
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 490 Session of
2017

INTRODUCED BY EICHELBERGER, BLAKE, FOLMER, BOSCOLA, COSTA,
BROWNE, SCHWANK AND VULAKOVICH, MARCH 10, 2017

REFERRED TO LOCAL GOVERNMENT, MARCH 10, 2017

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 ordinance authorizing
9 issuance of bonds or notes or instruments evidencing lease
10 rental debt, for small borrowing for capital purposes, for
11 debt statement, for submission to department, for fees for
12 filing, for certificate of approval of transcript, for effect
13 of failure of timely action by department and for records of
14 department and providing for duties of participants in
15 transactions relating to incurring debt and issuing bonds and
16 notes.

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

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

23 § 8002. Definitions.

24 * * *

25 (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) and 8007 of Title 53 are
23 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 due diligence. A local government unit may only issue a
8 guaranty to an authority or other local government unit
9 for projects which are expressly authorized by statute,
10 including projects under section 5607 (relating to
11 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 incorporated by two or more local government units
26 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 paragraph (2).

30 § 8007. Cost of project.

1 (a) Included costs.--The cost of a project includes the
2 amount of all payments to contractors or for the acquisition of
3 a project or for lands, easements, rights and other
4 appurtenances deemed necessary for the project, fees of
5 architects, engineers, appraisers, consultants, financial
6 advisors and attorneys incurred in connection with the project
7 financing costs, costs of necessary printing and advertising,
8 costs of preliminary feasibility studies and tests, cost
9 estimates and interest on money borrowed to finance the project,
10 if capitalized, to the date of completion of construction and,
11 if deemed necessary, for one year thereafter, amounts to be
12 placed in reserve funds, if any, a reasonable initial working
13 capital for operating the project and a proper allowance for
14 contingencies and any amount which constitutes, under generally
15 accepted accounting principles, a cost of, and which has been
16 determined by an independent actuary or other expert to be
17 required for the purposes of, a reserve or a contribution toward
18 a combined reserve, pool or other arrangement for losses or
19 liabilities covered by a self-insurance arrangement established
20 by one or more local government units.

21 (b) Excluded costs.--Costs paid, from sources other than the
22 debt that is to be refunded, more than two years before an
23 issuance of new debt to finance the costs may not be included in
24 the costs of a project financed by the new debt. Reimbursements
25 under a guaranty or amounts to be used by a local government
26 unit to address budgetary deficits or other purposes not related
27 to the project do not constitute a cost of a project in
28 connection with the incurring of debt under this subpart.

29 (c) Funding of unfunded debt.--Costs that qualify for
30 funding of unfunded debt under section 8130 (relating to

1 approval by court to fund unfunded debt) may only constitute a
2 cost of a project if the local government unit complies with the
3 requirements of section 8130.

4 Section 3. Section 8026(a)(5) of Title 53 is amended and the
5 section is amended by adding a subsection to read:

6 § 8026. Exclusion of other self-liquidating debt to determine
7 net nonelectoral debt or net lease rental debt.

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

18 * * *

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

28 * * *

29 (c) Change in circumstances.--If there has been a change in
30 circumstances and the local government unit has existing debt

1 that was previously approved by the department as self-
2 liquidating or subsidized, a new certification shall be filed.
3 The certification shall specify whether or not the debt should
4 continue to be treated as self-liquidating or subsidized and
5 state whether any decrease in the amount to be excluded is
6 required by any change in circumstances, other than resulting
7 from the payments of the debt.

8 Section 4. Title 53 is amended by adding a section to read:
9 § 8102.1. Preliminary filings with the department prior to the
10 issuance of certain debt.

11 (a) General rule.--At least 10 days prior to the enactment
12 of an ordinance authorizing the sale or issuance of any general
13 obligation bonds or notes or guaranteed revenue bonds or notes
14 constituting nonelectoral debt or any agreement evidencing lease
15 rental debt, a local government unit shall have obtained proof
16 of having filed with the department the information and
17 documentation required by this section. Proof of filing for
18 purposes of subsection (c) may be obtained by a certified mail
19 return receipt or other delivery requiring signature, or a
20 notice of receipt from the department.

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

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

28 (2) A description of the intended type and amount of
29 payment or performance bond, letter of credit or other
30 financial security proposed to guarantee completion of the

1 project.

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

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

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

20 (6) The debt statement required by section 8110
21 (relating to debt statement).

