

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 903 Session of 2013

INTRODUCED BY FOLMER, TEPLITZ, EICHELBERGER, BLAKE, BOSCOLA, BROWNE, YUDICHAK, WOZNIAK AND SOLOBAY, JUNE 7, 2013

AS AMENDED ON THIRD CONSIDERATION, JANUARY 28, 2014

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, for the <--
4 offense of knowingly participating in an ultra vires act of
5 an authority and for the offense of knowingly filing
6 materially false or misleading reports or certifications for
7 an authority; and, in indebtedness and borrowing, further
8 providing for definitions; and expanding the scope of
9 provisions relating to interest rate risk and interest cost
10 management to include first class counties and cities and
11 authorities.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Title 53 of the Pennsylvania Consolidated
15 Statutes is amended by adding sections A SECTION to read: <--

16 § 5608.1. Interest rate risk and interest rate cost management.

17 Notwithstanding any other provision of this chapter,
18 municipal authorities shall be subject to the provisions of
19 Subchapter F of Chapter 82 (relating to interest rate risk and
20 interest cost management).

21 § 5624. Knowingly participating in an ultra vires act of an <--
22 authority.

1 ~~(a) General rule. Any officer or any member of the~~
2 ~~governing body of any authority or any member of a law firm or a~~
3 ~~financial advisor firm who assists an authority in performing an~~
4 ~~ultra vires act commits a misdemeanor of the second degree and~~
5 ~~shall, upon conviction, be sentenced to pay a fine of not more~~
6 ~~than \$5,000 or to imprisonment for not more than two years, or~~
7 ~~both.~~

8 ~~(b) Prohibition. A law firm or financial advisor firm which~~
9 ~~has had a member convicted under subsection (a) shall be~~
10 ~~prohibited for two years from assisting an authority with or~~
11 ~~providing advice to an authority for any activity under this~~
12 ~~chapter.~~

13 ~~(c) Definitions. As used in this section, the following~~
14 ~~words and phrases shall have the meanings given to them in this~~
15 ~~subsection unless the context clearly indicates otherwise:~~

16 ~~"Financial advisor." A person, firm or other entity~~
17 ~~experienced in various aspects of debt and financial~~
18 ~~transactions who is retained by a local government unit to~~
19 ~~advise it with respect to structuring or repaying debt. The term~~
20 ~~does not include a lender, underwriter or other entity~~
21 ~~purchasing the bonds or notes of a local government unit.~~

22 ~~"Ultra vires act." An act that a reasonable person would~~
23 ~~know the municipal authority is without statutory authority or~~
24 ~~power to perform. The reasonable person shall have comparable~~
25 ~~education, experience and information to the person assisting~~
26 ~~the municipal authority in performing the act.~~

27 ~~§ 5625. Knowingly filing materially false or misleading reports~~
28 ~~or certifications for an authority.~~

29 ~~(a) General rule. Any officer or any member of the~~
30 ~~governing body of any authority or any lawyer, financial~~

1 ~~advisor, engineer, architect or any other individual who~~
2 ~~knowingly files a materially false or misleading report or~~
3 ~~certification with the department commits a misdemeanor of the~~
4 ~~second degree and shall, upon conviction, be sentenced to pay a~~
5 ~~fine of not more than \$5,000 or to imprisonment for not more~~
6 ~~than two years, or both.~~

7 ~~(b) Prohibition. The company or firm having a member or~~
8 ~~employee convicted under subsection (a) shall be prohibited for~~
9 ~~two years from assisting an authority with or providing advice~~
10 ~~to an authority for any activity under this chapter.~~

11 ~~(c) Definition. As used in this section, the term~~
12 ~~"financial advisor" means a person, firm or other entity~~
13 ~~experienced in various aspects of debt and financial~~
14 ~~transactions who is retained by a local government unit to~~
15 ~~advise it with respect to structuring or repaying debt. The term~~
16 ~~does not include a lender, underwriter or other entity~~
17 ~~purchasing the bonds or notes of a local government unit.~~

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

21 § 8002. Definitions.

22 * * *

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

29 * * *

30 "Interest rate management plan." A written plan prepared or

1 reviewed by an independent financial advisor with respect to a
2 qualified interest rate management agreement, which includes:

3 (1) A schedule listing the amount of debt outstanding
4 for each outstanding debt issue of the local government unit
5 and the expected annual debt service on that debt. In the
6 case of variable rate debt, the schedule shall set forth the
7 estimated annual debt service thereon and annual debt service
8 on the debt calculated at the maximum rate specified for the
9 variable rate debt.

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

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

14 (i) In dollars, all consulting, advisory, brokerage
15 or similar fees, paid or payable by the local government
16 unit in connection with the qualified interest rate
17 management agreement, and [a schedule of] any finder's
18 fees, consulting fees or brokerage fees, paid or payable
19 by the other party in connection with the qualified
20 interest rate management agreement.

