

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 882 Session of 2019

INTRODUCED BY GLEIM, RYAN, LEWIS, MIHALEK, GAYDOS, KAUFFMAN, B. MILLER, GROVE, ZIMMERMAN, ROTHMAN, KEEFER AND WHEELAND, MARCH 19, 2019

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 17, 2019

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, in indebtedness and borrowing, further
3 providing for definitions, for classification and authority
4 to issue bonds and notes, for cost of project and for
5 exclusion of other self-liquidating debt to determine net
6 nonelectoral debt or net lease rental debt; providing for
7 preliminary filings with department prior to issuance of
8 certain debt; further providing for ORDINANCE AUTHORIZING <--
9 ISSUANCE OF BONDS OR NOTES OR INSTRUMENTS EVIDENCING LEASE
10 RENTAL DEBT, FOR small borrowing for capital purposes, for
11 debt statement, for submission to department, for FEES FOR <--
12 FILING, FOR certificate of approval of transcript, for effect
13 of failure of timely action by department and for records of
14 department; and providing for duties of participants in
15 transactions relating to incurring debt and issuing bonds and
16 notes.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The definition of "self-liquidating debt" in
20 section 8002(b) of Title 53 of the Pennsylvania Consolidated
21 Statutes is amended and subsection (c) is amended by adding
22 definitions to read:

23 § 8002. Definitions.

24 \* \* \*

1 (b) Exclusions from debt.--With respect to exclusions from  
2 any particular category of debt and subject to additional  
3 definitions contained in subsequent provisions of this subpart  
4 which are applicable to specific provisions of this subpart, the  
5 following words and phrases when used in this subpart shall have  
6 the meanings given to them in this section unless the context  
7 clearly indicates otherwise:

8 "Self-liquidating debt." Debt payable solely from rents,  
9 rates or other charges to the ultimate users of the project, to  
10 be financed in whole or in part by that debt, or payable solely  
11 from special levies or assessments of benefits lawfully  
12 earmarked exclusively for that purpose. The term also includes  
13 debt or any portion thereof at the time qualified as self-  
14 liquidating pursuant to this subpart, whether or not solely  
15 payable from those sources. The term "ultimate users" includes  
16 the local government unit itself only where its use of the  
17 project is incidental to the use of the project by other users.  
18 A debt with respect to which debt service payments have been  
19 made under a guaranty of the debt shall not be considered self-  
20 liquidating.

21 \* \* \*

22 (c) Other definitions.--Subject to additional definitions  
23 contained in subsequent provisions of this subpart which are  
24 applicable to specific provisions of this subpart, the following  
25 words and phrases when used in this subpart shall have the  
26 meanings given to them in this section unless the context  
27 clearly indicates otherwise:

28 \* \* \*

29 "Financial advisor." A person retained directly by a local  
30 government unit who for compensation engages in the business of

1 advising that local government unit, either directly or in  
2 writing, as to the value of securities, bonds or notes or as to  
3 the advisability of investing in, purchasing or selling  
4 securities, bonds or notes. The term does not include an  
5 attorney, accountant or engineer whose performance of such  
6 services is solely incidental to the practice of his profession.  
7 The term does not include a lender, underwriter or other entity  
8 purchasing the bonds or notes of a local government unit.

9 \* \* \*

10 "Working capital." An amount which constitutes, under  
11 generally accepted accounting principles, the cost of the day-  
12 to-day operations of the project as well as a proper allowance  
13 for contingencies, for a period not to exceed one year after  
14 completion of the project. Working capital for periods exceeding  
15 one year shall be treated as unfunded debt under sections 8129  
16 (relating to scope of unfunded debt) and 8130 (relating to  
17 approval by court to fund unfunded debt). Reimbursements under a  
18 guaranty or amounts to be used to address budgetary deficits of  
19 a local government unit or for other purposes not related to the  
20 construction or operation of the project do not constitute  
21 reasonable working capital in connection with the incurring of  
22 debt under this subpart.

23 Section 2. Sections 8005(c) and (d), ~~8007 and 8026(a)(5)~~ AND <--  
24 8007 of Title 53 are amended to read:

25 § 8005. Classification and authority to issue bonds and notes.

