

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 582 Session of
2007

INTRODUCED BY ORIE, FONTANA, PIPPY, WOZNIAK, WAUGH, BOSCOLA AND
RAFFERTY, MARCH 20, 2007

REFERRED TO URBAN AFFAIRS AND HOUSING, MARCH 20, 2007

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, further providing, in relation to
3 municipal authorities formed by cities of the second class,
4 for method of incorporation, for limitations, for
5 prohibitions, for governing body and for money of
6 authorities.

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

9 Section 1. Section 5603(a), (b), (c) and (e) of Title 53 of
10 the Pennsylvania Consolidated Statutes are amended and the
11 section is amended by adding a subsection to read:

12 § 5603. Method of incorporation.

13 [(a) Resolution of intent.--Whenever the municipal]

14 (a) Resolution of intent.--

15 (1) Except as otherwise provided in paragraph (2),
16 whenever the municipal authorities of any municipality singly
17 or of two or more municipalities jointly desire to organize
18 an authority under this chapter, they shall adopt a
19 resolution or ordinance signifying their intention to do so.

1 No such resolution or ordinance shall be adopted until after
2 a public hearing has been held, the notice of which shall be
3 given at least 30 days before the hearing and in the same
4 manner as provided in subsection (b) for the giving of notice
5 of the adoption of the resolution or ordinance.

6 (2) Whenever any city of the second class singly or
7 jointly desires to organize an authority under this chapter,
8 they shall adopt a resolution or ordinance signifying their
9 intention to do so. No such resolution or ordinance shall be
10 adopted until after a public hearing has been held, the
11 notice of which shall be given at least 30 days before the
12 hearing and in the same manner as provided in subsection
13 (b.1) for the giving of notice of the adoption of the
14 resolution or ordinance.

15 (b) General notice of adopted resolution.--[If] For
16 municipal authorities subject to subsection (a)(1), if the
17 resolution or ordinance is adopted, the municipal authorities of
18 such municipality or municipalities shall cause a notice of such
19 resolution or ordinance to be published at least one time in the
20 legal periodical of the county or counties in which the
21 authority is to be organized and at least one time in a
22 newspaper published and in general circulation in such county or
23 counties. The notice shall contain a brief statement of the
24 substance of the resolution or ordinance, including the
25 substance of the articles making reference to this chapter. In
26 the case of authorities created for the purpose of making
27 business improvements or providing administrative services, if
28 appropriate, the notice shall specifically provide that the
29 municipality or municipalities have retained the right which
30 exists under this chapter to approve any plan of the authority.

1 The notice shall state that on a day certain, not less than
2 three days after publication of the notice, articles of
3 incorporation of the proposed authority shall be filed with the
4 Secretary of the Commonwealth. No municipality shall be required
5 to make any other publication of the resolution or ordinance
6 under the provisions of existing law.

7 (b.1) Certification of ballot question and referendum.--The
8 governing body of each city of the second class that has adopted
9 a resolution under subsection (a)(2) shall certify a copy of the
10 resolution and submit the same to the appropriate election
11 officials at least 90 days prior to the next primary or general
12 election. The applicable election officials shall place the
13 proposal on the ballot in a manner fairly representing the
14 content of the resolution by referendum at the election. The
15 question shall include an explanation of the purpose of the
16 authority and how the authority and its activities will be
17 financed. The explanation shall include a statement concerning
18 the debt limitations of the proposed authority. The question
19 shall be placed on the ballot as a referendum and shall become
20 effective by a majority vote of the electors voting thereon. The
21 procedure for referendum shall be governed by the act of June 3,
22 1937 (P.L.1333, No.320), known as the Pennsylvania Election
23 Code.

24 (c) Filing articles of incorporation.--On or before the day
25 specified in the notice required under subsection (b), the
26 municipal authorities subject to subsection (a)(1) shall file
27 with the Secretary of the Commonwealth articles of incorporation
28 together with proof of publication of the notice required under
29 subsection (b). Within 30 days of certification of the election
30 results approving its creation, the incorporating municipality

1 or municipalities subject to subsection (a)(2) shall file with
2 the Secretary of the Commonwealth articles of incorporation. The
3 articles of incorporation shall set forth:

4 (1) The name of the authority.

5 (2) A statement that the authority is formed under this
6 chapter.

