

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 307 Session of 2011

INTRODUCED BY SCAVELLO, BEAR, CALTAGIRONE, DENLINGER, GEORGE,
GODSHALL, GOODMAN, HENNESSEY, HORNAMAN, KAVULICH, KORTZ,
MOUL, RAPP, SCHRODER, K. SMITH, SWANGER AND WAGNER,
JANUARY 27, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 27, 2011

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, further providing for the definitions
3 of "debt," "independent financial advisor," "interest rate
4 management plan" and "qualified interest rate management
5 agreement," for scope of unfunded debt and for treatment of
6 costs upon refunding; and repealing provisions related to
7 interest rate risk and interest cost management.

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

10 Section 1. The definitions of "debt," "independent financial
11 advisor," "interest rate management plan" and "qualified
12 interest rate management agreement" in section 8002(a) and (c)
13 of Title 53 of the Pennsylvania Consolidated Statutes are
14 amended to read:

15 § 8002. Definitions.

16 (a) Classification of debt.--* * *

17 "Debt." The amount of all obligations for the payment of
18 money incurred by the local government unit, whether due and
19 payable in all events, or only upon the performances of work,

possession of property as lessee, rendering of services by others or other contingency, except the following:

(1) Current obligations for the full payment of which current revenues have been appropriated, including tax anticipation notes, and current payments for the funding of pension plans.

(2) Obligations under contracts for supplies, services and pensions allocable to current operating expenses of future years in which the supplies are to be expended or furnished, the services rendered or the pensions paid.

(3) Rentals or payments payable in future years under leases, guaranties, subsidy contracts or other forms of agreement not evidencing the acquisition of capital assets. This exception shall not apply to rentals or payments under any instruments which would constitute lease rental debt but for the fact that the lessor or obligee is not an entity described in section 8004(a)(1) (relating to when lease or other agreement evidences acquisition of capital asset).

(4) Interest or assumed taxes payable on bonds or notes which interest or taxes are not yet overdue.

[(5) Obligations incurred and payments, including periodic scheduled payments and termination payments, payable pursuant to a qualified interest rate management agreement.]

* * *

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

1 * * *

2 ["Independent financial advisor." A person or entity
3 experienced in the financial aspects and risks of interest rate
4 management agreements who is retained by a local government unit
5 to advise the local government unit with respect to a qualified
6 interest rate management agreement. The independent financial
7 advisor may not be the other party or an affiliate or agent of
8 the other party on a qualified interest rate management
9 agreement with respect to which the independent financial
10 advisor is advising a local government unit. For purposes of
11 sections 8281(b)(2) and (e)(5) (relating to qualified interest
12 rate management agreements), the independent financial advisor
13 may be retained by a public authority.

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

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

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

27 (3) A schedule listing all consulting, advisory,
28 brokerage or similar fees, paid or payable by the local
29 government unit in connection with the qualified interest
30 rate management agreement, and a schedule of any finder's

1 fees, consulting fees or brokerage fees, paid or payable by
2 the other party in connection with the qualified interest
3 rate management agreement.

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

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

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

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

29 * * *

30 ["Qualified interest rate management agreement." An

1 agreement, including a confirmation evidencing a transaction
2 effected under a master agreement, entered into by a local
3 government unit in accordance with and fulfilling the
4 requirements of section 8281 (relating to qualified interest
5 rate management agreements), which agreement in the judgment of
6 the local government unit is designed to manage interest rate
7 risk or interest cost of the local government unit on any debt a
8 local government unit is authorized to incur under this subpart,
9 including, but not limited to, swaps, interest rate caps,
10 collars, corridors, ceiling and floor agreements, forward
11 agreements, float agreements and other similar arrangements
12 which in the judgment of the local government unit will assist
13 the local government unit in managing the interest rate risk or
14 interest cost of the local government unit.]

15 * * *

16 Section 2. Sections 8129 and 8242(a)(2.1) of Title 53 are
17 amended to read:

18 § 8129. Scope of unfunded debt.

19 For the purpose of this subchapter, "unfunded debt" means
20 obligations of the same or one or more prior years incurred for
21 current expenses, including tax anticipation notes [and
22 payments, including termination payments, required to be made
23 under qualified interest rate management agreements], due and
24 owing or judgments against the local government unit entered by
25 a court after adversary proceedings, [including a judgment under
26 section 8283(b)(2)(i) (relating to remedies),] for the payment
27 of either of which category the taxes and other revenues
28 remaining to be collected in the fiscal year and funds on hand
29 will not be sufficient without a curtailment of municipal
30 services to an extent endangering the health or safety of the

1 public or proper public education, and the local government unit
2 either may not legally levy a sufficient tax for the balance of
3 the fiscal year, or a sufficient tax, if legally leviable, would
4 not be in the public interest. Unfunded debt does not, however,
5 include debt incurred under this subpart or obligations in
6 respect of a project or part of a project as incurred in respect
7 of the cost of a project.

