April 13, 2011

ENGROSSED
SENATE BILL No. 388

DIGEST OF SB 388 (Updated April 13, 2011 12:32 pm - DI 113)

Citations Affected: IC 5-1.

Synopsis: Swap agreements. Defines "issuing body" for purposes of restrictions on swap agreements to include the state of Indiana and its agencies, commissions, and authorities, the Indiana bond bank, a political subdivision, county, school corporation, hospital association, municipal corporation, special taxing district, local public improvement bond bank, and any entity that issues bonds payable by these entities. Provides that the law is to place restrictions on the use of swap agreements and does not authorize entering into swap agreements for any entity not already authorized under another law. Provides that a swap agreement may only be used in connection with the financing activities of an issuing body and may not be used as an investment by an issuing body. Provides that a swap agreement may be entered into only under the following conditions: (1) The swap agreement would not cause the aggregate outstanding notional amounts of all its outstanding swap agreements on obligations payable from tax revenues

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Effective: July 1, 2011.

Waltz, Breaux
(HOUSE SPONSOR — SPEEDY)

January 11, 2011, read first time and referred to Committee on Tax and Fiscal Policy.
February 15, 2011, amended, reported favorably — Do Pass.
February 17, 2011, read second time, amended, ordered engrossed.
February 18, 2011, engrossed.
February 22, 2011, read third time, passed. Yeas 37, nays 11.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Ways and Means.
April 13, 2011, amended, reported — Do Pass.

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Digest Continued

to exceed 20% of the sum of all aggregate outstanding obligations of the issuing body payable from tax revenues plus obligations payable from taxable revenues not yet issued but for which one or more swap agreements have been entered into by the issuing body. Provides that the Indiana finance authority may provide an exemption from the threshold for a local issuing body and that the budget committee must review a proposed swap agreement that would cause a state issuer to exceed the threshold. (2) The issuing body has adopted a comprehensive swap agreement policy at a public meeting that is not less restrictive than the swap agreement policy governing the adoption of swap agreements that is in place for the Indiana finance authority. (3) The swap agreement is approved by the issuing body at a public meeting and the resolution includes a thorough analysis of the risk the issuing body is assuming by entering into the swap agreement. Requires reports by the issuing body to its governing board regarding swap agreements.

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April 13, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 388

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-1-14-1.3, AS ADDED BY P.L.146-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.3. The following definitions apply throughout this chapter:

(1) "Local issuing body" has the meaning set forth in IC 5-1-5-1.

(2) "Special benefit taxes" has the meaning set forth in IC 5-1-5-1.

(3) "Swap agreement" has the meaning set forth in IC 8-9.5-4, except that the term does not include a swap agreement entered into by an issuing body (as defined in section 17(b) of this chapter) if none of the payments owed by the issuing body under the agreement, including any termination or settlement payments, are payable out of:

(A) a public fund (as defined in IC 36-1-12-1.2); or

(B) a special assessment.

~~(3)~~ **(4)** "Tax increment revenues" has the meaning set forth in IC 5-1-5-1.

SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE

AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17. (a) This section does not apply to a political subdivision or other local entity when the political subdivision or other local entity participates in a program sponsored by the Indiana bond bank in which the actions of the Indiana bond bank are subject to this section.**

(b) As used in this section, "issuing body" includes:

(1) the state of Indiana and its agencies, commissions, and authorities;

(2) the Indiana bond bank established under IC 5-1.5-2;

(3) a political subdivision, school corporation, hospital association, municipal corporation, and special taxing district;

(4) a local public improvement bond bank established under IC 5-1.4-2; and

(5) any entity that has issued bonds payable directly or indirectly from taxes or lease rentals payable by any of the entities listed in subdivisions (1) through (4).

(c) This section provides restrictions on any issuing body entering into a swap agreement and does not authorize an issuing body to enter into a swap agreement separate from any other authority the issuing body has for entering into a swap agreement.

(d) For an issuing body that is authorized by another law to enter into swap agreements, the issuing body:

(1) may enter into a swap agreement only in connection with the financing activities of the issuing body as provided in this section; and

(2) may not enter into a swap agreement as an investment.

(e) An issuing body may enter into one (1) or more swap agreements in connection with the financing activities of the issuing body only under the following conditions:

(1) If in connection with or in anticipation of the issuance of an obligation, entering into the swap agreement would not cause the percentage determined in STEP FOUR of the following STEPS to exceed twenty percent (20%):

STEP ONE: Determine:

(i) the aggregate outstanding notional amounts of all the issuing body's outstanding swap agreements; minus

(ii) the aggregate outstanding notional amounts of the issuing body's outstanding swap agreements that were issued in connection with obligations for which no tax revenues were pledged as a means to repay the obligations.