26 \* \* \*

27 (c) Authority to issue bonds and notes and lease rental  
28 debt.--Notwithstanding any other law to the contrary, every  
29 local government unit shall have full power and authority to  
30 issue bonds or notes, and make guaranties, leases, subsidy

1 contracts or other agreements evidencing the acquisition of  
2 capital assets payable out of taxes and other general revenues,  
3 to provide funds for and towards the cost of or the cost of  
4 completing any project or combination of projects which the  
5 local government unit is authorized to own, acquire, subsidize,  
6 operate or lease or to participate in owning, acquiring,  
7 subsidizing, operating or leasing with others, to issue tax  
8 anticipation notes and funding bonds or notes as provided in  
9 this subpart and to contract for insurance covering the risks of  
10 nonpayment of principal, interest and premium of bonds, notes,  
11 tax anticipation notes and guaranties.

12 (d) Nature of guaranty procedure for issuance and  
13 prohibitions.--The following shall apply to a guaranty:

14 (1) For the purpose of this subpart, unless debt  
15 evidenced by a guaranty has been approved as electoral debt  
16 in accordance with Subchapter C (relating to procedure for  
17 securing approval of electors), the guaranty shall be deemed  
18 to be nonelectoral debt if the local government unit  
19 guaranties its own bonds or notes and shall be deemed to be  
20 lease rental debt if it guaranties the bonds or notes of an  
21 authority or another local government unit. For the purpose  
22 of all other statutes, the guaranty shall be deemed to create  
23 debt or indebtedness of the local government unit making the  
24 guaranty.

25 (2) (i) A local government unit may issue a guaranty of  
26 debt of another separate and distinct local government  
27 unit or an authority ~~it~~ THE LOCAL GOVERNMENT UNIT did not <--  
28 incorporate, only after the local government unit has  
29 conducted its own due diligence to determine the risks  
30 involved in the transaction, including the impact of the

1 guaranty on the future financial condition of the local  
2 government unit, the financial condition of the entity  
3 seeking the guaranty, the sources and reliability of  
4 revenue to cover the underlying obligation and the  
5 likelihood of default of the entity seeking the guaranty.  
6 A guaranty may only be made by vote of the governing body  
7 after a public meeting at which the local government unit  
8 demonstrates such due diligence. A local government unit  
9 may only issue a guaranty to an authority or other local  
10 government unit for projects which are expressly  
11 authorized by statute, including projects under section  
12 5607 (relating to purposes and powers).

13 (ii) Notwithstanding the provisions of subparagraph  
14 (i), a local government unit may not issue a guaranty to  
15 a separate and distinct authority or local government  
16 unit for sums due under a qualified interest rate  
17 management agreement, nor may guaranties be issued for  
18 projects which involve untested technology or  
19 experimentation.

20 (3) A local government unit is prohibited from  
21 collecting a fee to guaranty the debt of an authority or  
22 another local government unit.

23 (4) Notwithstanding any other provision of this chapter  
24 or any other law to the contrary, an authority or a municipal  
25 authority in existence on the effective date of this  
26 paragraph incorporated by two or more local government units  
27 for the purpose of providing loan programs for capital  
28 projects for the benefit of local government units and  
29 authorities or municipal authorities, shall not be subject to  
30 the provisions of paragraph (2).

1 § 8007. Cost of project.

2 (A) INCLUDED COSTS.--The cost of a project includes the <--  
3 amount of all payments to contractors or for the acquisition of  
4 a project or for lands, easements, rights and other  
5 appurtenances deemed necessary for the project, fees of  
6 architects, engineers, appraisers, consultants, financial  
7 advisors and attorneys incurred in connection with the project  
8 financing costs, costs of necessary printing and advertising,  
9 costs of preliminary feasibility studies and tests, cost  
10 estimates and interest on money borrowed to finance the project,  
11 if capitalized, to the date of completion of construction and,  
12 if deemed necessary, for one year thereafter, amounts to be  
13 placed in reserve funds, if any, a reasonable initial working  
14 capital for operating the project and a proper allowance for  
15 contingencies and any amount which constitutes, under generally  
16 accepted accounting principles, a cost of, and which has been  
17 determined by an independent actuary or other expert to be  
18 required for the purposes of, a reserve or a contribution toward  
19 a combined reserve, pool or other arrangement for losses or  
20 liabilities covered by a self-insurance arrangement established  
21 by one or more local government units. Costs paid, from sources <--  
22 other than the debt

23 (B) EXCLUDED COSTS.--COSTS PAID, FROM SOURCES OTHER THAN THE <--  
24 DEBT that is to be refunded, more than two years before an  
25 issuance of new debt to finance the costs may not be included in  
26 the costs of a project financed by the new debt. Reimbursements  
27 under a guaranty or amounts to be used by a local government  
28 unit to address budgetary deficits or other purposes not related  
29 to the project do not constitute a cost of a project in  
30 connection with the incurring of debt under this subpart. Costs <--



