

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

SENATOR HUTCHINSON, LOCAL GOVERNMENT, AS AMENDED, OCTOBER 28, 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 RETAINED DIRECTLY BY A LOCAL <--  
29 GOVERNMENT UNIT who for compensation engages in the business of  
30 advising a THAT local government unit, either directly or in <--

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

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, FOR A PERIOD NOT TO EXCEED ONE YEAR AFTER <--  
13 COMPLETION OF THE PROJECT. WORKING CAPITAL FOR PERIODS EXCEEDING  
14 ONE YEAR SHALL BE TREATED AS UNFUNDED DEBT UNDER SECTIONS 8129  
15 (RELATING TO SCOPE OF UNFUNDED DEBT) AND 8130 (RELATING TO  
16 APPROVAL BY COURT TO FUND UNFUNDED DEBT). Reimbursements under a  
17 guaranty or amounts to be used to address budgetary deficits of  
18 a local government unit or for other purposes not related to the  
19 construction or operation of the project do not constitute  
20 reasonable working capital in connection with the incurring of  
21 debt under this subpart.

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

24 § 8005. Classification and authority to issue bonds and notes.

25 \* \* \*

26 (c) Authority to issue bonds and notes and lease rental  
27 debt.--Notwithstanding any other law to the contrary, every  
28 local government unit shall have full power and authority to  
29 issue bonds or notes, and make guaranties, leases, subsidy  
30 contracts or other agreements evidencing the acquisition of

1 capital assets payable out of taxes and other general revenues,  
2 to provide funds for and towards the cost of or the cost of  
3 completing any project or combination of projects which the  
4 local government unit is authorized to own, acquire, subsidize,  
5 operate or lease or to participate in owning, acquiring,  
6 subsidizing, operating or leasing with others, to issue tax  
7 anticipation notes and funding bonds or notes as provided in  
8 this subpart and to contract for insurance covering the risks of  
9 nonpayment of principal, interest and premium of bonds, notes,  
10 tax anticipation notes and guaranties.

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

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

24 (2) (i) A local government unit may ~~only~~ issue a <--  
25 guaranty of debt of another SEPARATE AND DISTINCT local <--  
26 government unit or an authority IT DID NOT INCORPORATE, <--  
27 ONLY after the local government unit has conducted its  
28 own due diligence to determine the risks involved in the  
29 transaction, including the impact of the guaranty on the  
30 future financial condition of the local government unit,

1 the financial condition of the entity seeking the  
2 guaranty, the sources and reliability of revenue to cover  
3 the underlying obligation and the likelihood of default  
4 of the entity seeking the guaranty. A guaranty may only  
5 be made by vote of the governing body after a public  
6 meeting at which the local government unit demonstrates  
7 such due diligence. A local government unit may only  
8 issue a guaranty to an authority or other local  
9 government unit for projects which are expressly  
10 authorized by statute, including projects under section  
11 5607 (relating to purposes and powers).

12 (ii) Notwithstanding the provisions of subparagraph  
13 (i), a local government unit may not issue a guaranty to  
14 ~~an~~ A SEPARATE AND DISTINCT authority or ~~other~~ local <--  
15 government unit for sums due under a qualified interest  
16 rate management agreement, nor may guaranties be issued  
17 for projects which involve untested technology or  
18 experimentation.

19 (3) A local government unit is prohibited from  
20 collecting a fee to guaranty the debt of an authority or  
21 another local government unit.

22 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER <--  
23 OR ANY OTHER LAW TO THE CONTRARY, AN AUTHORITY OR A MUNICIPAL  
24 AUTHORITY IN EXISTENCE ON THE EFFECTIVE DATE OF THIS  
25 PARAGRAPH FORMED BY TWO OR MORE LOCAL GOVERNMENT UNITS FOR  
26 THE PURPOSE OF PROVIDING LOAN PROGRAMS FOR THE BENEFIT OF  
27 LOCAL GOVERNMENT UNITS AND AUTHORITIES OR MUNICIPAL  
28 AUTHORITIES, SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS  
29 SECTION.

30 § 8007. Cost of project.

