

SENATE BILL No. 1314

May 9, 2002, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend 2001 PA 34, entitled
"Revised municipal finance act,"
by amending sections 317, 403, 611, and 701 (MCL 141.2317,
141.2403, 141.2611, and 141.2701).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 317. (1) For the purpose of more effectively managing
2 its debt service, a municipality may enter into an interest rate
3 exchange or swap, hedge, or similar agreement or agreements in
4 connection with the issuance OR PROPOSED ISSUANCE of ~~municipal~~
5 ~~securities~~ DEBT or in connection with its then outstanding
6 ~~municipal securities~~ DEBT.

7 (2) In connection with entering into an interest rate
8 exchange or swap, hedge, or similar agreement, a municipality may
9 create a reserve fund for the payment of the exchange or swap,
10 hedge, or similar agreement.

1 (3) An agreement entered into pursuant to this section shall
2 not be included within the total debt of a municipality for any
3 statutory or charter OR OTHER debt limitation purpose. ~~and shall~~
4 ~~be payable as a limited tax full faith and credit pledge from~~
5 ~~general funds of the municipality or, subject to any existing~~
6 ~~contracts, from any available money or revenue sources, including~~
7 ~~revenues that shall be specified by the agreement, securing the~~
8 ~~municipal security in connection with which the agreement is~~
9 ~~entered into.~~

10 (4) IF AN INTEREST RATE EXCHANGE OR SWAP, HEDGE, OR SIMILAR
11 AGREEMENT DESCRIBED IN THIS SECTION IS ENTERED INTO BY A MUNICI-
12 PALITY IN CONNECTION WITH DEBT THAT WAS NOT APPROVED BY THE
13 VOTERS OF THE MUNICIPALITY, OR IN CONNECTION WITH A REFUNDING OF
14 DEBT NOT ORIGINALLY APPROVED BY THE VOTERS OF THE MUNICIPALITY, 1
15 OR MORE OF THE FOLLOWING APPLY:

16 (A) THE INTEREST UNDER THE AGREEMENT CONSTITUTES A LIMITED
17 TAX FULL FAITH AND CREDIT PLEDGE FROM GENERAL FUNDS OF THE
18 MUNICIPALITY.

19 (B) SUBJECT TO ANY EXISTING CONTRACTS, THE INTEREST UNDER
20 THE AGREEMENT SHALL BE PAYABLE FROM ANY AVAILABLE MONEY OR REVE-
21 NUE SOURCES, INCLUDING REVENUES THAT SHALL BE SPECIFIED BY THE
22 AGREEMENT, SECURING THE MUNICIPAL SECURITY IN CONNECTION WITH
23 WHICH THE AGREEMENT IS ENTERED INTO.

24 (5) IF AN INTEREST RATE EXCHANGE OR SWAP, HEDGE, OR SIMILAR
25 AGREEMENT DESCRIBED IN THIS SECTION IS ENTERED INTO BY A MUNICI-
26 PALITY IN CONNECTION WITH DEBT THAT WAS APPROVED BY THE VOTERS OF
27 THE MUNICIPALITY, OR IN CONNECTION WITH A REFUNDING OF DEBT

1 ORIGINALLY APPROVED BY THE VOTERS OF THE MUNICIPALITY, THE
2 MUNICIPALITY'S INTEREST PAYMENT OBLIGATION UNDER THE AGREEMENT
3 SHALL BE CONSIDERED TO BE ADDITIONAL INTEREST ON THE DEBT, SHALL
4 CONSTITUTE AN UNLIMITED TAX FULL FAITH AND CREDIT PLEDGE OF THE
5 MUNICIPALITY, AND THE MUNICIPALITY SHALL LEVY ALL OF THE
6 FOLLOWING:

7 (A) THE FULL AMOUNT OF TAXES REQUIRED, OR IN THE CASE OF A
8 VARIABLE RATE OBLIGATION THE AMOUNT REASONABLY ESTIMATED TO BE
9 REQUIRED, FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON THE MUNIC-
10 IPAL SECURITIES WITHOUT LIMITATION AS TO RATE OR AMOUNT AND IN
11 ADDITION TO OTHER TAXES THAT THE MUNICIPALITY MAY BE AUTHORIZED
12 TO LEVY.

