

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 901 Session of 2013

INTRODUCED BY EICHELBERGER, BLAKE, FOLMER, TEPLITZ, YUDICHAK,
PILEGGI, WOZNIAK, SOLOBAY, VANCE AND MENSCH, JUNE 7, 2013

REFERRED TO LOCAL GOVERNMENT, JUNE 7, 2013

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, for exclusion
5 of other self-liquidating debt to determine net nonelectoral
6 debt or net lease rental debt and for preliminary
7 authorizations as to financing; providing for preliminary
8 approval by the department of the issuance of debt; further
9 providing for submission to department, for manner of sale of
10 bonds or notes, for fees for filing, for certificate of
11 approval of transcript, for effect of failure of timely
12 action by department, for records of department; providing
13 for duty of advisors; further providing for treatment of
14 costs upon refunding; providing for the offense of knowingly
15 participating in an ultra vires act of a local government
16 unit and for the offense of knowingly filing materially false
17 or misleading certifications or statements with the
18 department; and making a related repeal.

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

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

25 § 8002. Definitions.

26 * * *

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 for which payments have been made under a guaranty shall
19 not be considered self-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 "Working capital." An amount which constitutes, under
29 generally accepted accounting principles, the cost of the day-
30 to-day operations of the project as well as a proper allowance

1 for contingencies. Reimbursements under a guaranty or amounts to
2 address budgetary deficits not related to the project shall not
3 constitute reasonable working capital in connection with the
4 incurring of debt under this subpart.

5 Section 2. Sections 8005(c) and (d), 8007, 8026(a)(5) and
6 8102 of Title 53 are amended to read:

7 § 8005. Classification and authority to issue bonds and notes.

8 * * *

9 (c) Authority to issue bonds and notes and lease rental
10 debt.--Notwithstanding any other law to the contrary, every
11 local government unit shall have full power and authority to
12 issue bonds or notes, and make guaranties, leases, subsidy
13 contracts or other agreements evidencing the acquisition of
14 capital assets payable out of taxes and other general revenues,
15 to provide funds for and towards the cost of or the cost of
16 completing any project or combination of projects which the
17 local government unit is authorized to own, acquire, subsidize,
18 operate or lease or to participate in owning, acquiring,
19 subsidizing, operating or leasing with others, to issue tax
20 anticipation notes and funding bonds or notes as provided in
21 this subpart and to contract for insurance covering the risks of
22 nonpayment of principal, interest and premium of bonds, notes,
23 tax anticipation notes and guaranties. Notwithstanding the
24 foregoing, a local government unit may only issue a guaranty of
25 municipal authority debt when the debt is incurred in connection
26 with a loan from the Federal Government, the Pennsylvania
27 Infrastructure Investment Authority or any other instrumentality
28 or agency of the Commonwealth for a water or sanitary sewer
29 project.

30 (d) Nature of guaranty and prohibition on fees.--The

1 following shall apply to a guaranty:

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

13 (2) A local government unit is prohibited from
14 collecting a fee to guaranty the debt of an authority or
15 another local government unit.

16 § 8007. Cost of project.

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

1 cost of, and which has been determined by an independent actuary
2 or other expert to be required for the purposes of, a reserve or
3 a contribution toward a combined reserve, pool or other
4 arrangement for losses or liabilities covered by a self-
5 insurance arrangement established by one or more local
6 government units. Costs incurred before the fiscal year
7 immediately preceding the date the debt is incurred may not be
8 included in the cost of a project. Reimbursements under a
9 guaranty or amounts to address budgetary deficits not related to
10 the project shall not constitute a cost of a project in
11 connection with the incurring of debt under this subpart.

12 § 8026. Exclusion of other self-liquidating debt to determine
13 net nonelectoral debt or net lease rental debt.

14 (a) Filings with department.--Self-liquidating debt shall
15 not be excluded in determining net nonelectoral debt or net
16 lease rental debt for the purpose of establishing net debt of
17 either category where the debt is evidenced by general
18 obligation bonds or notes, by bonds, notes or other obligations
19 of an authority or of another local government unit or by a
20 guaranty until there has been filed with and approved by the
21 department a report to the local government unit from qualified
22 registered engineers or architects or other persons qualified by
23 experience appropriate to the project, setting forth:

24 * * *

25 (5) The estimated net revenues of the project for each
26 year of the remaining life of the bonds, notes or obligations
27 with a justification for any assumed increase in the gross
28 revenues of more than 5% in any one year and a computation
29 showing, in reasonable detail, that the net revenues,
30 together with other available funds to be received in respect

1 of the project, will be sufficient in each year to pay the
2 annual debt service, other than capitalized debt service, on
3 the bonds, notes or obligations or a specified aggregate
4 principal amount thereof.