1 The cost of a project includes the amount of all payments to  
2 contractors or for the acquisition of a project or for lands,  
3 easements, rights and other appurtenances deemed necessary for  
4 the project, fees of architects, engineers, appraisers,  
5 consultants, financial advisors and attorneys incurred in  
6 connection with the project financing costs, costs of necessary  
7 printing and advertising, costs of preliminary feasibility  
8 studies and tests, cost estimates and interest on money borrowed  
9 to finance the project, if capitalized, to the date of  
10 completion of construction and, if deemed necessary, for one  
11 year thereafter, amounts to be placed in reserve funds, if any,  
12 a reasonable initial working capital for operating the project  
13 and a proper allowance for contingencies and any amount which  
14 constitutes, under generally accepted accounting principles, a  
15 cost of, and which has been determined by an independent actuary  
16 or other expert to be required for the purposes of, a reserve or  
17 a contribution toward a combined reserve, pool or other  
18 arrangement for losses or liabilities covered by a self-  
19 insurance arrangement established by one or more local  
20 government units. Costs paid, from sources other than the debt  
21 that is to be refunded, more than two years before an issuance  
22 of new debt to finance the costs may not be included in the  
23 costs of a project financed by the new debt. Reimbursements  
24 under a guaranty or amounts to be used by a local government  
25 unit to address budgetary deficits or other purposes not related  
26 to the project do not constitute a cost of a project in  
27 connection with the incurring of debt under this subpart. Costs  
28 that qualify for funding of unfunded debt under section 8130  
29 (relating to approval by court to fund unfunded debt) may only  
30 constitute a cost of a project if the local government unit

1 complies with the requirements of section 8130.

2 § 8026. Exclusion of other self-liquidating debt to determine  
3 net nonelectoral debt or net lease rental debt.

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

14 \* \* \*

15 (5) The estimated net revenues of the project for each  
16 year of the remaining life of the bonds, notes or obligations  
17 with an explanation for any assumed increase and a  
18 computation showing, in reasonable detail, that the net  
19 revenues, together with other available funds to be received  
20 in respect of the project, will be sufficient in each year to  
21 pay the annual debt service, other than capitalized debt  
22 service, on the bonds, notes or obligations or a specified  
23 aggregate principal amount thereof.

24 \* \* \*

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

26 § 8102.1. Preliminary filings with the department prior to the  
27 issuance of certain debt.

28 (a) General rule.--Prior to the enactment of an ordinance  
29 authorizing the sale or issuance of any general obligation bonds  
30 or notes or guaranteed revenue bonds or notes constituting

1 nonelectoral debt or any agreement evidencing lease rental debt,  
2 a local government unit shall obtain proof of having filed with  
3 the department the information and documentation required by  
4 this section. Proof of filing FOR PURPOSES OF SUBSECTION (C) may <--  
5 be obtained by a certified mail return receipt or other delivery  
6 requiring signature, or a notice of receipt from the department.

7 (b) Required filings.--A local government unit shall file  
8 with the department a basic description of the intended  
9 financing and, as applicable, the following information and  
10 documentation:

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

14 (2) A description of the intended type and amount of  
15 payment or performance bond, letter or credit or other  
16 financial security proposed to insure the completion of the  
17 project.

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

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

25 (5) If the local government unit intends for the  
26 proposed debt to be self-liquidating or subsidized, a  
27 statement that the debt will qualify as self-liquidating or  
28 subsidized debt, including filings required under section  
29 8024 (relating to exclusion of subsidized debt from net  
30 nonelectoral debt or net lease rental debt), 8025 (relating

1 to exclusion of self-liquidating debt evidenced by revenue  
2 bonds or notes to determine net nonelectoral debt) or 8026  
3 (relating to exclusion of other self-liquidating debt to  
4 determine net nonelectoral debt or net lease rental debt), as  
5 applicable.

6 (6) If the local government unit has existing debt which  
7 was previously approved by the department as self-liquidating  
8 or subsidized, an explanation as to why the debt should  
9 continue to be treated as self-liquidating or subsidized and  
10 that no decrease in the amount to be excluded is required by  
11 any change in circumstances, other than resulting from the  
12 payments of the debt, or, if there has been a change in  
13 circumstances, information demonstrating the amount of debt  
14 that should continue to be treated as self-liquidating or  
15 subsidized.

16 (7) Schedules demonstrating the estimated net debt  
17 service impact of the transaction and information  
18 demonstrating that the local government unit adopted or  
19 approved a plan to provide the tax or other revenues  
20 necessary to pay the debt service on the debt, if applicable.

21 (8) The debt statement required by section 8110  
22 (relating to debt statement).

23 (9) A statement of the intended manner of sale of the  
24 bonds or notes, and if bonds or notes are to be sold at  
25 private sale by negotiation, the basis for the local  
26 government unit's finding that selling the bonds or notes in  
27 such manner are in the best financial interests of the local  
28 government unit.

29 (10) A project cost statement detailing the intended  
30 uses of debt proceeds.

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

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

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

9       (14) THE DECLARATION REQUIRED BY SECTION 8291(A)  
10       (RELATING TO DUTIES OF PARTICIPANTS).

<--

11       (c) Action by department.--

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

15       (2) If the department fails to notify the local  
16       government unit of an incomplete filing or fails to otherwise  
17       acknowledge the receipt of a filing within 10 days, the local  
18       government unit may proceed to incur the debt.

