



Legislation Details (With Text)

**File #:** 2004-0892      **Version:** 2

**Type:** Resolution      **Status:** Passed Finally

**File created:** 12/7/2004      **In control:** Committee on Finance & Budget

**On agenda:**      **Final action:** 12/20/2004

**Enactment date:** 12/20/2004      **Enactment #:** 618

**Effective date:** 12/21/2004

**Title:** Resolution authorizing a borrowing in anticipation of current taxes and current revenues and the issuance of Tax and Revenue Anticipation Notes; authorizing the execution of a credit agreement and a security agreement; establishing the form of such notes; approving and accepting a commitment letter of PNC Bank, National Association, National City Bank of Pennsylvania and Citizens Bank of Pennsylvania to purchase the notes; awarding and authorizing the negotiated sale thereof to said banks; providing security for such notes; making certain covenants in respect of such notes; authorizing and directing certain officials to deliver a certificate as to taxes and revenues to be collected, to cause to be made the filings required by law, to execute and deliver the notes, to restrict the use of the proceeds of the notes; creating a sinking fund; creating an interest reserve; and to take such other actions as may be necessary or desirable.

**Sponsors:**

**Indexes:** MISCELLANEOUS

**Code sections:**

**Attachments:** 1. 102.doc, 2. 2004-0892 v-2.doc

| Date       | Ver. | Action By                     | Action                               | Result |
|------------|------|-------------------------------|--------------------------------------|--------|
| 12/20/2004 | 2    | City Council                  | Passed Finally                       | Pass   |
| 12/15/2004 | 1    | Committee on Finance & Budget | AMENDED                              | Pass   |
| 12/15/2004 | 2    | Committee on Finance & Budget | Affirmatively Recommended as Amended | Pass   |
| 12/7/2004  | 1    | City Council                  | Read and referred                    |        |

Presented by Mr. Hertzberg

**AS AMENDED**

Resolution authorizing a borrowing in anticipation of current taxes and current revenues and the issuance of Tax and Revenue Anticipation Notes; authorizing the execution of a credit agreement and a security agreement; establishing the form of such notes; approving and accepting a commitment letter of PNC Bank, National Association, National City Bank of Pennsylvania and Citizens Bank of Pennsylvania to purchase the notes; awarding and authorizing the negotiated sale thereof to said banks; providing security for such notes; making certain covenants in respect of such notes; authorizing and directing certain officials to deliver a certificate as to taxes and revenues to be collected, to cause to be made the filings required by law, to execute and deliver the notes, to restrict the use of the proceeds of the notes; creating a sinking fund; creating an interest reserve; and to take such other actions as may be necessary or desirable.

WHEREAS, the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") empowers and authorizes a local government unit to borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes or current revenues or both and to evidence said indebtedness by tax

and revenue anticipation notes; and

WHEREAS, PNC Bank, National Association, National City Bank of Pennsylvania and Citizens Bank of Pennsylvania (collectively, the "Banks") have submitted to the City of Pittsburgh a commitment letter and a form of Non-Revolving Tax and Revenue Anticipation Credit Facility Credit Agreement by and among the City, the Banks and PNC Bank, National Association, as Agent (the "Credit Agreement") pursuant to which the Banks will purchase the City's Tax and Revenue Anticipation Notes, Series of 2005 and the City desires, by the adoption of this Resolution by the affirmative vote of a majority of the members of the City Council now holding office, to approve the commitment letter and the Credit Agreement and award and authorize the issue and sale of its Tax and Revenue Anticipation Notes; and

**Be it resolved by the Council of the City of Pittsburgh as follows:**

**Section 1.** The City Council of the City of Pittsburgh hereby authorizes the borrowing of the principal sum of up to \$40,000,000 in anticipation of the receipt of current taxes and current revenues, said borrowing to be evidenced by the Tax and Revenue Anticipation Notes of the City (the "Series 2005 TRANs") in the aforesaid principal sum, such Series 2005 TRANs to be dated the date of the issuance thereof, to mature December 31, 2005, to bear interest from the date thereof on the unpaid balance of principal at the rates set forth in the Credit Agreement, payable at the times set forth in the Credit Agreement and at maturity or earlier payment.

After maturity, whether by declaration, acceleration or otherwise, the Series 2005 TRANs shall bear interest until fully paid at the rate set forth in the Credit Agreement, payable on demand.

Each interest rate referred to in the Series 2005 TRANs shall be computed on the basis set forth in the Credit Agreement.

The principal of and interest on the Series 2005 TRANs shall be payable at the principal banking office of PNC Bank, National Association, as Agent (the "Agent"), Pittsburgh, Pennsylvania, in any coin or currency of the United States of America which, at respective times of payment, is legal tender for the payment of public and private debts.

The Series 2005 TRANs shall be in substantially the form attached as an exhibit to the Credit Agreement.

**Section 2.** The form, terms and provisions of the Credit Agreement and the other instruments, certificates and documents contemplated by the Credit Agreement, including the Series 2005 TRANs, the Security Agreement and the Agent's Letter (the "Loan Documents"), as presented at this meeting and the provisions for the payments thereunder are hereby approved and authorized and the Mayor and the City Controller are hereby authorized, empowered and directed, in the name and on behalf of the City, to execute and deliver the Credit Agreement and the other Loan Documents in substantially the form presented to this meeting, with such changes, modifications or additions thereto as the officers executing the same shall deem necessary, desirable or appropriate, their execution and delivery thereof to be conclusive evidence of their approval of such changes, modifications or additions and the City Clerk is hereby authorized, empowered and directed to cause the corporate seal of the City to be affixed thereto and to duly attest the signature of any officer of the City thereon. The form of the Credit Agreement as herein submitted and approved is to be attached to the minutes of the meeting and is hereby made a part hereof by reference.