8 § 8242. Treatment of costs upon refunding.

9 (a) General rule.--In any refunding, a principal amount of
10 refunding bonds or notes or obligations evidencing lease rental
11 debt equal to the sum of the following:

12 * * *

13 [(2.1) any funds borrowed in order to pay any
14 termination payment required to be paid under a qualified
15 interest rate management agreement in which the notional
16 amount is identified as corresponding to all or any portion
17 of the bond or note being refunded;]

18 * * *

19 Section 3. Subchapter F of Chapter 82 of Title 53 is
20 repealed:

21 [SUBCHAPTER F

22 INTEREST RATE RISK AND INTEREST COST MANAGEMENT

23 Sec.

24 8281. Qualified interest rate management agreements.

25 8282. Covenant to pay amounts due under qualified interest rate
26 management agreements.

27 8283. Remedies.

28 8284. Notice and retention of records.

29 8285. Financial reporting.

30 § 8281. Qualified interest rate management agreements.

1 (a) General rule.--

2 (1) Except as set forth in paragraph (4),
3 notwithstanding any other law to the contrary, a local
4 government unit may negotiate and enter into qualified
5 interest rate management agreements consistent with the
6 provisions of this subchapter.

7 (2) The local government unit must authorize and award
8 by resolution each qualified interest rate management
9 agreement or any confirmation of a transaction. The
10 resolution is subject to section 8003(a) and (b) (relating to
11 advertisement and effectiveness of ordinances) but may be
12 valid and effective for all purposes immediately upon
13 adoption or as otherwise provided in the resolution.

14 (3) A local government unit has the power to contract
15 for insurance covering the risks of nonpayment of amounts due
16 under qualified interest rate management agreements.

17 (4) The authority granted in this subchapter shall not
18 apply to any local government unit which has been declared
19 distressed by the Department of Community and Economic
20 Development.

21 (b) Requirements for resolution.--The resolution authorizing
22 and awarding a qualified interest rate management agreement or
23 authorizing a transaction under the agreement must include in
24 the resolution or as an appendix to the resolution all of the
25 following:

26 (1) A copy of the qualified interest rate management
27 agreement or confirmation of the transaction under the
28 qualified interest rate management agreement in substantially
29 the form to be executed pursuant to the resolution.

30 (2) The interest rate management plan meeting the

requirements under this subpart:

(i) adopted by the local government unit; or

(ii) if the local government unit is incurring indebtedness under this chapter which has or will be issued to a public authority that has entered into or will enter into an interest rate management agreement meeting the requirements of a qualified interest rate management agreement under this subpart, adopted by that public authority.

(3) A statement of the manner of the award of the qualified interest rate management agreement under subsection (e).

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

(1) The covenant of the local government unit to make payments required by the qualified interest rate management agreement and the covenants authorized by section 8282 (relating to covenant to pay amounts due under qualified interest rate management agreements).

(2) The notional amount of the qualified interest rate management agreement and the principal amount of bonds or notes or lease rental debt, or portions of the notional or principal amounts, issued or to be issued by the local government unit under this subpart or guaranteed by the local government unit under this subpart, to which the agreement relates.

(3) The term of any qualified interest rate management agreement, which must not exceed the latest maturity date of

1 the bonds or notes referenced in the qualified interest rate
2 management agreement.

3 (4) A provision requiring the termination of the
4 agreement if all debt to which the qualified interest rate
5 management agreement relates is no longer outstanding.

6 (5) The maximum annual interest rate which the local
7 government unit may pay thereunder.

8 (6) A provision that the maximum net payments by fiscal
9 year of a local government unit shall not exceed the maximum
10 interest rate specified in the qualified interest rate
11 management agreement for:

12 (i) periodic scheduled payments, not including any
13 termination payments, due under the qualified interest
14 rate management agreement; and

15 (ii) the interest on the bonds or notes to which the
16 qualified interest rate management agreement relates.

17 (7) The source of payment of the payment obligations of
18 the local government unit, which must be either general
19 revenues or revenues specifically identified in the
20 agreement.

21 (8) A provision addressing the actions to be taken if
22 the credit rating of the other party changes.

