

Schedule “B”
Ontario Regulation 653/05

Lease financing agreements, capital undertakings

8. (1) A municipality may enter lease financing agreements for the purpose of obtaining long-term financing of a capital undertaking of the municipality. O. Reg. 604/06, s. 2.

(2) If a lease financing agreement described in subsection (1) includes terms that require, or may require, the municipality to make payments after the expiry of the term for which the council authorizing the agreement was elected, sections 9, 10 and 11 apply to the agreement. O. Reg. 604/06, s. 2.

(3) A lease financing agreement must include a schedule of all fixed payments, if any, required by the agreement and that may be required by any extension or renewal of the agreement. O. Reg. 604/06, s. 2.

Statement of policies and goals re lease financing agreements

9. (1) Before a municipality passes a by-law authorizing a lease financing agreement, the council of the municipality shall adopt a statement of policies and goals relating to the use of lease financing agreements. O. Reg. 653/05, s. 9 (1).

(2) The statement of policies and goals,

- (a) must include a discussion of the financial and other risks to the municipality of using lease financing agreements; and
- (b) may provide for a category of lease financing agreements composed of agreements which, in the opinion of both the council of the municipality and the treasurer, would not result in a material impact on the municipality. O. Reg. 653/05, s. 9 (2); O. Reg. 78/16, s. 2.

Advice to council re lease financing agreements

10. (1) Before a municipality enters into a lease financing agreement, the municipality shall,

- (a) have its treasurer prepare a report with a recommendation, assessing, in the opinion of the treasurer, the costs and financial and other risks associated with the proposed agreement, including,
 - (i) a comparison between the fixed and estimated costs and the risks associated with the proposed agreement and those associated with other methods of financing,
 - (ii) a statement summarizing, as may be applicable, the effective rate or rates of financing for the agreement, the ability for agreement payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the agreement,

- (iii) a statement summarizing any contingent payment obligations under the agreement that in the opinion of the treasurer would result in a material impact on the municipality, including agreement termination provisions, equipment loss, equipment replacement options and guarantees and indemnities,
 - (iv) a summary of the assumptions applicable to any possible variations in the agreement payment and contingent payment obligations, and
 - (v) any other matters the treasurer or council considers advisable;
- (b) obtain legal advice and financial advice with respect to the proposed agreement;
- (c) consider if the scope of the proposed transaction warrants obtaining legal advice or financial advice with respect to the proposed agreement that is from a source independent of the source of the advice mentioned in clause (b);
- (d) in the case of a lower-tier municipality that forms part of a regional municipality, advise the regional municipality of the proposed agreement, in writing, before the agreement is entered into; and
- (e) consider and give its assessment of the report prepared under clause (a), including whether, in its opinion, the costs of financing for the proposed agreement are lower than other methods of financing available to the municipality, and whether the risks associated with the proposed agreement are reasonable. O. Reg. 653/05, s. 10 (1); O. Reg. 78/16, s. 3 (1, 2).

(2) In a report made under subsection (1), the costs and risks associated with a proposed lease financing agreement shall be assessed as of the date the report is made. O. Reg. 78/16, s. 3 (3).

(3) At any time after a report under subsection (1) is made, but before the proposed lease financing agreement is entered into, if the treasurer becomes of the opinion that a changed circumstance with respect to the proposed agreement may result in a material impact on the municipality, the treasurer shall as soon as is reasonably possible update the report and present the updated report to the council. O. Reg. 653/05, s. 10 (3); O. Reg. 78/16, s. 3 (4).

(4) A report made under subsection (1) shall summarize the information required by that subsection for the entire term of the proposed lease financing agreement, including any possible extensions or renewals. O. Reg. 653/05, s. 10 (4).

(5) Despite this section, a municipality may enter into a lease financing agreement without complying with the requirements of subsection (1) if,

- (a) the statement of policies and goals for lease financing agreements includes the category referred to in clause 9 (2) (b); and
- (b) in the opinion of the treasurer and the council, the proposed agreement is within that category, and its costs and risks, in combination with all the others agreements of that category entered into or proposed to be entered into in that year by the municipality, would not result in a material impact on the community. O. Reg. 653/05, s. 10 (5); O. Reg. 78/16, s. 3 (5).

- (6) In this section,
“costs” includes the costs of any advice obtained under clause (1) (b) or
(c). O. Reg. 653/05, s. 10 (6).

Report on lease financing agreements

11. (1) If a municipality has one or more lease financing agreements subsisting in a fiscal year, the treasurer of the municipality shall prepare and present to council of the municipality once in that fiscal year, or more often if the council so desires, a detailed report containing the information described in subsection (2). O. Reg. 653/05, s. 11 (1).

(2) The detailed report mentioned in subsection (1) shall contain,

- (a) a description of the estimated proportion of the total financing arrangements of the municipality that is undertaken through lease financing agreements to the total long-term debt of the municipality and a description of the change, if any, in that estimated proportion since the previous year’s report;
- (b) a statement by the treasurer as to whether, in his or her opinion, all lease financing agreements were made in accordance with the statement of lease financing policies and goals adopted by the municipality; and
- (c) any other information that the council may require or that, in the opinion of the treasurer, should be recorded. O. Reg. 653/05, s. 11 (2); O. Reg. 78/16, s. 4.