1 (C) CHANGE IN CIRCUMSTANCES.--IF THERE HAS BEEN A CHANGE IN <--  
2 CIRCUMSTANCES AND THE LOCAL GOVERNMENT UNIT HAS EXISTING DEBT  
3 THAT WAS PREVIOUSLY APPROVED BY THE DEPARTMENT AS SELF-  
4 LIQUIDATING OR SUBSIDIZED, A NEW CERTIFICATION SHALL BE FILED.  
5 THE CERTIFICATION SHALL SPECIFY WHETHER OR NOT THE DEBT SHOULD  
6 CONTINUE TO BE TREATED AS SELF-LIQUIDATING OR SUBSIDIZED AND  
7 STATE WHETHER ANY DECREASE IN THE AMOUNT TO BE EXCLUDED IS  
8 REQUIRED BY ANY CHANGE IN CIRCUMSTANCES, OTHER THAN RESULTING  
9 FROM THE PAYMENTS OF DEBT.

10 Section 3 4. Title 53 is amended by adding a section to <--  
11 read:

12 § 8102.1. Preliminary filings with department prior to issuance  
13 of certain debt.

14 (a) General rule.--Prior AT LEAST 10 DAYS PRIOR to the <--  
15 enactment of an ordinance authorizing the sale or issuance of  
16 any general obligation bonds or notes or guaranteed revenue  
17 bonds or notes constituting nonelectoral debt or any agreement  
18 evidencing lease rental debt, a local government unit shall  
19 obtain proof of having filed with the department the information  
20 and documentation required by this section. Proof of filing for  
21 purposes of subsection (c) may be obtained by a certified mail  
22 return receipt or other delivery requiring signature, or a  
23 notice of receipt from the department.

24 (b) Required filings.--A local government unit shall file  
25 with the department a basic description of the intended  
26 financing and, as applicable, the following information and  
27 documentation:

28 (1) Evidence that the local government unit is current  
29 in the filing of its annual financial statements with  
30 Commonwealth agencies under applicable State law.

1           (2) A description of the intended type and amount of  
2 payment or performance bond, letter of credit or other  
3 financial security proposed to insure the completion of the  
4 project.

5           (3) Information that the local government unit is up to  
6 date on all of its municipal securities disclosures required  
7 under 17 CFR § 240.15c2-12 (relating to municipal securities  
8 disclosure).

9           (4) A copy of the interest rate management plan prepared  
10 or reviewed by an independent financial advisor with respect  
11 to a proposed qualified interest rate management agreement.

12           (5) If the local government unit intends for the  
13 proposed debt to be self-liquidating or subsidized, a  
14 statement that the debt will qualify as self-liquidating or  
15 subsidized debt, including filings required under section  
16 8024 (relating to exclusion of subsidized debt from net  
17 nonelectoral debt or net lease rental debt), 8025 (relating  
18 to exclusion of self-liquidating debt evidenced by revenue  
19 bonds or notes to determine net nonelectoral debt) or 8026  
20 (relating to exclusion of other self-liquidating debt to  
21 determine net nonelectoral debt or net lease rental debt), as  
22 applicable.

23           (6) If the local government unit has existing debt which  
24 was previously approved by the department as self-liquidating  
25 or subsidized, an explanation as to why the debt should  
26 continue to be treated as self-liquidating or subsidized and  
27 that no decrease in the amount to be excluded is required by  
28 any change in circumstances, other than resulting from the  
29 payments of the debt, or, if there has been a change in  
30 circumstances, information demonstrating the amount of debt

1 that should continue to be treated as self-liquidating or  
2 subsidized.

3 (7) Schedules demonstrating the estimated net debt  
4 service impact of the transaction and information  
5 demonstrating that the local government unit adopted or  
6 approved a plan to provide the tax or other revenues  
7 necessary to pay the debt service on the debt, if applicable.

8 (8) The debt statement required by section 8110  
9 (relating to debt statement).

10 (9) A statement of the intended manner of sale of the  
11 bonds or notes, and if bonds or notes are to be sold at  
12 private sale by negotiation, the basis for the local  
13 government unit's finding that selling the bonds or notes in  
14 such manner are in the best financial interests of the local  
15 government unit.

16 (10) A project cost statement detailing the intended  
17 uses of debt proceeds.

