

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 949

Session of
1977

INTRODUCED BY MESSRS. BENNETT, L. E. SMITH, MCGINNIS, PRATT,
ARTHURS, ZWIKL, SPENCER, FEE, HALVERSON, REED, LETTERMAN,
DeVERTER, GRIECO, MILLIRON AND DOMBROWSKI, APRIL 25, 1977

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 1, 1977

AN ACT

1 ~~Amending the act of May 5, 1933 (P.L.364, No.106), entitled, as~~ <—
2 ~~amended, "An act relating to corporations; defining and~~
3 ~~providing for the organization, merger, consolidation,~~
4 ~~reorganization, winding up and dissolution of certain~~
5 ~~corporations for profit; conferring certain rights, powers,~~
6 ~~duties and immunities upon them and their officers and~~
7 ~~shareholders; prescribing the conditions on which such~~
8 ~~corporations may exercise their powers; providing for the~~
9 ~~inclusion of certain existing corporations and associations~~
10 ~~within the provisions of this act; prescribing the terms and~~
11 ~~conditions upon which certain foreign corporations may be~~
12 ~~admitted, or may continue, to do business within the~~
13 ~~Commonwealth; conferring powers and imposing duties on the~~
14 ~~courts of common pleas, and certain State departments,~~
15 ~~commissions, and officers; authorizing certain State~~
16 ~~departments, boards, commissions, or officers to collect fees~~
17 ~~for services required to be rendered by this act; imposing~~
18 ~~penalties; and repealing certain acts and parts of acts~~
19 ~~relating to corporations and other entities," further~~
20 ~~providing for the approval of a plan of merger or~~
21 ~~consolidation for certain domestic corporations.~~
22 AMENDING THE ACT OF JULY 12, 1972 (P.L.781, NO.185), ENTITLED, <—
23 AS AMENDED, "AN ACT PROVIDING DEBT LIMITS FOR LOCAL
24 GOVERNMENT UNITS, INCLUDING MUNICIPALITIES AND SCHOOL
25 DISTRICTS; PROVIDING THE METHODS OF INCURRING, EVIDENCING,
26 SECURING AND COLLECTING DEBT; DEFINING THE POWERS AND DUTIES
27 OF THE DEPARTMENT OF COMMUNITY AFFAIRS AND CERTAIN OTHER
28 PUBLIC OFFICERS AND AGENCIES WITH RESPECT THERETO; EXERCISING
29 THE INHERENT LEGISLATIVE AUTHORITY OF THE GENERAL ASSEMBLY BY
30 PROVIDING ADDITIONAL OVER-ALL LIMITATIONS ON THE INCURRING OF
31 LEASE RENTAL AND OTHER OBLIGATIONS FOR THE ACQUISITION OF

CAPITAL ASSETS TO BE REPAID FROM THE GENERAL TAX REVENUES OF SUCH LOCAL GOVERNMENT UNITS; IMPOSING PENALTIES FOR FILING FALSE OR UNTRUE STATEMENTS OR REFUSING TO GIVE INFORMATION WITH RESPECT TO PROCEEDINGS FOR THE INCURRING OF DEBT; AND CONFERRING JURISDICTION ON THE COMMONWEALTH COURT WITH RESPECT TO CERTAIN PROCEEDINGS RELATING TO THE INCURRING OF DEBT," FURTHER PROVIDING FOR UNFUNDED DEBT.

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

~~Section 1. Subsection C of section 902, act of May 5, 1933 (P.L.364, No.106), known as the "Business Corporation Law," amended July 20, 1968 (P.L.459, No.216), is amended to read:~~

~~Section 902. Approval of Plan of Merger or Consolidation.~~

~~* * *~~

~~C. The plan of merger or consolidation for domestic corporations having twenty five or less shareholders shall be approved upon receiving the affirmative vote of the shareholders entitled to cast at least [a majority] SIXTY SIX AND TWO THIRDS PERCENT of the votes which all shareholders are entitled to cast thereon of each of the merging or consolidating domestic corporations, and if any class of shares of any of such corporations is entitled to vote thereon as a class, the affirmative vote of the holders of at least [a majority] SIXTY SIX AND TWO THIRDS PERCENT of the outstanding shares of each class of shares entitled to vote thereon as a class. The plan of merger or consolidation for domestic corporations having twenty five or more THAN TWENTY FIVE shareholders shall be approved upon receiving the affirmative vote of shareholders entitled to cast at least sixty six and two thirds per cent of the votes which all shareholders are entitled to cast thereon of each of the merging or consolidating domestic corporations, and if any class of shares of any such corporations is entitled to vote thereon as a class, the affirmative vote of the holders of at~~

~~least sixty six and two thirds per cent of the outstanding
shares of each class of shares entitled to vote thereon as a
class. Any plan of merger or consolidation may contain a
provision that at any time prior to the filing of articles of
merger or consolidation with the Department of State the plan
may be terminated by the board of directors of any corporation
which is a party to the plan notwithstanding approval of the
plan by the shareholders of all or any of the corporations which
are parties to the plan.~~

