

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 EICHELBERGER, LOCAL GOVERNMENT, RE-REPORTED AS AMENDED,
OCTOBER 22, 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 CERTAIN debt; <--
9 further providing for SMALL BORROWING FOR CAPITAL PURPOSES, <--
10 FOR DEBT STATEMENT, FOR submission to department, ~~for manner~~ <--
11 ~~of sale of bonds or notes~~, for fees for filing, for
12 certificate of approval of transcript, for effect of failure
13 of timely action by department, AND for records of <--
14 department; providing ~~for duty of advisors~~; further providing <--
15 ~~for treatment of costs upon refunding~~; providing for the
16 ~~offense of knowingly participating in an ultra vires act of a~~
17 ~~local government unit and for the offense of knowingly filing~~
18 ~~materially false or misleading certifications or statements~~
19 ~~with the department~~ FOR DUTIES OF PARTICIPANTS IN LOCAL <--
20 GOVERNMENT UNIT DEBT ACT TRANSACTIONS; and making a related
21 repeal.

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

24 Section 1. The definition of "self-liquidating debt" in
25 subsection (b) of section 8002 of Title 53 of the Pennsylvania
26 Consolidated Statutes is amended and subsection (c) is amended
27 by adding ~~a definition~~ DEFINITIONS to read: <--

1 § 8002. Definitions.

2 * * *

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

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

20 A debt ~~for which~~ WITH RESPECT TO WHICH DEBT SERVICE payments <--
21 have been made under a guaranty OF THE DEBT shall not be <--
22 considered self-liquidating.

23 * * *

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

30 * * *

<--

1 "FINANCIAL ADVISOR." A PERSON WHO FOR COMPENSATION ENGAGES
2 IN THE BUSINESS OF ADVISING OTHERS, EITHER DIRECTLY OR IN
3 WRITING, AS TO THE VALUE OF SECURITIES, BONDS OR NOTES OR AS TO
4 THE ADVISABILITY OF INVESTING IN, PURCHASING OR SELLING
5 SECURITIES, BONDS OR NOTES. THE TERM DOES NOT INCLUDE AN
6 ATTORNEY, ACCOUNTANT OR ENGINEER WHOSE PERFORMANCE OF SUCH
7 SERVICES IS SOLELY INCIDENTAL TO THE PRACTICE OF HIS PROFESSION.

8 * * *

9 "Working capital." An amount which constitutes, under
10 generally accepted accounting principles, the cost of the day-
11 to-day operations of the project as well as a proper allowance
12 for contingencies. Reimbursements under a guaranty or amounts to
13 address budgetary deficits not related to the project shall not <--
14 constitute reasonable working capital in connection with the
15 incurring of debt under this subpart. BE USED TO ADDRESS <--
16 BUDGETARY DEFICITS OF A LOCAL GOVERNMENT UNIT OR FOR OTHER
17 PURPOSES NOT RELATED TO THE CONSTRUCTION OR OPERATION OF THE
18 PROJECT DO NOT CONSTITUTE REASONABLE WORKING CAPITAL IN
19 CONNECTION WITH THE INCURRING OF DEBT UNDER THIS SUBPART.

20 Section 2. Sections 8005(c) and (d), 8007, 8026(a)(5) and
21 8102 of Title 53 are amended to read:

22 § 8005. Classification and authority to issue bonds and notes.

23 * * *

24 (c) Authority to issue bonds and notes and lease rental
25 debt.--Notwithstanding any other law to the contrary, every
26 local government unit shall have full power and authority to
27 issue bonds or notes, and make guaranties, leases, subsidy
28 contracts or other agreements evidencing the acquisition of
29 capital assets payable out of taxes and other general revenues,
30 to provide funds for and towards the cost of or the cost of

