
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 340 Session of
2015

INTRODUCED BY EICHELBERGER, BLAKE, FOLMER, TEPLITZ, VULAKOVICH,
VANCE, SCHWANK, BOSCOLA, YUDICHAK AND BROWNE,
FEBRUARY 20, 2015

REFERRED TO LOCAL GOVERNMENT, FEBRUARY 20, 2015

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 and for
5 exclusion of other self-liquidating debt to determine net
6 nonelectoral debt or net lease rental debt; providing for
7 preliminary filings with the department prior to the issuance
8 of certain debt; further providing for small borrowing for
9 capital purposes, for debt statement, for submission to
10 department, for certificate of approval of transcript, for
11 effect of failure of timely action by department and for
12 records of department; and providing for duties of
13 participants in transactions relating to incurring debt and
14 issuing bonds and notes.

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

17 Section 1. The definition of "self-liquidating debt" in
18 section 8002(b) of Title 53 of the Pennsylvania Consolidated
19 Statutes is amended and subsection (c) is amended by adding
20 definitions to read:

21 § 8002. Definitions.

22 * * *

23 (b) Exclusions from debt.--With respect to exclusions from

1 any particular category of debt and subject to additional
2 definitions contained in subsequent provisions of this subpart
3 which are applicable to specific provisions of this subpart, the
4 following words and phrases when used in this subpart shall have
5 the meanings given to them in this section unless the context
6 clearly indicates otherwise:

7 "Self-liquidating debt." Debt payable solely from rents,
8 rates or other charges to the ultimate users of the project, to
9 be financed in whole or in part by that debt, or payable solely
10 from special levies or assessments of benefits lawfully
11 earmarked exclusively for that purpose. The term also includes
12 debt or any portion thereof at the time qualified as self-
13 liquidating pursuant to this subpart, whether or not solely
14 payable from those sources. The term "ultimate users" includes
15 the local government unit itself only where its use of the
16 project is incidental to the use of the project by other users.
17 A debt with respect to which debt service payments have been
18 made under a guaranty of the debt shall not be considered self-
19 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 "Financial advisor." A person who for compensation engages
29 in the business of advising a local government unit, either
30 directly or in writing, as to the value of securities, bonds or

1 notes or as to the advisability of investing in, purchasing or
2 selling securities, bonds or notes. The term does not include an
3 attorney, accountant or engineer whose performance of such
4 services is solely incidental to the practice of his profession.
5 The term does not include a lender, underwriter or other entity
6 purchasing the bonds or notes of a local government unit.

7 * * *

8 "Working capital." An amount which constitutes, under
9 generally accepted accounting principles, the cost of the day-
10 to-day operations of the project as well as a proper allowance
11 for contingencies. Reimbursements under a guaranty or amounts to
12 be used to address budgetary deficits of a local government unit
13 or for other purposes not related to the construction or
14 operation of the project do not constitute reasonable working
15 capital in connection with the incurring of debt under this
16 subpart.

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

19 § 8005. Classification and authority to issue bonds and notes.

20 * * *

21 (c) Authority to issue bonds and notes and lease rental
22 debt.--Notwithstanding any other law to the contrary, every
23 local government unit shall have full power and authority to
24 issue bonds or notes, and make guaranties, leases, subsidy
25 contracts or other agreements evidencing the acquisition of
26 capital assets payable out of taxes and other general revenues,
27 to provide funds for and towards the cost of or the cost of
28 completing any project or combination of projects which the
29 local government unit is authorized to own, acquire, subsidize,
30 operate or lease or to participate in owning, acquiring,

1 subsidizing, operating or leasing with others, to issue tax
2 anticipation notes and funding bonds or notes as provided in
3 this subpart and to contract for insurance covering the risks of
4 nonpayment of principal, interest and premium of bonds, notes,
5 tax anticipation notes and guaranties.