23 (9) A provision that periodic scheduled payments due
24 under the qualified interest rate management agreement and
25 debt service due on the related bonds or notes or payments
26 due under the related instrument evidencing lease rental debt
27 or guaranty of the local government unit shall be senior in
28 right and priority of payment to termination payments due
29 under the qualified interest rate management agreement.

30 (d) Other provisions of the qualified interest rate

1 management agreement.--The qualified interest rate management
2 agreement may include:

3 (1) A covenant to include any termination payment or
4 similar payment for a qualified interest rate management
5 agreement in its current budget at any time during a fiscal
6 year or in a budget adopted in a future fiscal year.

7 (2) A provision that the following shall be equally and
8 ratably payable and secured under the applicable covenants
9 authorized in section 8282:

10 (i) Periodic scheduled payments due under the
11 qualified interest rate management agreement; and

12 (ii) Any of the following to which the agreement
13 relates:

14 (A) the debt service due on the bonds or notes;

15 (B) payment under an instrument evidencing lease
16 rental debt; or

17 (C) payment under a guaranty of the local
18 government unit.

19 (3) A provision that the qualified interest rate
20 management agreement may be terminated at the option of the
21 local government unit without cause but that the qualified
22 interest rate management agreement may not be terminated at
23 the option of the other party to the qualified interest rate
24 management agreement without cause.

25 (e) Award of qualified interest rate management
26 agreements.--

27 (1) The local government unit shall establish a process
28 for selecting other parties before entering into a qualified
29 interest rate management agreement.

30 (2) The local government unit shall establish

1 qualifications for other parties before entering into a
2 qualified interest rate management agreement. The
3 qualifications shall include a rating for the other party of
4 at least the third highest rating category from a nationally
5 recognized rating agency.

6 (3) A qualified interest rate management agreement must
7 be awarded by public sale, private sale by negotiation or
8 private sale by invitation.

9 (4) The local government unit shall select the qualified
10 interest rate management agreement which the local government
11 unit determines is in its best financial interest. The
12 qualified interest rate management agreement selected must
13 contain financial terms and conditions which in the opinion
14 of the independent financial advisor to the local government
15 unit are fair and reasonable to the local government unit as
16 of the date of award.

17 (5) The local government unit may satisfy the
18 requirements of paragraph (4) by obtaining a finding from an
19 independent financial advisor to the public authority that
20 the financial terms and conditions of the agreement are fair
21 and reasonable to the public authority as of the date of the
22 award if all of the following apply:

23 (i) The local government unit is incurring
24 indebtedness under this chapter which has or will be
25 issued to a public authority.

26 (ii) In connection with the incurring of debt under
27 subparagraph (i), the local government unit will become
28 obligated for all or a portion of the public authority's
29 costs under an interest rate management agreement.

30 § 8282. Covenant to pay amounts due under qualified interest

1 rate management agreements.

2 (a) Contents.--The local government unit shall include in a
3 qualified interest rate management agreement a covenant that the
4 local government unit shall do the following:

5 (1) Include the periodic scheduled amounts payable in
6 respect of the qualified interest rate management agreement
7 for each fiscal year in its budget for that fiscal year.

8 (2) Appropriate those amounts from its general or
9 specially pledged revenues for the payment of amounts due
10 under the qualified interest rate management agreement.

11 (b) Pledge.--

12 (1) Except as set forth in paragraph (2), the local
13 government unit may pledge its full faith, credit and taxing
14 power for the budgeting, appropriation and payment of
15 periodic scheduled payments due under a qualified interest
16 rate management agreement.

17 (2) A local government unit may not make a pledge under
18 paragraph (1) if the payment obligations of the local
19 government unit under the qualified interest rate management
20 agreement are limited as to payment to specified revenues of
21 the local government unit.

22 (c) Security interest.--If the periodic scheduled payment
23 obligations of the local government unit are specified in the
24 qualified interest rate management agreement to be made from
25 specified revenues of the local government unit, the local
26 government unit may include in the qualified interest rate
27 management agreement a covenant granting a security interest in
28 those revenues to secure its periodic scheduled payment
29 obligations under the agreement. The security interest shall be
30 perfected under section 8147 (relating to pledge of revenues).

1 § 8283. Remedies.

2 (a) Failure to budget amounts due under a qualified interest
3 rate management agreement.--

4 (1) This subsection applies if a local government unit
5 fails or refuses to budget for any fiscal year a periodic
6 scheduled payment:

7 (i) due in that year pursuant to the provisions of a
8 qualified interest rate management agreement; and

9 (ii) payable from the general revenues of the local
10 government unit.

11 (2) If a local government unit commits a failure or
12 refusal under paragraph (1), the following apply:

13 (i) The other party to the interest rate management
14 agreement may bring an enforcement action in a court of
15 common pleas.

