

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, YOUNGBLOOD AND
WHEATLEY, APRIL 11, 2003

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 23, 2003

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions, for
3 scope of unfunded debt, for number of interest rates, for
4 treatment of debt costs upon refunding; and providing for
5 interest rate risk and interest cost management.

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

8 Section 1. The definition of "debt" in section 8002(a) of
9 Title 53 of the Pennsylvania Consolidated Statutes is amended
10 and subsection (c) is 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, except the following:

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

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

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

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

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

28 * * *

29 (c) Other definitions.--Subject to additional definitions
30 contained in subsequent provisions of this subpart which are

1 applicable to specific provisions of this subpart, the following
2 words and phrases when used in this subpart shall have the
3 meanings given to them in this section unless the context
4 clearly indicates otherwise:

5 * * *

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

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

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

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

1 (3) A schedule listing all consulting, advisory,
2 brokerage or similar fees, paid or payable by the local
3 government unit in connection with the qualified interest
4 rate management agreement, and a schedule of any finder's
5 fees, consulting fees, or brokerage fees, paid or payable by
6 the other party in connection with the qualified interest
7 rate management agreement.

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

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

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

28 (7) The local government unit's plan to monitor interest
29 rate risk, basis risk, termination risk, credit risk, market-
30 access risk and other risks. This paragraph includes the

1 valuation of the market or termination value of all
2 outstanding qualified interest rate management agreements.

3 * * *

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

19 * * *

20 Section 2. Sections 8129 and 8144 of Title 53 are amended to
21 read:

22 § 8129. Scope of unfunded debt.

23 For the purpose of this subchapter, "unfunded debt" means
24 obligations of the same or one or more prior years incurred for
25 current expenses, including tax anticipation notes and payments,
26 including termination payments, required to be made under
27 qualified interest rate management agreements, due and owing or
28 judgments against the local government unit entered by a court
29 after adversary proceedings, including a judgment under section
30 8283(b)(2)(i) (relating to remedies), for the payment of either

1 of which category the taxes and other revenues remaining to be
2 collected in the fiscal year and funds on hand will not be
3 sufficient without a curtailment of municipal services to an
4 extent endangering the health or safety of the public or proper
5 public education, and the local government unit either may not
6 legally levy a sufficient tax for the balance of the fiscal
7 year, or a sufficient tax, if legally leviable, would not be in
8 the public interest. Unfunded debt does not, however, include
9 debt incurred under this subpart or obligations in respect of a
10 project or part of a project as incurred in respect of the cost
11 of a project.

12 § 8144. Number of interest rates.

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

21 Section 3. Section 8242(a) of Title 53 is amended by adding
22 a paragraph to read:

23 § 8242. Treatment of costs upon refunding.

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

27 * * *

28 (2.1) any funds borrowed in order to pay any termination
29 payment required to be paid under a qualified interest rate
30 management agreement in which the notional amount is

1 identified as corresponding to all or any portion of the bond
2 or note being refunded;

3 * * *

4 Section 4. Chapter 82 of Title 53 is amended by adding a
5 subchapter to read:

6 SUBCHAPTER F

7 INTEREST RATE RISK AND INTEREST

8 COST MANAGEMENT

9 Sec.

10 8281. Qualified interest rate management agreements.

11 8282. Covenant to pay amounts due under qualified interest
12 rate management agreements.

13 8283. Remedies.

14 8284. Notice and retention of records.

15 8285. Financial reporting.

16 § 8281. Qualified interest rate management agreements.

17 (a) General rule.--

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

23 (2) The local government unit must authorize and award
24 by resolution each qualified interest rate management
25 agreement or any confirmation of a transaction. The
26 resolution is subject to section 8003(a) and (b) (relating to
27 advertisement and effectiveness of ordinances) but may be
28 valid and effective for all purposes immediately upon
29 adoption or as otherwise provided in the resolution.

30 (3) A local government unit has the power to contract

1 for insurance covering the risks of nonpayment of amounts due
2 under qualified interest rate management agreements.

