

LOCAL GOVERNMENT UNIT DEBT ACT - OMNIBUS AMENDMENTS

Act of Dec. 28, 1994, P.L. 1436, No. 169

Cl. 53

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No. 1994-169

SB 1687

AN ACT

Amending the act of July 12, 1972 (P.L.781, No.185), entitled, as amended, "An act providing debt limits for local government units, including municipalities and school districts; providing the methods of incurring, evidencing, securing and collecting debt; defining the powers and duties of the Department of Community Affairs and certain other public officers and agencies with respect thereto; exercising the inherent legislative authority of the General Assembly by providing additional over-all limitations on the incurring of lease rental and other obligations for the acquisition of capital assets to be repaid from the general tax revenues of such local government units; imposing penalties for filing false or untrue statements or refusing to give information with respect to proceedings for the incurring of debt; and conferring jurisdiction on the Commonwealth Court with respect to certain proceedings relating to the incurring of debt," further defining "project"; providing for the exclusion of debt issued to fund unfunded actuarial accrued liability from debt limits and for the exclusion of debt issued to fund unfunded actuarial accrued liability in the calculation of net nonelectoral debt; authorizing the pledge of proceeds of bonds or notes issued to fund unfunded actuarial accrued liability as security for such bonds or notes; providing for the maturity date of bonds or notes issued to fund unfunded actuarial accrued liability to be not more than 40 years from the date of issuance of such bonds or notes and for the exclusion of debt issued to fund unfunded actuarial accrued liability from level debt service requirements; and authorizing local government units to contribute to a pension trust fund or funds the proceeds of bonds or notes issued to fund unfunded actuarial accrued liability.

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

Section 1. Section 102(c)(12) of the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, reenacted and amended April 28, 1978 (P.L.124, No.52) and amended May 4, 1990 (P.L.169, No.40), is amended and the subsection is amended by adding a clause to read:

Section 102. Definitions.--* * *

(c) As used in this act unless the context clearly otherwise requires:

* * *

(12) "Project" means (i) any item of construction, acquisition, extraordinary maintenance or repair which has been undertaken by a local government unit, (ii) any preliminary studies, surveying, planning, testing or design work for any such, (iii) any lands or rights in land to be acquired, (iv) any furnishings, machinery, apparatus or equipment normally classified as capital items, but such items must have a useful life of five years or more if financed separately and not as a part of a construction or acquisition project, (v) the local government unit's share of the cost of a

project undertaken jointly with one or more other local government units or the Commonwealth or one of its agencies, (vi) county-wide revision of assessment of real property, (vii) funding of all or any portion of a reserve, or a contribution toward a combined reserve, pool or other arrangement, relating to self-insurance, which has been established by one or more local government units, pursuant to 42 Pa.C.S. § 8564 (relating to liability insurance and self-insurance), up to, but not exceeding, the amount provided in section 107 of this act, **(vii.1) funding of an unfunded actuarial accrued liability or any portion thereof**, (viii) funding or refunding of debt incurred for any or all of the foregoing purposes, or (ix) any combination of any or all of the foregoing, as any or all of the above may be designated as a project by the governing body for the financing of which it desires to incur debt. The term shall also include any deficit to be funded by bonds or notes as provided herein, or the creation of a revolving fund for specific improvements. Where a local government unit has adopted a capital budget, the term project shall mean any unfunded portion of the capital budget selected by ordinance for current funding.

* * *

(17) "Unfunded actuarial accrued liability" means, with respect to a local government unit retirement system, pension plan or pension trust fund, the excess of the actuarial accrued liability over the actuarial value of assets of the retirement system, pension plan or pension trust fund and shall be computed:

(i) in the case of a local government unit that is subject to the act of December 18, 1984 (P.L.1005, No.205), known as the "Municipal Pension Plan Funding Standard and Recovery Act," in accordance with the requirements of that act; and

(ii) in the case of a local government unit that is not subject to the "Municipal Pension Plan Funding Standard and Recovery Act," in accordance with the applicable laws for that local government unit regarding minimum funding requirements for the unit's retirement system, pension plan or pension trust fund or, if there are no such laws, in accordance with the ordinance, resolution or contract under which the local government unit participates in the retirement system, pension plan or pension trust fund.

Unfunded actuarial accrued liability in the case of a local government unit that participates in a retirement system, pension plan or pension trust fund for employees of more than one local government unit, including, without limitation, any association of local government units cooperating under the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law, shall include the local government unit's pro rata share of the total unfunded actuarial accrued liability of the retirement system, pension plan or pension trust fund, as the pro rata share may be determined under the applicable laws or, if there are no applicable laws, under the ordinance, resolution or contract under which the local government unit participates in the retirement system, pension plan or pension trust fund.