**Section 3.** The City hereby finds that a private sale of the Series 2005 TRANs by negotiation is in the best financial interest of the City. The commitment letter dated August 30, 2004, as amended as of September 13, 2004 of the Banks submitted to the City is hereby approved and accepted. The Series 2005 TRANs are

approved and shall be awarded, issued and sold upon a negotiated sale to the Banks at the principal amounts thereof in accordance with said commitment letter and the Credit Agreement.

**Section 4.** The Series 2005 TRANs shall be equally and ratably secured by the pledge of, security interest in, and a first lien and charge on, the taxes and revenues of the City to be received during the period when the Series 2005 TRANs will be outstanding. Such pledge, lien and charge shall be fully perfected as against the City, all its creditors and all third parties from and after the filing of a financing statement or statements with the Secretary of the Commonwealth.

**Section 5.** The Certification as to Taxes and Revenues to be collected dated \_\_\_\_\_, 2004 prepared by the Director of Finance of the City and submitted to the City Council in accordance with the Act is hereby approved, and said official is hereby authorized, empowered and directed to deliver a signed counterpart of such certificate (or of a revised subsequently dated certificate as may be necessary to comply with the Act) to the Banks in connection with the issuance and delivery of the Series 2005 TRANs.

**Section 6.** The Director of Finance of the City is hereby authorized, empowered and directed (i) to cause certified copies of the proceedings in connection with the authorization, issue and sale of the Series 2005 TRANs to be filed with the Department of Community and Economic Development as required by the Act, (ii) to execute and deliver a closing receipt for the proceeds thereof, and (iii) to take all such other actions and execute all such other documents as may be necessary or desirable to effect the issue and sale of the Series 2005 TRANs in conformity with the aforesaid commitment letter, the Credit Agreement and the Act.

**Section 7.** There is hereby established with the Agent a separate sinking fund for the City to be designated "Sinking Fund-City of Pittsburgh Tax and Revenue Anticipation Notes, Series of 2005" (the "Series 2005 TRANs Sinking Fund") and into the Series 2005 TRANs Sinking Fund shall be paid all moneys necessary to pay debt service on the Series 2005 TRANs. The City covenants to deposit, and the City Treasurer is hereby authorized and directed to deposit into the Series 2005 TRANs Sinking Fund on or before each Interest Payment Date, as described in the Credit Agreement, and on or before the Expiration Date, as defined in the Credit Agreement, an amount sufficient, together with other available amounts in the Series 2005 TRANs Sinking Fund, to pay (i) interest due on the Series 2005 TRANs due on each such Interest Payment Date and (ii) the principal on the Series 2005 TRANs maturing on the Expiration Date and not previously paid. The Series 2005 TRANs Sinking Fund shall be applied exclusively to the payment of the interest covenanted to be paid on the Series 2005 TRANs and to the principal thereof and to no other purpose whatsoever, until the same shall have been fully paid.

**Section 8.** The City hereby covenants with the holders of the Series 2005 TRANs that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Series 2005 TRANs of the interest on the Series 2005 TRANs under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder; and further that it will make no use of the proceeds of the Series 2005 TRANs or take or omit to take any action which would cause the Series 2005 TRANs to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations thereunder and that it will comply with the requirements of said Section and regulations to the extent applicable to the Series 2005 TRANs throughout the term of the Series 2005 TRANs.

**Section 9.** Certain Representations and Covenants Regarding Federal Income Tax Matters. The City hereby represents and covenants as follows:

- (a) It is a governmental unit with general taxing powers and the authority to incur this debt.

(b) No more than 5% of the proceeds of the funds hereby borrowed will be used directly or indirectly in a trade or business of a person or persons other than the City and its governmental affiliates. Additionally, no amount exceeding the lesser of 5% or \$5,000,000 of the proceeds will be used as loans to any persons other than a governmental unit.

(c) At least 95% of the net proceeds of such issue will be used for local governmental activities of the City or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City.

**Section 10. Information Reporting.** The City hereby covenants with the Banks that the City will provide to the Banks, at the time of payment for and delivery of the Series 2005 TRANs, a copy of IRS Form 8038-G, prepared by the City in compliance with Section 149(e) of the Code with evidence of the filing thereof with the Internal Revenue Service Center, Ogden, Utah.

**Section 11. Registered-Required Obligations.** The City agrees to maintain the Series 2005 TRANs in registered form. The Series 2005 TRANs will be registered as to both principal and any stated interest with the Agent, as registrar. The transfer of the Series 2005 TRANs will be effected only by surrender of the old Series 2005 TRANs and either the reissuance by the City of the old Series 2005 TRANs to the new holder or the issuance by the City of a new instrument, and as provided in the Credit Agreement.

**Section 12. 2005 Budget.** The 2005 TRANs shall not be issued prior to the receipt of an opinion of the City Solicitor that all the following have been satisfied: (a) the passage of the 2005 Budget by City Council, (b) the approval of the 2005 Budget by the Mayor, (c) approval of the 2005 Budget as required by the Municipality Financial Recovery Act (Act 47) and (d) approval of the 2005 Budget as required by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the Second Class.

**Section 13. All principal and interest due on the Series 2005 TRANs shall be repaid no later than June 30, 2005. There after, unless approved by City Council, the City shall borrow no additional money.**