22 (7) Whether the bonds or notes are zero coupon or
23 capital appreciation bonds or notes and, if so, the ratio of
24 total estimated principal and interest payments over the
25 proceeds of the issue.

26 (8) A project cost statement detailing the intended uses
27 of debt proceeds.

28 (9) If a guaranty from another local government unit is
29 proposed as a portion of the proposed borrowing, information
30 demonstrating compliance with section 8005(d) (relating to

1 classification and authority to issue bonds and notes).

2 (10) The declaration required by section 8291(a)
3 (relating to duties of participants).

4 (c) Action by department.--

5 (1) The department shall have 10 days after receipt of
6 the filing required under subsection (b) to notify the local
7 government unit of receipt of filing required under
8 subsection (b). An acknowledgment of a filing shall be valid
9 for one year from the date of its issuance.

10 (2) If the department fails to notify the local
11 government unit of an incorrect or incomplete filing or fails
12 to otherwise acknowledge the receipt of a filing within 10
13 days, the local government unit may proceed to incur the debt
14 or may presume the filing to be valid for one year from the
15 date the filing was submitted to the department.

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

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

26 (1) Small borrowing for capital purposes as provided in
27 section 8109 (relating to small borrowing for capital
28 purposes).

29 (2) Transactions under Subchapter C of Chapter 82
30 (relating to refunding of debt) which consist exclusively of

1 the issuance and sale of obligations, the proceeds of which
2 are to be used solely for purposes specified in section
3 8241(b)(1) (relating to power to refund) for the payment or
4 redemption of outstanding obligations upon or prior to
5 maturity and the costs of issuing the obligations. A
6 refunding transaction which includes a qualified interest
7 rate management agreement shall not be exempt from the
8 requirements of this section.

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

12 Section 5. Sections 8103(a)(1), 8109(a)(1) and 8110(b) of
13 Title 53 are amended to read:

14 § 8103. Ordinance authorizing issuance of bonds or notes or
15 instruments evidencing lease rental debt.

16 (a) General rule.--The ordinance or ordinances or, in the
17 case of notes issued under section 8109 (relating to small
18 borrowing for capital purposes), the resolution authorizing the
19 issuance of bonds or notes or the execution of a lease,
20 guaranty, subsidy contract or other agreement evidencing lease
21 rental debt by a local government unit shall contain, in
22 substance:

23 (1) In all cases, including lease rental debt, the
24 following:

25 (i) A brief description of the project for which the
26 debt is to be incurred and, if a capital project, a
27 realistic estimated useful life thereof.

28 (ii) A statement of the aggregate principal amount
29 of bonds or notes proposed to be issued pursuant to the
30 ordinance or, as the case may be, to be secured by the

1 instrument evidencing lease rental debt.

2 (iii) A statement whether the debt is to be incurred
3 as electoral debt, nonelectoral debt or lease rental
4 debt.

5 (iv) An authorization and direction to one or more
6 specified officers and their successors to prepare and
7 certify and, except in the case of notes issued under
8 section 8109, to file the debt statement required by
9 section 8110 (relating to debt statement), to execute and
10 deliver the bonds or notes or the instrument evidencing
11 lease rental debt and to take other necessary action.
12 This designation may be changed from time to time
13 thereafter.

14 (v) In the case of nonelectoral or lease rental debt
15 which is subject to exclusion as subsidized debt or self-
16 liquidating debt if the exclusion is presently desired,
17 an authorization to the proper officers of the local
18 government unit to prepare and file any statements
19 required by Subchapter B of Chapter 80 (relating to
20 limitations on debt of local government units) which are
21 necessary to qualify all or any portion of the debt for
22 exclusion from the appropriate debt limit as self-
23 liquidating debt or subsidized debt. If an exclusion is
24 to be claimed that the debt will be self-liquidating, the
25 identity of the expert relied upon to make that
26 determination.

27 (vi) As an exhibit, a disclosure statement in a
28 format prescribed by the department containing
29 information as to the following:

30 (A) The principal amount of the debt, the term

1 over which the debt will be repaid and the estimated
2 net debt service obligation to the local government
3 unit.

4 (B) A breakdown of the expected use of debt
5 proceeds for:

6 (I) The acquisition and construction of real
7 estate, including lands, buildings, easements,
8 rights and other appurtenances deemed necessary
9 for the project.

