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HB 2912 (Printer's No. 4482) Analysis

Date: October 6, 2020

Amending the Local Government Unit Debt Act (53 Pa. C.S., Subpart B) to temporarily remove court authorization for unfunded debt

Prime Sponsor: Representative Christina D. Sappey

A. Synopsis of Bill

The proposed legislation would amend Section 8130 of LGUDA to temporarily remove the requirement that a court hearing be conducted in order to fund unfunded debt related to the COVID-19 emergency.

B. Summary and Analysis of Bill

The bill amends Section 8130 to create a new subsection (d) to Section 8130 (Approval by court to fund unfunded debt) of the Local Government Unit Debt Act. The subsection would authorize unfunded debt by a municipality, within existing borrowing limits, solely for the purposes of addressing COVID related budget shortfalls without seeking court approval as with other unanticipated unfunded debt. The subsection would expire December 31, 2021. Specifically, the bill would:

- Require the municipality, by resolution, to issue a finding that due to the COVID-19 emergency there has been a decline or delay in anticipated revenue, there are no additional state or federal funds available, additional taxation is not advisable, and paying the debt by curtailing municipal services would be dangerous to the public health or safety.
- Specify that the debt is restricted to a maturity not in excess of 10 years and is counted against the municipality's borrowing base. The municipality must certify that the debt is equal to or less than the decline or delay in revenue reasonably attributable to the COVID emergency.
- Require Department of Community and Economic Development review and approval as with other municipal debt. The certification required above must be provided to the Department as a condition of approval.

- Require that municipalities report to the Local Government Commission any borrowing in accordance with the subsection. The Commission shall prepare a report to the General Assembly by December 31, 2022.

C. Relevant Current Law

Under current law Section 8130 requires a municipality to petition the court for approval to issue bonds or notes to fund unfunded debt. The court must issue a finding that “the unfunded debt is a lawful obligation of the local government unit; that there has been an unforeseeable decline in revenues or that taxes levied have not produced the revenues anticipated or that it was not reasonable to foresee the obligation; that paying the debt by curtailing municipal services will be dangerous to the public health, safety or education; and that it is not feasible or not in the public interest to levy additional taxes in the current fiscal year.” The court also establishes the term of the debt (not to exceed 10 years) and, in the case of nonelectoral debt, the amount of the debt to count against debt limitations.

D. Background of Bill

As a result of the COVID-19 emergency, the Local Government Commission staff has examined proposals extending additional unfunded debt authorizations for local government units. In gathering feedback related to those proposals, stakeholders involved in municipal finance, including Act 47 coordinators and bond counsel, have suggested that temporarily removing the procedural step of obtaining court approval for unfunded debt would be a helpful tool for municipalities without extending existing authority to borrow.

E. Effect of Bill

The bill, if enacted, could temporarily facilitate unfunded debt borrowing by removing a procedural step that requires additional municipal and judicial resources.

F. Issues, Policy Questions and Stakeholder Feedback

The Pennsylvania Association of Boroughs and the Pennsylvania Municipal League have no formal position on the concept as of yet. The Department of Community and Economic Development is supportive of the concept generally, but believe it should be restricted to non-distressed municipalities. Other feedback received includes:

A banker with expertise in municipal finance wrote, “I strongly encourage the removal of court approval for unfunded debt proceedings. This extra step appears to add limited value for financial effectiveness and often becomes a tool for political purposes.”

A municipal finance expert who had previously worked with a distressed municipality noted “[The modification would] provide some relief, albeit limited, to the proceedings, which can be cumbersome.”

An experienced Act 47 Coordinator wrote, “I’ve spoken to court administration at the county level and they reported to me the problems experienced in scheduling the backlog of hearings from the COVID interruption of this year. Some counties have been required to take trials off site to maintain social distance. These same officers reported as expected that unfunded debt hearings are few and far between in normal times and that

scheduling is not difficult. However, with the anticipated increase in filings for unfunded debt approval, the officers indicated that it will be difficult for judges to schedule many at once or in the alternate to do the background work necessary to move the request through the hearing and approval order process. The removal of the court hearing mandate and the proposed municipal certification of lost income and DCED review of same would be expedient to the process. In normal times, there is a need for LGUDA judicial review to confirm and assure taxpayers that borrowing is truly needed for unexpected or unanticipated expenses or revenue losses and that the municipality is not perpetuating a subterfuge in attempting to use debt to bypass the normal budgeting policy process. In COVID impact the loss revenue can be easily ascertained and certified by the municipality.”

Bond counsel suggested, “I think the unfunded debt amendment would be good to push. The TAN amendment [HB 2536] helps for delayed revenues but not for lost revenues (e.g., EIT revenues lost due to current unemployment),” and “I think the proposal . . . will come in handy this fall.”

G. Bill History

The bill has no history.