

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 901 Session of  
2013INTRODUCED BY EICHELBERGER, BLAKE, FOLMER, TEPLITZ, YUDICHAK,  
WOZNIAK, SOLOBAY, VANCE AND MENSCH, JUNE 7, 2013SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 27,  
2014

## 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 approval by the department of the issuance of  
8 certain debt; further providing for small borrowing for  
9 capital purposes, for debt statement, for submission to  
10 department, for fees for filing, for certificate of approval  
11 of transcript, for effect of failure of timely action by  
12 department and for records of department; providing for  
13 duties of participants in Local Government Unit Debt Act  
14 transactions; and making a related repeal.

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

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

21 § 8002. Definitions.

22 \* \* \*

23 (b) Exclusions from debt.--With respect to exclusions from

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

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

20 \* \* \*

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

27 \* \* \*

28 "Financial advisor." A person who for compensation engages  
29 in the business of advising a local government unit, either  
30 directly or in writing, as to the value of securities, bonds or

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

7 \* \* \*

8 "Working capital." An amount which constitutes, under  
9 generally accepted accounting principles, the cost of the day-  
10 to-day operations of the project as well as a proper allowance  
11 for contingencies. Reimbursements under a guaranty or amounts to  
12 be used to address budgetary deficits of a local government unit  
13 or for other purposes not related to the construction or  
14 operation of the project do not constitute reasonable working  
15 capital in connection with the incurring of debt under this  
16 subpart.

17 Section 2. Sections 8005(c) and (d), 8007 and 8026(a)(5) of  
18 Title 53 are amended to read:

19 § 8005. Classification and authority to issue bonds and notes.

20 \* \* \*

21 (c) Authority to issue bonds and notes and lease rental  
22 debt.--Notwithstanding any other law to the contrary, every  
23 local government unit shall have full power and authority to  
24 issue bonds or notes, and make guaranties, leases, subsidy  
25 contracts or other agreements evidencing the acquisition of  
26 capital assets payable out of taxes and other general revenues,  
27 to provide funds for and towards the cost of or the cost of  
28 completing any project or combination of projects which the  
29 local government unit is authorized to own, acquire, subsidize,  
30 operate or lease or to participate in owning, acquiring,

1 subsidizing, operating or leasing with others, to issue tax  
2 anticipation notes and funding bonds or notes as provided in  
3 this subpart and to contract for insurance covering the risks of  
4 nonpayment of principal, interest and premium of bonds, notes,  
5 tax anticipation notes and guaranties.

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

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

19 ~~(2) A local government unit may only issue a guaranty of~~ <--

20 ~~(2) (I) A LOCAL GOVERNMENT UNIT MAY ONLY ISSUE A~~ <--

21 ~~GUARANTY OF debt of another local government unit or an~~  
22 ~~authority after the initial local government unit IT has~~ <--

23 ~~conducted its own due diligence to determine the risks~~  
24 ~~involved in the transaction, including the impact of the~~  
25 ~~guaranty on the future financial condition of the local~~  
26 ~~government unit, the financial condition of the entity~~  
27 ~~seeking the guaranty, the sources and reliability of~~  
28 ~~revenue to cover the underlying obligation and the~~  
29 ~~likelihood of default of the entity seeking the guaranty.~~

30 A guaranty may only be made by vote of the governing body

1 after a public meeting at which the ~~initial~~ local <--  
2 government unit demonstrates the ~~foregoing~~ SUCH due <--  
3 diligence. A local government unit may only issue a  
4 guaranty to an authority or other local government unit  
5 for projects which are expressly authorized by statute,  
6 including projects under section 5607 ~~(relating to~~ <--  
7 ~~purposes and powers)~~. Notwithstanding the foregoing  
8 (RELATING TO PURPOSES AND POWERS). <--

9 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH  
10 (I), a local government unit may not issue a guaranty to  
11 an authority or other local government unit for sums due  
12 under a qualified interest rate management agreement, nor  
13 may guaranties be issued for projects which involve  
14 untested technology or experimentation.

15 (3) A local government unit is prohibited from  
16 collecting a fee to guaranty the debt of an authority or  
17 another local government unit.

18 § 8007. Cost of project.