10 (II) Equipment and furnishings.

11 (III) Fees of architects, engineers,
12 financial advisors, attorneys and other
13 professionals incurred in connection with the
14 project.

15 (IV) Costs of necessary printing and
16 advertising.

17 (V) Costs of preliminary feasibility studies
18 and tests.

19 (VI) Working capital for operating the
20 project.

21 (C) A description of the basis for the decision
22 that the bonds or notes are to be sold at a public
23 sale, at a private sale by negotiation or upon
24 invitation at the price the governing body
25 determines.

26 (D) The identity of the bond counsel.

27 (E) The identity of the sinking fund depositary
28 and paying agent.

29 (F) The identities of the purchaser of the bonds
30 or notes.

1 (G) Whether a qualified interest rate management
2 agreement is associated with the debt.

3 (H) Whether the project involves the sale of any
4 assets owned by the local government unit.

5 (I) The local government unit's plan to provide
6 necessary tax or other revenues to pay the debt
7 service on the debt.

8 * * *

9 § 8109. Small borrowing for capital purposes.

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

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

21 * * *

22 § 8110. Debt statement.

23 * * *

24 (b) Previously excluded self-liquidating or subsidized
25 debt.--Where debt has previously been excluded as self-
26 liquidating or subsidized debt, the debt statement shall be
27 accompanied by a certification that indicates one of the
28 following:

29 (1) no decrease in the amounts to be excluded is
30 required by any change of circumstances [or, if there has

1 been a change, other than decreases resulting from the
2 payments of bonds or notes, so that less debt is to be
3 excluded. If it has become possible to exclude a greater
4 amount of debt and the local government unit desires to do
5 so, the debt statement shall be accompanied by appropriate
6 certificates supporting the revised amount to be excluded,
7 and a revised approval shall be obtained from the
8 department.]; or

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

11 (i) The change in circumstance must be described. If
12 it has become possible to exclude a greater amount of
13 debt and the local government unit wants to do so, the
14 debt statement shall be accompanied by appropriate
15 certifications supporting the revised amount to be
16 excluded and a revised approval shall be obtained from
17 the department.

18 (ii) No debt service payments have been made under a
19 guaranty of debt previously established as self-
20 liquidating. Debt service payments that have been made
21 under a guaranty of the local government unit shall no
22 longer be considered self-liquidating unless and until
23 the local government unit files with the department a new
24 report satisfying the requirements of section 8025
25 (relating to exclusion of self-liquidating debt evidenced
26 by revenue bonds or notes to determine net nonelectoral
27 debt) or 8026 (relating to exclusion of other self-
28 liquidating debt to determine net nonelectoral debt or
29 net lease rental debt), as the case may be.

30 Section 6. Section 8111(a) of Title 53 is amended by adding

1 paragraphs to read:

2 § 8111. Submission to department.

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

14 * * *

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

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

22 * * *

23 Section 7. Sections 8203, 8204, 8206 and 8207(a) and (c) of
24 Title 53 are amended to read:

25 § 8203. Fees for filing.

26 Every filing with the department, with the exception of the
27 preliminary filing under section 8102.1 (relating to preliminary
28 filings with the department prior to the issuance of certain
29 debt), shall be accompanied by a filing fee as determined in
30 section 605-A of the act of April 9, 1929 (P.L.177, No.175),

1 known as The Administrative Code of 1929. No submission shall
2 constitute a filing until the proper fee is paid. All fees
3 received under this section shall be paid by the department into
4 the State Treasury through the Department of Revenue. A
5 preliminary filing under section 8102.1 shall be accompanied by
6 a fee of \$50.

7 § 8204. Certificate of final approval [of transcript].

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

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

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

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

29 § 8206. Effect of failure of timely action by department.

30 If the local government unit has submitted [a filing] an

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

13 § 8207. Records of department.

14 (a) Retention period.--

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

27 (2) The department shall also keep copies of all
28 documents filed with the department relating to a qualified
29 interest rate management agreement for as long as the
30 qualified interest rate management 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 resident 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 8. 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 care, including reasonable inquiry, skill and diligence
24 that a person of ordinary prudence would use under
25 similar circumstances, and provide opinion as to possible
26 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 9. 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 and (c), 8102.1, 8111(a), 8204, 8206, 8207(a) and (c) and 8291.

29 Section 10. This act shall take effect in 60 days.