CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 388

Citations Affected: IC 5-1-14.

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, or special taxing district, a local public improvement bond bank, and any entity that issues bonds payable by any of these entities. Provides that swap agreements are covered by the restrictions only if any part of the payments owed by an issuing body is payable from tax revenues or special assessments. Provides that the law places 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 be used only 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 of the issuing body's outstanding swap agreements on obligations payable from tax revenues to exceed 20% of the sum of all aggregate outstanding obligations of the issuing body payable from tax revenues plus obligations payable from tax 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 (if other than the Indiana finance authority) 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. **(This conference committee report restates in the positive the definition of swap agreement and adds a reference to a special assessment in the formula. Changes the code placement of a new section to avoid a conflict.)**

Effective: July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 388 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

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 8-9.5-9-4, except that the term includes a swap agreement entered into by an issuing body (as defined in section 17.2(b) of this chapter) only if any part of the payments owed by the issuing body under the agreement, including any termination or settlement payments, is payable out of:

(A) tax revenues; or

(B) a special assessment.

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

SECTION 2. IC 5-1-14-17.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17.2. (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 the aggregate amount of the outstanding notional amounts of the issuing body's outstanding swap agreements.

STEP TWO: Determine the difference between:

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

(ii) the aggregate amount of the outstanding obligations of the issuing body for which no tax revenues nor special assessments were pledged as a means to repay the obligations.

STEP THREE: Determine the sum of:

(i) the STEP TWO result; plus

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

STEP FOUR: Determine the quotient of:

(i) the STEP ONE result; divided 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.

(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.".

(Reference is to ESB 388 as reprinted April 19, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 388

Signed by:

Senator Waltz Chairperson	Representative Speedy
Senator Taylor	Representative Bardon
Senate Conferees	**House Conferees**