
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1148 Session of
2003

INTRODUCED BY NICKOL, BROWNE, CAPPELLI, CIVERA, DALLY, FRANKEL,
GEIST, GILLESPIE, HARPER, HERMAN, LEH, LEWIS, MAITLAND,
McILHATTAN, R. MILLER, PRESTON, ROSS, RUBLEY, SATHER,
SCHRODER, SOLOBAY, STEIL, TIGUE, WILT AND YOUNGBLOOD,
APRIL 11, 2003

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 11, 2003

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions, for
3 exclusion of other self-liquidating debt, for limitations on
4 stated maturity dates and for number of interest rates.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. The definitions of "debt" and "project" in
8 section 8002(a) and (c) of Title 53 of the Pennsylvania
9 Consolidated Statutes are amended and the subsections are
10 amended by adding definitions to read:

11 § 8002. Definitions.

12 (a) Classification of debt.--With respect to classifications
13 of debt and subject to additional definitions contained in
14 subsequent provisions of this subpart which are applicable to
15 specific provisions of this subpart, the following words and
16 phrases when used in this subpart shall have the meanings given
17 to them in this section unless the context clearly indicates

1 otherwise:

2 "Debt." The amount of all obligations for the payment of
3 money incurred by the local government unit, whether due and
4 payable in all events, or only upon the performances of work,
5 possession of property as lessee, rendering of services by
6 others or other contingency, including the total amount due
7 under a qualified prepayment agreement, except the following:

8 (1) Current obligations for the full payment of which
9 current revenues have been appropriated, including tax
10 anticipation notes and current obligations under a qualified
11 prepayment agreement, and current payments for the funding of
12 pension plans.

13 (2) Obligations under contracts for supplies, services
14 and pensions allocable to current operating expenses of
15 future years in which the supplies, services, utilities,
16 insurance premiums, reserves for self-insurance, including
17 those established under 42 Pa.C.S. § 8564 (relating to
18 liability insurance and self-insurance) or other benefits are
19 to be expended or furnished, the services rendered, the
20 utilities used, the insurance premiums, reserves for self-
21 insurance or the pensions paid or the benefits under
22 qualified prepayment agreements received.

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

1 (4) Interest or assumed taxes payable on bonds or notes
2 which interest or taxes [is] are not yet overdue.

3 (5) Obligations incurred and payments, including
4 periodic scheduled payments and termination payments, payable
5 pursuant to a qualified interest rate management agreement,
6 which payments are not yet overdue.

7 "Debt management plan." A written debt management plan of
8 the local government unit that includes a plain English analysis
9 of the following:

10 (1) The benefits and costs of entering into a qualified
11 prepayment agreement.

12 (2) The early termination, involuntary termination,
13 default and cost considerations associated with a qualified
14 prepayment agreement.

15 "Department." The Department of Community and Economic
16 Development of the Commonwealth.

17 * * *

18 "Interest rate management plan." A written plan prepared or
19 reviewed by an independent financial advisor which is not
20 affiliated with any of the parties to a qualified interest rate
21 management agreement, that includes:

22 (1) A schedule listing the amount of debt outstanding
23 for each outstanding debt issue of the local government unit
24 and the expected annual debt service thereon.

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

28 (3) A schedule listing all consulting, advisory,
29 brokerage or similar fees paid or payable by the local
30 government unit in connection with the qualified interest

1 rate management agreement.

2 (4) A schedule listing the anticipated amounts to be
3 paid by the local government unit, and to be received from
4 the counterparty, in each year during the term of the
5 qualified interest rate management agreement.

6 (5) An analysis of the effect of rising interest rate on
7 variable rate debt obligations of the local government unit.

8 (6) An analysis of the anticipated benefits, costs and
9 risks of entering into the qualified interest rate management
10 agreement.

11 (7) The local government unit's plan to monitor the
12 qualified interest rate management agreement.

13 * * *

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

20 * * *

21 "Project." Includes any of the following:

22 (1) Items of construction, acquisition, extraordinary
23 maintenance or repair which have been undertaken by a local
24 government unit.

25 (2) Preliminary studies, surveying, planning, testing or
26 design work for any undertaking described in paragraph (1).