18 (11) If a guaranty from another local government unit is  
19 proposed as a portion of the proposed borrowing, information  
20 demonstrating compliance with section 8005(d) (relating to  
21 classification and authority to issue bonds and notes).

22 (12) The declaration required by section 8291(a)  
23 (relating to duties of participants).

24 (13) A STATEMENT AS TO WHETHER OR NOT THE BONDS OR NOTES <--  
25 ARE ZERO COUPON OR CAPITAL APPRECIATION BONDS OR NOTES AND,  
26 IF SO, THE RATIO OF TOTAL ESTIMATED PRINCIPAL AND INTEREST  
27 PAYMENTS OVER THE PROCEEDS OF THE ISSUE.

28 (c) Action by department.--

29 (1) The department shall have ~~10~~ 20 days after receipt <--  
30 of the filing required under subsection (b) to notify the

1 local government unit of receipt of a complete filing. An  
2 acknowledgment of a complete filing shall be valid for one  
3 year from the date of the filing's issuance.

4 (2) If the department fails to notify the local  
5 government unit of an incomplete filing or fails to otherwise  
6 acknowledge the receipt of a filing within ~~10~~ 20 days, the <--  
7 local government unit may proceed to incur the debt or may  
8 presume the filing to be valid and complete for one year from  
9 the date the filing was submitted to the department.

10 (3) If the department finds in its reasonable discretion  
11 that the requirements are not satisfied in connection with  
12 the proposed debt, the department shall issue a notice of  
13 such incomplete filing and the local government unit may not  
14 proceed to incur the debt until acknowledgment from the  
15 department that the filing requirements of subsection (b)  
16 have been completed.

17 (4) THE DEPARTMENT SHALL DENY THE INTENDED FINANCING, <--  
18 AFTER REVIEWING THE COMPLETED FILING WITHIN THE TIME LIMIT  
19 PROVIDED IN PARAGRAPH (1), IF IT FINDS THAT THE LOCAL  
20 GOVERNMENT UNIT FAILED TO MEET ANY OF THE REQUIREMENTS  
21 INCLUDED WITHIN THE DOCUMENTATION REQUIRED UNDER SUBSECTION  
22 (B). THE DEPARTMENT SHALL PROVIDE THE LOCAL GOVERNMENT UNIT  
23 WITH A DETAILED EXPLANATION OF ITS REASON FOR DENIAL.

24 (d) Exempt transactions.--The following debt transactions  
25 shall be exempt from the requirement to file preliminary  
26 documentation under this section:

27 (1) Small borrowing for capital purposes as provided in  
28 section 8109 (relating to small borrowing for capital  
29 purposes).

30 (2) Transactions under Subchapter C of Chapter 82

1 (relating to refunding of debt) which consist exclusively of  
2 the issuance and sale of obligations, the proceeds of which  
3 are to be used solely for purposes specified in section  
4 8241(b)(1) (relating to power to refund) for the payment or  
5 redemption of outstanding obligations upon or prior to  
6 maturity and the costs of issuing the obligations. A  
7 refunding transaction which includes a qualified interest  
8 rate management agreement shall not be exempt from the  
9 requirements of this section.

10 (e) Review.--All determinations by the department under this  
11 section are reviewable as provided under 2 Pa.C.S. Ch. 7  
12 (relating to judicial review).

13 Section 4 5. Sections 8103(A)(1), 8109(a)(1) and 8110(b) of <--  
14 Title 53 are amended to read:

15 § 8103. ORDINANCE AUTHORIZING ISSUANCE OF BONDS OR NOTES OR <--  
16 INSTRUMENTS EVIDENCING LEASE RENTAL DEBT.

17 (A) GENERAL RULE.--THE ORDINANCE OR ORDINANCES OR, IN THE  
18 CASE OF NOTES ISSUED UNDER SECTION 8109 (RELATING TO SMALL  
19 BORROWING FOR CAPITAL PURPOSES), THE RESOLUTION AUTHORIZING THE  
20 ISSUANCE OF BONDS OR NOTES OR THE EXECUTION OF A LEASE,  
21 GUARANTY, SUBSIDY CONTRACT OR OTHER AGREEMENT EVIDENCING LEASE  
22 RENTAL DEBT BY A LOCAL GOVERNMENT UNIT SHALL CONTAIN, IN  
23 SUBSTANCE:

24 (1) IN ALL CASES, INCLUDING LEASE RENTAL DEBT, THE  
25 FOLLOWING:

26 (I) A BRIEF DESCRIPTION OF THE PROJECT FOR WHICH THE  
27 DEBT IS TO BE INCURRED AND, IF A CAPITAL PROJECT, A  
28 REALISTIC ESTIMATED USEFUL LIFE THEREOF.

