

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 320 Session of 2019

INTRODUCED BY RYAN, KEEFER, PICKETT, ROTHMAN, GLEIM, MULLINS AND WHEELAND, FEBRUARY 1, 2019

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 17, 2019

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, in general provisions, further
3 providing for definitions; in miscellaneous provisions,
4 repealing provisions relating to qualified interest rate
5 management agreements, further providing for financial
6 reporting, providing for application of subchapter, for
7 definitions, for qualified interest rate management
8 agreements and for interest rate risk and interest cost
9 management in first class cities and counties; and making
10 editorial changes.

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

13 Section 1. The definitions of "independent financial
14 advisor," "interest rate management plan" and "qualified
15 interest rate management agreement" in section 8002(c) of Title
16 53 of the Pennsylvania Consolidated Statutes are amended to
17 read:

18 § 8002. Definitions.

19 * * *

20 (c) Other definitions.--Subject to additional definitions
21 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)] section 8288(b)(2) and (e)(5) (relating to
16 qualified interest rate management agreements), the independent
17 financial advisor 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] illustrating the following:

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

9 (ii) The maximum counterparty margin or spread to be
10 included on the qualified interest rate management
11 agreement and a calculation of the present value of the
12 counterparty margin or spread.

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

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

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

1 payments, which would be due under all of the qualified
2 interest rate management agreements.

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

8 * * *

9 "Qualified interest rate management agreement." An
10 agreement, including a confirmation evidencing a transaction
11 effected under a master agreement, entered into by a local
12 government unit in accordance with and fulfilling the
13 requirements of section [8281] 8288 (relating to qualified
14 interest rate management agreements), which agreement in the
15 judgment of the local government unit is designed to manage
16 interest rate risk or interest cost of the local government unit
17 on any debt a local government unit is authorized to incur under
18 this subpart, including, but not limited to, swaps, interest
19 rate caps, collars, corridors, ceiling and floor agreements,
20 forward agreements, float agreements and other similar
21 arrangements which in the judgment of the local government unit
22 will assist the local government unit in managing the interest
23 rate risk or interest cost of the local government unit.

24 * * *

25 Section 2. Section 8281 of Title 53 is repealed:

26 [§ 8281. Qualified interest rate management agreements.

27 (a) General rule.--

28 (1) Except as set forth in paragraph (4),
29 notwithstanding any other law to the contrary, a local
30 government unit may negotiate and enter into qualified

1 interest rate management agreements consistent with the
2 provisions of this subchapter.

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

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

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

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

22 (1) A copy of the qualified interest rate management
23 agreement or confirmation of the transaction under the
24 qualified interest rate management agreement in substantially
25 the form to be executed pursuant to the resolution.

26 (2) The interest rate management plan meeting the
27 requirements under this subpart:

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

29 (ii) if the local government unit is incurring

30 indebtedness under this chapter which has or will be

1 issued to a public authority that has entered into or
2 will enter into an interest rate management agreement
3 meeting the requirements of a qualified interest rate
4 management agreement under this subpart, adopted by that
5 public authority.

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

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

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

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

25 (3) The term of any qualified interest rate management
26 agreement, which must not exceed the latest maturity date of
27 the bonds or notes referenced in the qualified interest rate
28 management agreement.

29 (4) A provision requiring the termination of the
30 agreement if all debt to which the qualified interest rate

1 management agreement relates is no longer outstanding.

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

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

8 (i) periodic scheduled payments, not including any
9 termination payments, due under the qualified interest
10 rate management agreement; and

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

13 (7) The source of payment of the payment obligations of
14 the local government unit, which must be either general
15 revenues or revenues specifically identified in the
16 agreement.

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

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

26 (d) Other provisions of the qualified interest rate
27 management agreement.--The qualified interest rate management
28 agreement may include:

29 (1) A covenant to include any termination payment or
30 similar payment for a qualified interest rate management

1 agreement in its current budget at any time during a fiscal
2 year or in a budget adopted in a future fiscal year.

3 (2) A provision that the following shall be equally and
4 ratably payable and secured under the applicable covenants
5 authorized in section 8282:

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

8 (ii) Any of the following to which the agreement
9 relates:

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

11 (B) payment under an instrument evidencing lease
12 rental debt; or

13 (C) payment under a guaranty of the local
14 government unit.