1 completing any project or combination of projects which the
2 local government unit is authorized to own, acquire, subsidize,
3 operate or lease or to participate in owning, acquiring,
4 subsidizing, operating or leasing with others, to issue tax
5 anticipation notes and funding bonds or notes as provided in
6 this subpart and to contract for insurance covering the risks of
7 nonpayment of principal, interest and premium of bonds, notes,
8 tax anticipation notes and guaranties. Notwithstanding the
9 foregoing, a local government unit may only issue a guaranty of
10 municipal authority debt when the debt is incurred in connection <--
11 with a loan from the Federal Government, the Pennsylvania
12 Infrastructure Investment Authority or any other instrumentality
13 or agency of the Commonwealth for a water or sanitary sewer
14 project. DEBT OF AN AUTHORITY WHEN THE DEBT IS INCURRED FOR A <--
15 DRINKING WATER, STORM SEWER OR SANITARY SEWER PROJECT, THE DEBT
16 IS INCURRED IN CONNECTION WITH A PLAN OR RECOVERY PLAN APPROVED
17 UNDER THE ACT OF JULY 10, 1987 (P.L.246, NO.47), KNOWN AS THE
18 MUNICIPALITIES FINANCIAL RECOVERY ACT, OR SUCCESSOR LEGISLATION,
19 OR THE GUARANTY IS NECESSARY TO ENABLE THE AUTHORITY TO OBTAIN
20 THE MOST COMPETITIVE INTEREST RATE AVAILABLE IN THE MARKETPLACE
21 AS DEMONSTRATED BY COMPARABLES.

22 (d) Nature of guaranty and prohibition on fees.--The
23 following shall apply to a guaranty:

24 (1) For the purpose of this subpart, unless debt
25 evidenced by a guaranty has been approved as electoral debt
26 in accordance with Subchapter C (relating to procedure for
27 securing approval of electors), the guaranty shall be deemed
28 to be nonelectoral debt if the local government unit
29 guaranties its own bonds or notes and shall be deemed to be
30 lease rental debt if it guaranties the bonds or notes of an

1 authority or another local government unit. For the purpose
2 of all other statutes, the guaranty shall be deemed to create
3 debt or indebtedness of the local government unit making the
4 guaranty.

5 (2) A local government unit is prohibited from
6 collecting a fee to guaranty the debt of an authority or
7 another local government unit.

8 § 8007. Cost of project.

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

29 immediately preceding the date the debt is incurred may not be
30 included in the cost of a project. Reimbursements under a

<--

~~guaranty or amounts to address budgetary deficits not related to~~
~~the project shall not constitute a cost of a project in~~
~~connection with the incurring of debt under this subpart. COSTS~~ <--
~~PAID, FROM SOURCES OTHER THAN THE DEBT THAT IS TO BE REFUNDED,~~
~~MORE THAN TWO YEARS BEFORE AN ISSUANCE OF NEW DEBT TO FINANCE~~
~~THE COSTS MAY NOT BE INCLUDED IN THE COSTS OF A PROJECT FINANCED~~
~~BY THE NEW DEBT. REIMBURSEMENTS UNDER A GUARANTY OR AMOUNTS TO~~
~~BE USED BY A LOCAL GOVERNMENT UNIT TO ADDRESS BUDGETARY DEFICITS~~
~~OR OTHER PURPOSES NOT RELATED TO THE PROJECT DO NOT CONSTITUTE A~~
~~COST OF A PROJECT IN CONNECTION WITH THE INCURRING OF DEBT UNDER~~
~~THIS SUBPART. COSTS THAT QUALIFY FOR FUNDING OF UNFUNDED DEBT~~
~~UNDER SECTION 8130 (RELATING TO APPROVAL BY COURT TO FUND~~
~~UNFUNDED DEBT) MAY ONLY CONSTITUTE A COST OF A PROJECT IF THE~~
~~LOCAL GOVERNMENT UNIT COMPLIES WITH THE REQUIREMENTS OF SECTION~~
~~8130.~~

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

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

* * *

(5) The estimated net revenues of the project for each
year of the remaining life of the bonds, notes or obligations

1 with a justification for any assumed increase in the gross
2 revenues of more than 5% in any one year and a computation
3 showing, in reasonable detail, that the net revenues,
4 together with other available funds to be received in respect
5 of the project, will be sufficient in each year to pay the
6 annual debt service, other than capitalized debt service, on
7 the bonds, notes or obligations or a specified aggregate
8 principal amount thereof.