29 (II) A STATEMENT OF THE AGGREGATE PRINCIPAL AMOUNT  
30 OF BONDS OR NOTES PROPOSED TO BE ISSUED PURSUANT TO THE

1           ORDINANCE OR, AS THE CASE MAY BE, TO BE SECURED BY THE  
2           INSTRUMENT EVIDENCING LEASE RENTAL DEBT.

3           (III) A STATEMENT WHETHER THE DEBT IS TO BE INCURRED  
4           AS ELECTORAL DEBT, NONELECTORAL DEBT OR LEASE RENTAL  
5           DEBT.

6           (IV) AN AUTHORIZATION AND DIRECTION TO ONE OR MORE  
7           SPECIFIED OFFICERS AND THEIR SUCCESSORS TO PREPARE AND  
8           CERTIFY AND, EXCEPT IN THE CASE OF NOTES ISSUED UNDER  
9           SECTION 8109, TO FILE THE DEBT STATEMENT REQUIRED BY  
10          SECTION 8110 (RELATING TO DEBT STATEMENT), TO EXECUTE AND  
11          DELIVER THE BONDS OR NOTES OR THE INSTRUMENT EVIDENCING  
12          LEASE RENTAL DEBT AND TO TAKE OTHER NECESSARY ACTION.  
13          THIS DESIGNATION MAY BE CHANGED FROM TIME TO TIME  
14          THEREAFTER.

15          (V) IN THE CASE OF NONELECTORAL OR LEASE RENTAL DEBT  
16          WHICH IS SUBJECT TO EXCLUSION AS SUBSIDIZED DEBT OR SELF-  
17          LIQUIDATING DEBT IF THE EXCLUSION IS PRESENTLY DESIRED,  
18          AN AUTHORIZATION TO THE PROPER OFFICERS OF THE LOCAL  
19          GOVERNMENT UNIT TO PREPARE AND FILE ANY STATEMENTS  
20          REQUIRED BY SUBCHAPTER B OF CHAPTER 80 (RELATING TO  
21          LIMITATIONS ON DEBT OF LOCAL GOVERNMENT UNITS) WHICH ARE  
22          NECESSARY TO QUALIFY ALL OR ANY PORTION OF THE DEBT FOR  
23          EXCLUSION FROM THE APPROPRIATE DEBT LIMIT AS SELF-  
24          LIQUIDATING DEBT OR SUBSIDIZED DEBT. IF AN EXCLUSION IS  
25          TO BE CLAIMED THAT THE DEBT WILL BE SELF-LIQUIDATING, THE  
26          IDENTITY OF THE EXPERT RELIED UPON TO MAKE THAT  
27          DETERMINATION.

28          (VI) AS AN EXHIBIT, A DISCLOSURE STATEMENT IN A  
29          FORMAT PRESCRIBED BY THE DEPARTMENT CONTAINING  
30          INFORMATION AS TO THE FOLLOWING:

1           (A) THE PRINCIPAL AMOUNT OF THE DEBT, THE TERM  
2           OVER WHICH THE DEBT WILL BE REPAID AND THE ESTIMATED  
3           NET DEBT SERVICE OBLIGATION TO THE LOCAL GOVERNMENT  
4           UNIT.

5           (B) A BREAKDOWN OF THE EXPECTED USE OF DEBT  
6           PROCEEDS FOR:

7                   (I) THE ACQUISITION AND CONSTRUCTION OF REAL  
8                   ESTATE, INCLUDING LAND, BUILDINGS, EASEMENTS,  
9                   RIGHTS AND OTHER APPURTENANCES DEEMED NECESSARY  
10                   FOR THE PROJECT.

11                   (II) EQUIPMENT AND FURNISHINGS.

12                   (III) FEES OF ARCHITECTS, ENGINEERS,  
13                   FINANCIAL ADVISORS, ATTORNEYS AND OTHER  
14                   PROFESSIONALS INCURRED IN CONNECTION WITH THE  
15                   PROJECT.

16                   (IV) COSTS OF NECESSARY PRINTING AND  
17                   ADVERTISING.

18                   (V) COSTS OF PRELIMINARY FEASIBILITY STUDIES  
19                   AND TESTS.

20                   (VI) WORKING CAPITAL FOR OPERATING THE  
21                   PROJECT.