6 (d) Nature of guaranty procedure for issuance and
7 prohibitions.--The following shall apply to a guaranty:

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

19 (2) (i) A local government unit may only issue a
20 guaranty of debt of another local government unit or an
21 authority after the local government unit has conducted
22 its own due diligence to determine the risks involved in
23 the transaction, including the impact of the guaranty on
24 the future financial condition of the local government
25 unit, the financial condition of the entity seeking the
26 guaranty, the sources and reliability of revenue to cover
27 the underlying obligation and the likelihood of default
28 of the entity seeking the guaranty. A guaranty may only
29 be made by vote of the governing body after a public
30 meeting at which the local government unit demonstrates

1 such due diligence. A local government unit may only
2 issue a guaranty to an authority or other local
3 government unit for projects which are expressly
4 authorized by statute, including projects under section
5 5607 (relating to purposes and powers).

6 (ii) Notwithstanding the provisions of subparagraph
7 (i), a local government unit may not issue a guaranty to
8 an authority or other local government unit for sums due
9 under a qualified interest rate management agreement, nor
10 may guaranties be issued for projects which involve
11 untested technology or experimentation.

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

15 § 8007. Cost of project.

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

1 or other expert to be required for the purposes of, a reserve or
2 a contribution toward a combined reserve, pool or other
3 arrangement for losses or liabilities covered by a self-
4 insurance arrangement established by one or more local
5 government units. Costs paid, from sources other than the debt
6 that is to be refunded, more than two years before an issuance
7 of new debt to finance the costs may not be included in the
8 costs of a project financed by the new debt. Reimbursements
9 under a guaranty or amounts to be used by a local government
10 unit to address budgetary deficits or other purposes not related
11 to the project do not constitute a cost of a project in
12 connection with the incurring of debt under this subpart. Costs
13 that qualify for funding of unfunded debt under section 8130
14 (relating to approval by court to fund unfunded debt) may only
15 constitute a cost of a project if the local government unit
16 complies with the requirements of section 8130.

17 § 8026. Exclusion of other self-liquidating debt to determine
18 net nonelectoral debt or net lease rental debt.

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

29 * * *

30 (5) The estimated net revenues of the project for each

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

9 * * *

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

11 § 8102.1. Preliminary filings with the department prior to the
12 issuance of certain debt.

13 (a) General rule.--Prior to the enactment of an ordinance
14 authorizing the sale or issuance of any general obligation bonds
15 or notes or guaranteed revenue bonds or notes constituting
16 nonelectoral debt or any agreement evidencing lease rental debt,
17 a local government unit shall obtain proof of having filed with
18 the department the information and documentation required by
19 this section. Proof of filing may be obtained by a certified
20 mail return receipt or other delivery requiring signature, or a
21 notice of receipt from the department.

22 (b) Required filings.--A local government unit shall file
23 with the department a basic description of the intended
24 financing and, as applicable, the following information and
25 documentation:

26 (1) Evidence that the local government unit is current
27 in the filing of its annual financial statements with
28 Commonwealth agencies under applicable State law.

29 (2) A description of the intended type and amount of
30 payment or performance bond, letter or credit or other

1 financial security proposed to insure the completion of the
2 project.

3 (3) Information that the local government unit is up to
4 date on all of its municipal securities disclosures required
5 under 17 CFR § 240.15c2-12 (relating to municipal securities
6 disclosure).

7 (4) A copy of the interest rate management plan prepared
8 or reviewed by an independent financial advisor with respect
9 to a proposed qualified interest rate management agreement.

10 (5) If the local government unit intends for the
11 proposed debt to be self-liquidating or subsidized, a
12 statement that the debt will qualify as self-liquidating or
13 subsidized debt, including filings required under section
14 8024 (relating to exclusion of subsidized debt from net
15 nonelectoral debt or net lease rental debt), 8025 (relating
16 to exclusion of self-liquidating debt evidenced by revenue
17 bonds or notes to determine net nonelectoral debt) or 8026
18 (relating to exclusion of other self-liquidating debt to
19 determine net nonelectoral debt or net lease rental debt), as
20 applicable.

21 (6) If the local government unit has existing debt which
22 was previously approved by the department as self-liquidating
23 or subsidized, an explanation as to why the debt should
24 continue to be treated as self-liquidating or subsidized and
25 that no decrease in the amount to be excluded is required by
26 any change in circumstances, other than resulting from the
27 payments of the debt, or, if there has been a change in
28 circumstances, information demonstrating the amount of debt
29 that should continue to be treated as self-liquidating or
30 subsidized.