13 (B) THE FULL AMOUNT OF TAXES REQUIRED, OR IN THE CASE OF A
14 VARIABLE RATE OBLIGATION THE AMOUNT REASONABLY ESTIMATED TO BE
15 REQUIRED, FOR THE PAYMENT OF THE MUNICIPALITY'S NET INTEREST
16 OBLIGATION UNDER AN INTEREST RATE EXCHANGE OR SWAP, HEDGE, OR
17 SIMILAR AGREEMENT ENTERED INTO UNDER THIS SECTION.

18 (C) THE AMOUNTS LEVIED UNDER SUBDIVISIONS (A) AND (B) SHALL
19 BE REDUCED BY ANY SURPLUS FUNDS ON HAND IN THE DEBT RETIREMENT
20 FUND IN EXCESS OF A REASONABLE RESERVE AS DETERMINED BY THE
21 MUNICIPALITY'S CHIEF FINANCIAL OFFICER.

22 (6) FOR PURPOSES OF THIS SECTION, "NET INTEREST OBLIGATION"
23 MEANS THE AMOUNT OF INTEREST PAYABLE BY A MUNICIPALITY IN A GIVEN
24 YEAR UNDER AN AGREEMENT ENTERED INTO UNDER THIS SECTION MINUS ANY
25 INTEREST PAYMENT RECEIVED BY A MUNICIPALITY FROM THE OTHER PARTY
26 TO THE AGREEMENT IN THE SAME PERIOD UNDER THE AGREEMENT, BUT NOT
27 LESS THAN ZERO. TERMINATION PAYMENTS SHALL CONSTITUTE INTEREST

1 TO THE EXTENT THAT THE TREATMENT DOES NOT CAUSE THE INTEREST RATE
2 ON THE DEBT TO EXCEED THE LIMITS ESTABLISHED BY THIS ACT.

3 (7) A MUNICIPALITY SHALL NOT ENTER INTO AN AGREEMENT UNDER
4 THIS SECTION UNLESS ALL OF THE FOLLOWING CONDITIONS ARE MET:

5 (A) THE GOVERNING BODY OF THE MUNICIPALITY HAS, BY RESOLU-
6 TION OR ORDINANCE, EXPRESSLY APPROVED THE AGREEMENT AND ACKNOWL-
7 EDGED THE POTENTIAL RISKS ASSOCIATED WITH THE AGREEMENT.

8 (B) THE COUNTERPARTY TO THE AGREEMENT HAS BEEN ASSIGNED A
9 RATING OF "A" OR BETTER, OR OTHER RATING AS THE DEPARTMENT MAY
10 DETERMINE, BY A NATIONALLY RECOGNIZED RATING AGENCY AT THE TIME
11 THE AGREEMENT IS ENTERED INTO.

12 (C) THE LENGTH OF THE AGREEMENT DOES NOT EXTEND BEYOND THE
13 FINAL MATURITY DATE OF THE DEBT ISSUED IN CONNECTION WITH THE
14 AGREEMENT.

15 (D) THE MUNICIPALITY SHALL NOT HAVE WAIVED ITS RIGHT TO A
16 JURY TRIAL.

17 (E) THE MUNICIPALITY HAS CREATED A DEBT MANAGEMENT PLAN.

18 (F) THE MUNICIPALITY HAS CREATED A SWAP MANAGEMENT PLAN.

19 (8) AN AGREEMENT ENTERED INTO UNDER THIS SECTION SHALL BE
20 DESCRIBED IN THE MUNICIPALITY'S ANNUAL AUDIT REPORT FILED UNDER
21 SECTION 303(1).