15 (3) A provision that the qualified interest rate
16 management agreement may be terminated at the option of the
17 local government unit without cause but that the qualified
18 interest rate management agreement may not be terminated at
19 the option of the other party to the qualified interest rate
20 management agreement without cause.

21 (e) Award of qualified interest rate management
22 agreements.--

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

26 (2) The local government unit shall establish
27 qualifications for other parties before entering into a
28 qualified interest rate management agreement. The
29 qualifications shall include a rating for the other party of
30 at least the third highest rating category from a nationally

1 recognized rating agency.

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

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

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

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

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

26 Section 3. Section 8285 of Title 53 is amended to read:

27 § 8285. Financial reporting.

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

1 respect to each qualified interest rate management agreement it
2 has authorized or entered into, including any information
3 required pursuant to any statement issued by the Governmental
4 Accounting Standards Board.

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

11 Section 4. Subchapter F of Chapter 82 of Title 53 is amended
12 by adding sections to read:

13 § 8286. Application of subchapter.

14 Only a local government unit may enter into an interest rate
15 management agreement, unless otherwise authorized to do so in
16 Subchapter G (relating to interest rate risk and interest cost
17 management in first class cities and counties).

18 § 8287. Definitions.

19 As used in this subchapter, the term "local government unit"
20 means an authority as defined in section 8002 (relating to
21 definitions) and a school district of the first class presently <--
22 operating under a home rule charter as defined under section
23 2902 (relating to definitions) or home rule charter supplement., <--

24 A POLITICAL SUBDIVISION OR HOME RULE MUNICIPALITY OR OPTIONAL
25 PLAN MUNICIPALITY.

26 § 8288. Qualified interest rate management agreements.

27 (a) General rule.--

28 (1) Except as set forth in paragraph (4),
29 notwithstanding any other law to the contrary, a local
30 government unit may negotiate and enter into qualified

1 interest rate management agreements consistent with the
2 provisions of this subchapter. A local government unit may
3 only authorize a qualified interest rate management agreement
4 under this subchapter.

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

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

15 (4) The authority granted in this subchapter shall not
16 apply to a local government unit that has been declared
17 distressed by the department.

18 (5) No payments for consulting, advisory, brokerage or
19 similar fees incurred to enter into the interest rate
20 management agreement may be made to or on behalf of a local
21 government unit by the other party to a qualified interest
22 rate management agreement and termination payments, unless
23 the payments are disclosed in conformity with this chapter
24 and are acknowledged by the local government unit.

25 (6) Periodic scheduled payments on a qualified interest
26 rate management agreement must commence not later than one
27 year after the date of execution of a confirmation associated
28 with the qualified interest rate management agreement.

29 (7) At the time a qualified interest rate management
30 agreement is entered into, the sum of the notional amount and

1 all other qualified interest rate management agreements
2 entered into or guaranteed, and then in effect of a local
3 government unit, may not exceed 50% of the total principal
4 amount of the aggregate nonelectoral debt plus lease rental
5 debt capacity of the local government unit then outstanding.

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

12 (9) The scheduled expiration date of a qualified
13 interest rate management agreement may not exceed 10 years
14 from the date of the related confirmation unless the
15 qualified interest rate management agreement contains a
16 provision allowing the local government unit to terminate the
17 agreement at any time, or at periodic intervals as shown in
18 the confirmation, after 10 years from the date of the related
19 confirmation without making a termination payment.

20 (10) No payments may 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 (11) The index or basis used for calculating the
25 periodic scheduled payments receivable by the local
26 government unit on a qualified interest rate management
27 agreement shall be a fixed rate or variable rate of interest
28 determined using either an index published by the Securities
29 Industry and Financial Markets Association or an index that
30 references the London Interbank Offered Rate. Periodic

1 scheduled payments based upon a London InterBank Offered Rate
2 index or other index are not permitted unless the interest
3 rate on the associated debt is also based on the same index
4 or the index is based on the same type of debt as the
5 associated debt.

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

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

15 (2) The interest rate management plan meeting the
16 requirements under this subchapter:

17 (i) approved by the local government unit not less
18 than 10 days prior to the date of the resolution; or

19 (ii) if the local government unit is incurring
20 indebtedness under this subpart 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, approved by that
25 public authority not less than 10 days prior to the date
26 of the resolution.

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

30 (c) Contents of qualified interest rate management

1 agreements.--In addition to other provisions approved by the
2 local government unit, a qualified interest rate management
3 agreement must contain all of the following:

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

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

16 (3) The term of a qualified interest rate management
17 agreement that must not exceed the latest maturity date of
18 the bonds or notes referenced in the qualified interest rate
19 management agreement.