22           (C) A DESCRIPTION OF THE BASIS FOR THE DECISION  
23           THAT THE BONDS OR NOTES ARE TO BE SOLD AT A PUBLIC  
24           SALE, AT A PRIVATE SALE BY NEGOTIATION OR UPON  
25           INVITATION AT THE PRICE THE GOVERNING BODY  
26           DETERMINES.

27                   (D) THE IDENTITY OF THE BOND COUNSEL.

28                   (E) THE IDENTITY OF THE SINKING FUND DEPOSITORY  
29                   AND PAYING AGENT.

30                   (F) THE IDENTITIES OF THE PURCHASERS OF THE

1           BONDS OR NOTES.

2                   (G) WHETHER A QUALIFIED INTEREST RATE MANAGEMENT  
3           AGREEMENT IS ASSOCIATED WITH THE DEBT.

4                   (H) WHETHER THE PROJECT INVOLVES THE SALE OF  
5           ASSETS OWNED BY THE LOCAL GOVERNMENT UNIT.

6                   (I) THE LOCAL GOVERNMENT UNIT'S PLAN TO PROVIDE  
7           NECESSARY TAX OR OTHER REVENUES TO PAY THE DEBT  
8           SERVICE ON THE DEBT.

9           \* \* \*

10 § 8109. Small borrowing for capital purposes.

11       (a) General rule.--Any local government unit may incur debt  
12 by resolution rather than by ordinance to be evidenced by notes  
13 to provide funds for a project as defined in this subpart  
14 without complying with the requirements of Subchapter A of  
15 Chapter 82 (relating to Department of Community and Economic  
16 Development) if:

17           (1) The aggregate amount of the debt outstanding at any  
18 one time shall not exceed the lesser of [\$125,000] \$250,000  
19 or 30% of the nonelectoral debt limit as authorized in  
20 section 8022(a) (relating to limitations on incurring of  
21 other debt).

22           \* \* \*

23 § 8110. Debt statement.

24           \* \* \*

25       (b) Previously excluded self-liquidating or subsidized  
26 debt.--Where debt has previously been excluded as self-  
27 liquidating or subsidized debt, the debt statement shall be  
28 accompanied by a certification that indicates one of the  
29 following:

30           (1) no decrease in the amounts to be excluded is

1 required by any change of circumstances [or, if there has  
2 been a change, other than decreases resulting from the  
3 payments of bonds or notes, so that less debt is to be  
4 excluded. If it has become possible to exclude a greater  
5 amount of debt and the local government unit desires to do  
6 so, the debt statement shall be accompanied by appropriate  
7 certificates supporting the revised amount to be excluded,  
8 and a revised approval shall be obtained from the  
9 department.]; or

10 (2) a decrease in the amounts to be excluded is required  
11 due to a change in circumstances, in which case:

12 (i) The change in circumstance must be described. If  
13 it has become possible to exclude a greater amount of  
14 debt and the local government unit wants to do so, the  
15 debt statement shall be accompanied by appropriate  
16 certifications supporting the revised amount to be  
17 excluded and a revised approval shall be obtained from  
18 the department.

19 (ii) No debt service payments have been made under a  
20 guaranty of debt previously established as self-  
21 liquidating. Debt service payments that have been made  
22 under a guarantee of the local government unit shall no  
23 longer be considered self-liquidating unless and until  
24 the local government unit files with the department a new  
25 report satisfying the requirements of section 8025  
26 (relating to exclusion of self-liquidating debt evidenced  
27 by revenue bonds or notes to determine net nonelectoral  
28 debt) or 8026 (relating to exclusion of other self-  
29 liquidating debt to determine net nonelectoral debt or  
30 net lease rental debt), as the case may be.

1 Section ~~5~~ 6. Section 8111(a) of Title 53 is amended by <--

2 adding paragraphs to read:

3 § 8111. Submission to department.

4 (a) General rule.--Before delivering any bonds or notes  
5 other than notes representing small borrowings issued under  
6 section 8109 (relating to small borrowing for capital purposes),  
7 the local government unit shall apply for and receive or be  
8 deemed to have received the approval of the department under  
9 section 8204 (relating to certificate of approval of transcript)  
10 or 8206 (relating to effect of failure of timely action by  
11 department). The application, in such form as the department  
12 prescribes, shall be accompanied by a transcript of the  
13 proceedings consisting of certified copies of any of the  
14 following, not previously filed, which are applicable:

15 \* \* \*

16 (8) A written statement with regard to the manner of  
17 compliance or intended compliance with the requirements of  
18 the act of December 20, 1967 (P.L.869, No.385), known as the  
19 Public Works Contractors' Bond Law of 1967.

