

REVISED MUNICIPAL FINANCE ACT (EXCERPT)
Act 34 of 2001

141.2317 Interest rate exchange or swap, hedge, or similar agreement; definitions.

Sec. 317. (1) For the purpose of more effectively managing its debt service, a municipality may enter into an interest rate exchange or swap, hedge, or similar agreement or agreements in connection with the issuance or proposed issuance of debt or in connection with its then outstanding debt.

(2) In connection with entering into an interest rate exchange or swap, hedge, or similar agreement, a municipality may create a reserve fund for the payment of the exchange or swap, hedge, or similar agreement.

(3) An agreement entered into pursuant to this section shall not be included within the total debt of a municipality for any statutory or charter or other debt limitation purpose.

(4) If an interest rate exchange or swap, hedge, or similar agreement described in this section is entered into by a municipality in connection with debt that was not approved by the voters of the municipality, or in connection with a refunding of debt not originally approved by the voters of the municipality, 1 or more of the following apply:

(a) The interest under the agreement constitutes a limited tax full faith and credit pledge from general funds of the municipality.

(b) Subject to any existing contracts, the interest under the agreement shall be payable from any available money or revenue sources, including revenues that shall be specified by the agreement, securing the municipal security in connection with which the agreement is entered into.

(5) If an interest rate exchange or swap, hedge, or similar agreement described in this section is entered into by a municipality in connection with debt that was approved by the voters of the municipality, or in connection with a refunding of debt originally approved by the voters of the municipality, the municipality's interest payment obligation under the agreement shall be considered to be additional interest on the debt, shall constitute an unlimited tax full faith and credit pledge of the municipality, and the municipality shall levy all of the following:

(a) The full amount of taxes required, or in the case of a variable rate obligation the amount reasonably estimated to be required, for the payment of principal and interest on the municipal securities without limitation as to rate or amount and in addition to other taxes that the municipality may be authorized to levy.

(b) The full amount of taxes required, or in the case of a variable rate obligation the amount reasonably estimated to be required, for the payment of the municipality's net interest obligation under an interest rate exchange or swap, hedge, or similar agreement entered into under this section.

(c) The amounts levied under subdivisions (a) and (b) shall be reduced by any surplus funds on hand in the debt retirement fund in excess of a reasonable reserve as determined by the municipality's chief financial officer.

(6) For purposes of this section, "net interest obligation" means the amount of interest payable by a municipality in a given year under an agreement entered into under this section minus any interest payment received by a municipality from the other party to the agreement in the same period under the agreement, but not less than zero. Termination payments shall constitute interest to the extent that the treatment does not cause the interest rate on the debt to exceed the limits established by this act.

(7) A municipality shall not enter into an agreement under this section unless all of the following conditions are met:

(a) The governing body of the municipality has, by resolution or ordinance, expressly approved the agreement and acknowledged the potential risks associated with the agreement.

(b) The counterparty to the agreement has been assigned a rating of "A" or better, or other rating as the department may determine, by a nationally recognized rating agency at the time the agreement is entered into.

(c) The length of the agreement does not extend beyond the final maturity date of the debt issued in connection with the agreement.

(d) The municipality shall not have waived its right to a jury trial.

(e) The municipality has created a debt management plan.

(f) The municipality has created a swap management plan.

(8) An agreement entered into under this section shall be described in the municipality's annual audit report filed under section 303(1).

(9) As used in this section:

(a) "Debt management plan" means a written debt management plan of the municipality that includes, but is not limited to, the following:

(i) Total amount of debt of the municipality.

(ii) Total amount of variable rate debt of the municipality.

- (iii) Analysis of the effect of rising interest rates on variable rate holdings of the municipality.
- (iv) Analysis of risk in maintaining variable risk holdings.
- (b) "Swap management plan" means a written management plan that includes, but is not limited to, all of the following:
 - (i) Analysis of the benefits and costs of entering into swap agreements.
 - (ii) Analysis of the risk associated with entering into swap agreements.
 - (iii) Analysis of early termination, involuntary termination, default, and cost considerations associated with swap agreements.
 - (iv) System in place to monitor the status of all outstanding swap agreements.

History: 2001, Act 34, Eff. Mar. 1, 2002;—Am. 2002, Act 500, Imd. Eff. July 3, 2002.