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

23 (5) The maximum annual interest rate that the local
24 government unit may pay.

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

29 (i) periodic scheduled payments, not including
30 termination payments, due under the qualified interest

1 rate management agreement; and

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

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

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

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

17 (10) A certification by the other party to the qualified
18 interest rate management agreement in which the other party
19 does all of the following:

20 (i) Acknowledges and agrees that the local
21 government unit that is entering into the qualified
22 interest rate management agreement under this subchapter
23 is a political subdivision of the Commonwealth.

24 (ii) Acknowledges that the other party has read this
25 subchapter.

26 (iii) Acknowledges and agrees that a local
27 government unit may only enter into a qualified interest
28 rate management agreement to manage interest rate risk or
29 interest cost of the local government unit on debt of the
30 local government unit.

1 (iv) Certifies that, in executing the transactions
2 under the qualified interest rate management agreement,
3 the other party has complied in all material aspects with
4 the applicable rules and regulations of the Commodity
5 Futures Trading Commission, the Securities and Exchange
6 Commission and the Municipal Securities Rulemaking Board
7 to which the other party is subject.

8 (v) Certifies that the other party acted in good
9 faith and made full and fair disclosure of all required
10 material facts and any conflicts of interest regarding
11 the qualified interest management agreement as required
12 by the Dodd-Frank Wall Street Reform and Consumer
13 Protection Act (Public Law 111-203, 12 U.S.C. § 5301 et
14 seq.).

15 (vi) Represents and warrants that the rate or rates
16 used to calculate amounts payable by the local government
17 unit pursuant to the qualified interest rate management
18 agreement are comparable to the rate or rates that the
19 other party would quote to receive from or pay to, as
20 applicable, a similarly situated counterparty to enter
21 into a reasonably comparable qualified interest rate
22 management agreement taking into full account the terms
23 and conditions of the qualified interest rate management
24 agreement.

25 (vii) Acknowledges and agrees that the other party
26 will notify the department in writing promptly upon the
27 other party's receipt of a termination payment by the
28 local government unit, including the date and amount of
29 the payment and the identity of the qualified interest
30 rate management agreement under which the payment was

1 made.

2 (d) Other provisions of the qualified interest rate
3 management agreement.--The qualified interest rate management
4 agreement may include:

5 (1) A covenant that includes a termination payment or
6 similar payment for a qualified interest rate management
7 agreement in the other party's current budget at any time
8 during a fiscal year or in a budget adopted in a future
9 fiscal year.

10 (2) A provision that the following shall be equally and
11 ratably payable and secured under the applicable covenants
12 authorized in section 8282:

13 (i) Periodic scheduled payments due under the
14 qualified interest rate management agreement.

15 (ii) Any of the following to which the agreement
16 relates:

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

18 (B) payment under an instrument evidencing lease
19 rental debt; or

20 (C) payment under a guaranty of the local
21 government unit.

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

28 (e) Award of qualified interest rate management
29 agreements.--

30 (1) The local government unit shall establish a process

1 for selecting other parties before entering into a qualified
2 interest rate management agreement.

3 (2) The local government unit shall establish
4 qualifications for other parties before entering into a
5 qualified interest rate management agreement. The
6 qualifications shall include a rating for the other party of
7 at least the third highest rating category from a nationally
8 recognized rating agency.

9 (3) A qualified interest rate management agreement must
10 be awarded by public sale, private sale by negotiation or
11 private sale by invitation.

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

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

26 (i) The local government unit is incurring
27 indebtedness under this chapter that has been or will be
28 issued to a public authority.

29 (ii) In connection with the incurring of debt under
30 subparagraph (i), the local government unit will become

1 obligated for all or a portion of the public authority's
2 costs under an interest rate management agreement.

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

5 SUBCHAPTER G

6 INTEREST RATE RISK AND INTEREST COST MANAGEMENT

7 IN FIRST CLASS CITIES AND COUNTIES

8 Sec.

9 8291. Scope of subchapter.

10 8292. Definitions.

11 8293. Interest rate management agreement requirements.

12 8294. Notice and retention of records.

13 8295. Financial reporting.

14 § 8291. Scope of subchapter.

