

PHILADELPHIA, CALCULATING BORROWING CAPACITY
Act of May 2, 1919, P.L. 106, No. 81
AN ACT

Cl. 11

To carry out the provisions of section eight, article nine of the Constitution of the State of Pennsylvania, as amended, and, for that purpose, prescribing the method of determining the amount which may be deducted in ascertaining the borrowing capacity of the city of Philadelphia by excluding from the calculation, and deducting from its indebtedness, so much of the debt of said city as shall have been incurred and the proceeds thereof invested in any public improvements of any character which shall be yielding to the said city an annual current net revenue.

Section 1. Exclusion of debts for revenue producing improvements in determining borrowing capacity; petition to court

Whenever the City of Philadelphia shall have incurred any debt or debts for, and the proceeds thereof shall have been invested in, any public improvements of any character which shall be yielding to the said city an annual current net revenue, the said city may, at any time and from time to time, present its petition to any of the courts of common pleas of the county in which such city is situated for the purpose of having determined the amount of its debt which may be deducted from its indebtedness in ascertaining the borrowing capacity of the said city as provided in section eight, article nine of the Constitution of the State of Pennsylvania, as amended. The said petition shall contain an enumeration of any public improvement or improvements yielding such annual current net revenue, the amount of indebtedness which shall have been incurred for, and the proceeds thereof invested in, such public improvement or improvements, the gross revenue from each of said improvements during the year immediately preceding the time of filing such petition, and the average rate of interest and sinking-fund charges payable upon the indebtedness incurred by said city as to each of such improvements; and it may, at the option of the petitioner, also contain a statement of the deductions deemed proper to be made from the gross revenue therefrom in order to ascertain the current net revenue from each improvement during the preceding year, together with such details with regard to the said gross revenue and deductions therefrom in order to ascertain the current net revenue and deductions therefrom as may be, in the opinion of the petitioner, necessary for making such computation, as well as a calculation of the capitalization of such annual current net revenue at the average rate of interest and sinking-fund charges payable upon the indebtedness incurred by the said city for the purpose of the said public improvements, and together with such other information as may be pertinent to the ends of the inquiry. The petition, hereinabove provided for, shall be made and sworn or affirmed to by the mayor, and shall be filed by the city solicitor, having first

been attested by the city controller and by the head of the department or other branch of the city government having the management of such improvements and by the chief of the bureau in immediate charge thereof, as to the matters within their special knowledge or control, respectively. 1919, May 2, P.L. 106, Sec. 1.

Section 2. Notice; answer; hearing

Upon the filing of the aforesaid petition, the court in which it shall have been filed shall fix a date, not less than three weeks nor more than five weeks thereafter, for the making of an application pursuant to the prayer of said petition, and notice of the filing thereof and of the date fixed for making such application shall be published by the mayor not less than once a week, for three weeks, in three daily newspapers of general circulation, published in said city, to be designated by the court, and in the legal journal in which legal notices are regularly printed. On or before the date so fixed, all parties in interest, including the taxpayers, the owners, or holders of bonds or other securities of said city, or otherwise, may appear in person or by attorney, and file with the said court a verified answer to the aforesaid petition. Upon the date so appointed for the making of such application, or at such time thereafter, as it or he may fix, the said court or one of the judges thereof shall proceed forthwith to take the testimony of the parties so appearing, and to hear argument thereon, as in other cases, at which taking of testimony and hearing of argument, all parties shall be entitled to present evidence, to be heard, and to file briefs, as the said judge or court may direct. 1919, May 2, P.L. 106, Sec. 2.

Section 3. Decision; order; exceptions

After hearing the allegations and proofs and the arguments thereon of the respective parties, the court or the judge before whom such hearing is had shall render a decision, stating how much of the debt of the said city shall have been incurred and the proceeds thereof invested in any public improvements of any character which shall be yielding to the said city an annual current net revenue, how much of such debt shall have been so incurred and the proceeds thereof so invested in each of such public improvements, the amount of the gross revenue and the net revenue from each such public improvement during the year immediately preceding the time of such ascertainment, with such particulars as shall show how the computation of the net revenue is made, the average rate of interest and sinking-fund charges payable upon the indebtedness incurred by the said city for each such improvement, and the capitalization of the principal amount which would yield such annual current net revenue at the average rate of interest and sinking-fund charges payable upon the indebtedness incurred by the said city therefor; and shall make an order fixing the total amount which for that reason the said city may exclude from the calculation and deduct from its debt in ascertaining its borrowing capacity. Should such a hearing be before a judge of the said court, exceptions to his findings and decision may be filed by any party in interest who shall have appeared, as aforesaid, within ten (10) days after such decision shall have been rendered and notice of said findings and

decision shall have been given to all parties by the prothonotary of the court, and the said exceptions shall be heard and disposed of by the court in banc, in the same manner, and subject to the same rules, as govern the hearing of exceptions upon trials in equity. If no exceptions be filed within ten (10) days to the findings and decision of such judge, they shall be final and conclusive. Upon the making of such order by the court or by a judge thereof, if no exceptions be filed to his decision, the amount so ascertained shall thereupon be wholly excluded in determining the power of such city to become otherwise indebted. 1919, May 2, P.L. 106, Sec. 3.

Section 4. Such determination and order of the court of common pleas shall not be subject to any other appeal or review, or to collateral attack of any kind whatsoever, but shall, with respect to the validity of all municipal loans, and in all other respects, be final and conclusive; and the proceeding herein provided for shall be the sole and exclusive method of determining the aforesaid matters relating to the amount of the debt of the City of Philadelphia which may be deducted from its indebtedness, in ascertaining its borrowing capacity, by reason of such debt having been incurred and the proceeds thereof invested in any public improvements of any character which shall be yielding to the said city an annual current net revenue. (4 repealed in part Apr. 28, 1978, P.L.202, No.53)

Compiler's Note" Section 2(a) of Act 53 of 1978 provided that the reference in section 4 to "the proceeding herein provided for" shall be deemed a reference to 42 Pa.C.S. & §5105 (relating to right to appellate review).