5 * * *

6 § 8102. Preliminary authorizations as to financing.

7 The governing body of a local government unit may express its
8 intent to evidence debt as electoral debt, nonelectoral debt or
9 lease rental debt. [Action] After obtaining approval by the
10 department under section 8102.1 (relating to preliminary
11 approval by the department of the issuance of debt), if
12 applicable, action may be taken either by resolution, which may
13 also provide for the submission of proposals to purchase any
14 bonds or notes, or by ordinance. But neither bonds or notes nor
15 lease, guaranty, subsidy contract or other agreement evidencing
16 lease rental debt shall be authorized other than by the
17 enactment of any ordinances required by this subchapter or, in
18 the case of notes issued under section 8109 (relating to small
19 borrowing for capital purposes), other than by adoption of the
20 resolution required under section 8109.

21 Section 3. Title 53 is amended by adding a section to read:

22 § 8102.1. Preliminary approval by the department of the
23 issuance of debt.

24 (a) General rule.--Prior to the adoption of an ordinance or
25 resolution authorizing the issuance of any general obligation
26 bonds or notes or guaranteed revenue bonds or notes constituting
27 nonelectoral debt or any agreement evidencing lease rental debt,
28 a local government unit shall obtain a preliminary authorization
29 to incur debt from the department. Authorization shall be
30 obtained by filing a notice with the department in the form of a

1 certificate signed by two officers of the local government unit.
2 The certificate shall include a basic description of the
3 intended financing. The department may prescribe the form of the
4 certificate. The local government unit may not take any action
5 to incur the debt until it receives a preliminary approval from
6 the department. The department may require the local government
7 unit to also provide evidence of any of the following:

8 (1) Information satisfactory to the department that the
9 local government unit has submitted a current audited
10 financial statement. If the department determines that the
11 most recent audited financial statements of the local
12 government unit do not include a current audited financial
13 statement, the department may prohibit the local government
14 unit from incurring debt until current audited financial
15 statements covering the designated fiscal year or years are
16 filed with the department.

17 (2) As part of the filing made by the local government
18 unit with the department under paragraph (1), information
19 demonstrating the type and amount of financial security
20 proposed to insure the completion of the project.

21 (3) Information satisfactory to the department that the
22 local government unit is up to date on all of its municipal
23 securities disclosures required under 17 CFR § 240.15c2-12
24 (relating to municipal securities disclosure). If the
25 department is not satisfied that the local government unit is
26 in compliance with such disclosure obligations, the
27 department may prohibit the local government unit from
28 incurring debt until the local government unit provides the
29 department with proof of compliance that is satisfactory to
30 the department.

1 (4) If the local government unit intends for the
2 proposed debt to be self-liquidating, information
3 satisfactory to the department that the debt will be self-
4 liquidating.

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

16 (6) If the local government unit wishes to issue
17 refunding debt for a purpose other than as set forth in
18 section 8241(b)(1) (relating to power to refund), information
19 satisfactory to the department that the refunding is a sound
20 financial transaction and is in the best long-term financial
21 interest of the local government unit.

22 (7) If the local government unit intends that the debt
23 to be issued provides that over 10% of the proceeds of the
24 debt will be used for working capital, information
25 satisfactory to the department that the financing is a sound
26 financial transaction and is in the best long-term financial
27 interest of the local government unit.

28 (b) Additional information.--After receipt by the department
29 of a filing by a local government unit under subsection (a), the
30 department may request and the local government unit shall

1 provide additional information which the department deems
2 necessary to avoid an unsound financial transaction or a
3 financial transaction which is not in the best long-term
4 financial interest of the local government unit.

5 (c) Action by department.--If the department, upon review of
6 the filing made by the local government unit under subsection
7 (a) and any additional information provided under subsection
8 (b), if applicable, finds that:

9 (1) The requirements are satisfied in connection with
10 the proposed debt, the department shall issue a preliminary
11 approval of the debt.

