

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

AS AMENDED ON THIRD CONSIDERATION, JULY 11, 2016

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 MISCELLANEOUS PROVISIONS REGARDING indebtedness and <--
5 borrowing, further providing for definitions; and expanding <--
6 the scope of provisions relating to interest rate risk and
7 interest cost management to include authorities., FOR <--
8 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS AND FOR
9 FINANCIAL REPORTING AND PROVIDING FOR INTEREST RATE RISK AND
10 INTEREST COST MANAGEMENT IN FIRST CLASS CITIES AND COUNTIES;
11 AND MAKING EDITORIAL CHANGES.

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 a section to read:

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

17 Notwithstanding any other provision of this chapter or any
18 other law to the contrary, authorities, except an authority or a
19 municipal authority in existence on the effective date of this
20 section, formed by two or more local government units for the
21 purpose of providing loan programs for the benefit of local
22 government units and other authorities or municipal authorities

1 ~~shall be subject to the provisions of Subchapter F of Chapter 82~~
2 ~~(relating to interest 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 SECTION 1. THE DEFINITIONS OF "INDEPENDENT FINANCIAL <--
7 ADVISOR," "INTEREST RATE MANAGEMENT PLAN" AND "QUALIFIED
8 INTEREST RATE MANAGEMENT AGREEMENT" IN SECTION 8002(C) OF TITLE
9 53 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO
10 READ:

11 § 8002. Definitions.

12 * * *

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

19 * * *

20 "INDEPENDENT FINANCIAL ADVISOR." A PERSON OR ENTITY <--
21 EXPERIENCED IN THE FINANCIAL ASPECTS AND RISKS OF INTEREST RATE
22 MANAGEMENT AGREEMENTS WHO IS RETAINED BY A LOCAL GOVERNMENT UNIT
23 TO ADVISE THE LOCAL GOVERNMENT UNIT WITH RESPECT TO A QUALIFIED
24 INTEREST RATE MANAGEMENT AGREEMENT. THE INDEPENDENT FINANCIAL
25 ADVISOR MAY NOT BE THE OTHER PARTY OR AN AFFILIATE OR AGENT OF
26 THE OTHER PARTY ON A QUALIFIED INTEREST RATE MANAGEMENT
27 AGREEMENT WITH RESPECT TO WHICH THE INDEPENDENT FINANCIAL
28 ADVISOR IS ADVISING A LOCAL GOVERNMENT UNIT. FOR PURPOSES OF
29 [SECTIONS 8281(B)(2)] SECTION 8281.3(B)(2) AND (E)(5) (RELATING
30 TO QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS), THE

1 INDEPENDENT FINANCIAL ADVISOR MAY BE RETAINED BY A PUBLIC
2 AUTHORITY.

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

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

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

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

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

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

27 (4) A schedule listing the estimated and maximum
28 periodic scheduled payments to be paid by the local
29 government unit and to be received by the local government
30 unit from the other party in each year during the term of the

1 qualified interest rate management agreement.

2 (5) An analysis of the interest rate risk, basis risk,
3 termination risk, credit risk, market-access risk and other
4 risks of entering into the qualified interest rate management
5 agreement. This paragraph includes schedules of the estimated
6 and maximum scheduled periodic payments which would be due
7 under the qualified interest rate management agreement.

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

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

22 * * *

23 ~~"Local government unit." As follows:~~ <--

24 ~~(1) A county, county institution district, city,~~
25 ~~borough, incorporated town, township, school district or any~~
26 ~~similar, general or limited purpose unit of local government~~
27 ~~or any unit created by joint action of two or more local~~
28 ~~government units which is authorized to be created by law.~~

29 {The}

30 ~~(2) The term does not include a city or county of the~~

~~first class or an authority or a municipal authority in existence on the effective date of this paragraph, formed by two or more local government units for the purpose of providing loan programs for the benefit of local government units and other authorities or municipal authorities.~~

~~(3) Except as provided under paragraph (4), the term does not include [a city or county of the first class,] an authority as defined in this section or any unit created by joint action of two or more local government units which have not been granted by statute the power to issue bonds. [The term]~~

~~(4) Except as provided under paragraph (2), for the purposes of Subchapter F of Chapter 82 (relating to interest rate risk and interest cost management), the term shall include an authority.~~

~~(5) The term includes school districts of the first class presently operating under a home rule charter or home rule charter supplement, and the provisions of this subpart shall govern over inconsistent charter provisions.~~

~~***~~

~~Section 3. Section 8281(a)(1), (b)(2) and (c)(4) of Title 53 are amended and subsections (a) and (c) are amended by adding paragraphs to read:~~

~~§ 8281. Qualified interest rate management agreements.~~

~~(a) General rule.—~~

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

1 ~~only authorize a qualified interest rate management agreement~~
2 ~~under this subchapter.~~

3 * * *

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

8 ~~(6) Periodic scheduled payments on a qualified interest~~
9 ~~rate management agreement must commence not later than three~~
10 ~~years after the date of execution of any confirmation~~
11 ~~associated with the qualified interest rate management~~
12 ~~agreement.~~

13 ~~(7) The index or basis used for calculating the periodic~~
14 ~~scheduled payments receivable by the local government unit on~~
15 ~~a qualified interest rate management agreement shall be a~~
16 ~~fixed or variable rate of interest determined using either an~~
17 ~~index published by the Securities Industry and Financial~~
18 ~~Markets Association or an index that references the London~~
19 ~~Interbank Offered Rate. Periodic scheduled payments based~~
20 ~~upon a London InterBank Offered Rate index or other index are~~
21 ~~not permitted unless the interest rate on the associated debt~~
22 ~~is also based on the same index or the index is based on the~~
23 ~~same type of debt as the associated debt.~~

24 ~~(8) At the time a qualified interest rate management~~
25 ~~agreement is entered into, the sum of the notional amount~~
26 ~~thereof and all other qualified interest rate management~~
27 ~~agreements entered into or guaranteed, and then in effect of~~
28 ~~a local government unit, shall not exceed 50% of the total~~
29 ~~principal amount of the aggregate nonelectoral debt plus~~
30 ~~lease rental debt capacity of the local government unit then~~

1 outstanding.

2 ~~(9) Scheduled periodic payments and termination payments~~
3 ~~received by a local government unit on a qualified interest~~
4 ~~rate management agreement shall be deposited in a payment~~
5 ~~account to pay periodic swap payments or to pay principal and~~
6 ~~interest on the debt related to the qualified interest rate~~
7 ~~management agreement.~~

8 ~~(10) The scheduled expiration date of a qualified~~
9 ~~interest rate management agreement shall not exceed 10 years~~
10 ~~from the date of the related confirmation unless the~~
11 ~~qualified interest rate management agreement contains a~~
12 ~~provision allowing the local government unit to terminate the~~
13 ~~same at any time after 10 years from the date of the related~~
14 ~~confirmation without making a termination payment.~~

15 ~~(b) Requirements for resolution. The resolution authorizing~~
16 ~~and awarding a qualified interest rate management agreement or~~
17 ~~authorizing a transaction under the agreement must include in~~
18 ~~the resolution or as an appendix to the resolution all of the~~
19 ~~following:~~

20 * * *

21 ~~(2) The interest rate management plan meeting the~~
22 ~~requirements under this subpart:~~

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

26 ~~(ii) if the local government unit is incurring~~
27 ~~indebtedness under this chapter which has or will be~~
28 ~~issued to a public authority that has entered into or~~
29 ~~will enter into an interest rate management agreement~~
30 ~~meeting the requirements of a qualified interest rate~~

1 ~~management agreement under this subpart, [adopted]~~
2 ~~approved by that public authority not less than 10 days~~
3 ~~prior to the date of the adoption of the resolution.~~