22 (9) AS USED IN THIS SECTION:

23 (A) "DEBT MANAGEMENT PLAN" MEANS A WRITTEN DEBT MANAGEMENT
24 PLAN OF THE MUNICIPALITY THAT INCLUDES, BUT IS NOT LIMITED TO,
25 THE FOLLOWING:

26 (i) TOTAL AMOUNT OF DEBT OF THE MUNICIPALITY.

1 (ii) TOTAL AMOUNT OF VARIABLE RATE DEBT OF THE
2 MUNICIPALITY.

3 (iii) ANALYSIS OF THE EFFECT OF RISING INTEREST RATES ON
4 VARIABLE RATE HOLDINGS OF THE MUNICIPALITY.

5 (iv) ANALYSIS OF RISK IN MAINTAINING VARIABLE RISK
6 HOLDINGS.

7 (B) "SWAP MANAGEMENT PLAN" MEANS A WRITTEN MANAGEMENT PLAN
8 THAT INCLUDES, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING:

9 (i) ANALYSIS OF THE BENEFITS AND COSTS OF ENTERING INTO SWAP
10 AGREEMENTS.

11 (ii) ANALYSIS OF THE RISK ASSOCIATED WITH ENTERING INTO SWAP
12 AGREEMENTS.

13 (iii) ANALYSIS OF EARLY TERMINATION, INVOLUNTARY TERMINA-
14 TION, DEFAULT, AND COST CONSIDERATIONS ASSOCIATED WITH SWAP
15 AGREEMENTS.

16 (iv) SYSTEM IN PLACE TO MONITOR THE STATUS OF ALL OUTSTAND-
17 ING SWAP AGREEMENTS.

18 Sec. 403. (1) If a municipality issues a municipal security
19 in anticipation of the collection of the taxes for the next suc-
20 ceeding fiscal year, the resolution authorizing a municipal
21 security shall contain an irrevocable provision for the levying
22 of a tax in the next succeeding fiscal year for the purpose for
23 which the municipal security is to be made and the repayment of
24 the municipal security from the receipt of taxes.

25 (2) A municipality may issue the short-term municipal secur-
26 ity described in subsection (1) to pay for operating

1 expenditures. As used in this section, "operating expenditures"
2 means 1 or more of the following:

3 (a) Necessary operating expenditures of the municipality
4 that could not reasonably have been foreseen and adequately pro-
5 vided for in the tax levy for the then current fiscal year.

6 (b) Payment of an expenditure in the then current fiscal
7 year that cannot be funded because of a delay in or failure of
8 receipt of budgeted revenue.

9 (c) Payment of budgeted expenditures in the then current
10 fiscal year that precede budgeted revenues.

11 (3) The amount of the municipal securities issued under this
12 section to pay operating expenditures shall not exceed 50% of the
13 operating tax levy for the current fiscal year, or if the operat-
14 ing tax levy for the next succeeding fiscal year is determined,
15 then 50% of the levy for the next succeeding fiscal year. The
16 authorizing resolution shall provide that from the first collec-
17 tions of the operating taxes for the next succeeding fiscal year,
18 there shall be set aside in a special fund to be used for the
19 payment of principal and interest on the tax anticipation municipi-
20 pal security, a portion of each dollar that is not less than 125%
21 of the percentage that the principal amount of the municipal
22 security bears to the amount of the operating taxes until the
23 amount set aside is sufficient for the payment. If a municipal-
24 ity collects its taxes in installments and issues a municipal
25 security in anticipation of more than 1 installment, the require-
26 ments of the preceding sentence shall apply to each installment
27 of taxes. The collection of the taxes to be set aside shall not

1 be used for any other purpose. If the municipality determines
2 that issuing municipal securities for this purpose will result in
3 a deficiency in the funds available to pay the necessary operat-
4 ing expenditures of the next succeeding fiscal year, the munici-
5 pality shall levy additional taxes in the future from within con-
6 stitutional, charter, and statutory limits to prevent a continua-
7 tion of the deficiency from year to year.