7 (3) A statement whether any other authority has been
8 organized under this chapter or under the former act of June
9 28, 1935 (P.L.463, No.191), entitled "An act providing for
10 the incorporation, as bodies corporate and politic, of
11 "Authorities" for municipalities, counties, and townships;
12 defining the same; prescribing the rights, powers, and duties
13 of such Authorities; authorizing such Authorities to acquire,
14 construct, improve, maintain, and operate projects, and to
15 borrow money and issue bonds therefor; providing for the
16 payment of such bonds, and prescribing the rights of the
17 holders thereof; conferring the right of eminent domain on
18 such Authorities; authorizing such Authorities to enter into
19 contracts with and to accept grants from the Federal
20 Government or any agency thereof; and for other purposes," or
21 the former act of May 2, 1945 (P.L.382, No.164), known as the
22 Municipality Authorities Act of 1945, and is in existence in
23 or for the incorporating municipality or municipalities. If
24 any one or more of the municipalities have already joined
25 with other municipalities not composing the same group in
26 organizing a joint authority, the application shall set forth
27 the name of that authority together with the names of the
28 municipalities joining in it.

29 (4) The name of the incorporating municipality or
30 municipalities together with the names and addresses of its

1 municipal authorities.

2 (5) The names, addresses and term of office of the first
3 members of the board of the authority.

4 (6) In the case of authorities created for the purpose
5 of making business improvements or providing administrative
6 services, if appropriate, a statement that the municipality
7 or municipalities have retained the right which exists under
8 this chapter to approve any plan of the authority.

9 (7) With respect to any authority incorporated or
10 reconstituted after July 1, 2007, the debt limitations which
11 shall apply to the authority.

12 (8) In the case of authorities subject to subsection
13 (a)(2), the term of existence of the authority prior to which
14 the incorporating municipality or municipalities must reenact
15 an ordinance to continue its existence.

16 [(7)] (9) Any other matter which shall be determined in
17 accordance with the provisions of this chapter.

18 * * *

19 (e) Certification of incorporation.--If the Secretary of the
20 Commonwealth finds that the articles of incorporation conform to
21 law, he shall, but not prior to the day specified in the notice
22 published in accordance with subsection (b) for authorities
23 subject to subsection (a)(1), endorse his approval of them and,
24 when all proper fees and charges have been paid, shall file the
25 articles and issue a certificate of incorporation to which shall
26 be attached a copy of the approved articles. Upon the issuance
27 of a certificate of incorporation by the Secretary of the
28 Commonwealth, the corporate existence of the authority shall
29 begin. The certificate of incorporation shall be conclusive
30 evidence of the fact that the authority has been incorporated,

1 but proceedings may be instituted by the Commonwealth to
2 dissolve an authority which was formed without substantial
3 compliance with the provisions of this section.

4 * * *

5 Section 2. Section 5607(b) and (e) of Title 53 are amended
6 to read:

7 § 5607. Purposes and powers.

8 * * *

9 (b) Limitations.--This section is subject to the following
10 limitations:

11 (1) An authority created by a school district or school
12 districts shall have the power only to acquire, hold,
13 construct, improve, maintain, operate and lease public school
14 buildings and other school projects acquired, constructed or
15 improved for public school purposes.

16 (2) The purpose and intent of this chapter being to
17 benefit the people of the Commonwealth by, among other
18 things, increasing their commerce, health, safety and
19 prosperity and not to unnecessarily burden or interfere with
20 existing business by the establishment of competitive
21 enterprises, none of the powers granted by this chapter shall
22 be exercised in the construction, financing, improvement,
23 maintenance, extension or operation of any project or
24 projects or providing financing for insurance reserves which
25 in whole or in part shall duplicate or compete with existing
26 enterprises serving substantially the same purposes. This
27 limitation shall not apply to the exercise of the powers
28 granted under this section:

29 (i) for facilities and equipment for the collection,
30 removal or disposal of ashes, garbage, rubbish and other

1 refuse materials by incineration, landfill or other
2 methods if each municipality organizing or intending to
3 use the facilities of an authority having such powers
4 shall declare by resolution or ordinance that it is
5 desirable for the health and safety of the people of such
6 municipality that it use the facilities of the authority
7 and state if any contract between such municipality and
8 any other person, firm or corporation for the collection,
9 removal or disposal of ashes, garbage, rubbish and other
10 refuse material has by its terms expired or is terminable
11 at the option of the municipality or will expire within
12 six months from the date such ordinance becomes
13 effective;