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

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

29 (5) An analysis of the interest rate risk, basis risk,
30 termination risk, credit risk, market-access risk and other

1 risks of entering into the qualified interest rate management
2 agreement. This paragraph includes schedules of the estimated
3 and maximum scheduled periodic payments which would be due
4 under the qualified interest rate management agreement.

5 (6) An analysis of the interest rate risk, basis risk,
6 termination risk, credit risk, market-access risk and other
7 risks to the local government unit of the net payments due
8 for all debt outstanding and all qualified interest rate
9 management agreements of the local government unit. This
10 paragraph includes schedules of the estimated and maximum net
11 payments of total debt service and scheduled, periodic, net
12 payments, which would be due under all of the qualified
13 interest rate management agreements.

14 (7) The local government unit's plan to monitor interest
15 rate risk, basis risk, termination risk, credit risk, market-
16 access risk and other risks. This paragraph includes the
17 valuation of the market or termination value of all
18 outstanding qualified interest rate management agreements.

19 * * *

20 "Local government unit." A county, county institution
21 district, city, borough, incorporated town, township, school
22 district or any similar, general or limited purpose unit of
23 local government or any unit created by joint action of two or
24 more local government units which is authorized to be created by
25 law. [The] Except as otherwise provided under Subchapter F of
26 Chapter 82 (relating to interest rate risk and interest cost
27 management) the term does not include a city or county of the
28 first class, an authority as defined in this section or any unit
29 created by joint action of two or more local government units
30 which have not been granted by statute the power to issue bonds.

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

5 * * *

6 Section 3. Section ~~8281(b)(2)~~ 8281(A)(1), (B)(2) and (c)(4) <--
7 of Title 53 are amended, subsections (a) and (c) are amended by
8 adding paragraphs and the section is amended by adding a
9 subsection to 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 the confirmation associated with the
27 ONE YEAR AFTER THE EFFECTIVE DATE OF THE qualified interest <--
28 rate management 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
2 substantially similar to the index or basis used for <--
3 calculating the interest due on the associated debt of the
4 local government unit. A FIXED OR VARIABLE RATE OF INTEREST <--
5 DETERMINED USING EITHER AN INDEX PUBLISHED BY THE SECURITIES
6 INDUSTRY AND FINANCIAL MARKETS ASSOCIATION OR AN INDEX THAT
7 REFERENCES THE LONDON INTERBANK OFFERED RATE.

8 (8) At the time a qualified interest rate management
9 agreement is entered into, the sum of the notional amount
10 thereof, taking into account any netting of offsetting <--
11 transactions, and all other qualified interest rate
12 management agreements entered into or guaranteed, and then in
13 effect of a local government unit, shall not exceed 50% of
14 the total principal amount of the aggregate nonelectoral debt
15 plus lease rental debt capacity of the local government unit <--
16 then outstanding. This paragraph shall not apply to a <--
17 regional financial authority that is primarily engaged in
18 lending to local government units.

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

25 (10) The scheduled expiration date of a qualified
26 interest rate management agreement shall not exceed ten years
27 from the date of the related confirmation unless the
28 qualified interest rate management agreement contains a
29 provision allowing the local government unit to terminate the
30 same at any time after ten years from the date of the related

1 confirmation without making a termination payment.

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

7 * * *

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

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

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

21 * * *

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

26 * * *

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

30 * * *

1 (10) A certification by the other party to the qualified
2 interest rate management agreement in which the other party
3 does all of the following:

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

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

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

14 ~~(iv) Believes that the qualified interest rate~~ <--
15 ~~management agreement will enable the local government~~
16 ~~unit to manage interest rate risk or interest cost of the~~
17 ~~local government unit on debt of the local government~~
18 ~~unit.~~

19 ~~(v) Acknowledges that it is the policy of the~~
20 ~~Commonwealth that local government units not enter into~~
21 ~~qualified interest rate management agreements that~~
22 ~~involve unreasonable speculation.~~

23 ~~(vi) Believes that the qualified interest rate~~
24 ~~management agreement does not involve unreasonable~~
25 ~~speculation.~~

26 (IV) CERTIFIES THAT THE INFORMATION PROVIDED TO THE <--
27 LOCAL GOVERNMENT UNIT, WHETHER IN SOLICITATIONS OR IN
28 RESPONSE TO REQUESTS FOR INFORMATION FROM THE LOCAL
29 GOVERNMENT UNIT AS TO POTENTIAL POSITIVE OR NEGATIVE
30 IMPACTS OF ENTERING INTO THE QUALIFIED INTEREST RATE

1 MANAGEMENT AGREEMENT, IS MATHEMATICALLY CORRECT AND
2 CONFORMS TO TITLE VII OF THE DODD-FRANK WALL STREET
3 REFORM AND CONSUMER FINANCIAL PROTECTION ACT (PUBLIC LAW
4 111-203, 124 STAT. 1641).