1 (7) Schedules demonstrating the estimated net debt
2 service impact of the transaction and information
3 demonstrating that the local government unit adopted or
4 approved a plan to provide the tax or other revenues
5 necessary to pay the debt service on the debt, if applicable.

6 (8) The debt statement required by section 8110
7 (relating to debt statement).

8 (9) A statement of the intended manner of sale of the
9 bonds or notes, and if bonds or notes are to be sold at
10 private sale by negotiation, the basis for the local
11 government unit's finding that selling the bonds or notes in
12 such manner are in the best financial interests of the local
13 government unit.

14 (10) A project cost statement detailing the intended
15 uses of debt proceeds.

16 (11) An explanation for any costs of issuance exceeding
17 2% of the principal amount of the proposed debt.

18 (12) An explanation for the use of more than 10% of the
19 proceeds of the debt for working capital.

20 (13) If a guaranty from another local government unit is
21 proposed as a portion of the proposed borrowing, information
22 demonstrating compliance with section 8005(d) (relating to
23 classification and authority to issue bonds and notes).

24 (c) Action by department.--

25 (1) The department shall have 10 days after receipt of
26 the filing required under subsection (b) to notify the local
27 government unit of receipt of a complete filing.

28 (2) If the department fails to notify the local
29 government unit of an incomplete filing or fails to otherwise
30 acknowledge the receipt of a filing within 10 days, the local

1 government unit may proceed to incur the debt.

2 (3) If the department finds in its reasonable discretion
3 that the requirements are not satisfied in connection with
4 the proposed debt, the department shall issue a notice of
5 such incomplete filing and the local government unit may not
6 proceed to incur the debt until acknowledgment from the
7 department that the filing requirements of subsection (b)
8 have been completed.

9 (d) Exempt transactions.--The following debt transactions
10 shall be exempt from the requirement to file preliminary
11 documentation under this section:

12 (1) Small borrowing for capital purposes as provided in
13 section 8109 (relating to small borrowing for capital
14 purposes).

15 (2) Transactions under Subchapter C of Chapter 82
16 (relating to refunding of debt) which consist exclusively of
17 the issuance and sale of obligations, the proceeds of which
18 are to be used solely for the payment or redemption of
19 outstanding obligations upon or prior to maturity and the
20 costs of issuing the obligations. A refunding transaction
21 which includes a qualified interest rate management agreement
22 shall not be exempt from the requirements of this section.

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

26 Section 4. Sections 8109(a)(1) and 8110(b) of Title 53 are
27 amended to read:

28 § 8109. Small borrowing for capital purposes.

29 (a) General rule.--Any local government unit may incur debt
30 by resolution rather than by ordinance to be evidenced by notes

1 to provide funds for a project as defined in this subpart
2 without complying with the requirements of Subchapter A of
3 Chapter 82 (relating to Department of Community and Economic
4 Development) if:

5 (1) The aggregate amount of the debt outstanding at any
6 one time shall not exceed the lesser of [\$125,000] \$250,000
7 or 30% of the nonelectoral debt limit as authorized in
8 section 8022(a) (relating to limitations on incurring of
9 other debt).

10 * * *

11 § 8110. Debt statement.

12 * * *

13 (b) Previously excluded self-liquidating or subsidized
14 debt.--Where debt has previously been excluded as self-
15 liquidating or subsidized debt, the debt statement shall be
16 accompanied by a certification that indicates one of the
17 following:

18 (1) no decrease in the amounts to be excluded is
19 required by any change of circumstances [or, if there has
20 been a change, other than decreases resulting from the
21 payments of bonds or notes, so that less debt is to be
22 excluded. If it has become possible to exclude a greater
23 amount of debt and the local government unit desires to do
24 so, the debt statement shall be accompanied by appropriate
25 certificates supporting the revised amount to be excluded,
26 and a revised approval shall be obtained from the
27 department.]; or

28 (2) a decrease in the amounts to be excluded is required
29 due to a change in circumstances, in which case:

30 (i) The change in circumstance must be described. If

1 it has become possible to exclude a greater amount of
2 debt and the local government unit wants to do so, the
3 debt statement shall be accompanied by appropriate
4 certifications supporting the revised amount to be
5 excluded and a revised approval shall be obtained from
6 the department.