19       (3) If the department finds in its reasonable discretion  
20       that the requirements are not satisfied in connection with  
21       the proposed debt, the department shall issue a notice of  
22       such incomplete filing and the local government unit may not  
23       proceed to incur the debt until acknowledgment from the  
24       department that the filing requirements of subsection (b)  
25       have been completed.

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

29       (1) Small borrowing for capital purposes as provided in  
30       section 8109 (relating to small borrowing for capital

1 purposes).

2 (2) Transactions under Subchapter C of Chapter 82  
3 (relating to refunding of debt) which consist exclusively of  
4 the issuance and sale of obligations, the proceeds of which  
5 are to be used solely FOR PURPOSES SPECIFIED IN SECTION <--  
6 8241(B)(1) (RELATING TO POWER TO REFUND) for the payment or  
7 redemption of outstanding obligations upon or prior to  
8 maturity and the costs of issuing the obligations. A  
9 refunding transaction which includes a qualified interest  
10 rate management agreement shall not be exempt from the  
11 requirements of this section.

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

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

17 § 8109. Small borrowing for capital purposes.

18 (a) General rule.--Any local government unit may incur debt  
19 by resolution rather than by ordinance to be evidenced by notes  
20 to provide funds for a project as defined in this subpart  
21 without complying with the requirements of Subchapter A of  
22 Chapter 82 (relating to Department of Community and Economic  
23 Development) if:

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

29 \* \* \*

30 § 8110. Debt statement.

1 \* \* \*

2 (b) Previously excluded self-liquidating or subsidized  
3 debt.--Where debt has previously been excluded as self-  
4 liquidating or subsidized debt, the debt statement shall be  
5 accompanied by a certification that indicates one of the  
6 following:

7 (1) no decrease in the amounts to be excluded is  
8 required by any change of circumstances [or, if there has  
9 been a change, other than decreases resulting from the  
10 payments of bonds or notes, so that less debt is to be  
11 excluded. If it has become possible to exclude a greater  
12 amount of debt and the local government unit desires to do  
13 so, the debt statement shall be accompanied by appropriate  
14 certificates supporting the revised amount to be excluded,  
15 and a revised approval shall be obtained from the  
16 department.]; or

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

19 (i) The change in circumstance must be described. If  
20 it has become possible to exclude a greater amount of  
21 debt and the local government unit wants to do so, the  
22 debt statement shall be accompanied by appropriate  
23 certifications supporting the revised amount to be  
24 excluded and a revised approval shall be obtained from  
25 the department.

26 (ii) No debt service payments have been made under a  
27 guaranty of debt previously established as self-  
28 liquidating. Debt service payments that have been made  
29 under a guarantee of the local government unit shall no  
30 longer be considered self-liquidating unless and until

1 the local government unit files with the department a new  
2 report satisfying the requirements of section 8025  
3 (relating to exclusion of self-liquidating debt evidenced  
4 by revenue bonds or notes to determine net nonelectoral  
5 debt) or 8026 (relating to exclusion of other self-  
6 liquidating debt to determine net nonelectoral debt or  
7 net lease rental debt), as the case may be.

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

10 § 8111. Submission to department.

11 (a) General rule.--Before delivering any bonds or notes  
12 other than notes representing small borrowings issued under  
13 section 8109 (relating to small borrowing for capital purposes),  
14 the local government unit shall apply for and receive or be  
15 deemed to have received the approval of the department under  
16 section 8204 (relating to certificate of approval of transcript)  
17 or 8206 (relating to effect of failure of timely action by  
18 department). The application, in such form as the department  
19 prescribes, shall be accompanied by a transcript of the  
20 proceedings consisting of certified copies of any of the  
21 following, not previously filed, which are applicable:

22 \* \* \*

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

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

30 \* \* \*

1 Section 6. Sections 8204, 8206 and 8207(a) and (c) of Title  
2 53 are amended to read:

3 § 8204. Certificate of final approval [of transcript].

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

5 (1) The department shall, upon receipt of any bond or  
6 note transcripts or other filings, carefully examine them to  
7 determine whether the debt outstanding and to be outstanding  
8 is within the applicable limitations imposed by this subpart  
9 and whether the proceedings for incurring the debt, for  
10 issuing and selling the bonds or notes and for excluding  
11 self-liquidating and subsidized debt have been taken in  
12 conformity with the Constitution of Pennsylvania and this  
13 subpart.

14 (2) If the debt requires preliminary filings to be made  
15 under section 8102.1 (relating to preliminary filings with  
16 the department relating to the issuance of certain debt), the  
17 preliminary filings shall become part of the transcript and  
18 be a requirement for final approval under this section.