4 * * *

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

9 * * *

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

13 * * *

14 ~~(10) A certification by the other party to the qualified~~
15 ~~interest rate management agreement in which the other party~~
16 ~~does all of the following:~~

17 ~~(i) Acknowledges and agrees that the local~~
18 ~~government unit which is entering into the qualified~~
19 ~~interest rate management agreement under this subpart is~~
20 ~~a political subdivision of the Commonwealth.~~

21 ~~(ii) Acknowledges that it has read this subpart.~~

22 ~~(iii) Acknowledges and agrees that a local~~
23 ~~government unit may only enter into a qualified interest~~
24 ~~rate management agreement to manage interest rate risk or~~
25 ~~interest cost of the local government unit on debt of the~~
26 ~~local government unit.~~

27 ~~(iv) Certifies that, in executing the transactions~~
28 ~~under the qualified interest rate management agreement,~~
29 ~~it has complied in all material aspects with the~~
30 ~~applicable rules and regulations of the Commodity Futures~~

~~Trading Commission, the Securities and Exchange
Commission and the Municipal Securities Rulemaking Board
to which it is subject.~~

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

~~(vi) Represents and warrants that the rate or rates
used to calculate amounts payable by the local government
unit pursuant to the qualified interest rate management
agreement is comparable to the rate or rates that it
would have quoted to receive from or pay to, as
applicable, a similarly situated counterparty to enter
into a reasonably comparable qualified interest rate
management agreement taking into full account the terms
and conditions of the qualified interest rate management
agreement.~~

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

~~* * *~~

"QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT." AN
AGREEMENT, INCLUDING A CONFIRMATION EVIDENCING A TRANSACTION
EFFECTED UNDER A MASTER AGREEMENT, ENTERED INTO BY A LOCAL
GOVERNMENT UNIT IN ACCORDANCE WITH AND FULFILLING THE
REQUIREMENTS OF SECTION [8281] 8281.3 (RELATING TO QUALIFIED
INTEREST RATE MANAGEMENT AGREEMENTS), WHICH AGREEMENT IN THE

<--

1 JUDGMENT OF THE LOCAL GOVERNMENT UNIT IS DESIGNED TO MANAGE
2 INTEREST RATE RISK OR INTEREST COST OF THE LOCAL GOVERNMENT UNIT
3 ON ANY DEBT A LOCAL GOVERNMENT UNIT IS AUTHORIZED TO INCUR UNDER
4 THIS SUBPART, INCLUDING, BUT NOT LIMITED TO, SWAPS, INTEREST
5 RATE CAPS, COLLARS, CORRIDORS, CEILING AND FLOOR AGREEMENTS,
6 FORWARD AGREEMENTS, FLOAT AGREEMENTS AND OTHER SIMILAR
7 ARRANGEMENTS WHICH IN THE JUDGMENT OF THE LOCAL GOVERNMENT UNIT
8 WILL ASSIST THE LOCAL GOVERNMENT UNIT IN MANAGING THE INTEREST
9 RATE RISK OR INTEREST COST OF THE LOCAL GOVERNMENT UNIT.

10 * * *

11 SECTION 2. SECTION 8281 OF TITLE 53 IS REPEALED:

12 [§ 8281. QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS.

13 (A) GENERAL RULE.--

14 (1) EXCEPT AS SET FORTH IN PARAGRAPH (4),
15 NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, A LOCAL
16 GOVERNMENT UNIT MAY NEGOTIATE AND ENTER INTO QUALIFIED
17 INTEREST RATE MANAGEMENT AGREEMENTS CONSISTENT WITH THE
18 PROVISIONS OF THIS SUBCHAPTER.

19 (2) THE LOCAL GOVERNMENT UNIT MUST AUTHORIZE AND AWARD
20 BY RESOLUTION EACH QUALIFIED INTEREST RATE MANAGEMENT
21 AGREEMENT OR ANY CONFIRMATION OF A TRANSACTION. THE
22 RESOLUTION IS SUBJECT TO SECTION 8003(A) AND (B) (RELATING TO
23 ADVERTISEMENT AND EFFECTIVENESS OF ORDINANCES) BUT MAY BE
24 VALID AND EFFECTIVE FOR ALL PURPOSES IMMEDIATELY UPON
25 ADOPTION OR AS OTHERWISE PROVIDED IN THE RESOLUTION.

26 (3) A LOCAL GOVERNMENT UNIT HAS THE POWER TO CONTRACT
27 FOR INSURANCE COVERING THE RISKS OF NONPAYMENT OF AMOUNTS DUE
28 UNDER QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS.

29 (4) THE AUTHORITY GRANTED IN THIS SUBCHAPTER SHALL NOT
30 APPLY TO ANY LOCAL GOVERNMENT UNIT WHICH HAS BEEN DECLARED

1 DISTRESSED BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC
2 DEVELOPMENT.

3 (B) REQUIREMENTS FOR RESOLUTION.--THE RESOLUTION AUTHORIZING
4 AND AWARDED A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT OR
5 AUTHORIZING A TRANSACTION UNDER THE AGREEMENT MUST INCLUDE IN
6 THE RESOLUTION OR AS AN APPENDIX TO THE RESOLUTION ALL OF THE
7 FOLLOWING:

8 (1) A COPY OF THE QUALIFIED INTEREST RATE MANAGEMENT
9 AGREEMENT OR CONFIRMATION OF THE TRANSACTION UNDER THE
10 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT IN SUBSTANTIALLY
11 THE FORM TO BE EXECUTED PURSUANT TO THE RESOLUTION.

12 (2) THE INTEREST RATE MANAGEMENT PLAN MEETING THE
13 REQUIREMENTS UNDER THIS SUBPART:

14 (I) ADOPTED BY THE LOCAL GOVERNMENT UNIT; OR

15 (II) IF THE LOCAL GOVERNMENT UNIT IS INCURRING
16 INDEBTEDNESS UNDER THIS CHAPTER WHICH HAS OR WILL BE
17 ISSUED TO A PUBLIC AUTHORITY THAT HAS ENTERED INTO OR
18 WILL ENTER INTO AN INTEREST RATE MANAGEMENT AGREEMENT
19 MEETING THE REQUIREMENTS OF A QUALIFIED INTEREST RATE
20 MANAGEMENT AGREEMENT UNDER THIS SUBPART, ADOPTED BY THAT
21 PUBLIC AUTHORITY.

22 (3) A STATEMENT OF THE MANNER OF THE AWARD OF THE
23 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT UNDER SUBSECTION
24 (E).

25 (C) CONTENTS OF QUALIFIED INTEREST RATE MANAGEMENT
26 AGREEMENTS.--IN ADDITION TO OTHER PROVISIONS APPROVED BY THE
27 LOCAL GOVERNMENT UNIT, A QUALIFIED INTEREST RATE MANAGEMENT
28 AGREEMENT MUST CONTAIN ALL OF THE FOLLOWING:

29 (1) THE COVENANT OF THE LOCAL GOVERNMENT UNIT TO MAKE
30 PAYMENTS REQUIRED BY THE QUALIFIED INTEREST RATE MANAGEMENT

1 AGREEMENT AND THE COVENANTS AUTHORIZED BY SECTION 8282
2 (RELATING TO COVENANT TO PAY AMOUNTS DUE UNDER QUALIFIED
3 INTEREST RATE MANAGEMENT AGREEMENTS) .

4 (2) THE NOTIONAL AMOUNT OF THE QUALIFIED INTEREST RATE
5 MANAGEMENT AGREEMENT AND THE PRINCIPAL AMOUNT OF BONDS OR
6 NOTES OR LEASE RENTAL DEBT, OR PORTIONS OF THE NOTIONAL OR
7 PRINCIPAL AMOUNTS, ISSUED OR TO BE ISSUED BY THE LOCAL
8 GOVERNMENT UNIT UNDER THIS SUBPART OR GUARANTEED BY THE LOCAL
9 GOVERNMENT UNIT UNDER THIS SUBPART, TO WHICH THE AGREEMENT
10 RELATES.