9 * * *

10 § 8102. Preliminary authorizations as to financing.

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

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

26 § 8102.1. Preliminary approval by the department of the
27 issuance of CERTAIN debt.

<--

28 ~~(a) General rule. Prior to the adoption of an ordinance or~~

<--

29 ~~(A) GENERAL RULE.--EXCEPT AS PROVIDED IN SECTION 8109~~

<--

30 ~~(RELATING TO SMALL BORROWING FOR CAPITAL PURPOSES), PRIOR TO THE~~

ENACTMENT OF AN ORDINANCE OR ADOPTION OF A resolution
authorizing the issuance of any general obligation bonds or
notes or guaranteed revenue bonds or notes constituting
nonelectoral debt or any agreement evidencing lease rental debt,
a local government unit shall obtain a preliminary authorization
to incur debt from the department. 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 certificate shall include a basic description of the
intended financing. The department may prescribe the form of the
certificate. The local government unit may not take any action
to incur the debt until it receives a preliminary approval from
the department. The department may require the local government
unit to also provide evidence of any of the following:

~~(1) Information satisfactory to the department that the~~ <--
~~local government unit has submitted a current audited~~
~~financial statement. If the department determines that the~~
~~most recent audited financial statements of the local~~
~~government unit do not include a current audited financial~~
~~statement, the department may prohibit the local government~~
~~unit from incurring debt until current audited financial~~
~~statements covering the designated fiscal year or years are~~
~~filed with the department.~~

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

(1) EVIDENCE SATISFACTORY TO THE DEPARTMENT THAT THE <--
LOCAL GOVERNMENT UNIT IS CURRENT IN THE FILING OF ITS ANNUAL
FINANCIAL STATEMENTS WITH COMMONWEALTH AGENCIES UNDER

1 APPLICABLE STATE LAW.

2 (2) A DESCRIPTION OF THE TYPE AND AMOUNT OF PAYMENT OR
3 PERFORMANCE BOND, LETTER OR CREDIT OR OTHER FINANCIAL
4 SECURITY PROPOSED TO INSURE THE COMPLETION OF THE PROJECT.

5 (3) Information satisfactory to the department that the
6 local government unit is up to date on all of its municipal
7 securities disclosures required under 17 CFR § 240.15c2-12
8 (relating to municipal securities disclosure). If the <--
9 department is not satisfied that the local government unit is
10 in compliance with such disclosure obligations, the
11 department may prohibit the local government unit from
12 incurring debt until the local government unit provides the
13 department with proof of compliance that is satisfactory to
14 the department.

15 (4) If the local government unit intends for the
16 proposed debt to be self liquidating, information
17 satisfactory to the department that the debt will be self
18 liquidating.

19 (4) IF THE LOCAL GOVERNMENT UNIT INTENDS FOR THE <--
20 PROPOSED DEBT TO BE SELF-LIQUIDATING OR SUBSIDIZED, EVIDENCE
21 SATISFACTORY TO THE DEPARTMENT THAT THE DEBT WILL QUALIFY AS
22 SELF-LIQUIDATING OR SUBSIDIZED DEBT, INCLUDING FILINGS
23 REQUIRED UNDER SECTION 8024 (RELATING TO EXCLUSION OF
24 SUBSIDIZED DEBT FROM NET NONELECTORAL DEBT OR NET LEASE
25 RENTAL DEBT), 8025 (RELATING TO EXCLUSION OF SELF-LIQUIDATING
26 DEBT EVIDENCED BY REVENUE BONDS OR NOTES TO DETERMINE NET
27 NONELECTORAL DEBT) OR 8026 (RELATING TO EXCLUSION OF OTHER
28 SELF-LIQUIDATING DEBT TO DETERMINE NET NONELECTORAL DEBT OR
29 NET LEASE RENTAL DEBT), AS APPLICABLE.