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STEP TWO: Add:

(i) all aggregate outstanding obligations of the issuing body; plus

(ii) obligations not yet issued but for which one (1) or more swap agreements have been entered into by the issuing body.

STEP THREE: Determine:

(i) the STEP TWO result; minus

(ii) the aggregate amount of all obligations included in the STEP TWO result for which no tax revenues were pledged as a means to repay the obligations.

STEP FOUR: Divide:

(i) the STEP ONE result; by

(ii) the STEP THREE result.

Multiply the quotient by one hundred (100) to convert the quotient to a percentage.

For purposes of the calculation, if more than one (1) swap agreement has been entered into in connection with or in anticipation of specified principal amounts and maturities of the same obligations, only the swap agreement with the highest outstanding notional amount is to be included in the calculation of the aggregate outstanding notional amounts of outstanding swap agreements. However, if the issuing body, except the Indiana finance authority, receives prior approval for entering into a particular swap agreement from the Indiana finance authority, an issuing body may enter into the swap agreement in excess of the threshold. In the case of the Indiana finance authority, the authority may enter into a swap agreement in excess of the threshold only after review by the budget committee.

(2) The issuing body, except the Indiana finance authority, has adopted a comprehensive swap agreement policy at a public meeting that:

(A) includes provisions governing the adoption of swap agreements;

(B) is not less restrictive than the swap agreement policy governing the adoption of swap agreements that is in place for the Indiana finance authority at the time the issuing body adopts the comprehensive swap agreement policy; and

(C) is submitted to the Indiana finance authority for a determination that it complies with this subdivision.

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(3) Each swap agreement is approved by a resolution of the governing board of the issuing body at a public meeting and the resolution includes a thorough analysis of the risk the issuing body is assuming by entering into the swap agreement.

(f) On an annual basis, an issuing body shall report to the governing board of the issuing body the status and terms and conditions of all outstanding swap agreements. The issuing body shall provide a final report to the governing board of the issuing body upon termination or expiration of each swap agreement.

(g) A swap agreement shall be considered as being entered into in connection with the financing activities of an issuing body if:

(1) the swap agreement is entered into not later than one hundred eighty (180) days after the issuance of the obligation and specifically indicates the swap agreement's relationship to the obligation;

(2) the issuing body designates the swap agreement as having a relationship to the obligation;

(3) the swap agreement amends, modifies, or reverses a swap agreement described in subdivision (1) or (2); or

(4) the terms of the swap agreement bear a reasonable relationship to the terms of the obligation.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 388, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 11 through 17, begin a new paragraph and insert:

"SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17. (a) As used in this section, "issuing body" includes:**

(1) the state of Indiana and its agencies, commissions, and authorities;

(2) the Indiana bond bank established under IC 5-1.5-2;

(3) a political subdivision (except a local airport authority created by a county having a consolidated city), school corporation, hospital association, municipal corporation, and special taxing district;

(4) a local public improvement bond bank established under IC 5-1.4-2; and

(5) any entity that has issued bonds payable directly or indirectly from taxes or lease rentals payable by any of the entities listed in subdivisions (1) through (4).

(b) This section provides restrictions on any issuing body entering into a swap agreement and does not authorize an issuing body to enter into a swap agreement separate from any other authority the issuing body has for entering into a swap agreement.

(c) For an issuing body that is authorized by another law to enter into swap agreements, the issuing body:

(1) may enter into a swap agreement only in connection with the financing activities of the issuing body as provided in this section; and

(2) may not enter into a swap agreement as an investment.

(d) An issuing body may enter into one (1) or more swap agreements in connection with the financing activities of the issuing body only under the following conditions:

(1) If in connection with or in anticipation of the issuance of an obligation, entering into the swap agreement would not cause the aggregate outstanding notional amounts of all its outstanding swap agreements to exceed twenty percent (20%) of the sum of:

(A) all aggregate outstanding obligations of the issuing

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body; plus

(B) obligations not yet issued but for which one (1) or more swap agreements have been entered into by the issuing body.

For purposes of the calculation, if more than one (1) swap agreement has been entered into in connection with or in anticipation of specified principal amounts and maturities of the same obligations, only the swap agreement with the highest outstanding notional amount is to be included in the calculation of the aggregate outstanding notional amounts of outstanding swap agreements. However, if the issuing body, except the Indiana finance authority, receives prior approval for entering into a particular swap agreement from the Indiana finance authority, an issuing body may enter into the swap agreement in excess of the threshold. In the case of the Indiana finance authority, the authority may enter into a swap agreement in excess of the threshold only after review by the state budget committee.