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

7 (b) Requirements for resolution.--The resolution authorizing
8 and awarding a qualified interest rate management agreement, or
9 authorizing a transaction under the agreement must include in
10 the resolution or as an appendix to the resolution all of the
11 following:

12 (1) A copy of the qualified interest rate management
13 agreement or confirmation of the transaction under the
14 qualified interest rate management agreement in substantially
15 the form to be executed pursuant to the resolution.

16 (2) The interest rate management plan meeting the
17 requirements under this subpart:

18 (i) adopted by the local government unit; or

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

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

29 (c) Contents of qualified interest rate management
30 agreements.--In addition to other provisions approved by the

1 local government unit, a qualified interest rate management
2 agreement must contain all of the following:

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

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

15 (3) The term of any qualified interest rate management
16 agreement, which must not exceed the latest maturity date of
17 the bonds or notes referenced in the qualified interest rate
18 management agreement.

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

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

24 (6) A provision that the maximum net payments by fiscal
25 year of a local government unit shall not exceed the maximum
26 interest rate specified in the qualified interest rate
27 management agreement for:

28 (i) periodic scheduled payments, not including any
29 termination payments, due under the qualified interest
30 rate management agreement; and

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

3 (7) The source of payment of the payment obligations of
4 the local government unit, which must be either general
5 revenues or revenues specifically identified in the
6 agreement.

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

9 (9) A provision that periodic scheduled payments due
10 under the qualified interest rate management agreement and
11 debt service due on the related bonds or notes or payments
12 due under the related instrument evidencing lease rental debt
13 or guaranty of the local government unit shall be senior in
14 right and priority of payment to termination payments due
15 under the qualified interest rate management agreement.

16 (d) Other provisions of the qualified interest rate
17 management agreement.--The qualified interest rate management
18 agreement may include:

19 (1) A covenant to include any termination payment or
20 similar payment for a qualified interest rate management
21 agreement in its current budget at any time during a fiscal
22 year or in a budget adopted in a future fiscal year.

23 (2) A provision that the following shall be equally and
24 ratably payable and secured under the applicable covenants
25 authorized in section 8282:

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

28 (ii) Any of the following to which the agreement
29 relates:

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

1 (B) payment under an instrument evidencing lease
2 rental debt; or

3 (C) payment under a guaranty of the local
4 government unit.

5 (3) A provision that the qualified interest rate
6 management agreement may be terminated at the option of the
7 local government unit without cause but that the qualified
8 interest rate management agreement may not be terminated at
9 the option of the other party to the qualified interest rate
10 management agreement without cause.

11 (e) Award of qualified interest rate management
12 agreements.--

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

16 (2) The local government unit shall establish
17 qualifications for other parties before entering into a
18 qualified interest rate management agreement. The
19 qualifications shall include a rating for the other party of
20 at least the third highest rating category from a nationally
21 recognized rating agency.

22 (3) A qualified interest rate management agreement must
23 be awarded by public sale, private sale by negotiation or
24 private sale by invitation.

25 (4) The local government unit shall select the qualified
26 interest rate management agreement which the local government
27 unit determines is in its best financial interest. The
28 qualified interest rate management agreement selected must
29 contain financial terms and conditions which in the opinion
30 of the independent financial advisor to the local government

1 unit are fair and reasonable to the local government unit as
2 of the date of award.

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

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

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

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

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

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

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

27 (b) Pledge.--

28 (1) Except as set forth in paragraph (2), the local
29 government unit may pledge its full faith, credit and taxing
30 power for the budgeting, appropriation and payment of

1 periodic scheduled payments due under a qualified interest
2 rate management agreement.

3 (2) A local government unit may not make a pledge under
4 paragraph (1) if the payment obligations of the local
5 government unit under the qualified interest rate management
6 agreement are limited as to payment to specified revenues of
7 the local government unit.

8 (c) Security interest.--If the periodic scheduled payment
9 obligations of the local government unit are specified in the
10 qualified interest rate MANAGEMENT AGREEMENT to be made from ←
11 specified revenues of the local government unit, the local
12 government unit may include in the qualified interest rate
13 management agreement a covenant granting a security interest in
14 those revenues to secure its periodic scheduled payment
15 obligations under the agreement. The security interest shall be
16 perfected under section 8147 (relating to pledge of revenues).
17 § 8283. Remedies.