19 The cost of a project includes the amount of all payments to  
20 contractors or for the acquisition of a project or for lands,  
21 easements, rights and other appurtenances deemed necessary for  
22 the project, fees of architects, engineers, appraisers,  
23 consultants, financial advisors and attorneys incurred in  
24 connection with the project financing costs, costs of necessary  
25 printing and advertising, costs of preliminary feasibility  
26 studies and tests, cost estimates and interest on money borrowed  
27 to finance the project, if capitalized, to the date of  
28 completion of construction and, if deemed necessary, for one  
29 year thereafter, amounts to be placed in reserve funds, if any,  
30 a reasonable initial working capital for operating the project

1 and a proper allowance for contingencies and any amount which  
2 constitutes, under generally accepted accounting principles, a  
3 cost of, and which has been determined by an independent actuary  
4 or other expert to be required for the purposes of, a reserve or  
5 a contribution toward a combined reserve, pool or other  
6 arrangement for losses or liabilities covered by a self-  
7 insurance arrangement established by one or more local  
8 government units. Costs paid, from sources other than the debt  
9 that is to be refunded, more than two years before an issuance  
10 of new debt to finance the costs may not be included in the  
11 costs of a project financed by the new debt. Reimbursements  
12 under a guaranty or amounts to be used by a local government  
13 unit to address budgetary deficits or other purposes not related  
14 to the project do not constitute a cost of a project in  
15 connection with the incurring of debt under this subpart. Costs  
16 that qualify for funding of unfunded debt under section 8130  
17 (relating to approval by court to fund unfunded debt) may only  
18 constitute a cost of a project if the local government unit  
19 complies with the requirements of section 8130.

20 § 8026. Exclusion of other self-liquidating debt to determine  
21 net nonelectoral debt or net lease rental debt.

22 (a) Filings with department.--Self-liquidating debt shall  
23 not be excluded in determining net nonelectoral debt or net  
24 lease rental debt for the purpose of establishing net debt of  
25 either category where the debt is evidenced by general  
26 obligation bonds or notes, by bonds, notes or other obligations  
27 of an authority or of another local government unit or by a  
28 guaranty until there has been filed with and approved by the  
29 department a report to the local government unit from qualified  
30 registered engineers or architects or other persons qualified by

1 experience appropriate to the project, setting forth:

2 \* \* \*

3 (5) The estimated net revenues of the project for each  
4 year of the remaining life of the bonds, notes or obligations  
5 with [a] ~~justification~~ AN EXPLANATION for any assumed <--  
6 increase and a computation showing, in reasonable detail,  
7 that the net revenues, together with other available funds to  
8 be received in respect of the project, will be sufficient in  
9 each year to pay the annual debt service, other than  
10 capitalized debt service, on the bonds, notes or obligations  
11 or a specified aggregate principal amount thereof.

12 \* \* \*

13 Section 3. Title 53 is amended by adding a section to read:  
14 § 8102.1. Preliminary approval by the department of the  
15 issuance of certain debt.

16 (a) General rule.--Prior to the enactment of an ordinance  
17 authorizing the sale or issuance of any general obligation bonds  
18 or notes or guaranteed revenue bonds or notes constituting  
19 nonelectoral debt or any agreement evidencing lease rental debt,  
20 a local government unit shall obtain a preliminary authorization  
21 to incur debt from the department. The following debt <--  
22 transactions shall be exempt from the requirement to obtain  
23 preliminary approval under this section:

24 (1) Small borrowing for capital purposes as provided in  
25 section 8109 (relating to small borrowing for capital  
26 purposes).

27 (2) Transactions under Subchapter C of Chapter 82  
28 (relating to refunding of debt) which consist exclusively of  
29 the issuance and sale of obligations, the proceeds of which  
30 are to be used solely for the payment or redemption of

~~outstanding obligations upon or prior to maturity and the  
costs of issuing the obligations. A refunding transaction  
which includes a qualified interest rate management agreement  
shall not be exempt from the requirements of this section.~~

(b) Authorization.--Authorization shall be obtained by  
filing a notice with the department in the form of a certificate  
signed by two officers of the local government unit. The  
department shall prescribe the form of the certificate which  
shall include a basic description of the intended financing and,  
as applicable, the following:

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

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

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

(4) If the local government unit intends for the  
proposed debt to be self-liquidating or subsidized,  
information ~~satisfactory~~ WHICH REASONABLY DEMONSTRATES to the <--  
department that the debt will qualify as self-liquidating or  
subsidized debt, including filings required under section  
8024 (relating to exclusion of subsidized debt from net  
nonelectoral debt or net lease rental debt), 8025 (relating  
to exclusion of self-liquidating debt evidenced by revenue  
bonds or notes to determine net nonelectoral debt) or 8026



1 (relating to exclusion of other self-liquidating debt to  
2 determine net nonelectoral debt or net lease rental debt), as  
3 applicable.