14 (ii) for industrial development projects if the
15 authority does not develop industrial projects which will
16 compete with existing industries;

17 (iii) for authorities created for the purpose of
18 providing business improvements and administrative
19 services if each municipality organizing an authority for
20 such a project shall declare by resolution or ordinance
21 that it is desirable for the entire local government unit
22 to improve the business district;

23 (iv) to hospital projects or health centers to be
24 leased to or financed with loans to public hospitals,
25 nonprofit corporation health centers or nonprofit
26 hospital corporations serving the public or to school
27 building projects and facilities to be leased to or
28 financed with loans to private, nonprofit, nonsectarian
29 secondary schools, colleges and universities, State-
30 related universities and community colleges or to

1 facilities, as limited under the provisions of this
2 section, to produce steam or to generate electric power
3 if each municipality organizing an authority for such a
4 project shall declare by resolution or ordinance that it
5 is desirable for the health, safety and welfare of the
6 people in the area served by such facilities to have such
7 facilities provided by or financed through an authority;

8 (v) to provide financing for insurance reserves if
9 each municipality or authority intending to use any
10 proceeds thereof shall declare by resolution or ordinance
11 that it is desirable for the health, safety and welfare
12 of the people in such local government unit or served by
13 such authority; or

14 (vi) to projects for financing working capital.

15 (3) It is the intent of this chapter in specifying and
16 defining the authorized purposes and projects of an authority
17 to permit the authority to benefit the people of this
18 Commonwealth by, among other things, increasing their
19 commerce, health, safety and prosperity while not
20 unnecessarily burdening or interfering with any municipality
21 which has not incorporated or joined that authority.

22 Therefore, notwithstanding any other provisions of this
23 chapter, an authority shall not have as its purpose and shall
24 not undertake as a project solely for revenue-producing
25 purposes the acquiring of buildings, facilities or tracts of
26 land which in the case of an authority incorporated or joined
27 by a county or counties are located either within or outside
28 the boundaries of the county or counties and in the case of
29 all other authorities are located outside the boundaries of
30 the municipality or municipalities that incorporated or

1 joined the authority unless either:

2 (i) the governing body of each municipality in which
3 the project will be undertaken has by resolution
4 evidenced its approval; or

5 (ii) in cases where the property acquired is not
6 subject to tax abatement, the authority covenants and
7 agrees with each municipality in which the authority will
8 acquire real property as part of the project either to
9 make annual payments in lieu of real estate taxes and
10 special assessments for amounts and time periods
11 specified in the agreement or to pay annually the amount
12 of real estate taxes and special assessments which would
13 be payable if the real property so acquired were fully
14 taxable and subject to special assessments.

15 (4) Unless otherwise expressly provided by law, all
16 projects and bonds of an authority in a second class city
17 shall be subject to open competitive bidding.

18 * * *

19 (e) [Prohibition] Prohibitions.--

20 (1) An authority may not pledge the credit or taxing
21 power of the Commonwealth or its political subdivision.

22 (2) The obligations of an authority are not obligations
23 of the Commonwealth or its political [subdivision]
24 subdivisions.

25 (3) Neither the Commonwealth nor a political subdivision
26 shall be liable for the payment of principal of or interest
27 on obligations of an authority.

28 (4) An authority incorporated by a city of the second
29 class may not borrow to meet its own operating expenses.

30 * * *

1 Section 3. Sections 5610(a) and 5612(b) of Title 53 are
2 amended and the sections are amended by adding subsections to
3 read:

4 § 5610. Governing body.

5 (a) Board.--The powers of each authority shall be exercised
6 by a board composed as follows:

7 (1) If the authority is incorporated by one
8 municipality, the board shall consist of a number of members,
9 not less than five, as enumerated in the articles of
10 incorporation. The governing body of the municipality shall
11 appoint the members of the board, whose terms of office shall
12 commence on the effective date of their appointment. One
13 member shall serve for one year, one for two years, one for
14 three years, one for four years and one for five years
15 commencing with the first Monday in January next succeeding
16 the date of incorporation or amendment. If there are more
17 than five members of the board, their terms shall be
18 staggered in a similar manner for terms of one to five years
19 from the first Monday in January next succeeding. Thereafter,
20 whenever a vacancy has occurred by reason of the expiration
21 of the term of any member, the governing body shall appoint a
22 member of the board for a term of five years from the date of
23 expiration of the prior term to succeed the member whose term
24 has expired.

