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.

SENATE ENROLLED ACT No. 388

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 8-9.5-9-4, 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.

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: ____________ Time: ____________