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

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

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

25 (ii) payable from the general revenues of the local
26 government unit.

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

29 (i) The other party to the interest rate management
30 agreement may bring an enforcement action in a court of

1 common pleas.

2 (ii) After a hearing held upon notice to the local
3 government unit as the court may direct, if the court
4 finds a failure or refusal under paragraph (1), the court
5 may, by order of mandamus, require the treasurer of the
6 local government unit to pay to the other party out of
7 the first tax money or other available revenue or money
8 thereafter received in the fiscal year by the treasurer
9 the periodic scheduled payments due pursuant to the
10 provisions of the qualified interest rate management
11 agreement. The order shall be subject to section
12 8281(c)(8) (relating qualified interest rate management
13 agreements).

14 (iii) Any priority on incoming tax money accorded to
15 a separate sinking fund for tax anticipation notes under
16 the authority of section 8125 (relating to security for
17 tax anticipation notes and sinking fund) shall not be
18 affected by an order under subparagraph (ii) until the
19 sum on deposit in each sinking fund equals the money
20 which should have been budgeted or appropriated for each
21 series.

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

24 (1) This subsection applies if:

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

28 (ii) the failure continues for 30 days.

29 (2) If there is a failure under paragraph (1), the other
30 party to the qualified interest rate management agreement may

1 bring an action in a court of common pleas to recover the
2 amount due. This paragraph is subject to:

3 (i) the priorities under sections 8125 and
4 8281(c)(8); and

5 (ii) any limitations upon rights of action properly
6 provided in the qualified interest rate management
7 agreement.

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

9 (i) have an appropriate priority upon the money next
10 coming into the treasury of the local government unit;
11 and

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

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

16 (1) This subsection applies if a board of directors of a
17 school district fails to pay or to provide for the payment of
18 periodic scheduled payments, not including any termination
19 payments, due pursuant to the provisions of a qualified
20 interest rate management agreement.

21 (2) A party to a qualified interest rate management
22 agreement must notify the Secretary of Education of a failure
23 under paragraph (1).

24 (3) Upon notice under paragraph (2), the following
25 apply:

26 (i) The secretary shall notify the Department of
27 Community and Economic Development and the offending
28 board of school directors.

29 (ii) If the secretary finds that the amount due and
30 payable by the school district has not been paid, the

1 secretary shall withhold out of any State appropriation
2 due the school district an amount equal to the amount due
3 pursuant to the qualified interest rate management
4 agreement and shall pay over the amount so withheld to
5 the party to the qualified interest rate management
6 agreement to whom the amount is due.

7 § 8284. Notice and retention of records.

8 (a) Notice.--

9 (1) The local government unit shall file with the
10 Department of Community and Economic Development certified
11 copies of a resolution authorizing a qualified interest rate
12 management agreement, including any appendix to the
13 resolution, 15 days following adoption.

14 (2) If the maximum net payments by fiscal year for
15 periodic scheduled payments of the local government unit, not
16 including any termination payments, and interest on the bonds
17 or notes to which the qualified interest rate management
18 agreement relates, exceed the amount of interest approved in
19 proceedings of the local government unit with respect to such
20 bonds or notes filed with and approved by the department, the
21 local government unit shall adopt an amendment to the
22 ordinance or resolution authorizing such bonds or notes
23 reflecting such increase. The amendment shall be advertised
24 and effective as provided in section 8003 (relating to
25 advertisement and effectiveness of ordinances), and filed
26 with the department. No approval by the department or filing
27 fee by the local government unit shall be required for any
28 filing under this subsection.

29 (b) Records.--The department shall keep copies of all
30 documents filed with the department under this section as long

1 as a qualified interest rate management agreement is in effect.
2 Documents filed with the department under this section are
3 public records available for examination by any citizen of this
4 Commonwealth; any party to the qualified interest rate
5 management agreement; or any bondholder or noteholder, including
6 holders of tax anticipation notes, of the local government unit
7 filing any document pursuant to this section.

8 § 8285. Financial reporting.

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

15 Section 5. This act shall take effect immediately.