4 (5) If the local government unit has existing debt which  
5 was previously approved by the department as subsidized or  
6 self-liquidating, information satisfactory to the department  
7 that the debt continues to be treated as subsidized or self-  
8 liquidating and that no decrease in the amount to be excluded  
9 is required by any change in circumstances, other than  
10 resulting from the payments of the debt, or, if there has  
11 been a change in circumstances, information demonstrating to  
12 the satisfaction of the department the amount of debt that  
13 should continue to be treated as subsidized or self-  
14 liquidating.

15 (6) Schedules demonstrating the estimated net debt  
16 service impact of the transaction and a certification that  
17 the local government adopted or approved a plan to provide  
18 the tax or other revenues necessary to pay the debt service  
19 on the debt, IF APPLICABLE.

<--

20 (7) The debt statement required by section 8110  
21 (relating to debt statement).

22 (8) A statement of the intended manner of sale of the  
23 bonds or notes.

24 (9) A project cost statement detailing the intended uses  
25 of debt proceeds.

26 (c) Additional information.--As part of the department's  
27 review of a filing by a local government unit under subsection  
28 (b), the department may request and the local government unit  
29 shall provide additional information regarding, INCLUDING any of  
30 the following:

<--

1        (1) ~~justification~~ AN EXPLANATION for costs of issuance        <--  
2        exceeding 2% of the principal amount of the proposed debt;

3        (2) ~~justification~~ AN EXPLANATION for the use of more        <--  
4        than 10% of the proceeds of the debt for working capital; and

5        (3) if bonds or notes are to be sold at private sale by  
6        negotiation, the basis for the local government unit's  
7        finding that the bonds or notes are in the best financial  
8        interests of the local government unit.

9        (d) Action by department.--If the department, upon review of  
10       the filing made by the local government unit under subsection  
11       (b) and any additional information provided under subsection  
12       (c), if applicable, finds IN ITS REASONABLE DISCRETION that:       <--

13       (1) The requirements are satisfied in connection with  
14       the proposed debt, the department shall issue a preliminary  
15       approval of the debt.

16       (2) The requirements are not satisfied in connection  
17       with the proposed debt, the department shall issue a  
18       preliminary disapproval of the debt and the local government  
19       may not proceed to incur the debt until the requirements are  
20       satisfied.

21       (e) Timely action required.--The department shall have 30  
22       days after receipt of the filing required under subsection (b)  
23       to issue a preliminary approval or disapproval of the debt. If  
24       the local government unit has submitted a certificate for  
25       preliminary approval to the department by certified mail, return  
26       receipt requested or otherwise has an official receipt from the  
27       department and the local government unit has not, within 30 days  
28       of the date of receipt of the filing by the department, received  
29       the certificate of preliminary approval, disapproval or  
30       notification of correctable error, the filing shall be deemed to

1 have been preliminarily approved for all purposes unless the  
2 local government unit has extended the time within which the  
3 department may act by written communication to the department or  
4 by failure to object to a written communication from the  
5 department requesting the extension. No extension shall exceed  
6 15 days.

7 (f) Incurrence of debt.--Upon issuance of preliminary  
8 approval of the department, the local government unit shall have  
9 one year to incur the debt under this subpart. The bonds or  
10 notes shall be sold, or instruments evidencing lease rental debt  
11 delivered, not more than two years following the date of the  
12 preliminary approval.

13 (g) Review.--All determinations by the department under this  
14 section are reviewable as provided under 2 Pa.C.S. Ch. 7  
15 (relating to judicial review).

16 (H) EXEMPTIONS AND SPECIAL PROVISIONS.--

<--

17 (1) SMALL BORROWING FOR CAPITAL PURPOSES AS PROVIDED IN  
18 SECTION 8109 (RELATING TO SMALL BORROWING FOR CAPITAL  
19 PURPOSES) SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS  
20 SECTION.

