

## AMENDMENTS TO SENATE BILL NO. 903

Sponsor:

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1 Amend Bill, page 1, lines 1 through 13, by striking out all  
2 of said lines and inserting

3 Amending Title 53 (Municipalities Generally) of the Pennsylvania  
4 Consolidated Statutes, in municipal authorities, providing  
5 for interest rate risk and interest cost management, for the  
6 offense of knowingly participating in an ultra vires act of  
7 an authority and for the offense of knowingly filing  
8 materially false or misleading reports or certifications for  
9 an authority; and, in indebtedness and borrowing, further  
10 providing for definitions; and expanding the scope of  
11 provisions relating to interest rate risk and interest cost  
12 management to include first class counties and cities,  
13 municipal authorities and transportation authorities.

14 Amend Bill, page 1, lines 16 through 23; page 2, lines 1  
15 through 4, by striking out all of said lines on said pages and  
16 inserting

17 Section 1. Title 53 of the Pennsylvania Consolidated  
18 Statutes is amended by adding sections to read:  
19 § 5608.1. Interest rate risk and interest rate cost management.  
20 Notwithstanding any other provision of this chapter,  
21 municipal authorities shall be subject to the provisions of  
22 Subchapter F of Chapter 82 (relating to interest rate risk and  
23 interest cost management).

24 Amend Bill, page 2, lines 9 through 11, by striking out "or  
25 provides advice to an" in line 9, all of line 10 and "of an  
26 authority" in line 11 and inserting

27 an authority in performing an ultra vires act

28 Amend Bill, page 2, lines 20 through 23, by striking out all  
29 of said lines and inserting

30 (c) Definitions.--As used in this section, the following  
31 words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:  
2 "Financial advisor." A person, firm or other entity  
3 experienced in various aspects of debt and financial  
4 transactions who is retained by a local government unit to  
5 advise it with respect to structuring or repaying debt. The term  
6 does not include a lender, underwriter or other entity  
7 purchasing the bonds or notes of a local government unit.

8 "Ultra vires act." An act that a reasonable person would  
9 know the municipal authority is without statutory authority or  
10 power to perform. The reasonable person shall have comparable  
11 education, experience and information to the person assisting  
12 the municipal authority in performing the act.

13 Amend Bill, page 2, line 27, by inserting after "authority"  
14 or any lawyer, financial advisor, engineer, architect or  
15 any other individual

16 Amend Bill, page 2, lines 28 and 29, by striking out  
17 "Secretary of the Commonwealth" and inserting  
18 department

19 Amend Bill, page 3, lines 3 through 12, by striking out all  
20 of lines 3 through 11 and "has had a member convicted under  
21 subsection (b)" in line 12 and inserting

22 (b) Prohibition.--The company or firm having a member or  
23 employee convicted under subsection (a)

24 Amend Bill, page 3, by inserting between lines 15 and 16

25 (c) Definition.--As used in this section, the term  
26 "financial advisor" means a person, firm or other entity  
27 experienced in various aspects of debt and financial  
28 transactions who is retained by a local government unit to  
29 advise it with respect to structuring or repaying debt. The term  
30 does not include a lender, underwriter or other entity  
31 purchasing the bonds or notes of a local government unit.

32 Amend Bill, page 3, lines 16 through 30; pages 4 through 18,  
33 lines 1 through 30; page 19, lines 1 through 21, by striking out  
34 all of said lines on said pages and inserting

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

38 § 8002. Definitions.

39 \* \* \*

40 (c) Other definitions.--Subject to additional definitions  
41 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 "Interest rate management plan." A written plan prepared or  
7 reviewed by an independent financial advisor with respect to a  
8 qualified interest rate management agreement, which includes:

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

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

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

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

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

30 (4) A schedule listing the estimated and maximum  
31 periodic scheduled payments to be paid by the local  
32 government unit and to be received by the local government  
33 unit from the other party in each year during the term of the  
34 qualified interest rate management agreement.

35 (5) An analysis of the interest rate risk, basis risk,  
36 termination risk, credit risk, market-access risk and other  
37 risks of entering into the qualified interest rate management  
38 agreement. This paragraph includes schedules of the estimated  
39 and maximum scheduled periodic payments which would be due  
40 under the qualified interest rate management agreement.

41 (6) An analysis of the interest rate risk, basis risk,  
42 termination risk, credit risk, market-access risk and other  
43 risks to the local government unit of the net payments due  
44 for all debt outstanding and all qualified interest rate  
45 management agreements of the local government unit. This  
46 paragraph includes schedules of the estimated and maximum net  
47 payments of total debt service and scheduled, periodic, net  
48 payments, which would be due under all of the qualified  
49 interest rate management agreements.