11 (3) THE TERM OF ANY QUALIFIED INTEREST RATE MANAGEMENT
12 AGREEMENT, WHICH MUST NOT EXCEED THE LATEST MATURITY DATE OF
13 THE BONDS OR NOTES REFERENCED IN THE QUALIFIED INTEREST RATE
14 MANAGEMENT AGREEMENT.

15 (4) A PROVISION REQUIRING THE TERMINATION OF THE
16 AGREEMENT IF ALL DEBT TO WHICH THE QUALIFIED INTEREST RATE
17 MANAGEMENT AGREEMENT RELATES IS NO LONGER OUTSTANDING.

18 (5) THE MAXIMUM ANNUAL INTEREST RATE WHICH THE LOCAL
19 GOVERNMENT UNIT MAY PAY THEREUNDER.

20 (6) A PROVISION THAT THE MAXIMUM NET PAYMENTS BY FISCAL
21 YEAR OF A LOCAL GOVERNMENT UNIT SHALL NOT EXCEED THE MAXIMUM
22 INTEREST RATE SPECIFIED IN THE QUALIFIED INTEREST RATE
23 MANAGEMENT AGREEMENT FOR:

24 (I) PERIODIC SCHEDULED PAYMENTS, NOT INCLUDING ANY
25 TERMINATION PAYMENTS, DUE UNDER THE QUALIFIED INTEREST
26 RATE MANAGEMENT AGREEMENT; AND

27 (II) THE INTEREST ON THE BONDS OR NOTES TO WHICH THE
28 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT RELATES.

29 (7) THE SOURCE OF PAYMENT OF THE PAYMENT OBLIGATIONS OF
30 THE LOCAL GOVERNMENT UNIT, WHICH MUST BE EITHER GENERAL

1 REVENUES OR REVENUES SPECIFICALLY IDENTIFIED IN THE
2 AGREEMENT.

3 (8) A PROVISION ADDRESSING THE ACTIONS TO BE TAKEN IF
4 THE CREDIT RATING OF THE OTHER PARTY CHANGES.

5 (9) A PROVISION THAT PERIODIC SCHEDULED PAYMENTS DUE
6 UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT AND
7 DEBT SERVICE DUE ON THE RELATED BONDS OR NOTES OR PAYMENTS
8 DUE UNDER THE RELATED INSTRUMENT EVIDENCING LEASE RENTAL DEBT
9 OR GUARANTY OF THE LOCAL GOVERNMENT UNIT SHALL BE SENIOR IN
10 RIGHT AND PRIORITY OF PAYMENT TO TERMINATION PAYMENTS DUE
11 UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT.

12 (D) OTHER PROVISIONS OF THE QUALIFIED INTEREST RATE
13 MANAGEMENT AGREEMENT.--THE QUALIFIED INTEREST RATE MANAGEMENT
14 AGREEMENT MAY INCLUDE:

15 (1) A COVENANT TO INCLUDE ANY TERMINATION PAYMENT OR
16 SIMILAR PAYMENT FOR A QUALIFIED INTEREST RATE MANAGEMENT
17 AGREEMENT IN ITS CURRENT BUDGET AT ANY TIME DURING A FISCAL
18 YEAR OR IN A BUDGET ADOPTED IN A FUTURE FISCAL YEAR.

19 (2) A PROVISION THAT THE FOLLOWING SHALL BE EQUALLY AND
20 RATABLY PAYABLE AND SECURED UNDER THE APPLICABLE COVENANTS
21 AUTHORIZED IN SECTION 8282:

22 (I) PERIODIC SCHEDULED PAYMENTS DUE UNDER THE
23 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; AND

24 (II) ANY OF THE FOLLOWING TO WHICH THE AGREEMENT
25 RELATES:

26 (A) THE DEBT SERVICE DUE ON THE BONDS OR NOTES;

27 (B) PAYMENT UNDER AN INSTRUMENT EVIDENCING LEASE
28 RENTAL DEBT; OR

29 (C) PAYMENT UNDER A GUARANTY OF THE LOCAL
30 GOVERNMENT UNIT.

1 (3) A PROVISION THAT THE QUALIFIED INTEREST RATE
2 MANAGEMENT AGREEMENT MAY BE TERMINATED AT THE OPTION OF THE
3 LOCAL GOVERNMENT UNIT WITHOUT CAUSE BUT THAT THE QUALIFIED
4 INTEREST RATE MANAGEMENT AGREEMENT MAY NOT BE TERMINATED AT
5 THE OPTION OF THE OTHER PARTY TO THE QUALIFIED INTEREST RATE
6 MANAGEMENT AGREEMENT WITHOUT CAUSE.

7 (E) AWARD OF QUALIFIED INTEREST RATE MANAGEMENT
8 AGREEMENTS.--

9 (1) THE LOCAL GOVERNMENT UNIT SHALL ESTABLISH A PROCESS
10 FOR SELECTING OTHER PARTIES BEFORE ENTERING INTO A QUALIFIED
11 INTEREST RATE MANAGEMENT AGREEMENT.

12 (2) THE LOCAL GOVERNMENT UNIT SHALL ESTABLISH
13 QUALIFICATIONS FOR OTHER PARTIES BEFORE ENTERING INTO A
14 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT. THE
15 QUALIFICATIONS SHALL INCLUDE A RATING FOR THE OTHER PARTY OF
16 AT LEAST THE THIRD HIGHEST RATING CATEGORY FROM A NATIONALLY
17 RECOGNIZED RATING AGENCY.

18 (3) A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT MUST
19 BE AWARDED BY PUBLIC SALE, PRIVATE SALE BY NEGOTIATION OR
20 PRIVATE SALE BY INVITATION.

21 (4) THE LOCAL GOVERNMENT UNIT SHALL SELECT THE QUALIFIED
22 INTEREST RATE MANAGEMENT AGREEMENT WHICH THE LOCAL GOVERNMENT
23 UNIT DETERMINES IS IN ITS BEST FINANCIAL INTEREST. THE
24 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT SELECTED MUST
25 CONTAIN FINANCIAL TERMS AND CONDITIONS WHICH IN THE OPINION
26 OF THE INDEPENDENT FINANCIAL ADVISOR TO THE LOCAL GOVERNMENT
27 UNIT ARE FAIR AND REASONABLE TO THE LOCAL GOVERNMENT UNIT AS
28 OF THE DATE OF AWARD.

29 (5) THE LOCAL GOVERNMENT UNIT MAY SATISFY THE
30 REQUIREMENTS OF PARAGRAPH (4) BY OBTAINING A FINDING FROM AN

1 INDEPENDENT FINANCIAL ADVISOR TO THE PUBLIC AUTHORITY THAT
2 THE FINANCIAL TERMS AND CONDITIONS OF THE AGREEMENT ARE FAIR
3 AND REASONABLE TO THE PUBLIC AUTHORITY AS OF THE DATE OF THE
4 AWARD IF ALL OF THE FOLLOWING APPLY:

5 (I) THE LOCAL GOVERNMENT UNIT IS INCURRING
6 INDEBTEDNESS UNDER THIS CHAPTER WHICH HAS OR WILL BE
7 ISSUED TO A PUBLIC AUTHORITY.

8 (II) IN CONNECTION WITH THE INCURRING OF DEBT UNDER
9 SUBPARAGRAPH (I), THE LOCAL GOVERNMENT UNIT WILL BECOME
10 OBLIGATED FOR ALL OR A PORTION OF THE PUBLIC AUTHORITY'S
11 COSTS UNDER AN INTEREST RATE MANAGEMENT AGREEMENT.]