27 (3) Lands or rights in land to be acquired.

28 (4) Furnishings, machinery, apparatus or equipment
29 normally classified as capital items, but these items must
30 have a useful life of five years or more if financed

1 separately and not as a part of a construction or acquisition
2 project.

3 (5) The local government unit's share of the cost of a
4 project undertaken jointly with one or more other local
5 government units or the Commonwealth or one of its agencies.

6 (6) Countywide revision of assessment of real property.

7 (7) Funding of all or any portion of a reserve, or a
8 contribution toward a combined reserve, pool or other
9 arrangement, relating to self-insurance, which has been
10 established by one or more local government units pursuant to
11 42 Pa.C.S. § 8564 (relating to liability insurance and self-
12 insurance) up to, but not exceeding, the amount provided in
13 section 8007 (relating to cost of project).

14 (8) Funding of an unfunded actuarial accrued liability
15 or a portion of an unfunded actuarial accrued liability.

16 (9) Funding or refunding of debt incurred for any or all
17 of the foregoing purposes.

18 (9.1) Funding of the amounts due in current and future
19 years under a qualified prepayment agreement.

20 (10) Any combination of any or all of the foregoing as
21 any or all of the above may be designated as a project by the
22 governing body for the financing of which it desires to incur
23 debt.

24 (11) Any deficit to be funded by bonds or notes as
25 provided in this subpart or the creation of a revolving fund
26 for specific improvements.

27 (12) Where a local government unit has adopted a capital
28 budget, any unfunded portion of the capital budget selected
29 by ordinance for current funding.

30 "Qualified interest rate management agreement." An agreement

1 entered into by a local government unit in accordance with, and
2 fulfilling the requirements of section 8201.1 (relating to
3 qualified interest rate management agreements), which agreement
4 in the judgment of the local government unit is designed to
5 manage interest rate risk or interest cost of the local
6 government unit on any debt a local government unit is
7 authorized to incur under this subpart, including, but not
8 limited to, swaps, interest rate caps, collars, corridors,
9 ceiling and floor agreements, forward agreements, float
10 agreements and other similar arrangements which, in the judgment
11 of the local government unit, will assist the local government
12 unit in managing the interest rate risk or interest cost of the
13 local government unit.

14 "Qualified prepayment agreement." Any agreement entered into
15 by a local government unit in accordance with, and fulfilling
16 the requirements of section 8201.2 (relating to qualified
17 prepayment agreements), the term of which is more than one year
18 but not more than five years entered into by a local government
19 unit for supplies, services, utilities, insurance premiums,
20 reserves for self-insurance, including those established
21 pursuant to 42 Pa.C.S. § 8564 (relating to liability insurance
22 and self-insurance) or any other obligation not evidencing the
23 acquisition of capital assets.

24 * * *

25 Section 2. The heading of section 8005 of Title 53 is
26 amended and the section is amended by adding subsections to
27 read:

28 § 8005. Classification and authority to [issue bonds and
29 notes.] enter into qualified prepayment agreements
30 and to enter into and perform qualified interest rate

1 management agreements.

2 * * *

3 (e) Authority to enter into qualified prepayment
4 agreements.--Notwithstanding any other law, a local government
5 unit may enter into a qualified prepayment agreement by
6 ordinance advertised under section 8003(a) (relating to
7 advertisement and effectiveness of ordinances). The obligations
8 of the local government unit under the qualified prepayment
9 agreement shall be enforceable against the local government unit
10 in accordance with the terms of the qualified prepayment
11 agreement.

12 (f) Authority to enter into and perform qualified interest
13 rate management agreements.--Notwithstanding any other law, a
14 local government unit may enter into a qualified interest rate
15 management agreement in accordance with this subpart and the
16 obligations of the local government unit under the qualified
17 interest rate management agreement shall be enforceable against
18 it in accordance with the terms thereof.

19 Section 3. Title 53 is amended by adding sections to read:

20 § 8102.1. Qualified interest rate management agreements.

21 (a) General rule.--Notwithstanding any other law to the
22 contrary, a local government unit may negotiate and enter into
23 qualified interest rate management agreements consistent with
24 the provisions of this section. The local government unit shall
25 authorize and award each qualified interest rate management
26 agreement by ordinance advertised under section 8003(a)
27 (relating to advertisement and effectiveness of ordinances).