30 (5) If the local government unit has existing debt which

1 was previously approved by the department as subsidized or
2 self-liquidating, information satisfactory to the department
3 that the debt continues to be treated as subsidized or self-
4 liquidating and that no decrease in the amount to be excluded
5 is required by any change in circumstances, other than
6 resulting from the payments of the debt, or, if there has
7 been a change in circumstances, information demonstrating to
8 the satisfaction of the department the amount of debt that
9 should continue to be treated as subsidized or self-
10 liquidating.

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

17 (7) If the local government unit intends that the debt
18 to be issued provides that over 10% of the proceeds of the
19 debt will be used for working capital, information
20 satisfactory to the department that the financing is a sound
21 financial transaction and is in the best long term financial
22 interest of the local government unit., SCHEDULES <--

23 DEMONSTRATING THE ESTIMATED NET DEBT SERVICE IMPACT OF THE
24 TRANSACTION AND A CERTIFICATION THAT THE LOCAL GOVERNMENT
25 ADOPTED OR APPROVED A PLAN TO PROVIDE THE TAX OR OTHER
26 REVENUES NECESSARY TO PAY THE DEBT SERVICE ON THE DEBT.

27 (7) THE DEBT STATEMENT REQUIRED BY SECTION 8110
28 (RELATING TO DEBT STATEMENT).

29 (8) A STATEMENT OF THE INTENDED MANNER OF SALE OF THE
30 BONDS OR NOTES.

1 (9) A PROJECT COST STATEMENT DETAILING THE INTENDED USES
2 OF DEBT PROCEEDS.

3 (b) Additional information.--After receipt by the department
4 of a filing by a local government unit under subsection (a), the
5 department may request and the local government unit shall
6 provide additional information which the department deems
7 necessary to avoid an unsound financial transaction or a <--
8 financial transaction which is not in the best long term
9 financial interest of the local government unit. UNDERSTAND THE <--

10 STRUCTURE AND PURPOSE OF THE PROPOSED TRANSACTION, INCLUDING:

11 (1) JUSTIFICATION FOR COSTS OF ISSUANCE EXCEEDING 2% OF
12 THE PRINCIPAL AMOUNT OF THE PROPOSED DEBT;

13 (2) JUSTIFICATION FOR THE USE OF MORE THAN 10% OF THE
14 PROCEEDS OF THE DEBT FOR WORKING CAPITAL; AND

15 (3) IF BONDS OR NOTES ARE TO BE SOLD AT PRIVATE SALE BY
16 NEGOTIATION, THE BASIS FOR THE LOCAL GOVERNMENT UNIT'S
17 FINDING THAT THE BONDS OR NOTES ARE IN THE BEST FINANCIAL
18 INTERESTS OF THE LOCAL GOVERNMENT UNIT.

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

23 (1) The requirements are satisfied in connection with
24 the proposed debt, the department shall issue a preliminary
25 approval of the debt.

26 (2) The requirements are not satisfied in connection
27 with the proposed debt, the department shall issue a
28 preliminary disapproval of the debt and the local government
29 may not proceed to incur the debt.

30 (d) Timely action required.--The department shall have 60 30 <--

days after receipt of the filing required under subsection (a)
to issue a preliminary approval or disapproval of the debt.

(e) Incurrence of debt.--Upon issuance of preliminary
approval of the department, the local government unit shall have
~~six months~~ ONE YEAR to incur the debt under this subpart. The <--
bonds or notes shall be sold, or instruments evidencing lease
rental debt delivered, not more than ~~one year~~ TWO YEARS <--
following the date of the preliminary approval.

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

SECTION 3.1. SECTIONS 8109(A) (1) AND 8110(B) OF TITLE 53 ARE <--
AMENDED TO READ:

§ 8109. SMALL BORROWING FOR CAPITAL PURPOSES.