12 SECTION 3. TITLE 53 IS AMENDED BY ADDING SECTIONS TO READ:

13 § 8281.1. DEFINITION.

14 AS USED IN THIS SUBCHAPTER, THE TERM "LOCAL GOVERNMENT UNIT"
15 MEANS:

16 (1) A COUNTY, CITY, BOROUGH, INCORPORATED TOWN,
17 TOWNSHIP, SCHOOL DISTRICT OR ANY UNIT CREATED BY JOINT ACTION
18 OF TWO OR MORE LOCAL GOVERNMENT UNITS WHICH IS AUTHORIZED TO
19 BE CREATED BY LAW AND GRANTED THE POWER TO ISSUE BONDS OR
20 INCUR DEBT.

21 (2) AN AUTHORITY FORMED PRIOR TO THE EFFECTIVE DATE OF
22 THIS SECTION BY TWO OR MORE LOCAL GOVERNMENT UNITS FOR THE
23 SOLE PURPOSE OF PROVIDING LOAN PROGRAMS.

24 (3) AN AUTHORITY AS DEFINED IN SECTION 5602 (RELATING TO
25 DEFINITIONS) AND A SCHOOL DISTRICT OF THE FIRST CLASS
26 PRESENTLY OPERATING UNDER A HOME RULE CHARTER OR HOME RULE
27 CHARTER SUPPLEMENT.

28 THE TERM DOES NOT INCLUDE A CITY OR COUNTY OF THE FIRST CLASS OR
29 ANY UNIT OF LOCAL GOVERNMENT WHICH HAS NOT BEEN GRANTED BY
30 STATUTE THE POWER TO ISSUE BONDS OR INCUR DEBT.

1 § 8281.2. APPLICATION OF SUBCHAPTER.

2 ONLY A LOCAL GOVERNMENT UNIT MAY ENTER INTO AN INTEREST RATE
3 MANAGEMENT AGREEMENT, UNLESS OTHERWISE AUTHORIZED TO DO SO IN
4 SUBCHAPTER G (RELATING TO INTEREST RATE RISK AND INTEREST COST
5 MANAGEMENT IN FIRST CLASS CITIES AND COUNTIES).

6 § 8281.3. QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS.

7 (A) GENERAL RULE.--

8 (1) EXCEPT AS SET FORTH IN PARAGRAPH (4),
9 NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, A LOCAL
10 GOVERNMENT UNIT MAY NEGOTIATE AND ENTER INTO QUALIFIED
11 INTEREST RATE MANAGEMENT AGREEMENTS CONSISTENT WITH THE
12 PROVISIONS OF THIS SUBCHAPTER. A LOCAL GOVERNMENT UNIT MAY
13 ONLY AUTHORIZE A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT
14 UNDER THIS SUBCHAPTER.

15 (2) THE LOCAL GOVERNMENT UNIT MUST AUTHORIZE AND AWARD
16 BY RESOLUTION EACH QUALIFIED INTEREST RATE MANAGEMENT
17 AGREEMENT OR ANY CONFIRMATION OF A TRANSACTION. THE
18 RESOLUTION IS SUBJECT TO SECTION 8003 (A) AND (B) (RELATING TO
19 ADVERTISEMENT AND EFFECTIVENESS OF ORDINANCES) BUT MAY BE
20 VALID AND EFFECTIVE FOR ALL PURPOSES IMMEDIATELY UPON
21 ADOPTION OR AS OTHERWISE PROVIDED IN THE RESOLUTION.

22 (3) A LOCAL GOVERNMENT UNIT HAS THE POWER TO CONTRACT
23 FOR INSURANCE COVERING THE RISKS OF NONPAYMENT OF AMOUNTS DUE
24 UNDER QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS.

25 (4) THE AUTHORITY GRANTED IN THIS SUBCHAPTER SHALL NOT
26 APPLY TO ANY LOCAL GOVERNMENT UNIT WHICH HAS BEEN DECLARED
27 DISTRESSED BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC
28 DEVELOPMENT.

29 (5) NO PAYMENTS FOR CONSULTING, ADVISING, BROKERING OR
30 SIMILAR FEES INCURRED TO ENTER INTO THE INTEREST RATE

1 MANAGEMENT AGREEMENTS SHALL BE MADE TO OR ON BEHALF OF A
2 LOCAL GOVERNMENT UNIT BY THE OTHER PARTY TO A QUALIFIED
3 INTEREST RATE MANAGEMENT AGREEMENT EXCEPT PERIODIC SCHEDULED
4 PAYMENTS AND TERMINATION PAYMENTS AND EXCEPT IF PAYMENTS ARE
5 DISCLOSED IN CONFORMITY WITH THIS ACT AND ARE ACKNOWLEDGED BY
6 THE LOCAL GOVERNMENT UNIT.

7 (6) PERIODIC SCHEDULED PAYMENTS ON A QUALIFIED INTEREST
8 RATE MANAGEMENT AGREEMENT MUST COMMENCE NOT LATER THAN THREE
9 YEARS AFTER THE DATE OF EXECUTION OF ANY CONFIRMATION
10 ASSOCIATED WITH THE QUALIFIED INTEREST RATE MANAGEMENT
11 AGREEMENT.

12 (7) AT THE TIME A QUALIFIED INTEREST RATE MANAGEMENT
13 AGREEMENT IS ENTERED INTO, THE SUM OF THE NOTIONAL AMOUNT
14 THEREOF AND ALL OTHER QUALIFIED INTEREST RATE MANAGEMENT
15 AGREEMENTS ENTERED INTO OR GUARANTEED, AND THEN IN EFFECT OF
16 A LOCAL GOVERNMENT UNIT, SHALL NOT EXCEED 50% OF THE TOTAL
17 PRINCIPAL AMOUNT OF THE AGGREGATE NONELECTORAL DEBT PLUS
18 LEASE RENTAL DEBT CAPACITY OF THE LOCAL GOVERNMENT UNIT THEN
19 OUTSTANDING.

20 (8) SCHEDULED PERIODIC PAYMENTS AND TERMINATION PAYMENTS
21 RECEIVED BY A LOCAL GOVERNMENT UNIT ON A QUALIFIED INTEREST
22 RATE MANAGEMENT AGREEMENT SHALL BE DEPOSITED IN A PAYMENT
23 ACCOUNT TO PAY PERIODIC SWAP PAYMENTS OR TO PAY PRINCIPAL AND
24 INTEREST ON THE DEBT RELATED TO THE QUALIFIED INTEREST RATE
25 MANAGEMENT AGREEMENT.

26 (9) THE SCHEDULED EXPIRATION DATE OF A QUALIFIED
27 INTEREST RATE MANAGEMENT AGREEMENT SHALL NOT EXCEED 10 YEARS
28 FROM THE DATE OF THE RELATED CONFIRMATION UNLESS THE
29 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT CONTAINS A
30 PROVISION ALLOWING THE LOCAL GOVERNMENT UNIT TO TERMINATE THE

1 SAME AT ANY TIME, OR AT PERIODIC INTERVALS AS SHOWN IN THE
2 CONFIRMATION, AFTER 10 YEARS FROM THE DATE OF THE RELATED
3 CONFIRMATION WITHOUT MAKING A TERMINATION PAYMENT.

4 (B) REQUIREMENTS FOR RESOLUTION.--THE RESOLUTION AUTHORIZING
5 AND AWARDING A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT OR
6 AUTHORIZING A TRANSACTION UNDER THE AGREEMENT MUST INCLUDE IN
7 THE RESOLUTION OR AS AN APPENDIX TO THE RESOLUTION ALL OF THE
8 FOLLOWING:

9 (1) A COPY OF THE QUALIFIED INTEREST RATE MANAGEMENT
10 AGREEMENT OR CONFIRMATION OF THE TRANSACTION UNDER THE
11 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT IN SUBSTANTIALLY
12 THE FORM TO BE EXECUTED PURSUANT TO THE RESOLUTION.