15 Notwithstanding Subchapter F (relating to interest rate risk
16 and interest cost management), this subchapter shall apply to
17 interest rate management agreements in cities and counties of
18 the first class.

19 § 8292. Definitions.

20 The following words and phrases when used in this subchapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Contracting authority." Any of the following that enter
24 into an interest rate management agreement under this
25 subchapter:

26 (1) A city of the first class.

27 (2) A county of the first class.

28 (3) A municipal authority created under Chapter 56

29 (relating to municipal authorities) by an entity listed under
30 paragraph (1) or (2).

1 "Department." The Department of Community and Economic
2 Development of the Commonwealth.

3 "Interest rate management agreement." An agreement,
4 including a confirmation evidencing a transaction effected under
5 a master agreement, that:

6 (1) is entered into by a contracting authority in
7 accordance with and fulfilling the requirements of section
8 8293 (relating to interest rate management agreement
9 requirements);

10 (2) in the judgment of the contracting authority, is
11 designed to manage interest rate risk or interest cost of the
12 contracting authority on a debt or other debt-related
13 obligations a contracting authority is authorized to incur,
14 including, but not limited to, swaps, interest rate caps,
15 collars, corridors, ceiling and floor agreements, forward
16 agreements, float agreements and other similar arrangements;
17 and

18 (3) in the judgment of the contracting authority, will
19 assist the contracting authority in managing the interest
20 rate risk or interest cost of the contracting authority.

21 § 8293. Interest rate management agreement requirements.

22 (a) General rule.--Notwithstanding any other law to the
23 contrary, an interest rate management agreement entered into by
24 a contracting authority shall comply with the provisions of this
25 section.

26 (b) Requirements.--The following requirements shall apply:

27 (1) A contracting authority shall authorize and award by
28 resolution each interest rate management agreement or
29 confirmation of a transaction. THE RESOLUTION IS SUBJECT TO <--
30 SECTION 8003(A) AND (B) (RELATING TO ADVERTISEMENT AND

1 EFFECTIVENESS OF ORDINANCES) BUT MAY BE VALID AND EFFECTIVE
2 FOR ALL PURPOSES IMMEDIATELY UPON ADOPTION OR AS OTHERWISE
3 PROVIDED IN THE RESOLUTION. THE RESOLUTION AUTHORIZING AND
4 AWARDING 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 (I) A COPY OF THE QUALIFIED INTEREST RATE MANAGEMENT
9 AGREEMENT OR CONFIRMATION OF THE TRANSACTION UNDER THE
10 QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT IN
11 SUBSTANTIALLY THE FORM TO BE EXECUTED PURSUANT TO THE
12 RESOLUTION.

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

15 (A) ADOPTED BY THE CONTRACTING AUTHORITY; OR

16 (B) IF THE CONTRACTING AUTHORITY IS INCURRING
17 INDEBTEDNESS WHICH HAS OR WILL BE ISSUED TO A PUBLIC
18 AUTHORITY THAT HAS ENTERED INTO OR WILL ENTER INTO AN
19 INTEREST RATE MANAGEMENT AGREEMENT MEETING THE
20 REQUIREMENTS OF THIS SUBCHAPTER, ADOPTED BY THAT
21 PUBLIC AUTHORITY.

22 (III) A STATEMENT OF THE MANNER BY WHICH THE AWARD
23 OF THE INTEREST RATE MANAGEMENT AGREEMENT IS COMPLETED.

24 (2) No payments may be made to or on behalf of a
25 contracting authority by the other party to an interest rate
26 management agreement except periodic scheduled payments,
27 termination payments and attorney fees and other consultant
28 fees incurred in connection with entering into an interest
29 rate management agreement.

30 (3) Periodic scheduled payments on an interest rate

1 management agreement must commence not later than three years
2 after the date of the confirmation associated with the
3 interest rate management agreement.

4 (4) The index or basis used for calculating the periodic
5 scheduled payments receivable by the contracting authority on
6 an interest rate management agreement shall be substantially
7 similar to the index or basis used for calculating the
8 interest due on the associated debt or other debt-related
9 obligations of the contracting authority.

10 (5) At the time an interest rate management agreement is
11 entered into, the sum of the notional amount of the
12 agreement, without duplication for the notional amount of any
13 offsetting transactions, and all other interest rate
14 management agreements entered into or guaranteed and then in
15 effect of a contracting authority may not exceed 30% of the
16 total principal amount of the aggregate general obligation
17 debt and other debt-related obligations payable from or
18 supported by the contracting authority's general fund then
19 outstanding. If an interest rate management agreement is
20 payable from or supported by another specified fund or
21 revenues, the limitation shall apply based solely on interest
22 rate management agreements and debt and other debt-related
23 obligations payable from or supported by the specified fund
24 or revenues.