19 (b) Duty to certify.--If, upon completion of its  
20 examination, a transcript or other filing is found by the  
21 department to be in conformity with the Constitution of  
22 Pennsylvania and this subpart, the department shall certify its  
23 approval to the local government unit if required under other  
24 provisions of this subpart.

25 § 8206. Effect of failure of timely action by department.

26 If the local government unit has submitted [a filing] an  
27 application for final approval to the department by certified  
28 mail, return receipt requested, or otherwise has an official  
29 receipt from the department, and the local government unit has  
30 not, within 20 days of the date of receipt of the filing by the

1 department, received the certificate of final approval or  
2 disapproval or notification of correctable error, the filing  
3 shall be deemed to have been approved for all purposes unless  
4 the local government unit has extended the time within which the  
5 department may act by written communication to the department or  
6 by failure to object to a written communication from the  
7 department requesting the extension. Extensions shall not exceed  
8 one additional period of 20 days.

9 § 8207. Records of department.

10 (a) Retention period.--The department shall keep all  
11 proceedings including all applications and statements by a local  
12 government unit under sections 8102.1 (relating to preliminary  
13 filings with the department relating to the issuance of certain  
14 debt), 8111 (relating to submission to department) and 8201  
15 (relating to certification to department of bond or note  
16 transcript or lease, guaranty, subsidy contract or other  
17 agreement) on file for a period of not less than [four months  
18 after issuance of its certificate of approval or disapproval and  
19 thereafter as long as any appeal respecting the proceedings is  
20 pending and not finally determined.] five years after the debt  
21 issuance has been paid off by the local government unit. The  
22 department shall also keep copies of all documents filed with  
23 the department relating to a qualified interest rate management  
24 agreement for as long as the qualified interest rate management  
25 agreement is in effect.

26 \* \* \*

27 (c) Records open for inspection.--[The records of the  
28 department shall be public records available for examination by  
29 any citizen of this Commonwealth or any bondholders or  
30 noteholders.] All submissions, determinations and records of the

1 department under this subpart, including those related to  
2 qualified interest rate management agreements and including  
3 correspondence with the interested parties to any debt  
4 proceeding, shall be public records available for examination by  
5 any citizen of this Commonwealth, any interested parties or any  
6 bondholder or noteholder, including holders of tax anticipation  
7 notes, of the local government unit.

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

10 SUBCHAPTER G

11 OTHER PROVISIONS

12 Sec.

13 8291. Duties of participants.

14 § 8291. Duties of participants.

15 (a) Declaration of representation.--

16 (1) As a condition of participation in transactions  
17 under Chapter 81 (relating to incurring debt and issuing  
18 bonds and notes) and this chapter, each attorney ~~or,~~ <--

19 financial advisor OR MUNICIPAL ADVISOR REGISTERED UNDER THE <--  
20 SECURITIES EXCHANGE ACT OF 1934 (48 STAT. 881, 15 U.S.C. §  
21 78A ET SEQ.) WHO IS involved in the transaction shall provide  
22 a written declaration to the local government unit as to;

23 (i) Which party is being represented by the attorney  
24 or financial advisor.

25 (ii) The source from which the attorney or financial  
26 advisor will receive compensation for services related to  
27 the transaction.

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

30 (2) A full-time employee of the local government unit

1 shall not be required to file a declaration under this  
2 subsection.

3 (b) Fiduciary duty of REPRESENTATIVES RETAINED BY local <--  
4 government unit representatives UNITS.-- <--

5 (1) An attorney or financial advisor who purports to <--  
6 represent a local government unit under subsection (a) in, <--  
7 INCLUDING AN INDEPENDENT FINANCIAL ADVISOR UNDER SECTION 8281  
8 (RELATING TO QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS)  
9 WHO IS RETAINED AND COMPENSATED BY A LOCAL GOVERNMENT TO  
10 REPRESENT THE LOCAL GOVERNMENT UNIT IN a transaction under  
11 this subpart, shall stand in a fiduciary relationship to the <--  
12 local government unit.

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

23 (ii) With regard to attorneys licensed to practice  
24 law in this Commonwealth, the fiduciary duty shall be as  
25 prescribed by the Pennsylvania Supreme Court, including  
26 the Pennsylvania Rules of Professional Conduct.

27 (3) An attorney or financial advisor in the course of  
28 the representation shall be entitled to rely on reasonable  
29 representations and certifications made to the attorney or  
30 financial advisor by architects, engineers and other persons

1 retained by and the officers and employees of a local  
2 government unit.

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

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

29 (d) Materially false or misleading certifications.--An  
30 officer or member of the governing body of a local government

1 unit or an attorney or financial advisor may not knowingly file  
2 a materially false or misleading certification or statement with  
3 the department under this subpart.

4 (e) Penalties.--

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

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

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

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