13 (2) THE INTEREST RATE MANAGEMENT PLAN MEETING THE
14 REQUIREMENTS UNDER THIS SUBPART:

15 (I) APPROVED BY THE LOCAL GOVERNMENT UNIT NOT LESS
16 THAN 10 DAYS PRIOR TO THE DATE OF THE RESOLUTION; OR

17 (II) IF THE LOCAL GOVERNMENT UNIT IS INCURRING
18 INDEBTEDNESS UNDER THIS CHAPTER WHICH HAS OR WILL BE
19 ISSUED TO A PUBLIC AUTHORITY THAT HAS ENTERED INTO OR
20 WILL ENTER INTO AN INTEREST RATE MANAGEMENT AGREEMENT
21 MEETING THE REQUIREMENTS OF A QUALIFIED INTEREST RATE
22 MANAGEMENT AGREEMENT UNDER THIS SUBPART, APPROVED BY THAT
23 PUBLIC AUTHORITY NOT LESS THAN 10 DAYS PRIOR TO THE DATE
24 OF THE RESOLUTION.

25 (3) A STATEMENT OF THE MANNER OF THE AWARD OF THE
26 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT UNDER SUBSECTION
27 (E).

28 (C) CONTENTS OF QUALIFIED INTEREST RATE MANAGEMENT
29 AGREEMENTS.--IN ADDITION TO OTHER PROVISIONS APPROVED BY THE
30 LOCAL GOVERNMENT UNIT, A QUALIFIED INTEREST RATE MANAGEMENT

1 AGREEMENT MUST CONTAIN ALL OF THE FOLLOWING:

2 (1) THE COVENANT OF THE LOCAL GOVERNMENT UNIT TO MAKE
3 PAYMENTS REQUIRED BY THE QUALIFIED INTEREST RATE MANAGEMENT
4 AGREEMENT AND THE COVENANTS AUTHORIZED BY SECTION 8282
5 (RELATING TO COVENANT TO PAY AMOUNTS DUE UNDER QUALIFIED
6 INTEREST RATE MANAGEMENT AGREEMENTS).

7 (2) THE NOTIONAL AMOUNT OF THE QUALIFIED INTEREST RATE
8 MANAGEMENT AGREEMENT AND THE PRINCIPAL AMOUNT OF BONDS OR
9 NOTES OR LEASE RENTAL DEBT, OR PORTIONS OF THE NOTIONAL OR
10 PRINCIPAL AMOUNTS, ISSUED OR TO BE ISSUED BY THE LOCAL
11 GOVERNMENT UNIT UNDER THIS SUBPART OR GUARANTEED BY THE LOCAL
12 GOVERNMENT UNIT UNDER THIS SUBPART, TO WHICH THE AGREEMENT
13 RELATES.

14 (3) THE TERM OF ANY QUALIFIED INTEREST RATE MANAGEMENT
15 AGREEMENT, WHICH MUST NOT EXCEED THE LATEST MATURITY DATE OF
16 THE BONDS OR NOTES REFERENCED IN THE QUALIFIED INTEREST RATE
17 MANAGEMENT AGREEMENT.

18 (4) A PROVISION REQUIRING THE TERMINATION OF THE
19 AGREEMENT WHEN ALL DEBT TO WHICH THE QUALIFIED INTEREST RATE
20 MANAGEMENT AGREEMENT RELATES IS NO LONGER OUTSTANDING.

21 (5) THE MAXIMUM ANNUAL INTEREST RATE WHICH THE LOCAL
22 GOVERNMENT UNIT MAY PAY THEREUNDER.

23 (6) A PROVISION THAT THE MAXIMUM NET PAYMENTS BY FISCAL
24 YEAR OF A LOCAL GOVERNMENT UNIT SHALL NOT EXCEED THE MAXIMUM
25 INTEREST RATE SPECIFIED IN THE QUALIFIED INTEREST RATE
26 MANAGEMENT AGREEMENT FOR:

27 (I) PERIODIC SCHEDULED PAYMENTS, NOT INCLUDING ANY
28 TERMINATION PAYMENTS, DUE UNDER THE QUALIFIED INTEREST
29 RATE MANAGEMENT AGREEMENT; AND

30 (II) THE INTEREST ON THE BONDS OR NOTES TO WHICH THE

1 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT RELATES.

2 (7) THE SOURCE OF PAYMENT OF THE PAYMENT OBLIGATIONS OF
3 THE LOCAL GOVERNMENT UNIT, WHICH MUST BE EITHER GENERAL
4 REVENUES OR REVENUES SPECIFICALLY IDENTIFIED IN THE
5 AGREEMENT.

6 (8) A PROVISION ADDRESSING THE ACTIONS TO BE TAKEN IF
7 THE CREDIT RATING OF THE OTHER PARTY CHANGES.

8 (9) A PROVISION THAT PERIODIC SCHEDULED PAYMENTS DUE
9 UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT AND
10 DEBT SERVICE DUE ON THE RELATED BONDS OR NOTES OR PAYMENTS
11 DUE UNDER THE RELATED INSTRUMENT EVIDENCING LEASE RENTAL DEBT
12 OR GUARANTY OF THE LOCAL GOVERNMENT UNIT SHALL BE SENIOR IN
13 RIGHT AND PRIORITY OF PAYMENT TO TERMINATION PAYMENTS DUE
14 UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT.

15 (10) A CERTIFICATION BY THE OTHER PARTY TO THE QUALIFIED
16 INTEREST RATE MANAGEMENT AGREEMENT IN WHICH THE OTHER PARTY
17 DOES ALL OF THE FOLLOWING:

18 (I) ACKNOWLEDGES AND AGREES THAT THE LOCAL
19 GOVERNMENT UNIT WHICH IS ENTERING INTO THE QUALIFIED
20 INTEREST RATE MANAGEMENT AGREEMENT UNDER THIS SUBPART IS
21 A POLITICAL SUBDIVISION OF THE COMMONWEALTH.

22 (II) ACKNOWLEDGES THAT IT HAS READ THIS SUBPART.

23 (III) ACKNOWLEDGES AND AGREES THAT A LOCAL
24 GOVERNMENT UNIT MAY ONLY ENTER INTO A QUALIFIED INTEREST
25 RATE MANAGEMENT AGREEMENT TO MANAGE INTEREST RATE RISK OR
26 INTEREST COST OF THE LOCAL GOVERNMENT UNIT ON DEBT OF THE
27 LOCAL GOVERNMENT UNIT.

28 (IV) CERTIFIES THAT, IN EXECUTING THE TRANSACTIONS
29 UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT,
30 IT HAS COMPLIED IN ALL MATERIAL ASPECTS WITH THE

1 APPLICABLE RULES AND REGULATIONS OF THE COMMODITY FUTURES
2 TRADING COMMISSION, THE SECURITIES AND EXCHANGE
3 COMMISSION AND THE MUNICIPAL SECURITIES RULEMAKING BOARD
4 TO WHICH IT IS SUBJECT.

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) REPRESENTS AND WARRANTS THAT THE RATE OR RATES
10 USED TO CALCULATE AMOUNTS PAYABLE BY THE LOCAL GOVERNMENT
11 UNIT PURSUANT TO THE QUALIFIED INTEREST RATE MANAGEMENT
12 AGREEMENT IS COMPARABLE TO THE RATE OR RATES THAT IT
13 WOULD HAVE QUOTED TO RECEIVE FROM OR PAY TO, AS
14 APPLICABLE, A SIMILARLY SITUATED COUNTERPARTY TO ENTER
15 INTO A REASONABLY COMPARABLE QUALIFIED INTEREST RATE
16 MANAGEMENT AGREEMENT TAKING INTO FULL ACCOUNT THE TERMS
17 AND CONDITIONS OF THE QUALIFIED INTEREST RATE MANAGEMENT
18 AGREEMENT.