12 (2) The requirements are not satisfied in connection
13 with the proposed debt, the department shall issue a
14 preliminary disapproval of the debt and the local government
15 may not proceed to incur the debt.

16 (d) Timely action required.--The department shall have 60
17 days after receipt of the filing required under subsection (a)
18 to issue a preliminary approval or disapproval of the debt.

19 (e) Incurrence of debt.--Upon issuance of preliminary
20 approval of the department, the local government unit shall have
21 six months to incur the debt under this subpart. The bonds or
22 notes shall be sold, or instruments evidencing lease rental debt
23 delivered, not more than one year following the date of the
24 preliminary approval.

25 (f) Review.--All determinations by the department under this
26 section are reviewable as provided under 2 Pa.C.S. Ch. 7
27 (relating to judicial review).

28 Section 4. Section 8111(a) of Title 53 is amended by adding
29 paragraphs to read:

30 § 8111. Submission to department.

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

* * *

(8) Proof of obtainment of the required financial security to insure the completion of the project.

(9) An itemized statement of all disbursements to be made from the proceeds of the borrowing. Not more than 2% of debt proceeds may be distributed for the cost of issuing the debt.

* * *

Section 5. Sections 8161(a), 8203, 8204, 8206 and 8207(a) and (c) of Title 53 are amended to read:

§ 8161. Manner of sale of bonds or notes.

(a) General rule.--Except as otherwise specifically provided in this subpart and subject to subsection (b), bonds or notes may be sold at public or private sale by negotiation or upon invitation and at the price the governing body of the issuing local government unit shall determine. Before making any private sale by negotiation of bonds or notes[, the governing body shall adopt a resolution finding that a private sale by negotiation is] of more than \$5,000,000 in any fiscal year, the governing

body shall submit to the department satisfactory evidence that exceeding the limit is necessary and in the best financial interest of the local government unit. Bonds or notes may be conditionally sold before the final details of the series are fixed.

* * *

§ 8203. Fees for filing.

Every filing under this subpart with the department shall be accompanied by a filing fee [as determined in section 605-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.] of \$250. In addition, the filing shall be accompanied by an additional fee of 1/32 mill on each dollar of the aggregate principal amount of the debt relating to the filing. No submission shall constitute a filing until the proper fee is paid. All fees received under this section shall be [paid by the department into the State Treasury through the Department of Revenue.] deposited into the Local Government Unit Debt Act Administrative Account, established as follows:

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

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

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

1 The department shall, upon receipt of any bond or note
2 transcripts or other filings, carefully examine them to
3 determine whether the debt outstanding and to be outstanding is
4 within the applicable limitations imposed by this subpart and
5 whether the proceedings for incurring the debt, for issuing and
6 selling the bonds or notes and for excluding self-liquidating
7 and subsidized debt have been taken in conformity with the
8 Constitution of Pennsylvania and this subpart. If, upon
9 completion of its examination, a transcript or other filing is
10 found by the department to be in conformity with the
11 Constitution of Pennsylvania and this subpart, the department
12 shall certify its approval to the local government unit if
13 required under other provisions of this subpart.

14 § 8206. Effect of failure of timely action by department.

15 If the local government unit has submitted [a filing] an
16 application for final approval to the department by certified
17 mail, return receipt requested, or otherwise has an official
18 receipt from the department, and the local government unit has
19 not, within [20] 30 days of the date of receipt of the filing by
20 the department, received the certificate of final approval or
21 disapproval or notification of correctable error, the filing
22 shall be deemed to have been approved for all purposes unless
23 the local government unit has extended the time within which the
24 department may act by written communication to the department or
25 by failure to object to a written communication from the
26 department requesting the extension. Extensions shall not exceed
27 one additional period of [20] 30 days.

28 § 8207. Records of department.

29 (a) Retention period.--The department shall keep all
30 proceedings and all applications and statements by a local

government unit under sections 8102.1 (relating to preliminary approval by the department of the issuance of debt) and 8111 (relating to submission to department) on file for a period of not less than [four months after issuance of its certificate of approval or disapproval and thereafter as long as any appeal respecting the proceedings is pending and not finally determined.] five years after the debt issuance has been paid off by the local government unit. The department shall also keep copies of all documents filed with the department relating to a qualified interest rate management agreement for as long as the qualified interest rate management agreement is in effect.