~~Section 2. This act shall take effect immediately.~~

SECTION 1. SECTIONS 509 AND 510, ACT OF JULY 12, 1972
(P.L.781, NO.185), KNOWN AS THE "LOCAL GOVERNMENT UNIT DEBT
ACT," ARE AMENDED TO READ:

SECTION 509. UNFUNDED DEBT.--UNFUNDED DEBT SHALL MEAN
OBLIGATIONS OF THE SAME OR A PRIOR YEAR [PROPERLY CONTRACTED]
INCURRED OR TO BE INCURRED FOR CURRENT EXPENSES (INCLUDING TAX
ANTICIPATION NOTES), [DUE AND OWING, WHICH] WHEN THE TAXES AND
OTHER REVENUES REMAINING TO BE COLLECTED IN THE FISCAL YEAR AND
FUNDS ON HAND WILL NOT BE SUFFICIENT TO PAY SUCH OBLIGATIONS
WITHOUT A CURTAILMENT OF MUNICIPAL SERVICES TO AN EXTENT
ENDANGERING THE HEALTH OR SAFETY OF THE PUBLIC OR PROPER
EDUCATION OF SCHOOL CHILDREN, AND THE LOCAL GOVERNMENT UNIT
EITHER MAY NOT LEGALLY LEVY A SUFFICIENT TAX FOR THE BALANCE OF
THE FISCAL YEAR, OR A SUFFICIENT TAX, IF LEGALLY LEVIABLE, WOULD
BE SERIOUSLY REGRESSIVE AND NOT IN THE PUBLIC INTEREST.

SECTION 510. PROCEDURE TO FUND UNFUNDED DEBT.--WHENEVER THE
GOVERNING BODY OF A LOCAL GOVERNMENT UNIT SHALL BE OF OPINION
THAT IT HAS OUTSTANDING UNFUNDED DEBT, IT MAY, WITH THE APPROVAL
OF THE DEPARTMENT, IN THE CASES COVERED BY SECTION 511 OF THIS
ACT, FUND SUCH UNFUNDED DEBT BY ELECTORAL OR BY NONELECTORAL

1 DEBT WITHIN THE LIMITS PRESCRIBED BY ARTICLE II OF THIS ACT, OR
2 IT MAY, IN THE CASES COVERED BY SECTION 512 OF THIS ACT,
3 PETITION THE [COMMONWEALTH COURT] COURT OF COMMON PLEAS OF THE
4 COUNTY WHERE THE LOCAL GOVERNMENT UNIT IS LOCATED FOR LEAVE TO
5 FUND SUCH UNFUNDED DEBT PURSUANT TO THE PROVISIONS OF THIS
6 ARTICLE V.

7 SECTION 2. SECTION 512 OF THE ACT, SUBSECTION (A) AMENDED
8 DECEMBER 21, 1973 (P.L.434, NO.153), IS AMENDED TO READ:

9 SECTION 512. APPROVAL BY COURT.--(A) IN ALL CASES NOT
10 COVERED IN SECTION 511, INCLUDING CASES COVERED THEREBY IN WHICH
11 THE FUNDING DEBT WOULD EXCEED APPLICABLE DEBT LIMITATIONS, THE
12 LOCAL GOVERNMENT UNIT SHALL, EXCEPT AS PROVIDED FOR IN
13 SUBSECTION (A.1), BY PETITION TO THE COURT OF COMMON PLEAS OF
14 THE COUNTY WHERE THE LOCAL GOVERNMENT UNIT IS LOCATED SETTING
15 FORTH THE FACTS, REQUEST APPROVAL FOR THE ISSUANCE OF NOTES TO
16 FUND THE UNFUNDED DEBT. AFTER HEARING, ON SUCH NOTICE TO THE
17 LOCAL GOVERNMENT UNIT AND ITS TAXPAYERS AS THE COURT MAY
18 PRESCRIBE, THE COURT SHALL MAKE AN ORDER GRANTING AUTHORITY TO
19 FUND ALL OR A PART OF SUCH UNFUNDED DEBT IF THE COURT SHALL FIND
20 THAT SUCH UNFUNDED DEBT WAS LAWFULLY INCURRED, THAT THERE HAS
21 BEEN AN UNFORESEEABLE DECLINE IN REVENUES, OR THAT TAXES LEVIED
22 HAVE NOT PRODUCED THE REVENUES ANTICIPATED OR THAT IT WAS NOT
23 REASONABLE TO FORESEE SUCH OBLIGATION; THAT PAYING SUCH DEBT BY
24 CURTAILING MUNICIPAL SERVICES WILL BE DANGEROUS TO THE PUBLIC
25 HEALTH, SAFETY OR EDUCATION, AND THAT IT IS NOT FEASIBLE TO LEVY
26 ADDITIONAL TAXES IN THE CURRENT FISCAL YEAR. THE FUNDING DEBT SO
27 APPROVED SHALL BE STATED TO MATURE IN SUCH AMOUNTS AND OVER SUCH
28 NUMBER OF YEARS, NOT EXCEEDING TEN, AS THE COURT SHALL FIND WILL
29 ACCOMPLISH THE PAYMENT OF THE DEBT WITHOUT ENDANGERING THE
30 RENDERING OF MUNICIPAL SERVICES OR REQUIRING THE LEVYING OF