19 (VII) ACKNOWLEDGES AND AGREES THAT IT WILL NOTIFY
20 THE DEPARTMENT IN WRITING PROMPTLY UPON ITS RECEIPT OF A
21 TERMINATION PAYMENT BY THE LOCAL GOVERNMENT UNIT,
22 INCLUDING THE DATE AND AMOUNT OF THE PAYMENT AND THE
23 IDENTITY OF THE QUALIFIED INTEREST RATE MANAGEMENT
24 AGREEMENT UNDER WHICH THE PAYMENT WAS MADE.

25 (D) OTHER PROVISIONS OF THE QUALIFIED INTEREST RATE
26 MANAGEMENT AGREEMENT.--THE QUALIFIED INTEREST RATE MANAGEMENT
27 AGREEMENT MAY INCLUDE:

28 (1) A COVENANT TO INCLUDE ANY TERMINATION PAYMENT OR
29 SIMILAR PAYMENT FOR A QUALIFIED INTEREST RATE MANAGEMENT
30 AGREEMENT IN ITS CURRENT BUDGET AT ANY TIME DURING A FISCAL

1 YEAR OR IN A BUDGET ADOPTED IN A FUTURE FISCAL YEAR.

2 (2) A PROVISION THAT THE FOLLOWING SHALL BE EQUALLY AND
3 RATABLY PAYABLE AND SECURED UNDER THE APPLICABLE COVENANTS
4 AUTHORIZED IN SECTION 8282:

5 (I) PERIODIC SCHEDULED PAYMENTS DUE UNDER THE
6 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT.

7 (II) ANY OF THE FOLLOWING TO WHICH THE AGREEMENT
8 RELATES:

9 (A) THE DEBT SERVICE DUE ON THE BONDS OR NOTES;

10 (B) PAYMENT UNDER AN INSTRUMENT EVIDENCING LEASE
11 RENTAL DEBT; OR

12 (C) PAYMENT UNDER A GUARANTY OF THE LOCAL
13 GOVERNMENT UNIT.

14 (3) A PROVISION THAT THE QUALIFIED INTEREST RATE
15 MANAGEMENT AGREEMENT MAY BE TERMINATED AT THE OPTION OF THE
16 LOCAL GOVERNMENT UNIT WITHOUT CAUSE BUT THAT THE QUALIFIED
17 INTEREST RATE MANAGEMENT AGREEMENT MAY NOT BE TERMINATED AT
18 THE OPTION OF THE OTHER PARTY TO THE QUALIFIED INTEREST RATE
19 MANAGEMENT AGREEMENT WITHOUT CAUSE.

20 (E) AWARD OF QUALIFIED INTEREST RATE MANAGEMENT

21 AGREEMENTS.--

22 (1) THE LOCAL GOVERNMENT UNIT SHALL ESTABLISH A PROCESS
23 FOR SELECTING OTHER PARTIES BEFORE ENTERING INTO A QUALIFIED
24 INTEREST RATE MANAGEMENT AGREEMENT.

25 (2) THE LOCAL GOVERNMENT UNIT SHALL ESTABLISH
26 QUALIFICATIONS FOR OTHER PARTIES BEFORE ENTERING INTO A
27 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT. THE
28 QUALIFICATIONS SHALL INCLUDE A RATING FOR THE OTHER PARTY OF
29 AT LEAST THE THIRD HIGHEST RATING CATEGORY FROM A NATIONALLY
30 RECOGNIZED RATING AGENCY.

1 (3) A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT MUST
2 BE AWARDED BY PUBLIC SALE, PRIVATE SALE BY NEGOTIATION OR
3 PRIVATE SALE BY INVITATION.

4 (4) THE LOCAL GOVERNMENT UNIT SHALL SELECT THE QUALIFIED
5 INTEREST RATE MANAGEMENT AGREEMENT WHICH THE LOCAL GOVERNMENT
6 UNIT DETERMINES IS IN ITS BEST FINANCIAL INTEREST. THE
7 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT SELECTED MUST
8 CONTAIN FINANCIAL TERMS AND CONDITIONS WHICH IN THE OPINION
9 OF THE INDEPENDENT FINANCIAL ADVISOR TO THE LOCAL GOVERNMENT
10 UNIT ARE FAIR AND REASONABLE TO THE LOCAL GOVERNMENT UNIT AS
11 OF THE DATE OF AWARD.

12 (5) THE LOCAL GOVERNMENT UNIT MAY SATISFY THE
13 REQUIREMENTS OF PARAGRAPH (4) BY OBTAINING A FINDING FROM AN
14 INDEPENDENT FINANCIAL ADVISOR TO THE PUBLIC AUTHORITY THAT
15 THE FINANCIAL TERMS AND CONDITIONS OF THE AGREEMENT ARE FAIR
16 AND REASONABLE TO THE PUBLIC AUTHORITY AS OF THE DATE OF THE
17 AWARD IF ALL OF THE FOLLOWING APPLY:

18 (I) THE LOCAL GOVERNMENT UNIT IS INCURRING
19 INDEBTEDNESS UNDER THIS CHAPTER WHICH HAS OR WILL BE
20 ISSUED TO A PUBLIC AUTHORITY.

21 (II) IN CONNECTION WITH THE INCURRING OF DEBT UNDER
22 SUBPARAGRAPH (I), THE LOCAL GOVERNMENT UNIT WILL BECOME
23 OBLIGATED FOR ALL OR A PORTION OF THE PUBLIC AUTHORITY'S
24 COSTS UNDER AN INTEREST RATE MANAGEMENT AGREEMENT.

25 Section 4. Section 8285 of Title 53 is amended to read:

26 § 8285. Financial reporting.

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

1 has authorized or entered into, including any information
2 required pursuant to any statement issued by the Governmental
3 Accounting Standards Board.

4 (b) Quarterly report.--A local government unit that
5 authorizes a qualified interest rate management agreement shall
6 report on the performance of the qualified interest rate
7 management agreement quarterly at a public meeting. At a
8 minimum, the reporting shall include a current mark to market
9 valuation of the agreement.

10 ~~Section 5. The amendment or addition of 53 Pa.C.S. §§~~ <--
11 ~~5608.1, 8002(c), 8281 and 8285:~~

12 ~~(1) Shall apply to all qualified interest rate~~
13 ~~management agreements entered into on or after the effective~~
14 ~~date of this section.~~

15 ~~(2) Shall not apply to an amendment, termination or~~
16 ~~novation of a qualified interest rate management agreement~~
17 ~~where the qualified interest rate management agreement was~~
18 ~~entered into prior to the effective date of this section,~~
19 ~~unless the term of the qualified interest rate management~~
20 ~~agreement is extended and the qualified interest rate~~
21 ~~management agreement continues to be in effect on or after~~
22 ~~the effective date of this section.~~

23 ~~Section 6. This act shall take effect in 60 days.~~

24 SECTION 5. CHAPTER 82 OF TITLE 53 IS AMENDED BY ADDING A <--
25 SUBCHAPTER TO READ:

26 SUBCHAPTER G
27 INTEREST RATE RISK AND INTEREST COST MANAGEMENT
28 IN FIRST CLASS CITIES AND COUNTIES
29 SEC.
30 8291. SCOPE OF SUBCHAPTER.

1 8292. DEFINITIONS.

2 8293. INTEREST RATE MANAGEMENT AGREEMENT REQUIREMENTS.