20 (9) An itemized statement of all estimated disbursements  
21 for costs to be made from the proceeds of the borrowing to  
22 the extent possible.

23 \* \* \*

24 Section ~~6~~ 7. Sections 8203, 8204, 8206 and 8207(a) and (c) <--  
25 of Title 53 are amended to read:

26 § 8203. FEES FOR FILING. <--

27 **[EVERY]** (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION  
28 (B), EVERY FILING WITH THE DEPARTMENT SHALL BE ACCOMPANIED BY A  
29 FILING FEE AS DETERMINED IN SECTION 605-A OF THE ACT OF APRIL 9,  
30 1929 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF

1 1929.

2 (B) EXCEPTION.--A PRELIMINARY FILING UNDER SECTION 8102.1  
3 (RELATING TO PRELIMINARY FILINGS WITH DEPARTMENT PRIOR TO  
4 ISSUANCE OF CERTAIN DEBT) SHALL BE ACCOMPANIED BY A FEE OF \$50.

5 (C) PAYMENTS.--NO SUBMISSION SHALL CONSTITUTE A FILING UNTIL  
6 THE PROPER FEE IS PAID. ALL FEES RECEIVED UNDER THIS SECTION  
7 SHALL BE PAID BY THE DEPARTMENT INTO THE STATE TREASURY THROUGH  
8 THE DEPARTMENT OF REVENUE.

9 § 8204. Certificate of final approval [of transcript].

10 (a) Examination of transcripts and filings.--

11 (1) The department shall, upon receipt of any bond or  
12 note transcripts or other filings, carefully examine them to  
13 determine whether the debt outstanding and to be outstanding  
14 is within the applicable limitations imposed by this subpart  
15 and whether the proceedings for incurring the debt, for  
16 issuing and selling the bonds or notes and for excluding  
17 self-liquidating and subsidized debt have been taken in  
18 conformity with the Constitution of Pennsylvania and this  
19 subpart.

20 (2) If the debt requires preliminary filings to be made  
21 under section 8102.1 (relating to preliminary filings with  
22 department prior to issuance of certain debt), the  
23 preliminary filings shall become part of the transcript and  
24 be a requirement for final approval under this section.

25 (b) Duty to certify.--If, upon completion of its  
26 examination, a transcript or other filing is found by the  
27 department to be in conformity with the Constitution of  
28 Pennsylvania and this subpart, the department shall certify its  
29 approval to the local government unit if required under other  
30 provisions of this subpart.

1 § 8206. Effect of failure of timely action by department.

2 If the local government unit has submitted [a filing] an  
3 application for final approval to the department by certified  
4 mail, return receipt requested, or otherwise has an official  
5 receipt from the department, and the local government unit has  
6 not, within 20 days of the date of receipt of the filing by the  
7 department, received the certificate of final approval or  
8 disapproval or notification of correctable error, the filing  
9 shall be deemed to have been approved for all purposes unless  
10 the local government unit has extended the time within which the  
11 department may act by written communication to the department or  
12 by failure to object to a written communication from the  
13 department requesting the extension. Extensions shall not exceed  
14 one additional period of 20 days.

15 § 8207. Records of department.

16 ~~(a) Retention period. The department shall keep all~~ <--  
17 ~~proceedings including all applications and statements by a local~~

18 (A) RETENTION PERIOD.-- <--

19 (1) THE DEPARTMENT SHALL KEEP ALL PROCEEDINGS, INCLUDING  
20 ALL APPLICATIONS AND STATEMENTS BY A LOCAL government unit  
21 under sections 8102.1 (relating to preliminary filings with  
22 department prior to issuance of certain debt), 8111 (relating  
23 to submission to department) and 8201 (relating to  
24 certification to department of bond or note transcript or  
25 lease, guaranty, subsidy contract or other agreement) on file  
26 for a period of not less than [four months after issuance of  
27 its certificate of approval or disapproval and thereafter as  
28 long as any appeal respecting the proceedings is pending and  
29 not finally determined.] five years after the debt issuance  
30 has been paid off by the local government unit. The <--



1 declaration to the local government unit as to:

2 (i) Which party is being represented by the attorney  
3 or financial advisor.

4 (ii) The source from which the attorney or financial  
5 advisor will receive compensation for services related to  
6 the transaction.