(A) GENERAL RULE.--ANY LOCAL GOVERNMENT UNIT MAY INCUR DEBT
BY RESOLUTION RATHER THAN BY ORDINANCE TO BE EVIDENCED BY NOTES
TO PROVIDE FUNDS FOR A PROJECT AS DEFINED IN THIS SUBPART
WITHOUT COMPLYING WITH THE REQUIREMENTS OF SUBCHAPTER A OF
CHAPTER 82 (RELATING TO DEPARTMENT OF COMMUNITY AND ECONOMIC
DEVELOPMENT) IF:

(1) THE AGGREGATE AMOUNT OF THE DEBT OUTSTANDING AT ANY
ONE TIME SHALL NOT EXCEED THE LESSER OF [\$125,000] \$250,000
OR 30% OF THE NONELECTORAL DEBT LIMIT AS AUTHORIZED IN
SECTION 8022(A) (RELATING TO LIMITATIONS ON INCURRING OF
OTHER DEBT) .

* * *

§ 8110. DEBT STATEMENT.

* * *

(B) PREVIOUSLY EXCLUDED SELF-LIQUIDATING OR SUBSIDIZED
DEBT.--WHERE DEBT HAS PREVIOUSLY BEEN EXCLUDED AS SELF-

LIQUIDATING OR SUBSIDIZED DEBT, THE DEBT STATEMENT SHALL BE
ACCOMPANIED BY A CERTIFICATION THAT EITHER:

(1) NO DECREASE IN THE AMOUNTS TO BE EXCLUDED IS
REQUIRED BY ANY CHANGE OF CIRCUMSTANCES OTHER THAN DECREASES
RESULTING FROM THE PAYMENTS OF BONDS OR NOTES; OR [, IF THERE
HAS BEEN A CHANGE, OTHER THAN DECREASES RESULTING FROM THE
PAYMENTS OF BONDS OR NOTES, SO THAT LESS DEBT IS TO BE
EXCLUDED. IF IT HAS BECOME POSSIBLE TO EXCLUDE A GREATER
AMOUNT OF DEBT AND THE LOCAL GOVERNMENT UNIT DESIRES TO DO
SO, THE DEBT STATEMENT SHALL BE ACCOMPANIED BY APPROPRIATE
CERTIFICATES SUPPORTING THE REVISED AMOUNT TO BE EXCLUDED,
AND A REVISED APPROVAL SHALL BE OBTAINED FROM THE
DEPARTMENT.]

(2) A DECREASE IN THE AMOUNTS TO BE EXCLUDED IS REQUIRED
DUE TO A CHANGE IN CIRCUMSTANCES, IN WHICH CASE THE CHANGE IN
CIRCUMSTANCES MUST BE DESCRIBED.

A DEBT PREVIOUSLY ESTABLISHED AS SELF-LIQUIDATING FOR WHICH
PAYMENTS ARE MADE UNDER A GUARANTEE OF THE LOCAL GOVERNMENT UNIT
IS NO LONGER CONSIDERED SELF-LIQUIDATING UNLESS AND UNTIL THE
LOCAL GOVERNMENT UNIT FILES WITH THE DEPARTMENT A NEW REPORT
SATISFYING THE REQUIREMENTS OF SECTION 8025 (RELATING TO
EXCLUSION OF SELF-LIQUIDATING DEBT EVIDENCED BY REVENUE BONDS OR
NOTES TO DETERMINE NET NONELECTORAL DEBT) OR 8026 (RELATING TO
EXCLUSION OF OTHER SELF-LIQUIDATING DEBT TO DETERMINE NET
NONELECTORAL DEBT OR NET LEASE RENTAL DEBT), AS THE CASE MAY BE.

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

§ 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~~ WRITTEN PROOF OF OBTAINMENT <--
OF OR AGREEMENT TO OBTAIN the required financial security to
insure the completion of the project.

~~(9) An itemized statement of all disbursements~~ ESTIMATED <--
DISBURSEMENTS FOR COSTS 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].

The department shall, upon receipt of 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.

13 § 8206. Effect of failure of timely action by department.

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

27 § 8207. Records of department.