8 (4) A municipality may issue a short-term municipal security
9 described in subsection (1) to pay for 1 or more capital improve-
10 ments that can be legally and properly provided for in the budget
11 of the municipality for the fiscal year in which the municipality
12 issues the short-term municipal security. The principal amount
13 of the municipal security issued for this purpose shall not
14 exceed the sum set forth in the authorizing resolution to be
15 levied for the improvement. The authorizing resolution shall
16 provide that from the first collection of taxes for the next suc-
17 ceeding fiscal year, there shall be set aside in a special fund
18 to be used for the payment of principal and interest on the
19 short-term municipal security that percentage of the collection
20 that the tax levied for capital outlay bears to the total levy,
21 and until the amount set aside is sufficient for the payment,
22 collection of the taxes to be set aside shall not be used for any
23 other purpose.

24 (5) A MUNICIPALITY MAY ISSUE THE SHORT-TERM MUNICIPAL SECUR-
25 ITY DESCRIBED IN SUBSECTION (1) TO PAY DEBT SERVICE CHARGES OR
26 OBLIGATIONS ON MUNICIPAL SECURITIES OR AGREEMENTS DESCRIBED IN
27 SECTION 317(5).

1 Sec. 611. (1) Except as provided in section 515 or
2 subsection (2), a municipality shall not refund all or any part
3 of its outstanding securities by issuing a refunding security
4 unless the net present value of the principal and interest to be
5 paid on the refunding security, including the cost of issuance,
6 AND TAKING INTO ACCOUNT AN AGREEMENT ENTERED INTO PURSUANT TO
7 SECTION 317, is less than the net present value of the principal
8 and interest to be paid on the outstanding security being
9 refunded as calculated using a method approved by the
10 department. However, when a municipality is issuing refunding
11 securities for outstanding variable interest rate securities, as
12 determined by the department the net present value calculation
13 shall use the appropriate current fixed interest rate and the
14 fixed interest rate that would have been available for the out-
15 standing variable interest rate securities when originally issued
16 if the outstanding variable interest rate securities had been
17 issued as fixed interest rate securities or shall use another
18 procedure determined by the department.

19 (2) A municipality may, under procedures established by the
20 department, obtain an exception from the requirements of
21 subsection (1) if the department determines a reasonable basis
22 for that exception exists. As used in this subsection, reason-
23 able basis means 1 or more of the following:

24 (a) The refunding is required by a state or federal agency.

25 (b) The refunding is necessary to reduce or eliminate
26 requirements of ordinances or covenants applicable to the
27 existing outstanding security.

1 (c) The refunding is necessary to avoid a potential default
2 on an outstanding security.

3 (d) The refunding of a short-term municipal security issued
4 under section 413.

5 Sec. 701. (1) Subject to subsection (3), if a municipality
6 has municipal securities outstanding, or with the approval of its
7 electors has authorized the issuance of municipal securities to
8 be paid from collections of its next tax levy, an officer or
9 official body charged with a duty in connection with the determi-
10 nation of the amount of the next taxes to be raised or with the
11 levying of the next taxes, shall include all of the following in
12 the amount of taxes levied each year:

13 (a) An amount such that the estimated collections will be
14 sufficient to promptly pay, when due, the interest on all munici-
15 pal securities and the portion of the principal falling due
16 whether by maturity or by mandatory redemption before the time of
17 the following year's tax collection.

18 (b) An amount, if there are outstanding mandatory redemption
19 refunding securities, sufficient to provide the sum required to
20 be deposited, by the ordinance or resolution authorizing the
21 issue, into the sinking fund for that purpose before the time of
22 the following year's tax collection.

23 (c) An amount, if there are outstanding mandatory redemption
24 municipal securities other than refunding securities not required
25 to be redeemed in annual amounts before the maturity of the out-
26 standing mandatory redemption municipal securities, that if
27 deposited annually into a sinking fund will, with the existing

1 sinking fund pertaining to the municipal securities and the
2 increment of the municipal securities, be sufficient to pay the
3 municipal securities at maturity.