25 (6) Scheduled periodic payments and termination payments
26 received by a contracting authority on an interest rate
27 management agreement shall be deposited in a payment account
28 to:

29 (i) Pay periodic swap payments or to pay principal
30 and interest on the debt or debt-related obligations

1 related to the interest rate management agreement.

2 (ii) If the interest rate management agreement
3 described under subparagraph (i) has been terminated and
4 none of the related debt or debt-related obligations are
5 outstanding, pay periodic swap payments on interest rate
6 management agreements or principal and interest on debt
7 or debt-related obligations payable from or supported by
8 the same fund or revenues as the interest rate management
9 agreement described under subparagraph (i).

10 (iii) If all of the interest rate management
11 agreements described under subparagraph (ii) have been
12 terminated and no debt or debt-related obligations
13 described under subparagraph (ii) are outstanding, pay
14 all other obligations of the contracting authority.

15 (7) The scheduled expiration date of an interest rate
16 management agreement may not exceed 10 years from the date of
17 the related confirmation unless the interest rate management
18 agreement contains a provision allowing the contracting
19 authority to terminate the agreement at any time after 10
20 years from the date of the related confirmation without
21 making a termination payment.

22 (8) An interest rate management agreement shall contain
23 a certification by the other party to the interest rate
24 management agreement in which the other party does all of the
25 following:

26 (i) Acknowledges that the contracting authority that
27 is entering into the interest rate management agreement
28 under this subchapter is a political subdivision of this
29 Commonwealth or a municipal authority created under
30 Chapter 56 (relating to municipal authorities) by a city

1 of the first class or a county of the first class.

2 (ii) Acknowledges that the other party has read this
3 subchapter.

4 (iii) Acknowledges that a contracting authority may
5 only enter into an interest rate management agreement to
6 manage interest rate risk or interest cost of the
7 contracting authority on debt or other debt-related
8 obligations of the contracting authority.

9 (iv) Acknowledges and agrees that the other party
10 will notify the department, in writing, promptly upon the
11 payment to the other party of a termination payment by
12 the contracting authority, including the date and amount
13 of the payment and the identity of the interest
14 rate management agreement under which the payment was
15 made.

16 § 8294. Notice and retention of records.

17 (a) Notice.--Within 15 days following the adoption of a
18 resolution authorizing an interest rate management agreement, a
19 contracting authority shall file with the department certified
20 copies of the resolution, including an appendix to the
21 resolution, together with an itemized statement of all attorney
22 fees, consultant fees and other costs expected to be paid on
23 behalf of a contracting authority by the other party to
24 the interest rate management agreement.

25 (b) Records.--The department shall keep copies of all
26 documents filed with the department under this section as long
27 as an interest rate management agreement is in effect.

28 § 8295. Financial reporting.

29 A contracting authority that has entered into an interest
30 rate management agreement shall include in the contracting

1 authority's annual financial statements information with respect
2 to each interest rate management agreement the contracting
3 authority has authorized or entered into, including information
4 required pursuant to a statement issued by the Governmental
5 Accounting Standards Board.

6 Section 6. The following shall apply:

7 (1) The amendment or addition of 53 Pa.C.S. §§ 8002(c),
8 8286, 8287 and 8288:

9 (i) Shall apply to all qualified interest rate
10 management agreements entered into on or after the
11 effective date of this section.

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

20 (2) The addition of 53 Pa.C.S. Ch. 82 Subch. G:

21 (i) Shall apply to all interest rate management
22 agreements entered into by a contracting authority on or
23 after the effective date of this section.

24 (ii) Shall not apply to any amendment, termination
25 or novation of an interest rate management agreement if
26 the interest rate management agreement was entered into
27 prior to the effective date of this section or if the
28 term of the interest rate management agreement is not
29 extended.

30 (iii) Notwithstanding any other provision of law,

1 shall apply to an interest rate management agreement
2 entered into by any of the following:

3 (A) A city of the first class.

4 (B) A county of the first class.

5 (C) A municipal authority created under 53
6 Pa.C.S. Ch. 56 by an entity listed under clause (A)
7 or (B).

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