25 (2) If the authority is incorporated by two or more
26 municipalities, the board shall consist of a number of
27 members at least equal to the number of municipalities
28 incorporating the authority, but in no event less than five.
29 When one or more additional municipalities join an existing
30 authority, each of the joining municipalities shall have

1 similar membership on the board as the municipalities then
2 members of the authority and the joining municipalities may
3 determine by appropriate resolutions. The members of the
4 board of a joint authority shall each be appointed by the
5 governing body of the incorporating or joining municipality
6 he represents, and their terms of office shall commence on
7 the effective date of their appointment. One member shall
8 serve for one year, one for two years, one for three years,
9 one for four years and one for five years from the first
10 Monday in January next succeeding the date of incorporation,
11 amendment or joinder, and if there are more than five members
12 of the board, their terms shall be staggered in a similar
13 manner for terms of from one to five years commencing with
14 the first Monday in January next succeeding. Thereafter,
15 whenever a vacancy has occurred by reason of the expiration
16 of the term of any member, the governing body of the
17 municipality which has the power of appointment shall appoint
18 a member of the board for a term of five years from the date
19 of expiration of the prior term.

20 (3) In the case of an authority in a second class city:

21 (i) No member shall be appointed without a majority
22 vote of the municipal governing body.

23 (ii) No member may be an elected official or an
24 employee of the appointing municipality.

25 (iii) Each member must possess qualifications
26 relevant to the purpose of the authority.

27 (iv) The board shall not be composed of entirely one
28 political party.

29 (v) No member can serve on more than one authority
30 formed by the same municipality.

1 * * *

2 (g) Removal, retention and conflict of interest.--The
3 following provisions shall apply only to an authority in a
4 second class city:

5 (1) Unless removed or a successor appointed, board
6 members shall stand for retention election as provided in
7 this subsection.

8 (2) A member of the authority appointed under subsection
9 (a) or retained under this section may file a declaration of
10 candidacy for retention election with the Secretary of the
11 Commonwealth on or before the first Monday of January of the
12 year preceding the year in which his term of office expires.
13 If no declaration is filed, a vacancy shall exist upon the
14 expiration of the term of office of the member, to be filled
15 by the municipality in accordance with subsection (a).

16 (3) If a member files a declaration, his name shall be
17 submitted to the electors of the municipality without party
18 designation, as a separate question or in a separate column
19 or line on voting machines, at the municipal election
20 immediately preceding the expiration of the term of office of
21 the members, to determine only the question whether he shall
22 be retained in office.

23 (4) If a majority is against retention, a vacancy shall
24 exist upon the expiration of his term of office, to be filled
25 by appointment under subsection (a). If a majority favors
26 retention, the member shall serve for the regular term of
27 office unless sooner removed or vacated. At the expiration of
28 each term, a member shall be eligible for retention as
29 provided in this section.

30 (5) No member of the authority or officer or employee of

1 the authority may directly or indirectly be a party to or be
2 interested in any contract or agreement with the authority
3 for any matter, cause or thing if the contract or agreement
4 establishes liability against or indebtedness of the
5 authority. Any contract or agreement made in violation of
6 this subsection is void, and no action may be maintained on
7 the agreement against the authority.

8 (h) Open meetings.--The governing body of an authority in a
9 second class city shall be construed as an agency for purposes
10 of and as defined under 65 Pa.C.S. § 703 (relating to
11 definitions), and its meetings shall be subject to the
12 provisions of 65 Pa.C.S. Ch. 7 (relating to open meetings).

13 § 5612. Money of authority.

14 * * *

15 [(b) Report.--Every authority whose fiscal year ends
16 December 31 shall file on or before July 1 an annual report of
17 its fiscal affairs covering the preceding calendar year with the
18 Department of Community and Economic Development and with the
19 municipality creating the authority on forms prepared and
20 distributed by the Department of Community and Economic
21 Development. Authorities whose fiscal year does not end on
22 December 31 shall file the report within 90 days after the end
23 of their fiscal year. Every authority shall have its books,
24 accounts and records audited annually by a certified public
25 accountant, and a copy of his audit report shall be filed in the
26 authority office for the purpose of public review and in the
27 office of the municipality or municipalities that created the
28 authority. A concise financial statement shall be published
29 annually at least once in a newspaper of general circulation in
30 the municipality where the principal office of the authority is

1 located. If the publication is not made by the authority, the
2 municipality shall publish such statement at the expense of the
3 authority. If the authority fails to make such an audit, then
4 the controller, auditor or accountant designated by the
5 municipality is hereby authorized and empowered from time to
6 time to examine at the expense of the authority the accounts and
7 books of it, including its receipts, disbursements, contracts,
8 leases, sinking funds, investments and any other matters
9 relating to its finances, operation and affairs.]

