



Reprinted
February 18, 2011

SENATE BILL No. 388

DIGEST OF SB 388 (Updated February 17, 2011 4:30 pm - DI 58)

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, (other than the Indianapolis airport authority) 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 except the Indianapolis airport authority. 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 to exceed 20% of the sum of all aggregate outstanding obligations of the issuing body plus obligations not yet issued but for which one or more swap agreements have been entered into by the issuing body. Provides that
(Continued next page)

Effective: July 1, 2011.

Waltz

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.

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Digest Continued

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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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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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:

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

- 5 (1) "Local issuing body" has the meaning set forth in IC 5-1-5-1.
6 (2) "Special benefit taxes" has the meaning set forth in IC 5-1-5-1.
7 **(3) "Swap agreement" has the meaning set forth in**
8 **IC 8-9.5-9-4.**
9 ~~(4)~~ **(4)** "Tax increment revenues" has the meaning set forth in
10 IC 5-1-5-1.

11 SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2011]: **Sec. 17. (a) As used in this section, "issuing body"**
14 **includes:**

- 15 **(1) the state of Indiana and its agencies, commissions, and**
16 **authorities;**
17 **(2) the Indiana bond bank established under IC 5-1.5-2;**

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1 (3) a political subdivision (except a local airport authority
 2 established for a county having a consolidated city), school
 3 corporation, hospital association, municipal corporation, and
 4 special taxing district;
 5 (4) a local public improvement bond bank established under
 6 IC 5-1.4-2; and
 7 (5) any entity that has issued bonds payable directly or
 8 indirectly from taxes or lease rentals payable by any of the
 9 entities listed in subdivisions (1) through (4).
 10 (b) This section provides restrictions on any issuing body
 11 entering into a swap agreement and does not authorize an issuing
 12 body to enter into a swap agreement separate from any other
 13 authority the issuing body has for entering into a swap agreement.
 14 (c) For an issuing body that is authorized by another law to
 15 enter into swap agreements, the issuing body:
 16 (1) may enter into a swap agreement only in connection with
 17 the financing activities of the issuing body as provided in this
 18 section; and
 19 (2) may not enter into a swap agreement as an investment.
 20 (d) An issuing body may enter into one (1) or more swap
 21 agreements in connection with the financing activities of the issuing
 22 body only under the following conditions:
 23 (1) If in connection with or in anticipation of the issuance of
 24 an obligation, entering into the swap agreement would not
 25 cause the aggregate outstanding notional amounts of all its
 26 outstanding swap agreements to exceed twenty percent (20%)
 27 of the sum of:
 28 (A) all aggregate outstanding obligations of the issuing
 29 body; plus
 30 (B) obligations not yet issued but for which one (1) or more
 31 swap agreements have been entered into by the issuing
 32 body.
 33 For purposes of the calculation, if more than one (1) swap
 34 agreement has been entered into in connection with or in
 35 anticipation of specified principal amounts and maturities of
 36 the same obligations, only the swap agreement with the
 37 highest outstanding notional amount is to be included in the
 38 calculation of the aggregate outstanding notional amounts of
 39 outstanding swap agreements. However, if the issuing body,
 40 except the Indiana finance authority, receives prior approval
 41 for entering into a particular swap agreement from the
 42 Indiana finance authority, an issuing body may enter into the

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1 swap agreement in excess of the threshold. In the case of the
 2 Indiana finance authority, the authority may enter into a
 3 swap agreement in excess of the threshold only after review
 4 by the state budget committee.
 5 (2) The issuing body, except the Indiana finance authority, has
 6 adopted a comprehensive swap agreement policy at a public
 7 meeting that:
 8 (A) includes provisions governing the adoption of swap
 9 agreements;
 10 (B) is not less restrictive than the swap agreement policy
 11 governing the adoption of swap agreements that is in place
 12 for the Indiana finance authority at the time the issuing
 13 body adopts the comprehensive swap agreement policy;
 14 and
 15 (C) is submitted to the Indiana finance authority for a
 16 determination that it complies with this subdivision.
 17 (3) Each swap agreement is approved by a resolution of the
 18 governing board of the issuing body at a public meeting and
 19 the resolution includes a thorough analysis of the risk the
 20 issuing body is assuming by entering into the swap agreement.
 21 (e) On an annual basis, an issuing body shall report to the
 22 governing board of the issuing body the status and terms and
 23 conditions of all outstanding swap agreements. The issuing body
 24 shall provide a final report to the governing board of the issuing
 25 body upon termination or expiration of each swap agreement.
 26 (f) A swap agreement shall be considered as being entered into
 27 in connection with the financing activities of an issuing body if:
 28 (1) the swap agreement is entered into not later than one
 29 hundred eighty (180) days after the issuance of the obligation
 30 and specifically indicates the swap agreement's relationship
 31 to the obligation;
 32 (2) the issuing body designates the swap agreement as having
 33 a relationship to the obligation;
 34 (3) the swap agreement amends, modifies, or reverses a swap
 35 agreement described in subdivision (1) or (2); or
 36 (4) the terms of the swap agreement bear a reasonable
 37 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.)

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