3 8294. NOTICE AND RETENTION OF RECORDS.

4 8295. FINANCIAL REPORTING.

5 § 8291. SCOPE OF SUBCHAPTER.

6 NOTWITHSTANDING SUBCHAPTER F (RELATING TO INTEREST RATE RISK
7 AND INTEREST COST MANAGEMENT), THIS SUBCHAPTER SHALL APPLY TO
8 INTEREST RATE MANAGEMENT AGREEMENTS IN CITIES AND COUNTIES OF
9 THE FIRST CLASS.

10 § 8292. DEFINITIONS.

11 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
12 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
13 CONTEXT CLEARLY INDICATES OTHERWISE:

14 "CONTRACTING AUTHORITY." ANY OF THE FOLLOWING THAT ENTER
15 INTO AN INTEREST RATE MANAGEMENT AGREEMENT UNDER THIS
16 SUBCHAPTER:

17 (1) A CITY OF THE FIRST CLASS.

18 (2) A COUNTY OF THE FIRST CLASS.

19 (3) A MUNICIPAL AUTHORITY CREATED BY A CITY OF THE FIRST
20 CLASS UNDER CHAPTER 56 (RELATING TO MUNICIPAL AUTHORITIES) BY
21 AN ENTITY LISTED UNDER PARAGRAPH (1) OR (2).

22 "DEPARTMENT." THE DEPARTMENT OF COMMUNITY AND ECONOMIC
23 DEVELOPMENT OF THE COMMONWEALTH.

24 "INTEREST RATE MANAGEMENT AGREEMENT." AN AGREEMENT,
25 INCLUDING A CONFIRMATION EVIDENCING A TRANSACTION EFFECTED UNDER
26 A MASTER AGREEMENT, ENTERED INTO BY A CONTRACTING AUTHORITY IN
27 ACCORDANCE WITH AND FULFILLING THE REQUIREMENTS OF SECTION 8293
28 (RELATING TO INTEREST RATE MANAGEMENT AGREEMENT REQUIREMENTS),
29 WHICH AGREEMENT IN THE JUDGMENT OF THE CONTRACTING AUTHORITY IS
30 DESIGNED TO MANAGE INTEREST RATE RISK OR INTEREST COST OF THE

1 CONTRACTING AUTHORITY ON ANY DEBT OR OTHER DEBT-RELATED
2 OBLIGATIONS A CONTRACTING AUTHORITY IS AUTHORIZED TO INCUR,
3 INCLUDING, BUT NOT LIMITED TO, SWAPS, INTEREST RATE CAPS,
4 COLLARS, CORRIDORS, CEILING AND FLOOR AGREEMENTS, FORWARD
5 AGREEMENTS, FLOAT AGREEMENTS AND OTHER SIMILAR ARRANGEMENTS
6 WHICH IN THE JUDGMENT OF THE CONTRACTING AUTHORITY WILL ASSIST
7 THE CONTRACTING AUTHORITY IN MANAGING THE INTEREST RATE RISK OR
8 INTEREST COST OF THE CONTRACTING AUTHORITY.

9 § 8293. INTEREST RATE MANAGEMENT AGREEMENT REQUIREMENTS.

10 (A) GENERAL RULE.--NOTWITHSTANDING ANY OTHER LAW TO THE
11 CONTRARY, ANY INTEREST RATE MANAGEMENT AGREEMENT ENTERED INTO BY
12 A CONTRACTING AUTHORITY SHALL COMPLY WITH THE PROVISIONS OF THIS
13 SECTION.

14 (B) REQUIREMENTS.--THE FOLLOWING REQUIREMENTS SHALL APPLY:

15 (1) A CONTRACTING AUTHORITY SHALL AUTHORIZE AND AWARD BY
16 RESOLUTION EACH INTEREST RATE MANAGEMENT AGREEMENT OR ANY
17 CONFIRMATION OF A TRANSACTION.

18 (2) NO PAYMENTS SHALL BE MADE TO OR ON BEHALF OF A
19 CONTRACTING AUTHORITY BY THE OTHER PARTY TO AN INTEREST RATE
20 MANAGEMENT AGREEMENT EXCEPT PERIODIC SCHEDULED PAYMENTS,
21 TERMINATION PAYMENTS AND ATTORNEY FEES AND OTHER CONSULTANT
22 FEES INCURRED IN CONNECTION WITH ENTERING INTO AN INTEREST
23 RATE MANAGEMENT AGREEMENT.

24 (3) PERIODIC SCHEDULED PAYMENTS ON AN INTEREST RATE
25 MANAGEMENT AGREEMENT MUST COMMENCE NOT LATER THAN THREE YEARS
26 AFTER THE DATE OF THE CONFIRMATION ASSOCIATED WITH THE
27 INTEREST RATE MANAGEMENT AGREEMENT.

28 (4) THE INDEX OR BASIS USED FOR CALCULATING THE PERIODIC
29 SCHEDULED PAYMENTS RECEIVABLE BY THE CONTRACTING AUTHORITY ON
30 AN INTEREST RATE MANAGEMENT AGREEMENT SHALL BE SUBSTANTIALLY

1 SIMILAR TO THE INDEX OR BASIS USED FOR CALCULATING THE
2 INTEREST DUE ON THE ASSOCIATED DEBT OR OTHER DEBT-RELATED
3 OBLIGATIONS OF THE CONTRACTING AUTHORITY.

4 (5) AT THE TIME AN INTEREST RATE MANAGEMENT AGREEMENT IS
5 ENTERED INTO, THE SUM OF THE NOTIONAL AMOUNT THEREOF, WITHOUT
6 DUPLICATION FOR THE NOTIONAL AMOUNT OF ANY OFFSETTING
7 TRANSACTIONS, AND ALL OTHER INTEREST RATE MANAGEMENT
8 AGREEMENTS ENTERED INTO OR GUARANTEED, AND THEN IN EFFECT OF
9 A CONTRACTING AUTHORITY, SHALL NOT EXCEED 30% OF THE TOTAL
10 PRINCIPAL AMOUNT OF THE AGGREGATE GENERAL OBLIGATION DEBT AND
11 OTHER DEBT-RELATED OBLIGATIONS PAYABLE FROM OR SUPPORTED BY
12 ITS GENERAL FUND THEN OUTSTANDING. IF AN INTEREST RATE
13 MANAGEMENT AGREEMENT IS PAYABLE FROM OR SUPPORTED BY ANOTHER
14 SPECIFIED FUND OR REVENUES, THE LIMITATION SHALL APPLY BASED
15 SOLELY ON INTEREST RATE MANAGEMENT AGREEMENTS AND DEBT AND
16 OTHER DEBT-RELATED OBLIGATIONS PAYABLE FROM OR SUPPORTED BY
17 THE SPECIFIED FUND OR REVENUES.

18 (6) SCHEDULED PERIODIC PAYMENTS AND TERMINATION PAYMENTS
19 RECEIVED BY A CONTRACTING AUTHORITY ON AN INTEREST RATE
20 MANAGEMENT AGREEMENT SHALL BE DEPOSITED IN A PAYMENT ACCOUNT
21 TO:

22 (I) PAY PERIODIC SWAP PAYMENTS OR TO PAY PRINCIPAL
23 AND INTEREST ON THE DEBT OR DEBT-RELATED OBLIGATIONS
24 RELATED TO THE INTEREST RATE MANAGEMENT AGREEMENT.

