

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

AS AMENDED ON SECOND CONSIDERATION, SEPTEMBER 27, 2016

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 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 issue a guaranty of
25 debt of another separate and distinct local government
26 unit or an authority it did not incorporate, only after
27 the local government unit has conducted its own due
28 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 a separate and distinct authority or local government
15 unit for sums due under a qualified interest rate
16 management agreement, nor may guaranties be issued for
17 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~~ INCORPORATED by two or more local government <--
26 units for the purpose of providing loan programs FOR CAPITAL <--
27 PROJECTS for the benefit of local government units and
28 authorities or municipal authorities, shall not be subject to
29 the provisions of this section. PARAGRAPH (2). <--

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 of 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)~~ (11) If a guaranty from another local government <--
6 unit is proposed as a portion of the proposed borrowing,
7 information demonstrating compliance with section 8005(d)
8 (relating to classification and authority to issue bonds and
9 notes).

10 ~~(14)~~ (12) The declaration required by section 8291(a) <--
11 (relating to duties of participants).

12 (c) Action by department.--

13 (1) The department shall have 10 days after receipt of
14 the filing required under subsection (b) to notify the local
15 government unit of receipt of a complete filing. AN <--
16 ACKNOWLEDGMENT OF A COMPLETE FILING SHALL BE VALID FOR ONE
17 YEAR FROM THE DATE OF ITS ISSUANCE.

18 (2) If the department fails to notify the local
19 government unit of an incomplete filing or fails to otherwise
20 acknowledge the receipt of a filing within 10 days, the local
21 government unit may proceed to incur the debt. OR MAY PRESUME <--
22 THE FILING TO BE VALID AND COMPLETE FOR ONE YEAR FROM THE
23 DATE THE FILING WAS SUBMITTED TO THE DEPARTMENT.

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

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

4 (1) Small borrowing for capital purposes as provided in
5 section 8109 (relating to small borrowing for capital
6 purposes).

7 (2) Transactions under Subchapter C of Chapter 82
8 (relating to refunding of debt) which consist exclusively of
9 the issuance and sale of obligations, the proceeds of which
10 are to be used solely for purposes specified in section
11 8241(b)(1) (relating to power to refund) for the payment or
12 redemption of outstanding obligations upon or prior to
13 maturity and the costs of issuing the obligations. A
14 refunding transaction which includes a qualified interest
15 rate management agreement shall not be exempt from the
16 requirements of this section.

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

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

22 § 8109. Small borrowing for capital purposes.

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

29 (1) The aggregate amount of the debt outstanding at any
30 one time shall not exceed the lesser of [\$125,000] \$250,000

1 or 30% of the nonelectoral debt limit as authorized in
2 section 8022(a) (relating to limitations on incurring of
3 other debt).

4 * * *

5 § 8110. Debt statement.

6 * * *

7 (b) Previously excluded self-liquidating or subsidized
8 debt.--Where debt has previously been excluded as self-
9 liquidating or subsidized debt, the debt statement shall be
10 accompanied by a certification that indicates one of the
11 following:

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

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

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

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

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

15 § 8111. Submission to department.

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

27 * * *

28 (8) A written statement with regard to the manner of
29 compliance or intended compliance with the requirements of
30 the act of December 20, 1967 (P.L.869, No.385), known as the

1 Public Works Contractors' Bond Law of 1967.

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

5 * * *

6 Section 6. Sections 8204, 8206 and 8207(a) and (c) of Title
7 53 are amended to read:

8 § 8204. Certificate of final approval [of transcript].

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

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

19 (2) If the debt requires preliminary filings to be made
20 under section 8102.1 (relating to preliminary filings with
21 the department relating to the issuance of certain debt), the
22 preliminary filings shall become part of the transcript and
23 be a requirement for final approval under this section.

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

30 § 8206. Effect of failure of timely action by department.

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

14 § 8207. Records of department.

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

1 * * *

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

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

15 SUBCHAPTER G

16 OTHER PROVISIONS

17 Sec.

18 8291. Duties of participants.

19 § 8291. Duties of participants.

20 (a) Declaration of representation.--

21 (1) As a condition of participation in transactions
22 under Chapter 81 (relating to incurring debt and issuing
23 bonds and notes) and this chapter, each attorney, financial
24 advisor or municipal advisor registered under the Securities
25 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.)
26 who is involved in the transaction shall provide a written
27 declaration to the local government unit as to;

28 (i) Which party is being represented by the attorney
29 or financial advisor.

30 (ii) The source from which the attorney or financial

1 advisor will receive compensation for services related to
2 the transaction.

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

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

8 (b) Fiduciary duty of representatives retained by local
9 government units.--

10 (1) An attorney or financial advisor, including an
11 independent financial advisor under section 8281 (relating to
12 qualified interest rate management agreements) who is
13 retained and compensated by a local government to represent
14 the local government unit in a transaction under this
15 subpart, shall stand in a fiduciary relationship to the local
16 government unit.

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

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

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

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