28 (a) Retention period.--The department shall keep all
29 proceedings ~~and~~ INCLUDING all applications and statements by a <--
30 local government unit under sections 8102.1 (relating to

1 preliminary approval by the department of the issuance of debt)
2 and, 8111 (relating to submission to department) AND 8201 <--
3 (RELATING TO CERTIFICATION TO DEPARTMENT OF BOND OR NOTE
4 TRANSCRIPT OR LEASE, GUARANTY, SUBSIDY CONTRACT OR OTHER
5 AGREEMENT) on file for a period of not less than [four months
6 after issuance of its certificate of approval or disapproval and
7 thereafter as long as any appeal respecting the proceedings is
8 pending and not finally determined.] five years after the debt
9 issuance has been paid off by the local government unit. The
10 department shall also keep copies of all documents filed with
11 the department relating to a qualified interest rate management
12 agreement for as long as the qualified interest rate management
13 agreement is in effect.

14 * * *

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

26 Section 6. CHAPTER 82 OF Title 53 is amended by adding a <--
27 ~~section~~ SUBCHAPTER to read: <--

28 ~~§ 8212. Duty of advisors.~~ <--

29 ~~In regards to a transaction under this subpart, an attorney~~
30 ~~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~~

1 subsequent debt statements, any such separately stated principal
2 amount of bonds, notes or obligations shall be reported as being
3 amortized in the same proportion as the series of which they are
4 a part.

5 * * *

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

7 § 8272. Knowingly participating in an ultra vires act of a
8 local government unit.

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

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

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

26 § 8273. Knowingly filing materially false or misleading
27 certifications or statements with the department.

28 (a) General rule. Any officer or any member of the
29 governing body of any local government unit or any member of a
30 law firm or a financial advisor firm who knowingly files a

~~materially false or misleading certification or statement with
the department commits a misdemeanor of the second degree and
shall, upon conviction, be sentenced to pay a fine of not more
than \$5,000 or to imprisonment for not more than two years, or
both.~~

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

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

SUBCHAPTER G

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MISCELLANEOUS PROVISIONS

§ 8291. DUTIES OF PARTICIPANTS IN LOCAL GOVERNMENT UNIT DEBT
ACT TRANSACTIONS.

(A) CERTIFICATION OF REPRESENTATION.--WITH REGARD TO EACH
TRANSACTION UNDER THIS SUBPART, AN ATTORNEY OR FINANCIAL ADVISOR
SHALL ADVISE THE LOCAL GOVERNMENT UNIT IN WRITING AS TO THE
PARTY BEING REPRESENTED BY THE ATTORNEY OR FINANCIAL ADVISOR,
THE SOURCE FROM WHICH THE ATTORNEY OR FINANCIAL ADVISOR WILL
RECEIVE COMPENSATION FOR SERVICES RELATED TO THE TRANSACTION AND
WHETHER THE COMPENSATION IS DEPENDENT UPON THE ISSUANCE OF DEBT
BY THE LOCAL GOVERNMENT UNIT.

1 (B) FIDUCIARY DUTY.--AN ATTORNEY OR FINANCIAL ADVISOR
2 RETAINED BY OR WHO PURPORTS TO ADVISE A LOCAL GOVERNMENT UNIT
3 WITH REGARD TO A TRANSACTION UNDER THIS SUBPART SHALL STAND IN A
4 FIDUCIARY RELATIONSHIP TO THE LOCAL GOVERNMENT UNIT AND SHALL
5 PERFORM LOYALLY, IN GOOD FAITH AND IN A MANNER THE ATTORNEY OR
6 FINANCIAL ADVISOR REASONABLY BELIEVES TO BE IN THE BEST
7 INTERESTS OF THE LOCAL GOVERNMENT UNIT. THE ATTORNEY OR
8 FINANCIAL ADVISOR SHALL ACT WITH SUCH CARE, INCLUDING REASONABLE
9 INQUIRY, SKILL AND DILIGENCE THAT A PERSON OF ORDINARY PRUDENCE
10 WOULD USE UNDER SIMILAR CIRCUMSTANCES AND PROVIDE OPINION BOTH
11 AS TO POSITIVE AND NEGATIVE POSSIBLE IMPACTS OF THE TRANSACTION.
12 AN ATTORNEY OR FINANCIAL ADVISOR IN THE COURSE OF HIS
13 REPRESENTATION IS ENTITLED TO RELY ON REASONABLE REPRESENTATIONS
14 AND CERTIFICATIONS MADE TO THEM BY ARCHITECTS, ENGINEERS AND
15 OTHER PERSONS RETAINED BY AND THE OFFICERS AND EMPLOYEES OF THE
16 LOCAL GOVERNMENT UNIT IN CONNECTION WITH THE TRANSACTION.