10 (b) Report.--

11 (1) Except as otherwise provided in paragraph (2):

12 (i) Every authority whose fiscal year ends December
13 31 shall file on or before July 1 an annual report of its
14 fiscal affairs covering the preceding calendar year with
15 the Department of Community and Economic Development and
16 with the municipality creating the authority on forms
17 prepared and distributed by the Department of Community
18 and Economic Development. Authorities whose fiscal year
19 does not end on December 31 shall file the report within
20 90 days after the end of their fiscal year.

21 (ii) Every authority shall have its books, accounts
22 and records audited annually by a certified public
23 accountant, and a copy of his audit report shall be filed
24 in the authority office for the purpose of public review
25 and in the office of the municipality or municipalities
26 that created the authority.

27 (iii) A concise financial statement shall be
28 published annually at least once in a newspaper of
29 general circulation in the municipality where the
30 principal office of the authority is located.

1 (iv) If the publication is not made by the
2 authority, the municipality shall publish such statement
3 at the expense of the authority. If the authority fails
4 to make such an audit, then the controller, auditor or
5 accountant designated by the municipality is hereby
6 authorized and empowered from time to time to examine at
7 the expense of the authority the accounts and books of
8 the authority, including its receipts, disbursements,
9 contracts, leases, sinking funds, investments and any
10 other matters relating to its finances, operation and
11 affairs.

12 (2) The following provisions shall apply only to an
13 authority in a city of the second class:

14 (i) Every authority whose fiscal year ends December
15 31 shall file on or before July 1 an annual report of its
16 fiscal affairs covering the preceding calendar year with
17 the Department of Community and Economic Development and
18 with the municipality creating the authority on forms
19 prepared and distributed by the Department of Community
20 and Economic Development. Authorities whose fiscal year
21 does not end on December 31 shall file the report within
22 90 days after the end of their fiscal year.

23 (ii) Every authority shall have its books, accounts
24 and records audited annually in accordance with generally
25 accepted auditing standards by an independent certified
26 public accountant who is not affiliated with the
27 authority, and a copy of his audit report shall be filed
28 in the authority office for the purpose of public review
29 and in the office of the municipality or municipalities
30 that created the authority and with the Department of

1 Community and Economic Development and the Appropriations
2 Committee of the Senate and the Appropriations Committee
3 of the House of Representatives.

4 (iii) A concise financial statement shall be
5 published annually at least once in a newspaper of
6 general circulation in the municipality where the
7 principal office of the authority is located. If the
8 publication is not made by the authority, the
9 municipality shall publish such statement at the expense
10 of the authority.

11 (iv) If the authority fails to make such an audit,
12 then the controller, auditor or accountant designated by
13 the municipality or the Auditor General is hereby
14 authorized and empowered from time to time to examine at
15 the expense of the authority the accounts and books of
16 the authority, including its receipts, disbursements,
17 contracts, leases, sinking funds, investments and any
18 other matters relating to its finances, operations and
19 affairs.

20 (v) Every ten years, or sooner if required by the
21 articles of incorporation of the authority, the report
22 shall include an evaluation of the performance of the
23 authority and a recommendation regarding whether the
24 authority should be continued, discontinued or continued
25 with changes to its articles of incorporation and its
26 operating practices.

27 * * *

28 (d) Open records.--An authority in a city of the second
29 class shall be construed as an agency for the purposes of and as
30 defined under the act of June 21, 1957 (P.L.390, No.212),

1 referred to as the Right-to-Know Law, and the books, accounts
2 and records of the authority shall be construed as public
3 records for purposes of and as defined under that act and shall
4 be accessible for inspection and duplication by a requester in
5 accordance with that act.

6 Section 4. As to already existing authorities, nothing in
7 this act shall impair or alter existing bonds or contractual
8 agreements. The provisions of this act with regard to the
9 qualifications, selection and retention of members of an
10 authority governing board shall be phased in as each member's
11 term expires or a vacancy occurs.

12 Section 5. This act shall take effect in 60 days.