21 (2) A LOCAL GOVERNMENT UNIT MAY OBTAIN A SINGLE ANNUAL  
22 PRELIMINARY AUTHORIZATION WITH REGARD TO ALL SUCH ANTICIPATED  
23 OR POTENTIAL REFINANCING TRANSACTIONS THAT COMPLY WITH  
24 SECTION 8244 (RELATING TO EFFECT OF DEBT LIMITS ON REFUNDING  
25 NONELECTORAL BONDS OR NOTES OR LEASE RENTAL DEBT). THE  
26 DEPARTMENT SHALL PROVIDE A PROCEDURE THROUGH WHICH A LOCAL  
27 GOVERNMENT UNIT MAY OBTAIN AUTHORIZATION, WHICH MUST INCLUDE  
28 IDENTIFYING CURRENT DEBT WHICH THE UNIT MAY SEEK TO REFUND  
29 AND COMPLYING WITH APPLICABLE PROVISIONS OF THIS SECTION.

30 (3) A TRANSACTION WHICH INCLUDES A QUALIFIED INTEREST

1     RATE MANAGEMENT AGREEMENT SHALL NOT BE EXEMPT FROM THE  
2     REQUIREMENTS OF THIS SECTION.

3     Section 4. Sections 8109(a)(1) and 8110(b) of Title 53 are  
4 amended to read:

5     § 8109. Small borrowing for capital purposes.

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

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

17         \* \* \*

18     § 8110. Debt statement.

19         \* \* \*

20     (b) Previously excluded self-liquidating or subsidized  
21 debt.--Where debt has previously been excluded as self-  
22 liquidating or subsidized debt, the debt statement shall be  
23 accompanied by a certification that indicates one of the  
24 following:

25         (1) no decrease in the amounts to be excluded is  
26 required by any change of circumstances [or ,if there has  
27 been a change, other than decreases resulting from the  
28 payments of bonds or notes, so that less debt is to be  
29 excluded. If it has become possible to exclude a greater  
30 amount of debt and the local government unit desires to do

1 so, the debt statement shall be accompanied by appropriate  
2 certificates supporting the revised amount to be excluded,  
3 and a revised approval shall be obtained from the  
4 department.];

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

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

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

26 Section 5. Section 8111(a) of Title 53 is amended by adding  
27 paragraphs to read:

28 § 8111. Submission to department.

29 (a) General rule.--Before delivering any bonds or notes  
30 other than notes representing small borrowings issued under

1 section 8109 (relating to small borrowing for capital purposes),  
2 the local government unit shall apply for and receive or be  
3 deemed to have received the approval of the department under  
4 section 8204 (relating to certificate of approval of transcript)  
5 or 8206 (relating to effect of failure of timely action by  
6 department). The application, in such form as the department  
7 prescribes, shall be accompanied by a transcript of the  
8 proceedings consisting of certified copies of any of the  
9 following, not previously filed, which are applicable:

10 \* \* \*

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

15 (9) An itemized statement of all estimated disbursements  
16 for costs to be made from the proceeds of the borrowing TO <--  
17 THE EXTENT POSSIBLE.

18 \* \* \*

19 Section 6. Sections 8203, 8204, 8206 and 8207(a) and (c) of  
20 Title 53 are amended to read:

21 § 8203. Fees for filing.

22 Every filing under this subpart with the department shall be  
23 accompanied by a filing fee [as determined in section 605-A of  
24 the act of April 9, 1929 (P.L.177, No.175), known as The  
25 Administrative Code of 1929.] of \$250. In addition, the, SUBJECT <--  
26 TO THE FOLLOWING PROVISIONS:

27 (1) THE filing shall be accompanied by an additional fee  
28 of 1/32 mill on each dollar of the aggregate principal amount  
29 of the debt relating to the filing. No submission shall <--  
30 constitute a filing until the THE FILING. <--

1        (2) NO SUBMISSION SHALL CONSTITUTE A FILING UNTIL THE  
2        proper fee is paid. [All fees received under this section <--  
3        shall be {paid by the department into the State Treasury <--  
4        through the Department of Revenue.] ~~deposited into the Local~~ <--  
5        ~~Government Unit Debt Act Administrative Account, established~~  
6        ~~as follows:~~

