

SB1307



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1307

Introduced 2/18/2015, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

30 ILCS 305/7

from Ch. 17, par. 6607

Amends the Bond Authorization Act. Prohibits school districts from entering into interest rate swaps.

LRB099 10018 NHT 30238 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Bond Authorization Act is amended by
5 changing Section 7 as follows:

6 (30 ILCS 305/7) (from Ch. 17, par. 6607)

7 Sec. 7. Interest rate swaps. For purposes of this Section,
8 terms are as defined in the Local Government Debt Reform Act,
9 except that "governmental unit" shall exclude a school
10 district. With respect to all or part of any currently
11 outstanding or proposed issue of its bonds, a governmental unit
12 whose aggregate principal amount of bonds outstanding or
13 proposed exceeds \$10,000,000 may, without prior appropriation,
14 enter into agreements or contracts with any necessary or
15 appropriate person (the counter party) that will have the
16 benefit of providing to the governmental unit: (i) an interest
17 rate basis, cash flow basis, or other basis different from that
18 provided in the bonds for the payment of interest or (ii) with
19 respect to a future delivery of bonds, one or more of a
20 guaranteed interest rate, interest rate basis, cash flow basis,
21 or purchase price. Such agreements or contracts include without
22 limitation agreements or contracts commonly known as interest
23 rate swap, collar, cap, or derivative agreements, forward

1 payment conversion agreements, interest rate locks, forward
2 bond purchase agreements, bond warrant agreements, or bond
3 purchase option agreements and also include agreements or
4 contracts providing for payments based on levels of or changes
5 in interest rates, including a change in an interest rate
6 index, to exchange cash flows or a series of payments, or to
7 hedge payment, rate spread, or similar exposure (such
8 agreements or contracts, collectively, being "swaps"). Without
9 limiting other permitted terms which may be included in swaps,
10 the following provisions may or, if hereinafter so required,
11 shall apply:

12 (a) Payments made pursuant to a swap (the swap
13 payments) which are to be made by the governmental unit may
14 be paid by such governmental unit, without limitation, from
15 proceeds of the bonds, including bonds for future delivery,
16 identified to such swaps, or from bonds issued to refund
17 such bonds, or from whatever enterprise revenues or revenue
18 source, including taxes pledged or to be pledged to the
19 payment of such bonds, which enterprise revenues or revenue
20 source may be increased to make such swap payments, and
21 swap payments to be received by the governmental unit,
22 which may be periodic, up-front, or on termination, shall
23 be used solely for and limited to any lawful corporate
24 purpose of the governmental unit.

25 (b) Up-front or periodic net swap payments to be paid
26 by the governmental unit under the swaps (the standard swap

1 payments) shall be treated as interest for the purpose of
2 calculating any interest rate limit applicable to the
3 bonds, provided, however, that for purposes of making such
4 standard swap payments only (and not with respect to the
5 bonds so issued or to be issued), the bonds shall be deemed
6 not exempt from income taxation under the Internal Revenue
7 Code for purposes of State law, as contained in this Bond
8 Authorization Act, relating to the permissible rate of
9 interest to be borne thereon, and, provided further, that
10 if payments of any standard swap payments are to be made by
11 the governmental unit and the counterparty on different
12 dates, the net effect of such payments for purposes of such
13 interest rate limitation shall be determined using a true
14 interest cost (yield) calculation.

15 (c) Any such agreement or contract and the swap
16 payments to be made thereunder shall not be taken into
17 account with respect to any debt limit applicable to the
18 governmental unit.

19 (d) Swap payments upon the termination of any swap may
20 be paid to a counterparty upon any terms customary for
21 swaps, including, without limitation, provisions using
22 market quotations available for giving the net benefit of
23 the swap at the time of termination to the persons entitled
24 thereto (viz., the governmental unit or the counterparty)
25 or reasonable fair market value determinations of the value
26 at termination made in good faith by either such persons.

1 (e) The term of the swap shall not exceed the term of
2 any currently outstanding bonds identified to such swap or,
3 for bonds to be delivered, not greater than 5 years plus
4 the term of years proposed for such bonds to be delivered,
5 but in no event longer than 40 years, plus, in each case,
6 any time period necessary to cure any defaults under such
7 swap.

8 (f) The choice of law for enforcement of swaps as to
9 any counterparty may be made for any state of these United
10 States, but the law which shall apply to the obligations of
11 the governmental unit shall be the law of the State of
12 Illinois, and jurisdiction to enforce the swaps as against
13 the governmental units shall be exclusively in the courts
14 of the State of Illinois or in the applicable federal court
15 having jurisdiction and located within the State of
16 Illinois.

17 (g) Governmental units, in entering into swaps, may not
18 waive any sovereign immunities from time to time available
19 under the laws of the State of Illinois as to jurisdiction,
20 procedures, and remedies, but such swaps shall otherwise be
21 fully enforceable as valid and binding contracts as and to
22 the extent provided herein and by other applicable law.

23 A school district is prohibited from entering into an
24 agreement or contract under this Section.

25 (Source: P.A. 93-9, eff. 6-3-03.)