

IC 8-9.5-9

Chapter 9. Powers and Duties of Authorities Related to Swap Agreements

IC 8-9.5-9-1

Construction and application of chapter

Sec. 1. This chapter applies notwithstanding any other law and shall be liberally construed.

As added by P.L.55-1994, SEC.1.

IC 8-9.5-9-2

"Authority" defined

Sec. 2. As used in this chapter, "authority" means:

- (1) an authority or agency established under IC 8-1-2.2 or IC 8-9.5 through IC 8-23;
- (2) when acting under an affected statute (as defined in IC 4-4-10.9-1.2), the Indiana finance authority established by IC 4-4-11;
- (3) only in connection with a program established under IC 13-18-13 or IC 13-18-21, the bank established under IC 5-1.5;
- (4) a fund or program established under IC 13-18-13 or IC 13-18-21;
- (5) the Indiana housing and community development authority established by IC 5-20-1;
- (6) the authority established under IC 4-4-11; or
- (7) the authority established under IC 5-1-17.

As added by P.L.55-1994, SEC.1. Amended by P.L.273-1999, SEC.45; P.L.235-2005, SEC.108; P.L.214-2005, SEC.50; P.L.1-2006, SEC.153 and P.L.181-2006, SEC.49; P.L.162-2007, SEC.30.

IC 8-9.5-9-3

"Obligations" defined

Sec. 3. As used in this chapter, "obligations" means bonds, loan contracts, notes, bond anticipation notes, commercial paper, leases, lease-purchases, installment purchases, certificates of participation in agreements or programs, other evidences of indebtedness, or other agreements or purchasing programs, whether or not the obligations have been issued or entered into.

As added by P.L.55-1994, SEC.1. Amended by P.L.273-1999, SEC.46.

IC 8-9.5-9-4

"Swap agreement" defined

Sec. 4. As used in this chapter, "swap agreement" refers to:

- (1) an agreement (including terms and conditions incorporated by reference in the agreement) that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, rate cap agreement, rate floor agreement, rate collar agreement, or

- any other similar agreement (including any option to enter into any of the agreements described in this subdivision);
- (2) any combination of the agreements described in subdivision (1); or
- (3) a master agreement for an agreement or a combination of agreements described in subdivision (1) or (2), together with all supplements to the agreement.

As added by P.L.55-1994, SEC.1.

IC 8-9.5-9-5

Powers and duties of authorities

Sec. 5. (a) Subject to subsections (b) through (d), an authority may enter into and modify, amend, or terminate one (1) or more swap agreements that the authority determines to be necessary or desirable in connection with or incidental to the issuance, carrying, or securing of obligations. Swap agreements entered into by an authority shall:

- (1) contain the provisions (including payment, term, security, default, and remedy provisions); and
- (2) be with the parties;

that the authority determines are necessary or desirable after due consideration is given to the creditworthiness of the parties.

(b) The authority may not:

- (1) enter into any swap agreement under this section other than for the purpose of managing an interest rate or similar risk that arises in connection with or incidental to the issuance, carrying, or securing of obligations by the authority; or
- (2) carry on a business of acting as a dealer in swap agreements.

(c) A swap agreement shall be considered as being entered into in connection with or incidental to the issuance, carrying, or securing of obligations if:

- (1) the swap agreement is entered into not more than one hundred eighty (180) days after the issuance of the obligations and specifically indicates the agreement's relationship to the obligations;
- (2) the authority designates the swap agreement as having a relationship to the obligations;
- (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 obligations.

(d) Payments to be made by the authority to any other party under a swap agreement may be payable from:

- (1) the same source or sources of funds from which the obligations are, will be, or may be payable; or
- (2) any other lawfully available source.

(e) This chapter does not create a debt or liability of the authority or the state for purposes of any constitutional or statutory limitation.

As added by P.L.55-1994, SEC.1. Amended by P.L.273-1999, SEC.47.

IC 8-9.5-9-6

Investment powers

Sec. 6. The provisions of this chapter shall not be construed as limiting or restricting the investment powers otherwise provided to the authority.

As added by P.L.55-1994, SEC.1.

IC 8-9.5-9-7

Credit enhancement and liquidity agreements

Sec. 7. With regard to entering into any swap agreement, the authority may enter into credit enhancement or liquidity agreements with payment, security, default, remedy, and other terms and conditions as determined by the authority.

As added by P.L.55-1994, SEC.1.

IC 8-9.5-9-8

Payments under swap agreements

Sec. 8. (a) With respect to all leases and contracts entered into by the authority with the Indiana department of transportation, the Indiana department of administration, a fund or program established under IC 13-18-13 or IC 13-18-21, or any other entity to support obligations, the lease or contract may provide that payments under a swap agreement are treated as a debt service on the obligations or as additional rental or other payment due under the lease or contract as the authority may determine.

(b) The authority may determine that payments under a swap agreement may be integrated with payments on obligations for the purpose of meeting any statutory requirements related to the issuance of obligations.

As added by P.L.55-1994, SEC.1. Amended by P.L.273-1999, SEC.48.

IC 8-9.5-9-9

Enforcement of swap agreements

Sec. 9. (a) This section does not apply in cases of bad faith or actual knowledge to the contrary by a party.

(b) A party that enters into any swap agreement with an authority may rely on a representation by the authority that the authority is authorized or empowered to enter into the swap agreement, and notwithstanding the failure by the authority to comply with the provisions of this chapter, that party may enforce the swap agreement against the authority, subject to the terms of the swap agreement and subject to prior claims on sources from which the swap agreement may be payable.

As added by P.L.55-1994, SEC.1.