(2) The issuing body, except the Indiana finance authority, has adopted a comprehensive swap agreement policy at a public meeting that:

(A) includes provisions governing the adoption of swap agreements;

(B) is not less restrictive than the swap agreement policy governing the adoption of swap agreements that is in place for the Indiana finance authority at the time the issuing body adopts the comprehensive swap agreement policy; and

(C) is submitted to the Indiana finance authority for a determination that it complies with this subdivision.

(3) Each swap agreement is approved by a resolution of the governing board of the issuing body at a public meeting and the resolution includes a thorough analysis of the risk the issuing body is assuming by entering into the swap agreement.

(e) On an annual basis, an issuing body shall report to the governing board of the issuing body the status and terms and conditions of all outstanding swap agreements. The issuing body shall provide a final report to the governing board of the issuing body upon termination or expiration of each swap agreement.

(f) A swap agreement shall be considered as being entered into in connection with the financing activities of an issuing body if:

(1) the swap agreement is entered into not later than one

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hundred eighty (180) days after the issuance of the obligation and specifically indicates the swap agreement's relationship to the obligation;
(2) the issuing body designates the swap agreement as having a relationship to the obligation;
(3) the swap agreement amends, modifies, or reverses a swap agreement described in subdivision (1) or (2); or
(4) the terms of the swap agreement bear a reasonable relationship to the terms of the obligation.".

Page 2, delete lines 1 through 9.

and when so amended that said bill do pass.

(Reference is to SB 388 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 388 be amended to read as follows:

Page 2, line 2, delete "created by " and insert "**established for**".

(Reference is to SB 388 as printed February 16, 2011.)

WALTZ

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 388, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete line 8, begin a new line block indented and insert:

"**IC 8-9.5-4, except that the term does not include a swap agreement entered into by an issuing body (as defined in section 17(b) of this chapter) if none of the payments owed by the issuing body under the agreement, including any termination or settlement payments, are payable out of:**
(A) a public fund (as defined in IC 36-1-12-1.2); or

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(B) a special assessment.".

Page 1, line 13, delete "As used in this section, "issuing body"" and insert "**This section does not apply to a political subdivision or other local entity when the political subdivision or other local entity participates in a program sponsored by the Indiana bond bank in which the actions of the Indiana bond bank are subject to this section.**".

Page 1, delete line 14, begin a new paragraph and insert:

"**(b) As used in this section, "issuing body" includes:**".

Page 2, line 1, delete "(except a local airport authority".

Page 2, line 2, delete "established for a county having a consolidated city)".

Page 2, line 10, delete "(b)" and insert "**(c)**".

Page 2, line 14, delete "(c)" and insert "**(d)**".

Page 2, line 20, delete "(d)" and insert "**(e)**".

Page 2, line 25, delete "aggregate outstanding notional amounts of all its" and insert "**percentage determined in STEP FOUR of the following STEPS**".

Page 2, line 26, delete "outstanding swap agreements".

Page 2, line 26, after "(20%)" insert "**:**

STEP ONE: Determine:

(i) the aggregate outstanding notional amounts of all the issuing body's outstanding swap agreements; minus

(ii) the aggregate outstanding notional amounts of the issuing body's outstanding swap agreements that were issued in connection with obligations for which no tax revenues were pledged as a means to repay the obligations.

STEP TWO: Add:

(i) all aggregate outstanding obligations of the issuing body; plus

(ii) obligations not yet issued but for which one (1) or more swap agreements have been entered into by the issuing body.

STEP THREE: Determine:

(i) the STEP TWO result; minus

(ii) the aggregate amount of all obligations included in the STEP TWO result for which no tax revenues were pledged as a means to repay the obligations.

STEP FOUR: Divide:

(i) the STEP ONE result; by

(ii) the STEP THREE result.

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Multiply the quotient by one hundred (100) to convert the quotient to a percentage.".

Page 2, delete lines 27 through 32.

Page 3, line 4, delete "state".

Page 3, line 21, delete "(e)" and insert "**(f)**".

Page 3, line 26, delete "(f)" and insert "**(g)**".

and when so amended that said bill do pass.

(Reference is to SB 388 as reprinted February 18, 2011.)

ESPICH, Chair

Committee Vote: yeas 21, nays 1.

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