7 (iii) Whether the compensation is dependent upon the  
8 issuance of debt by the local government unit.

9 (2) A full-time employee of the local government unit  
10 shall not be required to file a declaration under this  
11 subsection.

12 (b) Fiduciary duty of representatives retained by local  
13 government units.--

14 (1) An attorney or financial advisor, including an  
15 independent financial advisor under section 8281 (relating to  
16 qualified interest rate management agreements) who is  
17 retained and compensated by a local government to represent  
18 the local government unit in a transaction under this  
19 subpart, shall stand in a fiduciary relationship to the local  
20 government unit.

21 (2) (i) With regard to a financial advisor who  
22 represents a local government unit, the term "fiduciary  
23 duty" shall mean the duty to perform loyally, in good  
24 faith and in a manner the financial advisor reasonably  
25 believes to be in the best interests of the local  
26 government unit. The financial advisor shall act with  
27 such care, including reasonable inquiry, skill and  
28 diligence that a person of ordinary prudence would use  
29 under similar circumstances, and provide opinion as to  
30 possible positive and negative impacts of a transaction.

1           (ii) With regard to attorneys licensed to practice  
2           law in this Commonwealth, the fiduciary duty shall be as  
3           prescribed by the Pennsylvania Supreme Court, including  
4           the Pennsylvania Rules of Professional Conduct.

5           (3) An attorney or financial advisor in the course of  
6           the representation shall be entitled to rely on reasonable  
7           representations and certifications made to the attorney or  
8           financial advisor by architects, engineers and other persons  
9           retained by and the officers and employees of a local  
10          government unit.

11          (4) Pursuant to subsection (f) of Municipal Securities  
12          Rulemaking Board Rule G-23 (relating to activities of  
13          financial advisors), 17 CFR §§ 240.15Ba1-1 (relating to  
14          definitions), 240.15Ba1-2 (relating to registration of  
15          municipal advisors and information regarding certain natural  
16          persons), 240.15Ba1-3 (relating to exemption of certain  
17          natural persons from registration under section 15B(a)(1)(B)  
18          of the act), 240.15Ba1-4 (relating to withdrawal from  
19          municipal advisor registration), 240.15Ba1-5 (relating to  
20          amendments to Form MA and Form MA-I), 240.15Ba1-6 (relating  
21          to consent to service of process to be filed by non-resident  
22          municipal advisors; legal opinion to be provided by non-  
23          resident municipal advisors), 240.15Ba1-7 (relating to  
24          registration of successor to municipal advisor) and  
25          240.15Ba1-8 (relating to books and records to be made and  
26          maintained by municipal advisors), and only as to those  
27          representatives retained and compensated directly by the  
28          local government unit, the fiduciary duty described in this  
29          section shall be in addition to any duty imposed by rules  
30          promulgated by the Municipal Securities Rulemaking Board that

1 may apply to the attorney or financial advisor.

2 (c) Ultra vires acts.--An officer or member of the governing  
3 body of a local government unit or a financial advisor or  
4 attorney may not knowingly participate in a violation of this  
5 title.

6 (d) Materially false or misleading certifications.--An  
7 officer or member of the governing body of a local government  
8 unit or an attorney or financial advisor may not knowingly file  
9 a materially false or misleading certification or statement with  
10 the department under this subpart.

11 (e) Penalties.--

12 (1) An officer or member of the governing body of a  
13 local government unit or an attorney or financial advisor who  
14 aids or participates in the commission of an act prohibited  
15 in subsection (c) or (d) commits a misdemeanor of the second  
16 degree and shall, upon conviction, be sentenced to pay a fine  
17 of not more than \$5,000 or to imprisonment for not more than  
18 two years, or both.

19 (2) Notwithstanding paragraph (1), a local government  
20 unit may seek civil judicial redress for a violation of this  
21 section that results in damages to the local government unit  
22 not caused by the local government unit or its agents. A  
23 local government unit shall prohibit or restrict the future  
24 participation in transactions under this subpart of an  
25 individual attorney or financial advisor who violates this  
26 section and may also prohibit or restrict participation of a  
27 firm that employs the attorney or financial advisor for a  
28 period not to exceed two years.

29 Section § 9. All acts and parts of acts are repealed insofar <--  
30 as they are inconsistent with the amendment or addition of 53

1 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007, 8026(a)(5),  
2 8102.1, 8111(a), 8204, 8206, 8207(a) and (c) and 8291.

3 Section 9 10. This act shall take effect in 60 days.

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