduled expiration date of a qualified
25 interest rate management agreement shall not exceed 10 years
26 from the date of the related confirmation unless the
27 qualified interest rate management agreement contains a
28 provision allowing the local government unit to terminate the
29 same at any time after 10 years from the date of the related
30 confirmation without making a termination payment.

1 (b) Requirements for resolution.--The resolution authorizing
2 and awarding a qualified interest rate management agreement or
3 authorizing a transaction under the agreement must include in
4 the resolution or as an appendix to the resolution all of the
5 following:

6 * * *

7 (2) The interest rate management plan meeting the
8 requirements under this subpart:

9 (i) [adopted] approved by the local government unit
10 not less than 10 days prior to the date of the
11 resolution; or

12 (ii) if the local government unit is incurring
13 indebtedness under this chapter which has or will be
14 issued to a public authority that has entered into or
15 will enter into an interest rate management agreement
16 meeting the requirements of a qualified interest rate
17 management agreement under this subpart, [adopted]
18 approved by that public authority not less than 10 days
19 prior to the date of the adoption of the resolution.

20 * * *

21 (c) Contents of qualified interest rate management
22 agreements.--In addition to other provisions approved by the
23 local government unit, a qualified interest rate management
24 agreement must contain all of the following:

25 * * *

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

29 * * *

30 (10) A certification by the other party to the qualified

1 interest rate management agreement in which the other party
2 does all of the following:

3 (i) Acknowledges and agrees that the local
4 government unit which is entering into the qualified
5 interest rate management agreement under this subpart is
6 a political subdivision of the Commonwealth.

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

8 (iii) Acknowledges and agrees that a local
9 government unit may only enter into a qualified interest
10 rate management agreement to manage interest rate risk or
11 interest cost of the local government unit on debt of the
12 local government unit.

13 (iv) Certifies that, in executing the transactions
14 under the qualified interest rate management agreement,
15 it has complied in all material aspects with the
16 applicable rules and regulations of the Commodity Futures
17 Trading Commission, the Securities and Exchange
18 Commission and the Municipal Securities Rulemaking Board
19 to which it is subject.

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

24 (vi) Represents and warrants that the rate or rates
25 used to calculate amounts payable by the local government
26 unit pursuant to the qualified interest rate management
27 agreement is comparable to the rate or rates that it
28 would have quoted to receive from or pay to, as
29 applicable, a similarly situated counterparty to enter
30 into a reasonably comparable qualified interest rate

1 management agreement taking into full account the terms
2 and conditions of the qualified interest rate management
3 agreement.

4 (vii) Acknowledges and agrees that it will notify
5 the department in writing promptly upon its receipt of a
6 termination payment by the local government unit,
7 including the date and amount of the payment and the
8 identity of the qualified interest rate management
9 agreement under which the payment was made.

10 * * *

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

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

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

19 * * *

20 ~~(d) 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 § 8283. Remedies.

25 * * *

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

30 § 8284. Notice and retention of records.

1 * * *

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

6 Section ~~5~~ 4. Section 8285 of Title 53 is amended to read: <--
7 § 8285. Financial reporting.

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

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

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

25 Section ~~6~~ 5. The amendment or addition of 53 Pa.C.S. §§ <--
26 5608.1, 8002(c), 8281, ~~8282, 8283, 8284~~ and 8285: <--

27 (1) Shall apply to all qualified interest rate
28 management agreements entered into on or after the effective
29 date of this section.

30 (2) Shall not apply to an amendment, termination or

1 novation of a qualified interest rate management agreement
2 where the qualified interest rate management agreement was
3 entered into prior to the effective date of this section,
4 unless the term of the qualified interest rate management
5 agreement is extended and the qualified interest rate
6 management agreement continues to be in effect on or after
7 the effective date of this section.

8 Section 7 6. This act shall take effect in 60 days.

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