5 (V) CERTIFIES THAT IT ACTED IN GOOD FAITH AND MADE
6 FULL AND FAIR DISCLOSURE OF THE MATERIAL FACTS AND ANY
7 CONFLICTS OF INTEREST REGARDING THE QUALIFIED INTEREST
8 MANAGEMENT AGREEMENT.

9 (VI) BELIEVES THAT THE INTEREST RATE MANAGEMENT
10 AGREEMENT IS CONSISTENT WITH THE POLICY OF THE
11 COMMONWEALTH THAT A LOCAL GOVERNMENT UNIT NOT ENTER INTO
12 THE AGREEMENT IF IT INVOLVES UNREASONABLE SPECULATION.

13 (vii) Represents and warrants that its pricing of
14 the qualified interest rate management agreement is fair
15 and honest and in line with market standards.

16 ~~(viii) Acknowledges that when a local government~~ <--
17 ~~unit loses money on a qualified interest rate management~~
18 ~~agreement, it is the taxpayers of the local government~~
19 ~~unit that end up directly or indirectly paying for the~~
20 ~~losses.~~

21 (VIII) (RESERVED). <--

22 (ix) Acknowledges and agrees that it will notify the
23 department, in writing, promptly upon the payment to the
24 other party of a termination payment by the local
25 government unit, including the date and amount of the
26 payment and the identity of the qualified interest rate
27 management agreement under which the payment was made.

28 * * *

29 (f) Definition.--As used in this section, the term "local
30 government unit" has the same meaning as under section 8002

1 ~~(relating to definitions), except that the term includes a city <--~~
2 ~~or county of the first class and an authority.~~

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

5 § 8282. Covenant to pay amounts due under qualified interest
6 rate management agreements.

7 * * *

8 (d) Definition.--As used in this section, the term "local
9 government unit" has the same meaning as under section 8002
10 ~~(relating to definitions), except that the term includes a city <--~~
11 ~~or county of the first class and an authority.~~

12 § 8283. Remedies.

13 * * *

14 (d) Definition.--As used in this section, the term "local
15 government unit" has the same meaning as under section 8002
16 ~~(relating to definitions), except that the term includes a city <--~~
17 ~~or county of the first class and an authority.~~

18 § 8284. Notice and retention of records.

19 * * *

20 (c) 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 a city <--~~
23 ~~or county of the first class and an authority.~~

24 Section 5. Section 8285 of Title 53 is amended to read:

25 § 8285. Financial reporting.

26 (a) General rule.--A local government unit which has entered
27 into a qualified interest rate management agreement shall
28 include in its annual financial statements information with
29 respect to each qualified interest rate management agreement it
30 has authorized or entered into, including any information

1 required pursuant to any statement issued by the Governmental
2 Accounting Standards Board.

3 (B) QUARTERLY REPORT.--A LOCAL GOVERNMENT UNIT THAT <--
4 AUTHORIZES A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT SHALL
5 REPORT ON THE PERFORMANCE OF THE QUALIFIED INTEREST RATE
6 MANAGEMENT AGREEMENT QUARTERLY AT A PUBLIC MEETING. AT A
7 MINIMUM, THE REPORTING SHALL INCLUDE A CURRENT MARK TO MARKET
8 VALUATION OF THE AGREEMENT.

9 ~~(b)~~ (C) Definition.--As used in this section, the term <--
10 "local government unit" has the same meaning as under section
11 8002 (relating to definitions), except that the term includes a <--
12 city or county of the first class and an authority.

13 ~~Section 6. The amendment or addition of sections 5608.1,~~ <--
14 ~~8002(c), 8281, 8282, 8283, 8284 and 8285 of Title 53 shall apply~~
15 ~~to interest rate management agreements entered into on or after~~
16 ~~the effective date of this act.~~

17 SECTION 6. APPLICABILITY. <--

18 THE FOLLOWING SHALL APPLY:

19 (1) THIS ACT SHALL APPLY TO ALL INTEREST RATE MANAGEMENT
20 AGREEMENTS ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF
21 THIS ACT.

22 (2) THIS ACT SHALL NOT APPLY TO ANY AMENDMENT,
23 TERMINATION OR NOVATION OF AN INTEREST RATE MANAGEMENT
24 AGREEMENT WHERE THE INTEREST RATE MANAGEMENT AGREEMENT WAS
25 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS ACT AS LONG
26 AS THE TERM OF THE INTEREST RATE MANAGEMENT AGREEMENT IS NOT
27 EXTENDED.

28 Section 7. This act shall take effect in 60 days.