* * *

(c) Records open for inspection.--[The records of the department shall be public records available for examination by any citizen of this Commonwealth or any bondholders or noteholders.] All submissions, determinations and records of the department under this subpart, including those related to qualified interest rate management agreements and including correspondence with the interested parties to any debt proceeding, shall be public records available for examination by any citizen of this Commonwealth, any interested parties or any bondholder or noteholder, including holders of tax anticipation notes, of the local government unit.

Section 6. Title 53 is amended by adding a section to read:
§ 8212. Duty of advisors.

In regards to a transaction under this subpart, an attorney or financial advisor to a local government unit shall stand in a fiduciary relationship to the local government unit and shall perform loyally, in good faith and in 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.

Section 7. Section 8242(a) of Title 53 is amended to read:
§ 8242. Treatment of costs upon refunding.

(a) General rule.--In any refunding, a principal amount of
refunding bonds or notes or obligations evidencing lease rental
debt equal to the sum of the following:

(1) the call premium payable on the bonds, notes or
obligations being refunded;

(2) the discount allowed on the sale of the refunding
bonds, notes or obligations;

[(2.1) any funds borrowed in order to pay any
termination payment required to be paid under a qualified
interest rate management agreement in which the notional
amount is identified as corresponding to all or any portion
of the bond or note being refunded;]

(3) any funds borrowed to pay interest on bonds, notes
or obligations being refunded; and

(4) the costs of issue and sale of the refunding bonds,
notes or obligations;

may be considered as interest on the refunding bonds, notes or
obligations and may be separately stated in all reporting of
debt and in all computation of debt limits and, if so considered
and reported by the local government unit, shall not be
considered as electoral, nonelectoral or lease rental debt. In
subsequent debt statements, any such separately stated principal
amount of bonds, notes or obligations shall be reported as being
amortized in the same proportion as the series of which they are

1 a part.

2 * * *

3 Section 8. Title 53 is amended by adding sections to read:

4 § 8272. Knowingly participating in an ultra vires act of a
5 local government unit.

6 (a) General rule.--Any officer or any member of the
7 governing body of any local government unit or any member of a
8 law firm or a financial advisor firm who assists or provides
9 advice to a local government unit and who knowingly participates
10 in an ultra vires act of a local government unit commits a
11 misdemeanor of the second degree and shall, upon conviction, be
12 sentenced to pay a fine of not more than \$5,000 or to
13 imprisonment for not more than two years, or both.

14 (b) Prohibition.--A law firm or financial advisor firm which
15 has had a member convicted under subsection (a) shall be
16 prohibited for two years from assisting a local government unit
17 with or providing advice to a local government unit for any
18 activity under this subpart.

19 (c) Definition.--An act is an "ultra vires act" when the
20 local government unit is without authority to perform the act or
21 when the act is not explicitly prohibited, but is in excess of
22 the authority granted to the local government unit.

23 § 8273. Knowingly filing materially false or misleading
24 certifications or statements with the department.

25 (a) General rule.--Any officer or any member of the
26 governing body of any local government unit or any member of a
27 law firm or a financial advisor firm who knowingly files a
28 materially false or misleading certification or statement with
29 the department commits a misdemeanor of the second degree and
30 shall, upon conviction, be sentenced to pay a fine of not more

1 than \$5,000 or to imprisonment for not more than two years, or
2 both.

3 (b) Aiding or abetting.--Any officer or any member of the
4 governing body of any local government unit or any member of a
5 law firm or a financial advisor firm who assists or provides
6 advice to a local government unit and who aids or abets in the
7 commission of the offense under subsection (a) commits a
8 misdemeanor of the second degree and shall, upon conviction, be
9 sentenced to pay a fine of not more than \$5,000 or to
10 imprisonment for not more than two years, or both.

11 (c) Prohibition.--A law firm or financial advisor firm which
12 has been convicted or which has had a member convicted under
13 subsection (b) shall be prohibited for two years from assisting
14 a local government unit with or providing advice to a local
15 government unit for any activity under this subpart.

16 Section 9. Repeals are as follows:

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

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

23 (3) All acts and parts of acts are repealed insofar as
24 they are inconsistent with the amendment or addition of 53
25 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007,
26 8026(a)(5), 8102, 8102.1, 8111(a), 8161(a), 8203, 8204, 8206,
27 8207(a) and (c), 8212, 8242(a), 8272 and 8273.

28 Section 10. This act shall take effect in 60 days.