7        ~~(1) There is hereby established a restricted receipt~~  
8        ~~account within the General Fund of the State Treasury which~~  
9        ~~shall be known as the Local Government Unit Debt Act~~  
10       ~~Administrative Account.~~

11       ~~(2) All moneys in the Local Government Unit Debt Act~~  
12       ~~Administrative Account shall be held in trust solely for the~~  
13       ~~purpose of defraying the costs of the administration of this~~  
14       ~~subpart and shall be earmarked for the use of and annually~~  
15       ~~appropriated to the department for disbursement solely for~~  
16       ~~that purpose. The account shall be subject to audit by the~~  
17       ~~Auditor General.~~

18       (3) The fee shall be waived for borrowings in connection  
19       with a plan or recovery plan under the act of July 10, 1987  
20       (P.L.246, No.47), known as the Municipalities Financial  
21       Recovery Act.

22       (4) Fees paid in connection with a filing under section  
23       8102.1 (relating to preliminary approval by the department on  
24       the issuance of certain debt) shall constitute payment of  
25       fees due under section 8204 (relating to certificate of  
26       ~~fiscal~~ FINAL approval). <--

27    § 8204. Certificate of final approval [of transcript].

28       The department shall, upon receipt of a submission under  
29       section 8111 (relating to submission to department) containing  
30       an application for final approval and any bond or note

1 transcripts or other filings, carefully examine them to  
2 determine whether the debt outstanding and to be outstanding is  
3 within the applicable limitations imposed by this subpart and  
4 whether the proceedings for incurring the debt, for issuing and  
5 selling the bonds or notes and for excluding self-liquidating  
6 and subsidized debt have been taken in conformity with the  
7 Constitution of Pennsylvania and this subpart. If, upon  
8 completion of its examination, a transcript or other filing is  
9 found by the department to be in conformity with the  
10 Constitution of Pennsylvania and this subpart, the department  
11 shall certify its approval to the local government unit if  
12 required under other provisions of this subpart. If the debt  
13 requires preliminary approval under section 8102.1 (relating to  
14 preliminary approval by the department of the issuance of  
15 certain debt), the certificates and filings related to  
16 preliminary approval shall be part of the transcript and a  
17 requirement for final approval under this section. If the debt  
18 has received preliminary approval under section 8102.1, the  
19 department shall provide for a procedure to expedite the  
20 processing of final approval.

21 § 8206. Effect of failure of timely action by department.

22 If the local government unit has submitted [a filing] an  
23 application for final approval to the department by certified  
24 mail, return receipt requested, or otherwise has an official  
25 receipt from the department, and the local government unit has  
26 not, within 20 days of the date of receipt of the filing by the  
27 department, received the certificate of final approval or  
28 disapproval or notification of correctable error, the filing  
29 shall be deemed to have been approved for all purposes unless  
30 the local government unit has extended the time within which the



1 department may act by written communication to the department or  
2 by failure to object to a written communication from the  
3 department requesting the extension. Extensions shall not exceed  
4 one additional period of 20 days.

5 § 8207. Records of department.

6 (a) Retention period.--The department shall keep all  
7 proceedings including all applications and statements by a local  
8 government unit under sections 8102.1 (relating to preliminary  
9 approval by the department of the issuance of certain debt),  
10 8111 (relating to submission to department) and 8201 (relating  
11 to certification to department of bond or note transcript or  
12 lease, guaranty, subsidy contract or other agreement) on file  
13 for a period of not less than [four months after issuance of its  
14 certificate of approval or disapproval and thereafter as long as  
15 any appeal respecting the proceedings is pending and not finally  
16 determined.] five years after the debt issuance has been paid  
17 off by the local government unit. The department shall also keep  
18 copies of all documents filed with the department relating to a  
19 qualified interest rate management agreement for as long as the  
20 qualified interest rate management agreement is in effect.

21 \* \* \*

22 (c) Records open for inspection.--[The records of the  
23 department shall be public records available for examination by  
24 any citizen of this Commonwealth or any bondholders or  
25 noteholders.] All submissions, determinations and records of the  
26 department under this subpart, including those related to  
27 qualified interest rate management agreements and including  
28 correspondence with the interested parties to any debt  
29 proceeding, shall be public records available for examination by  
30 any citizen of this Commonwealth, any interested parties or any

1 bondholder or noteholder, including holders of tax anticipation  
2 notes, of the local government unit.