4 (D) AN AMOUNT NECESSARY TO PAY DEBT SERVICE CHARGES OR OBLI-
5 GATIONS ON MUNICIPAL SECURITIES OR AGREEMENTS DESCRIBED IN SEC-
6 TION 317(5) FALLING DUE IN THE IMMEDIATELY PRECEDING FISCAL YEAR,
7 TO THE EXTENT THAT THE TAX LEVY IN THE PRECEDING FISCAL YEAR WAS
8 INADEQUATE TO PAY, WHEN DUE, THE DEBT SERVICE CHARGES OR OBLIGA-
9 TIONS ON MUNICIPAL SECURITIES OR AGREEMENTS DESCRIBED IN SECTION
10 317(5). THE MUNICIPALITY SHALL DO 1 OR MORE OF THE FOLLOWING
11 WITH THE PROCEEDS OF THE TAX LEVY:

12 (i) DEPOSIT IN THE DEBT RETIREMENT FUND ESTABLISHED FOR THE
13 MUNICIPAL SECURITIES AND USED TO PAY DEBT SERVICE CHARGES OR
14 OBLIGATIONS ON MUNICIPAL SECURITIES OR AGREEMENTS DESCRIBED IN
15 SECTION 317(5).

16 (ii) USE TO PAY DEBT SERVICE ON SHORT-TERM MUNICIPAL SECURI-
17 TIES ISSUED UNDER SECTION 403(5).

18 (iii) USE TO REIMBURSE THE MUNICIPALITY FOR ANY ADVANCES OF
19 FUNDS USED FOR THE PURPOSES DESCRIBED IN SUBPARAGRAPH (i) OR
20 (ii).

21 (2) Subsection (1) does not limit the amount required to be
22 levied in a year for the purposes prescribed in that subsection,
23 by the terms of an ordinance or resolution authorizing the issu-
24 ance of the municipal securities.

25 (3) If the municipal securities were authorized or issued
26 before December 23, 1978, or were approved by the electors of a
27 municipality, the municipality shall levy the full amount of

1 taxes required by this section for the payment of the municipal
2 securities without limitation as to rate or amount and in addi-
3 tion to other taxes that the municipality may be authorized to
4 levy. If the municipal securities were authorized or issued by a
5 municipality after December 22, 1978, and were not approved by
6 the electors of the municipality, the municipality shall set
7 aside each year from the levy and collection of ad valorem taxes
8 as required by this section as a first budget obligation for the
9 payment of the municipal securities. However, the ad valorem
10 taxes shall be subject to applicable charter, statutory, or con-
11 stitutional rate limitations.

12 (4) If there is surplus money on hand for the payment of
13 principal or interest at the time of making an annual tax levy,
14 and provision has not been made in the authorizing resolution for
15 the disposition of that money, the annual levy for principal or
16 interest shall be adjusted to reflect available funds.

17 (5) Money remaining in a debt retirement fund from the levy
18 of a tax or an account within a debt retirement fund from the
19 levy of a tax after the retirement of all municipal securities
20 payable from that fund shall be used in the following order of
21 priority:

22 (a) To pay other outstanding unlimited tax full faith and
23 credit municipal securities.

24 (b) To pay other outstanding limited tax full faith and
25 credit municipal securities.

26 (c) To be deposited in the general fund of the
27 municipality.

1 (6) As taxes are collected, there shall be set aside that
2 portion of the collections that is allocable to the payment of
3 the principal and interest on the municipal securities. The por-
4 tion set aside shall be divided pro rata among the various sink-
5 ing funds and debt retirement funds in accordance with the amount
6 levied for that purpose. Tax collections paid into a debt
7 retirement fund, if the fund is for the payment of more than 1
8 issue of municipal securities, shall be allocated on the books
9 and records of the municipality between the various issues in
10 accordance with the amounts levied for that purpose.

11 (7) An officer who willfully fails to perform duties
12 required by this section is personally liable to the municipality
13 or to a holder of a municipal security for loss or damage arising
14 from his or her failure.