50 (7) The local government unit's plan to monitor interest  
51 rate risk, basis risk, termination risk, credit risk, market-

1 access risk and other risks. This paragraph includes the  
2 valuation of the market or termination value of all  
3 outstanding qualified interest rate management agreements.

4 \* \* \*

5 "Local government unit." A county, county institution  
6 district, city, borough, incorporated town, township, school  
7 district or any similar, general or limited purpose unit of  
8 local government or any unit created by joint action of two or  
9 more local government units which is authorized to be created by  
10 law. [The] Except as otherwise provided under Subchapter F of  
11 Chapter 82 (relating to interest rate risk and interest cost  
12 management) the term does not include a city or county of the  
13 first class, an authority as defined in this section or any unit  
14 created by joint action of two or more local government units  
15 which have not been granted by statute the power to issue bonds.  
16 The term includes school districts of the first class presently  
17 operating under a home rule charter or home rule charter  
18 supplement, and the provisions of this subpart shall govern over  
19 inconsistent charter provisions.

20 \* \* \*

21 Section 3. Section 8281(b)(2) and (c)(4) of Title 53 are  
22 amended, subsections (a) and (c) are amended by adding  
23 paragraphs and the section is amended by adding a subsection to  
24 read:

25 § 8281. Qualified interest rate management agreements.

26 (a) General rule.--

27 \* \* \*

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

32 (6) Periodic scheduled payments on a qualified interest  
33 rate management agreement must commence not later than three  
34 years after the date of the confirmation associated with the  
35 qualified interest rate management agreement.

36 (7) The index or basis used for calculating the periodic  
37 scheduled payments receivable by the local government unit on  
38 a qualified interest rate management agreement shall be  
39 substantially similar to the index or basis used for  
40 calculating the interest due on the associated debt of the  
41 local government unit.

42 (8) At the time a qualified interest rate management  
43 agreement is entered into, the sum of the notional amount  
44 thereof, taking into account any netting of offsetting  
45 transactions, and all other qualified interest rate  
46 management agreements entered into or guaranteed, and then in  
47 effect of a local government unit, shall not exceed 50% of  
48 the total principal amount of the aggregate nonelectoral debt  
49 plus lease rental debt capacity of the local government unit  
50 then outstanding. This paragraph shall not apply to a  
51 regional financial authority that is primarily engaged in

1 lending to local government units.

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 ten 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 ten 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 ten 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  
31 management agreement under this subpart, [adopted]  
32 approved by that public authority not less than ten days  
33 prior to the date of the adoption of the resolution.

34 \* \* \*

35 (c) Contents of qualified interest rate management  
36 agreements.--In addition to other provisions approved by the  
37 local government unit, a qualified interest rate management  
38 agreement must contain all of the following:

39 \* \* \*

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

43 \* \* \*

44 (10) A certification by the other party to the qualified  
45 interest rate management agreement in which the other party  
46 does all of the following:

47 (i) Acknowledges and agrees that the local  
48 government unit which is entering into the qualified  
49 interest rate management agreement under this subpart is  
50 a political subdivision of the Commonwealth.

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

1 (iii) Acknowledges and agrees that a local  
2 government unit may only enter into a qualified interest  
3 rate management agreement to manage interest rate risk or  
4 interest cost of the local government unit on debt of the  
5 local government unit.

6 (iv) Believes that the qualified interest rate  
7 management agreement will enable the local government  
8 unit to manage interest rate risk or interest cost of the  
9 local government unit on debt of the local government  
10 unit.

11 (v) Acknowledges that it is the policy of the  
12 Commonwealth that local government units not enter into  
13 qualified interest rate management agreements that  
14 involve unreasonable speculation.

15 (vi) Believes that the qualified interest rate  
16 management agreement does not involve unreasonable  
17 speculation.

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

21 (viii) Acknowledges that when a local government  
22 unit loses money on a qualified interest rate management  
23 agreement, it is the taxpayers of the local government  
24 unit that end up directly or indirectly paying for the  
25 losses.

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

32 \* \* \*

33 (f) Definition.--As used in this section, the term "local  
34 government unit" has the same meaning as under section 8002  
35 (relating to definitions), except that the term includes a city  
36 or county of the first class and an authority.

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

39 § 8282. Covenant to pay amounts due under qualified interest  
40 rate management agreements.

41 \* \* \*

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

46 § 8283. Remedies.

47 \* \* \*

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

1 § 8284. Notice and retention of records.

2 \* \* \*

3 (c) Definition.--As used in this section, the term "local  
4 government unit" has the same meaning as under section 8002  
5 (relating to definitions), except that the term includes a city  
6 or county of the first class and an authority.

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

8 § 8285. Financial reporting.

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

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

20 Section 6. The amendment or addition of sections 5608.1,  
21 8002(c), 8281, 8282, 8283, 8284 and 8285 of Title 53 shall apply  
22 to interest rate management agreements entered into on or after  
23 the effective date of this act.

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