28 (b) Contents of ordinance.--

29 (1) Notwithstanding any other provision of this subpart
30 to the contrary, an ordinance under subsection (a) shall be

1 sufficient if it specifies all of the following:

2 (i) The principal amount of each identified note,
3 including a tax anticipation note, or bond, or the
4 portion thereof, issued under this subpart to which the
5 agreement relates.

6 (ii) The anticipated term of the agreement.

7 (iii) The maximum annual interest rate that the
8 local government unit will pay under the agreement.

9 (2) The ordinance must contain all of the following:

10 (i) A covenant to:

11 (A) Include in its budget for each fiscal year
12 the net annual amounts anticipated for that fiscal
13 year to be paid under the agreement, including a
14 covenant to include any termination payment or
15 similar payment for a qualified interest rate
16 management agreement in its current budget at any
17 time during a fiscal year or in a budget adopted in
18 any future fiscal year.

19 (B) Appropriate in each fiscal year, from its
20 general or, if applicable, specially pledged
21 revenues, money for the payment of the net amounts
22 under clause (A) anticipated to be due in that fiscal
23 year.

24 (ii) A covenant to pledge its full faith, credit and
25 taxing power or special revenues.

26 (iii) An interest rate management plan.

27 (c) Private sale.--The local government unit shall establish
28 a process for qualifying contracting parties before entering
29 into a qualified interest rate management agreement. A qualified
30 interest rate management agreement may be entered into a private

1 sale by negotiation, if the local government unit shall have
2 obtained an independent finding that its financial terms and
3 conditions are fair and reasonable to the local government unit
4 as of the date of its execution.

5 (d) Remedies for default under a qualified interest rate
6 management agreement.--

7 (1) If a local government unit fails or refuses to
8 budget for any fiscal year amounts due in that year pursuant
9 to the provisions of a qualified interest rate management
10 agreement under subsection (b)(2)(i)(A), then at the suit of
11 the counterparty to the agreement, the court of common pleas
12 shall, after a hearing held upon such notice to the local
13 government unit as the court may direct and upon a finding of
14 such failure or neglect, by order of mandamus, require the
15 treasurer of the local government unit to pay such amounts
16 due to the other party to the agreement out of the first tax
17 moneys or other available revenues or moneys thereafter
18 received in the fiscal year by the local governmental unit.
19 Any priority on available revenues or moneys accorded to a
20 separate sinking fund for tax anticipation notes under the
21 authority of section 8125 (relating to security for tax
22 anticipation notes and sinking fund) or for any bonds issued
23 under this chapter shall not be affected by this provision
24 until the sum on deposit in each sinking fund equals the
25 moneys that should have been budgeted or appropriated for
26 each series.

27 (2) If a local unit fails or neglects to pay any amount
28 due under a qualified interest rate management agreement as
29 the same becomes due and payable, and the failure continues
30 for 30 days, the counterparty to the qualified interest rate

1 management agreement may, subject to the priorities under
2 section 8125 and to any limitations upon individual rights of
3 action, obtain a judgment in the court of common pleas. The
4 judgment recovered shall have an appropriate priority upon
5 the moneys next coming into the treasury of the local
6 government unit and shall be a judgment upon which funding
7 bonds may be issued pursuant to Subchapter B (relating to tax
8 anticipation notes and funding debt).

9 (3) In all cases where the board of directors of any
10 school district fails to pay or to provide for the payment of
11 periodic scheduled amounts and, at the time due, any
12 termination payment, pursuant to the provisions of a
13 qualified interest rate management agreement, and upon notice
14 to the Secretary of Education by any party to a qualified
15 interest rate management agreement, the Secretary of
16 Education shall notify the department and such board of
17 school directors and, if the secretary finds that such
18 amounts payable by the school district have not been paid as
19 and when due, the Secretary of Education shall withhold out
20 of any State appropriation due such school district an amount
21 equal to such amounts due pursuant to the provisions of the
22 qualified interest rate management agreement and shall pay
23 over the amount so withheld to the party to the qualified
24 interest rate management agreement to whom such amounts are
25 due and owing.