Section 2. Sections 202(c) and 208(b)(5) of the act are amended to read:

Section 202. Limitations on the Incurring of Other Debt.--* *

(c) The limitations and prohibitions of the preceding subsections (hereinafter called the "regular debt limits") shall not apply to electoral debt, nor to debt excluded in computing net amounts of nonelectoral debt or of lease rental debt, as self-liquidating or because subsidized, when such exclusion is made pursuant to sections 204, 205 and 206 of this act[.] **nor to debt incurred to fund an unfunded actuarial accrued liability, except that bonds or notes issued to fund an unfunded actuarial accrued liability shall be limited to the principal amount necessary, after**

deduction of costs of issuance, underwriter's discount and original issue discount, to fund the unfunded actuarial accrued liability.

* * *

Section 208. Determination of Existing Net Nonelectoral Debt and Net Nonelectoral Plus Net Lease Rental Debt.--* * *

(b) Net nonelectoral and net lease rental debt shall then be determined by subtracting separately from gross nonelectoral debt and gross lease rental debt respectively, as may be applicable, and as the local government unit may desire to claim:

* * *

(5) The amount of self-liquidating debt [and], subsidized debt **and debt issued to fund an unfunded actuarial accrued liability** properly excluded and concurrently excludable from each respective category being computed;

* * *

Section 3. The act is amended by adding sections to read:

Section 416. Condition Precedent to Validity of Debt Incurred to Fund an Unfunded Actuarial Accrued Liability.--No bond or note issued to fund an unfunded actuarial accrued liability shall be valid or obligatory in the hands of an original purchaser thereof until certified copies of the ordinance or ordinances authorizing the bonds or notes, the ordinance or resolution awarding the bonds or notes and the certificate of approval of the department shall have been filed with the Public Employee Retirement Commission. No approval of the Public Employee Retirement Commission shall be required.

Section 417. Pledge of Proceeds of Certain Bonds or Notes Authorized.--A local government unit may pledge to the holders of its bonds or notes issued to fund an unfunded actuarial accrued liability or to a trustee or paying agent acting on behalf of the holders, as security for the payment of the bonds or notes, the proceeds of such bonds or notes, and investment income on such proceeds, notwithstanding that such proceeds have become assets of the local government unit's retirement system, pension plan or pension trust fund. The pledge shall be valid and binding from the time the pledge is made, and the lien of the pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the local government unit or the retirement system, pension plan or pension trust fund, whether or not the persons have notice. Except as provided in section 416, neither the proceedings of the local government unit relating to the bonds or notes nor any other instrument by which a pledge is made nor any financing statement in respect thereof need be recorded or filed. The local government unit shall cause the proceeds of bonds or notes, and investment earnings thereon, that are subject to the pledge to be segregated from other assets of the retirement system, pension plan or pension trust fund so that such proceeds will be identifiable.

Section 4. Section 602(a)(1) and (b) of the act, amended May 22, 1981 (P.L.54, No.19) and May 4, 1990 (P.L.169, No.40), are amended to read:

Section 602. Limitations on Stated Maturity Dates.--(a) No bonds or notes shall be issued with a stated maturity date exceeding the sooner to occur of:

(1) Forty years from the date of the series of any bonds or notes issued to evidence debt for the purpose of financing the cost of actually constructing, acquiring or improving a project or a separately financed portion of a project **or funding an unfunded actuarial accrued liability; or**

* * *

(b) Bonds or notes may be serial bonds or notes, or term bonds or notes or any combination thereof that may be selected by the

governing body of the issuing local government unit. If term bonds or notes are issued, such bonds or notes must be subject to mandatory redemption, and, if serial or installment bonds or notes, the amounts of the stated maturities or installments shall be fixed, (1) so as to amortize the issue on at least an approximately level annual debt service plan during the period specified for the payment of principal in subsection (c) of this section 602; or (2) so that the debt service on outstanding debt of the same classification (and for this purpose lease rental debt shall be considered as the same classification as general obligation debt) will be brought more nearly into an over-all level annual debt service plan. **The limitation of this subsection shall not apply to bonds or notes issued to fund an unfunded actuarial accrued liability.**

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Section 5. The act is amended by adding a section to read:

Section 602.1. Disposition of Proceeds Notwithstanding Certain Limitations.--A local government unit that issues bonds or notes to fund an unfunded actuarial accrued liability shall contribute to the applicable pension trust fund or funds the proceeds of the bonds or notes, after deduction of costs of issuance, underwriter's discount and original issue discount, notwithstanding that the contribution may exceed a limitation on contributions to retirement systems, pension plans or pension trust funds otherwise applicable to the local government unit.

Section 6. This act shall take effect immediately.

APPROVED--The 28th day of December, A. D. 1994.

ROBERT P. CASEY