25 (II) IF THE INTEREST RATE MANAGEMENT AGREEMENT
26 DESCRIBED UNDER SUBPARAGRAPH (I) HAS BEEN TERMINATED AND
27 NONE OF THE RELATED DEBT OR DEBT-RELATED OBLIGATIONS ARE
28 OUTSTANDING, PAY PERIODIC SWAP PAYMENTS ON INTEREST RATE
29 MANAGEMENT AGREEMENTS OR PRINCIPAL AND INTEREST ON DEBT
30 OR DEBT-RELATED OBLIGATIONS PAYABLE FROM OR SUPPORTED BY

1 THE SAME FUND OR REVENUES AS THE INTEREST RATE MANAGEMENT
2 AGREEMENT DESCRIBED UNDER SUBPARAGRAPH (I).

3 (III) IF ALL OF THE INTEREST RATE MANAGEMENT
4 AGREEMENTS DESCRIBED UNDER SUBPARAGRAPH (II) HAVE BEEN
5 TERMINATED AND NO DEBT OR DEBT-RELATED OBLIGATIONS
6 DESCRIBED UNDER SUBPARAGRAPH (II) ARE OUTSTANDING, PAY
7 ANY OTHER OBLIGATIONS OF THE CONTRACTING AUTHORITY.

8 (7) THE SCHEDULED EXPIRATION DATE OF AN INTEREST RATE
9 MANAGEMENT AGREEMENT SHALL NOT EXCEED 10 YEARS FROM THE DATE
10 OF THE RELATED CONFIRMATION UNLESS THE INTEREST RATE
11 MANAGEMENT AGREEMENT CONTAINS A PROVISION ALLOWING THE
12 CONTRACTING AUTHORITY TO TERMINATE THE SAME AT ANY TIME AFTER
13 10 YEARS FROM THE DATE OF THE RELATED CONFIRMATION WITHOUT
14 MAKING A TERMINATION PAYMENT.

15 (8) AN INTEREST RATE MANAGEMENT AGREEMENT SHALL CONTAIN
16 A CERTIFICATION BY THE OTHER PARTY TO THE INTEREST RATE
17 MANAGEMENT AGREEMENT IN WHICH THE OTHER PARTY DOES ALL OF THE
18 FOLLOWING:

19 (I) ACKNOWLEDGES THAT THE CONTRACTING AUTHORITY
20 WHICH IS ENTERING INTO THE INTEREST RATE MANAGEMENT
21 AGREEMENT UNDER THIS SUBCHAPTER IS A POLITICAL
22 SUBDIVISION OF THIS COMMONWEALTH OR A MUNICIPAL AUTHORITY
23 CREATED UNDER CHAPTER 56 (RELATING TO MUNICIPAL
24 AUTHORITIES) BY A CITY OF THE FIRST CLASS OR A COUNTY OF
25 THE FIRST CLASS.

26 (II) ACKNOWLEDGES THAT IT HAS READ THIS SUBCHAPTER.

27 (III) ACKNOWLEDGES THAT A CONTRACTING AUTHORITY MAY
28 ONLY ENTER INTO AN INTEREST RATE MANAGEMENT AGREEMENT TO
29 MANAGE INTEREST RATE RISK OR INTEREST COST OF THE
30 CONTRACTING AUTHORITY ON DEBT OR OTHER DEBT-RELATED

1 OBLIGATIONS OF THE CONTRACTING AUTHORITY.

2 (IV) ACKNOWLEDGES AND AGREES THAT IT WILL NOTIFY THE
3 DEPARTMENT, IN WRITING, PROMPTLY UPON THE PAYMENT TO THE
4 OTHER PARTY OF A TERMINATION PAYMENT BY THE CONTRACTING
5 AUTHORITY, INCLUDING THE DATE AND AMOUNT OF THE PAYMENT
6 AND THE IDENTITY OF THE INTEREST RATE MANAGEMENT
7 AGREEMENT UNDER WHICH THE PAYMENT WAS MADE.

8 § 8294. NOTICE AND RETENTION OF RECORDS.

9 (A) NOTICE.--WITHIN 15 DAYS FOLLOWING THE ADOPTION OF A
10 RESOLUTION AUTHORIZING AN INTEREST RATE MANAGEMENT AGREEMENT, A
11 CONTRACTING AUTHORITY SHALL FILE WITH THE DEPARTMENT CERTIFIED
12 COPIES OF THE RESOLUTION, INCLUDING ANY APPENDIX TO THE
13 RESOLUTION, TOGETHER WITH AN ITEMIZED STATEMENT OF ALL ATTORNEY
14 FEES, CONSULTANT FEES AND ANY OTHER COSTS EXPECTED TO BE PAID ON
15 BEHALF OF A CONTRACTING AUTHORITY BY THE OTHER PARTY TO
16 SUCH INTEREST RATE MANAGEMENT AGREEMENT.

17 (B) RECORDS.--THE DEPARTMENT SHALL KEEP COPIES OF ALL
18 DOCUMENTS FILED WITH THE DEPARTMENT UNDER THIS SECTION AS LONG
19 AS AN INTEREST RATE MANAGEMENT AGREEMENT IS IN EFFECT.

20 § 8295. FINANCIAL REPORTING.

21 A CONTRACTING AUTHORITY WHICH HAS ENTERED INTO AN INTEREST
22 RATE MANAGEMENT AGREEMENT SHALL INCLUDE IN ITS ANNUAL FINANCIAL
23 STATEMENTS INFORMATION WITH RESPECT TO EACH INTEREST RATE
24 MANAGEMENT AGREEMENT IT HAS AUTHORIZED OR ENTERED INTO,
25 INCLUDING ANY INFORMATION REQUIRED PURSUANT TO ANY STATEMENT
26 ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

27 SECTION 6. THE FOLLOWING SHALL APPLY:

28 (1) THE AMENDMENT OR ADDITION OF 53 PA.C.S. §§ 8002(C),
29 8281.1, 8281.2 AND 8281.3:

30 (I) SHALL APPLY TO ALL QUALIFIED INTEREST RATE

1 MANAGEMENT AGREEMENTS ENTERED INTO ON OR AFTER THE
2 EFFECTIVE DATE OF THIS SECTION.

3 (II) SHALL NOT APPLY TO AN AMENDMENT, TERMINATION OR
4 NOVATION OF A QUALIFIED INTEREST RATE MANAGEMENT
5 AGREEMENT WHERE THE QUALIFIED INTEREST RATE MANAGEMENT
6 AGREEMENT WAS ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF
7 THIS SECTION, UNLESS THE TERM OF THE QUALIFIED INTEREST
8 RATE MANAGEMENT AGREEMENT IS EXTENDED AND THE QUALIFIED
9 INTEREST RATE MANAGEMENT AGREEMENT CONTINUES TO BE IN
10 EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

11 (2) THE ADDITION OF 53 PA.C.S. CH. 82 SUBCH. G:

12 (I) SHALL APPLY TO ALL INTEREST RATE MANAGEMENT
13 AGREEMENTS ENTERED INTO BY A CONTRACTING AUTHORITY ON OR
14 AFTER THE EFFECTIVE DATE OF THIS SECTION.

15 (II) SHALL NOT APPLY TO ANY AMENDMENT, TERMINATION
16 OR NOVATION OF AN INTEREST RATE MANAGEMENT AGREEMENT IF
17 THE INTEREST RATE MANAGEMENT AGREEMENT WAS ENTERED INTO
18 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION IF THE TERM
19 OF THE INTEREST RATE MANAGEMENT AGREEMENT IS NOT
20 EXTENDED.

21 (III) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
22 SHALL APPLY TO AN INTEREST RATE MANAGEMENT AGREEMENT
23 ENTERED INTO BY ANY OF THE FOLLOWING:

24 (A) A CITY OF THE FIRST CLASS.

25 (B) A COUNTY OF THE FIRST CLASS.

26 (C) A MUNICIPAL AUTHORITY CREATED UNDER 53
27 PA.C.S. CH. 56 BY AN ENTITY LISTED UNDER CLAUSE (A)
28 OR (B).

29 SECTION 7. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.