26 § 8102.2. Qualified prepayment agreements.

27 (a) General rule.--Notwithstanding any other law to the
28 contrary, a local government unit may negotiate and enter into
29 qualified prepayment agreements consistent with the provisions
30 of this section. The local government unit shall authorize and

1 award each qualified prepayment agreement by ordinance
2 advertised under section 8003(a) (relating to advertisement and
3 effectiveness of ordinances).

4 (b) Contents of ordinance.--Notwithstanding any other
5 provision of this subpart to the contrary, an ordinance under
6 subsection (a) shall be sufficient if it contains all of the
7 following:

8 (1) The terms of the qualified prepayment agreement.

9 (2) The debt management plan.

10 Section 4. Section 8129 of Title 53 is amended to read:

11 § 8129. Scope of unfunded debt.

12 For the purpose of this subchapter, "unfunded debt" means
13 obligations of the same or one or more prior years incurred for
14 current expenses, including tax anticipation notes and payments,
15 including termination payments, required to be made under
16 qualified interest rate management agreements, due and owing or
17 judgments against the local government unit entered by a court
18 after adversary proceedings, including a judgment under section
19 8102.1(b)(2)(i) (relating to qualified interest rate management
20 agreements), for the payment of either of which category the
21 taxes and other revenues remaining to be collected in the fiscal
22 year and funds on hand will not be sufficient without a
23 curtailment of municipal services to an extent endangering the
24 health or safety of the public or proper public education, and
25 the local government unit either may not legally levy a
26 sufficient tax for the balance of the fiscal year, or a
27 sufficient tax, if legally leviable, would not be in the public
28 interest. Unfunded debt does not, however, include debt incurred
29 under this subpart or obligations in respect of a project or
30 part of a project as incurred in respect of the cost of a

1 project.

2 Section 5. Section 8142(a)(2) of Title 53 is amended by
3 adding a subparagraph to read:

4 § 8142. Limitations on stated maturity dates.

5 (a) General rule.--No bonds or notes shall be issued with a
6 stated maturity date exceeding the sooner to occur of:

7 * * *

8 (2) * * *

9 (v) Where a project consists of the funding of all
10 or a portion of the amounts due under a qualified
11 prepayment agreement, the useful life shall be deemed to
12 be no longer than five years.

13 * * *

14 Section 6. Section 8144 of Title 53 is amended to read:

15 § 8144. Number of interest rates.

16 A series of bonds or notes may have any number of interest
17 rates or yields, subject to any limitation on such number fixed
18 by the governing body of the issuing local government unit, but,
19 unless further limited by the issuing local government unit in
20 the official notice of sale, no fixed interest rate or yield for
21 any stated maturity date in the last two-thirds of the period of
22 the series may be less than that stated for the immediately
23 preceding year which falls within the last two-thirds period.

24 Section 7. Section 8242(a) of Title 53 is amended by adding
25 a paragraph to read:

26 § 8242. Treatment of costs upon refunding.

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

30 * * *

1 (2.1) any funds borrowed in order to pay any termination
2 payment required to be paid under a qualified interest rate
3 management agreement, the notional amount of which was
4 identified as corresponding to all or any portion of any note
5 or bond being refunded;

6 * * *

7 Section 8. Title 53 is amended by adding a section to read:
8 § 8272. Notice to the department; retention of record by the
9 department.

10 (a) Notice to the department.--The local government unit
11 shall file with the department certified copies of any ordinance
12 authorizing a qualified interest rate management agreement,
13 including any appendices to the resolution, 15 days following
14 adoption. No approval by the department shall be required of any
15 filing under this section.

16 (b) Records of the department.--The department shall keep
17 copies of all documents filed with the department pursuant to
18 this section so long as a qualified interest rate management
19 agreement shall be in effect. All documents filed with the
20 department pursuant to this section shall be public records
21 available for examination by any citizen of this Commonwealth,
22 any party to the qualified interest rate management agreement or
23 any bondholders or noteholders, including holders of tax
24 anticipation notes, of the local government unit filing any
25 document pursuant to this section.

26 Section 9. This act shall take effect immediately.