7 (ii) No debt service payments have been made under a
8 guaranty of debt previously established as self-
9 liquidating. Debt service payments that have been made
10 under a guarantee of the local government unit shall no
11 longer be considered self-liquidating unless and until
12 the local government unit files with the department a new
13 report satisfying the requirements of section 8025
14 (relating to exclusion of self-liquidating debt evidenced
15 by revenue bonds or notes to determine net nonelectoral
16 debt) or 8026 (relating to exclusion of other self-
17 liquidating debt to determine net nonelectoral debt or
18 net lease rental debt), as the case may be.

19 Section 5. Section 8111(a) of Title 53 is amended by adding
20 paragraphs to read:

21 § 8111. Submission to department.

22 (a) General rule.--Before delivering any bonds or notes
23 other than notes representing small borrowings issued under
24 section 8109 (relating to small borrowing for capital purposes),
25 the local government unit shall apply for and receive or be
26 deemed to have received the approval of the department under
27 section 8204 (relating to certificate of approval of transcript)
28 or 8206 (relating to effect of failure of timely action by
29 department). The application, in such form as the department
30 prescribes, shall be accompanied by a transcript of the

1 proceedings consisting of certified copies of any of the
2 following, not previously filed, which are applicable:

3 * * *

4 (8) A written statement with regard to the manner of
5 compliance or intended compliance with the requirements of
6 the act of December 20, 1967 (P.L.869, No.385), known as the
7 Public Works Contractors' Bond Law of 1967.

8 (9) An itemized statement of all estimated disbursements
9 for costs to be made from the proceeds of the borrowing to
10 the extent possible.

11 * * *

12 Section 6. Sections 8204, 8206 and 8207(a) and (c) of Title
13 53 are amended to read:

14 § 8204. Certificate of final approval [of transcript].

15 (a) Examination of transcripts and filings.--

16 (1) The department shall, upon receipt of any bond or
17 note transcripts or other filings, carefully examine them to
18 determine whether the debt outstanding and to be outstanding
19 is within the applicable limitations imposed by this subpart
20 and whether the proceedings for incurring the debt, for
21 issuing and selling the bonds or notes and for excluding
22 self-liquidating and subsidized debt have been taken in
23 conformity with the Constitution of Pennsylvania and this
24 subpart.

25 (2) If the debt requires preliminary filings to be made
26 under section 8102.1 (relating to preliminary filings with
27 the department relating to the issuance of certain debt), the
28 preliminary filings shall become part of the transcript and
29 be a requirement for final approval under this section.

30 (b) Duty to certify.--If, upon completion of its

1 examination, a transcript or other filing is found by the
2 department to be in conformity with the Constitution of
3 Pennsylvania and this subpart, the department shall certify its
4 approval to the local government unit if required under other
5 provisions of this subpart.

6 § 8206. Effect of failure of timely action by department.

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

20 § 8207. Records of department.

21 (a) Retention period.--The department shall keep all
22 proceedings including all applications and statements by a local
23 government unit under sections 8102.1 (relating to preliminary
24 filings with the department relating to the issuance of certain
25 debt), 8111 (relating to submission to department) and 8201
26 (relating to certification to department of bond or note
27 transcript or lease, guaranty, subsidy contract or other
28 agreement) on file for a period of not less than [four months
29 after issuance of its certificate of approval or disapproval and
30 thereafter as long as any appeal respecting the proceedings is

1 pending and not finally determined.] five years after the debt
2 issuance has been paid off by the local government unit. The
3 department shall also keep copies of all documents filed with
4 the department relating to a qualified interest rate management
5 agreement for as long as the qualified interest rate management
6 agreement is in effect.

7 * * *

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

19 Section 7. Chapter 82 of Title 53 is amended by adding a
20 subchapter to read:

21 SUBCHAPTER G

22 OTHER PROVISIONS

23 Sec.

24 8291. Duties of participants.

25 § 8291. Duties of participants.

26 (a) Declaration of representation.--

27 (1) As a condition of participation in transactions
28 under Chapter 81 (relating to incurring debt and issuing
29 bonds and notes) and this chapter, each attorney or financial
30 advisor involved in the transaction shall provide a written

1 declaration to the local government unit as to;

2 (i) Which party is being represented by the attorney
3 or financial advisor.