1 EXCESSIVE TAXES. THE PROVISIONS OF SECTION 409 OF THIS ACT SHALL
2 NOT BE APPLICABLE TO SUCH NOTES. IF THE FUNDING OF THE UNFUNDED
3 DEBT HAS NOT BEEN APPROVED BY A VOTE OF THE PEOPLE, THE ORDER OF
4 THE COURT SHALL FIX THE PORTION THEREOF, IF ANY, WHICH SHALL NOT
5 BE CHARGED AGAINST THE NONELECTORAL DEBT LIMITATIONS OF THE
6 LOCAL GOVERNMENT UNIT UNDER SECTION 202 OF THIS ACT, DURING THE
7 TIME SUCH FUNDING DEBT IS OUTSTANDING, SO AS TO LEAVE SOME
8 AVAILABLE BORROWING CAPACITY FOR OTHER SITUATIONS. THE
9 PERCENTAGES FIXED BY SECTION 202 OF THIS ACT SHALL BE DEEMED
10 INCREASED TO THE EXTENT REQUIRED FOR SUCH FUNDING DEBT.

11 (A.1) NOTWITHSTANDING THE PROVISIONS OF SECTION 511 OR OF
12 SUBSECTION (A) OF THIS SECTION, SCHOOL DISTRICTS OF THE FIRST
13 CLASS MAY, BY PETITION TO THE COURT OF COMMON PLEAS OF THE
14 COUNTY WHERE THE LOCAL GOVERNMENT UNIT IS LOCATED SETTING FORTH
15 THE FACTS, REQUEST APPROVAL FOR THE ISSUANCE OF BONDS OR NOTES
16 TO FUND THE UNFUNDED DEBT. AFTER HEARING ON SUCH NOTICE TO THE
17 LOCAL GOVERNMENT UNIT AND ITS TAXPAYERS AS THE COURT MAY
18 PRESCRIBE, THE COURT SHALL MAKE AN ORDER GRANTING AUTHORITY TO
19 FUND ALL OR A PART OF SUCH UNFUNDED DEBT IF THE COURT SHALL FIND
20 THAT PAYING SUCH DEBT BY CURTAILING MUNICIPAL OR EDUCATIONAL
21 SERVICES WILL BE DANGEROUS TO THE PUBLIC HEALTH, SAFETY OR
22 EDUCATION, THAT THE FUNDING DEBT DOES NOT EXCEED APPLICABLE DEBT
23 LIMITATIONS AND THAT IT IS NOT FEASIBLE FOR SCHOOL DISTRICTS OF
24 THE FIRST CLASS TO LEVY ADDITIONAL TAXES IN THE CURRENT FISCAL
25 YEAR. THE FUNDING DEBT SO APPROVED SHALL BE STATED TO MATURE IN
26 SUCH AMOUNTS AND OVER SUCH NUMBER OF YEARS, NOT EXCEEDING TEN,
27 AS THE COURT SHALL FIND WILL ACCOMPLISH THE PAYMENT OF THE DEBT
28 WITHOUT ENDANGERING THE RENDERING OF MUNICIPAL OR EDUCATIONAL
29 SERVICES OR REQUIRING THE LEVYING OF EXCESSIVE TAXES. THE
30 PROVISIONS OF SECTION 409 SHALL NOT BE APPLICABLE TO SUCH BONDS

1 OR NOTES. THE FUNDING OF THE UNFUNDED DEBT SHALL BE CHARGED
2 AGAINST THE NONELECTORAL DEBT LIMITATIONS OF THE SCHOOL DISTRICT
3 OF THE FIRST CLASS UNDER SECTION 202.

4 (B) THE FUNDING DEBT SO AUTHORIZED BY THE COURT SHALL BE
5 ISSUED AND SOLD BY THE GOVERNING BODY AS PROVIDED BY THIS ACT,
6 EXCEPT THAT NO APPROVAL OF THE DEPARTMENT SHALL BE REQUIRED, BUT
7 THE LOCAL GOVERNMENT UNIT SHALL FILE A CERTIFIED COPY OF THE
8 PROCEEDING TOGETHER WITH A CERTIFIED COPY OF THE ORDER OF THE
9 COURT IN THE OFFICE FOR THE RECORDING OF DEEDS IN AND FOR THE
10 COUNTY IN WHICH SUCH LOCAL GOVERNMENT UNIT IS LOCATED PRIOR TO
11 THE DELIVERY OF ANY BONDS OR NOTES EVIDENCING SUCH DEBT.

12 (C) THE PROVISIONS OF THIS SECTION ARE HEREBY DECLARED AND
13 FOUND AS A LEGISLATIVE DETERMINATION TO BE SUBSTANTIVE AND NOT
14 PROCEDURAL.

15 SECTION 3. THIS AMENDATORY ACT SHALL TAKE EFFECT IMMEDIATELY
16 AND SHALL EXPIRE ON JUNE 30, 1978, BUT SUCH EXPIRATION SHALL NOT
17 EFFECT THE VALIDITY OF ANY OBLIGATION OUTSTANDING HEREUNDER.