3 Section 7. Chapter 82 of Title 53 is amended by adding a  
4 subchapter to read:

5 SUBCHAPTER G

6 MISCELLANEOUS OTHER PROVISIONS <--

7 Sec.

8 8291. Duties of participants in Local Government Unit Debt Act <--  
9 transactions.

10 \$ 8291. Duties of participants in Local Government Unit Debt <--  
11 Act transactions.

12 (a) Declaration of representation.--With regard to each <--  
13 transaction under this subchapter, AS A CONDITION OF <--

14 PARTICIPATION IN TRANSACTIONS UNDER CHAPTER 81 (RELATING TO  
15 INCURRING DEBT AND ISSUING BONDS AND NOTES) AND THIS CHAPTER,  
16 each attorney or financial advisor involved in the transaction  
17 shall provide a written declaration to the local government unit  
18 as to which party is being represented by the attorney or  
19 financial advisor, the source from which the attorney or  
20 financial advisor will receive compensation for services related  
21 to the transaction and whether the compensation is dependent  
22 upon the issuance of debt by the local government unit. A full  
23 time employee of the local government unit shall not be required  
24 to file a declaration under this subsection.

25 (b) Fiduciary duty. An attorney or financial advisor <--  
26 retained by or who in subsection (a) purports to represent a  
27 local government unit with regard to a transaction under this  
28 subpart shall stand in a fiduciary relationship to the local  
29 government unit and shall perform loyally, in good faith and in  
30 a manner the attorney or financial advisor reasonably believes

~~to be in the best interests of the local government unit. The attorney or financial advisor shall act with such care, including reasonable inquiry, skill and diligence that a person of ordinary prudence would use under similar circumstances and provide opinion both as to positive and negative possible impacts of the transaction. An attorney or financial advisor in the course of the representation is entitled to rely on reasonable representations and certifications made to the attorney or financial advisor by architects, engineers and other persons retained by and the officers and employees of the local government unit in connection with the transaction. For attorneys licensed to practice law in this Commonwealth, this duty shall be interpreted to be consistent with Supreme Court rule of professional conduct pertaining to attorney fiduciary relationships. For financial advisors retained by a local government unit, this duty shall be in addition to any fiduciary duty which may be imposed by Federal law.~~

(B) FIDUCIARY DUTY OF LOCAL GOVERNMENT UNIT  
REPRESENTATIVES.--

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(1) AN ATTORNEY OR FINANCIAL ADVISOR WHO PURPORTS TO REPRESENT A LOCAL GOVERNMENT UNIT UNDER SUBSECTION (A) IN A TRANSACTION UNDER THIS SUBPART SHALL STAND IN A FIDUCIARY RELATIONSHIP TO THE LOCAL GOVERNMENT UNIT.

(2) (I) WITH REGARD TO A FINANCIAL ADVISOR WHO REPRESENTS A LOCAL GOVERNMENT UNIT, THE TERM "FIDUCIARY DUTY" SHALL MEAN THE DUTY TO PERFORM LOYALLY, IN GOOD FAITH AND IN A MANNER THE FINANCIAL ADVISOR REASONABLY BELIEVES TO BE IN THE BEST INTERESTS OF THE LOCAL GOVERNMENT UNIT. THE FINANCIAL ADVISOR SHALL ACT WITH SUCH CARE, INCLUDING REASONABLE INQUIRY, SKILL AND

1 DILIGENCE THAT A PERSON OF ORDINARY PRUDENCE WOULD USE  
2 UNDER SIMILAR CIRCUMSTANCES, AND PROVIDE OPINION AS TO  
3 POSSIBLE POSITIVE AND NEGATIVE IMPACTS OF A TRANSACTION.

4 (II) WITH REGARD TO ATTORNEYS LICENSED TO PRACTICE  
5 LAW IN THIS COMMONWEALTH, THE FIDUCIARY DUTY SHALL BE AS  
6 PRESCRIBED BY THE PENNSYLVANIA SUPREME COURT, INCLUDING  
7 ITS RULES OF PROFESSIONAL CONDUCT.