4 (ii) The source from which the attorney or financial
5 advisor will receive compensation for services related to
6 the transaction.

7 (iii) Whether the compensation is dependent upon the
8 issuance of debt by the local government unit.

9 (2) A full-time employee of the local government unit
10 shall not be required to file a declaration under this
11 subsection.

12 (b) Fiduciary duty of local government unit
13 representatives.--

14 (1) An attorney or financial advisor who purports to
15 represent a local government unit under subsection (a) in a
16 transaction under this subpart shall stand in a fiduciary
17 relationship to the local government unit.

18 (2) (i) With regard to a financial advisor who
19 represents a local government unit, the term "fiduciary
20 duty" shall mean the duty to perform loyally, in good
21 faith and in a manner the financial advisor reasonably
22 believes to be in the best interests of the local
23 government unit. The financial advisor shall act with
24 such care, including reasonable inquiry, skill and
25 diligence that a person of ordinary prudence would use
26 under similar circumstances, and provide opinion as to
27 possible positive and negative impacts of a transaction.

28 (ii) With regard to attorneys licensed to practice
29 law in this Commonwealth, the fiduciary duty shall be as
30 prescribed by the Pennsylvania Supreme Court, including

1 the Pennsylvania Rules of Professional Conduct.

2 (3) An attorney or financial advisor in the course of
3 the representation shall be entitled to rely on reasonable
4 representations and certifications made to the attorney or
5 financial advisor by architects, engineers and other persons
6 retained by and the officers and employees of a local
7 government unit.

8 (4) Pursuant to subsection (f) of Municipal Securities
9 Rulemaking Board Rule G-23 (relating to activities of
10 financial advisors), 17 CFR §§ 240.15Ba1-1 (relating to
11 definitions), 240.15Ba1-2 (relating to registration of
12 municipal advisors and information regarding certain natural
13 persons), 240.15Ba1-3 (relating to exemption of certain
14 natural persons from registration under section 15B(a)(1)(B)
15 of the act), 240.15Ba1-4 (relating to withdrawal from
16 municipal advisor registration), 240.15Ba1-5 (relating to
17 amendments to Form MA and Form MA-I), 240.15Ba1-6 (relating
18 to consent to service of process to be filed by non-resident
19 municipal advisors; legal opinion to be provided by non-
20 resident municipal advisors), 240.15Ba1-7 (relating to
21 registration of successor to municipal advisor) and
22 240.15Ba1-8 (relating to books and records to be made and
23 maintained by municipal advisors), and as to local government
24 unit representatives only, the fiduciary duty described in
25 this section shall be in addition to any duty contained in
26 rules promulgated by the Municipal Securities Rulemaking
27 Board that may apply to the attorney or financial advisor.

28 (c) Ultra vires acts.--An officer or member of the governing
29 body of a local government unit or a financial advisor or
30 attorney may not knowingly participate in a violation of this

1 title.

2 (d) Materially false or misleading certifications.--An
3 officer or member of the governing body of a local government
4 unit or an attorney or financial advisor may not knowingly file
5 a materially false or misleading certification or statement with
6 the department under this subpart.

7 (e) Penalties.--

8 (1) An officer or member of the governing body of a
9 local government unit or an attorney or financial advisor who
10 aids or participates in the commission of an act prohibited
11 in subsection (c) or (d) commits a misdemeanor of the second
12 degree and shall, upon conviction, be sentenced to pay a fine
13 of not more than \$5,000 or to imprisonment for not more than
14 two years, or both.

15 (2) Notwithstanding paragraph (1), a local government
16 may seek civil judicial redress for a violation of this
17 section that results in damages to the local government unit
18 not caused by the local government unit or its agents. A
19 local government unit shall prohibit or restrict the future
20 participation in transactions under this subpart of an
21 individual attorney or financial advisor who violates this
22 section and may also prohibit or restrict participation of a
23 firm that employs the attorney or financial advisor for a
24 period not to exceed two years.

25 Section 8. All acts and parts of acts are repealed insofar
26 as they are inconsistent with the amendment or addition of 53
27 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007, 8026(a)(5),
28 8102.1, 8111(a), 8204, 8206, 8207(a) and (c) and 8291.

29 Section 9. This act shall take effect in 60 days.