16 (ii) After a hearing held upon notice to the local
17 government unit as the court may direct, if the court
18 finds a failure or refusal under paragraph (1), the court
19 may, by order of mandamus, require the treasurer of the
20 local government unit to pay to the other party out of
21 the first tax money or other available revenue or money
22 thereafter received in the fiscal year by the treasurer
23 the periodic scheduled payments due pursuant to the
24 provisions of the qualified interest rate management
25 agreement. The order shall be subject to section 8281(c)
26 (8) (relating qualified interest rate management
27 agreements).

28 (iii) Any priority on incoming tax money accorded to
29 a separate sinking fund for tax anticipation notes under
30 the authority of section 8125 (relating to security for

1 tax anticipation notes and sinking fund) shall not be
2 affected by an order under subparagraph (ii) until the
3 sum on deposit in each sinking fund equals the money
4 which should have been budgeted or appropriated for each
5 series.

6 (b) Failure to pay amounts due under a qualified interest
7 rate management agreement.--

8 (1) This subsection applies if:

9 (i) a local government unit fails to pay any amount
10 due under a qualified interest rate management agreement
11 when it becomes due and payable; and

12 (ii) the failure continues for 30 days.

13 (2) If there is a failure under paragraph (1), the other
14 party to the qualified interest rate management agreement may
15 bring an action in a court of common pleas to recover the
16 amount due. This paragraph is subject to:

17 (i) the priorities under sections 8125 and 8281(c)
18 (8); and

19 (ii) any limitations upon rights of action properly
20 provided in the qualified interest rate management
21 agreement.

22 (3) The judgment recovered under paragraph (2) shall:

23 (i) have an appropriate priority upon the money next
24 coming into the treasury of the local government unit;
25 and

26 (ii) be a judgment upon which funding bonds may be
27 issued pursuant to Ch. 81 Subch. B (relating to tax
28 anticipation notes and funding debt).

29 (c) Failure to pay by school districts.--

30 (1) This subsection applies if a board of directors of a

1 school district fails to pay or to provide for the payment of
2 periodic scheduled payments, not including any termination
3 payments, due pursuant to the provisions of a qualified
4 interest rate management agreement.

5 (2) A party to a qualified interest rate management
6 agreement must notify the Secretary of Education of a failure
7 under paragraph (1).

8 (3) Upon notice under paragraph (2), the following
9 apply:

10 (i) The secretary shall notify the Department of
11 Community and Economic Development and the offending
12 board of school directors.

13 (ii) If the secretary finds that the amount due and
14 payable by the school district has not been paid, the
15 secretary shall withhold out of any State appropriation
16 due the school district an amount equal to the amount due
17 pursuant to the qualified interest rate management
18 agreement and shall pay over the amount so withheld to
19 the party to the qualified interest rate management
20 agreement to whom the amount is due.

21 § 8284. Notice and retention of records.

22 (a) Notice.--

23 (1) The local government unit shall file with the
24 Department of Community and Economic Development certified
25 copies of a resolution authorizing a qualified interest rate
26 management agreement, including any appendix to the
27 resolution, 15 days following adoption.

28 (2) If the maximum net payments by fiscal year for
29 periodic scheduled payments of the local government unit, not
30 including any termination payments, and interest on the bonds

1 or notes to which the qualified interest rate management
2 agreement relates exceed the amount of interest approved in
3 proceedings of the local government unit with respect to such
4 bonds or notes filed with and approved by the department, the
5 local government unit shall adopt an amendment to the
6 ordinance or resolution authorizing such bonds or notes
7 reflecting such increase. The amendment shall be advertised
8 and effective as provided in section 8003 (relating to
9 advertisement and effectiveness of ordinances) and filed with
10 the department. No approval by the department or filing fee
11 by the local government unit shall be required for any filing
12 under this subsection.

13 (b) Records.--The department shall keep copies of all
14 documents filed with the department under this section as long
15 as a qualified interest rate management agreement is in effect.
16 Documents filed with the department under this section are
17 public records available for examination by any citizen of this
18 Commonwealth; any party to the qualified interest rate
19 management agreement; or any bondholder or noteholder, including
20 holders of tax anticipation notes, of the local government unit
21 filing any document pursuant to this section.

22 § 8285. Financial reporting.

23 A local government unit which has entered into a qualified
24 interest rate management agreement shall include in its annual
25 financial statements information with respect to each qualified
26 interest rate management agreement it has authorized or entered
27 into, including any information required pursuant to any
28 statement issued by the Governmental Accounting Standards
29 Board.]

30 Section 4. This act shall take effect immediately.