17 (C) ULTRA VIRES ACTS.--AN OFFICER OR MEMBER OF THE GOVERNING
18 BODY OF A LOCAL GOVERNMENT UNIT OR A FINANCIAL ADVISOR OR
19 ATTORNEY MAY NOT KNOWINGLY PARTICIPATE IN AN ULTRA VIRES ACT.
20 FOR PURPOSES OF THIS SUBSECTION, AN ACT IS ULTRA VIRES WHEN:

21 (1) THE LOCAL GOVERNMENT UNIT IS WITHOUT AUTHORITY TO
22 PERFORM THE ACT; OR

23 (2) THE ACT IS NOT EXPLICITLY PROHIBITED BUT IS IN
24 EXCESS OF THE AUTHORITY GRANTED TO THE LOCAL GOVERNMENT UNIT.

25 (D) MATERIALLY FALSE OR MISLEADING CERTIFICATIONS.--AN
26 OFFICER OR MEMBER OF THE GOVERNING BODY OF A LOCAL GOVERNMENT
27 UNIT OR AN ATTORNEY OR FINANCIAL ADVISOR MAY NOT KNOWINGLY FILE
28 A MATERIALLY FALSE OR MISLEADING CERTIFICATION OR STATEMENT WITH
29 THE DEPARTMENT UNDER THIS ACT.

30 (E) PENALTIES.--

1 (1) AN OFFICER OR MEMBER OF THE GOVERNING BODY OF A
2 LOCAL GOVERNMENT UNIT OR AN ATTORNEY OR FINANCIAL ADVISOR WHO
3 AIDS OR PARTICIPATES IN THE COMMISSION OF AN ACT PROHIBITED
4 IN SUBSECTION (C) OR (D) COMMITS A MISDEMEANOR OF THE SECOND
5 DEGREE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A FINE
6 OF NOT MORE THAN \$5,000 OR TO IMPRISONMENT FOR NOT MORE THAN
7 TWO YEARS, OR BOTH.

8 (2) NOTWITHSTANDING PARAGRAPH (1), A LOCAL GOVERNMENT
9 MAY SEEK CIVIL JUDICIAL REDRESS FOR A VIOLATION OF THIS
10 SECTION THAT RESULTS IN DAMAGES TO THE LOCAL GOVERNMENT UNIT
11 NOT CAUSED BY THE LOCAL GOVERNMENT UNIT OR ITS AGENTS. A
12 LOCAL GOVERNMENT UNIT SHALL PROHIBIT OR RESTRICT THE FUTURE
13 PARTICIPATION IN TRANSACTIONS UNDER THIS SUBPART OF AN
14 ATTORNEY OR FINANCIAL ADVISOR WHO VIOLATES THIS SECTION AND
15 MAY ALSO PROHIBIT OR RESTRICT PARTICIPATION OF A FIRM THAT
16 EMPLOYS THE ATTORNEY OR FINANCIAL ADVISOR FOR A PERIOD NOT TO
17 EXCEED TWO YEARS.

18 Section 9 7. Repeals are as follows:

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

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

25 (3) All acts and parts of acts are repealed insofar as
26 they are inconsistent with the amendment or addition of 53
27 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007,
28 8026(a)(5), 8102, 8102.1, 8111(a), ~~8161(a)~~, 8203, 8204, 8206, <--
29 8207(a) and (c), ~~8212, 8242(a), 8272 and 8273~~ AND 8291. <--

30 Section ~~10~~ 8. This act shall take effect in 60 days.

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