8 (3) AN ATTORNEY OR FINANCIAL ADVISOR IN THE COURSE OF  
9 THE REPRESENTATION SHALL BE ENTITLED TO RELY ON REASONABLE  
10 REPRESENTATIONS AND CERTIFICATIONS MADE TO THE ATTORNEY OR  
11 FINANCIAL ADVISOR BY ARCHITECTS, ENGINEERS AND OTHER PERSONS  
12 RETAINED BY AND THE OFFICERS AND EMPLOYEES OF A LOCAL  
13 GOVERNMENT UNIT.

14 (4) PURSUANT TO SUBSECTION (F) OF MUNICIPAL SECURITIES  
15 RULEMAKING BOARD RULE G-23 (RELATING TO ACTIVITIES OF  
16 FINANCIAL ADVISORS), 17 CFR §§ 240.15BA1-1 (RELATING TO  
17 DEFINITIONS), 240.15BA1-2 (RELATING TO REGISTRATION OF  
18 MUNICIPAL ADVISORS AND INFORMATION REGARDING CERTAIN NATURAL  
19 PERSONS), 240.15BA1-3 (RELATING TO EXEMPTION OF CERTAIN  
20 NATURAL PERSONS FROM REGISTRATION UNDER SECTION 15B(A) (1) (B)  
21 OF THE ACT), 240.15BA1-4 (RELATING TO WITHDRAWAL FROM  
22 MUNICIPAL ADVISOR REGISTRATION), 240.15BA1-5 (RELATING TO  
23 AMENDMENTS TO FORM MA AND FORM MA-I), 240.15BA1-6 (RELATING  
24 TO CONSENT TO SERVICE OF PROCESS TO BE FILED BY NON-RESIDENT  
25 MUNICIPAL ADVISORS; LEGAL OPINION TO BE PROVIDE BY NON-  
26 RESIDENT MUNICIPAL ADVISORS), 240.15BA1-7 (RELATING TO  
27 REGISTRATION OF SUCCESSOR TO MUNICIPAL ADVISOR) AND  
28 240.15BA1-8 (RELATING TO BOOKS AND RECORDS TO BE MADE AND  
29 MAINTAINED BY MUNICIPAL ADVISORS), AND AS TO LOCAL GOVERNMENT  
30 UNIT REPRESENTATIVES ONLY, THE FIDUCIARY DUTY DESCRIBED IN

1 THIS SECTION SHALL BE IN ADDITION TO ANY DUTY CONTAINED IN  
2 RULES PROMULGATED BY THE MUNICIPAL SECURITIES RULEMAKING  
3 BOARD THAT MAY APPLY TO THE ATTORNEY OR FINANCIAL ADVISOR.

4 (c) Ultra vires acts.--An officer or member of the governing  
5 body of a local government unit or a financial advisor or  
6 attorney may not knowingly participate in an ultra vires act. <--

7 For purposes of this subsection, an act is ultra vires when:

8 ~~(1) the local government unit is without authority to~~  
9 ~~perform the act; or~~

10 ~~(2) the act is in excess of the authority granted to the~~  
11 ~~local government unit~~ A VIOLATION OF THIS TITLE. <--

12 (d) Materially false or misleading certifications.--An  
13 officer or member of the governing body of a local government  
14 unit or an attorney or financial advisor may not knowingly file  
15 a materially false or misleading certification or statement with  
16 the department under this act SUBPART. <--

17 (e) Penalties.--

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

25 (2) Notwithstanding paragraph (1), a local government  
26 may seek civil judicial redress for a violation of this  
27 section that results in damages to the local government unit  
28 not caused by the local government unit or its agents. A  
29 local government unit shall prohibit or restrict the future  
30 participation in transactions under this subpart of an

1 individual attorney or financial advisor who violates this  
2 section and may also prohibit or restrict participation of a  
3 firm that employs the attorney or financial advisor for a  
4 period not to exceed two years.

5 Section 8. Repeals are as follows:

6 (1) The General Assembly declares that the repeal under  
7 paragraph (2) is necessary to effectuate the amendment of 53  
8 Pa.C.S. § 8203.

9 (2) Section 605-A of the act of April 9, 1929 (P.L.177,  
10 No.175), known as The Administrative Code of 1929, is  
11 repealed.

12 (3) All acts and parts of acts are repealed insofar as  
13 they are inconsistent with the amendment or addition of 53  
14 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007,  
15 8026(a)(5), 8102.1, 8111(a), 8203, 8204, 8206, 8207(a) and  
16 (c) and 8291.

17 Section 9. This act shall take effect in 60 days.