
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 204 Session of
2019

INTRODUCED BY BLAKE, FOLMER, DiSANTO, SCHWANK, COSTA, BOSCOLA
AND BROWNE, FEBRUARY 5, 2019

REFERRED TO LOCAL GOVERNMENT, FEBRUARY 5, 2019

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; in incurring debt
7 and issuing bonds and notes, providing for preliminary
8 filings with the department prior to the issuance of certain
9 debt, further providing for ordinance authorizing issuance of
10 bonds or notes or instruments evidencing lease rental debt,
11 for small borrowing for capital purposes, for debt statement
12 and for submission to department; in miscellaneous
13 provisions, further providing for fees for filing, for
14 certificate of approval of transcript, for effect of failure
15 of timely action by department and for records of department
16 and providing for duties of participants in transactions
17 relating to incurring debt and issuing bonds and notes.

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

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

24 § 8002. Definitions.

25 * * *

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

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

21 * * *

22 (c) Other definitions.--Subject to additional definitions
23 contained in subsequent provisions of this subpart which are
24 applicable to specific provisions of this subpart, the following
25 words and phrases when used in this subpart shall have the
26 meanings given to them in this section unless the context
27 clearly indicates otherwise:

28 * * *

29 "Financial advisor." A person retained directly by a local
30 government unit who for compensation engages in the business of

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

9 * * *

10 "Working capital." An amount which constitutes, under
11 generally accepted accounting principles, the cost of the day-
12 to-day operations of the project as well as a proper allowance
13 for contingencies, for a period not to exceed one year after
14 completion of the project. Working capital for periods exceeding
15 one year shall be treated as unfunded debt under sections 8129
16 (relating to scope of unfunded debt) and 8130 (relating to
17 approval by court to fund unfunded debt). Reimbursements under a
18 guaranty or amounts to be used to address budgetary deficits of
19 a local government unit or for other purposes not related to the
20 construction or operation of the project do not constitute
21 reasonable working capital in connection with the incurring of
22 debt under this subpart.

23 Section 2. Sections 8005(c) and (d) and 8007 of Title 53 are
24 amended to read:

25 § 8005. Classification and authority to issue bonds and notes.

26 * * *

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

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

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

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

25 (2) (i) A local government unit may issue a guaranty of
26 debt of another separate and distinct local government
27 unit or an authority the local government unit did not
28 incorporate, only after the local government unit has
29 conducted its own due diligence to determine the risks
30 involved in the transaction, including the impact of the

1 guaranty on the future financial condition of the local
2 government unit, the financial condition of the entity
3 seeking the guaranty, the sources and reliability of
4 revenue to cover the underlying obligation and the
5 likelihood of default of the entity seeking the guaranty.
6 A guaranty may only be made by vote of the governing body
7 after a public meeting at which the local government unit
8 demonstrates due diligence. A local government unit may
9 only issue a guaranty to an authority or other local
10 government unit for projects which are expressly
11 authorized by statute, including projects under section
12 5607 (relating to purposes and powers).

13 (ii) Notwithstanding the provisions of subparagraph
14 (i), a local government unit may not issue a guaranty to
15 a separate and distinct authority or local government
16 unit for sums due under a qualified interest rate
17 management agreement, nor may guaranties be issued for
18 projects which involve untested technology or
19 experimentation.

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

23 (4) Notwithstanding any other provision of this chapter
24 or any other law to the contrary, an authority or a municipal
25 authority in existence on the effective date of this
26 paragraph incorporated by two or more local government units
27 for the purpose of providing loan programs for capital
28 projects for the benefit of local government units and
29 authorities or municipal authorities, shall not be subject to
30 the provisions of paragraph (2).

1 § 8007. Cost of project.

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

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

30 (c) Funding of unfunded debt.--Costs that qualify for

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

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

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

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

19 * * *

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

29 * * *

30 (c) Change in circumstances.--If there has been a change in

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (9) If a guaranty from another local government unit is
30 proposed as a portion of the proposed borrowing, information

1 demonstrating compliance with section 8005(d) (relating to
2 classification and authority to issue bonds and notes).

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

5 (c) Action by department.--

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

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

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

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

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

30 (2) Transactions under Subchapter C of Chapter 82

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

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

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

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

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

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

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

29 (ii) A statement of the aggregate principal amount
30 of bonds or notes proposed to be issued pursuant to the

1 ordinance or, as the case may be, to be secured by the
2 instrument evidencing lease rental debt.

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

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

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

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

1 (A) The principal amount of the debt, the term
2 over which the debt will be repaid and the estimated
3 net debt service obligation to the local government
4 unit.

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

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

11 (II) Equipment and furnishings.

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

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

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

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

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

27 (D) The identity of the bond counsel.

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

30 (F) The identities of the purchaser of the bonds

1 or notes.

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

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

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

9 * * *

10 § 8109. Small borrowing for capital purposes.

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

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

22 * * *

23 § 8110. Debt statement.

24 * * *

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

30 (1) no decrease in the amounts to be excluded is

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

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

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

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

1 Section 6. Section 8111(a) introductory paragraph of Title
2 53 is amended and the subsection is amended by adding paragraphs
3 to read:

4 § 8111. Submission to department.

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

16 * * *

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

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

24 * * *

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

27 § 8203. Fees for filing.

28 Every filing with the department, with the exception of the
29 preliminary filing under section 8102.1 (relating to preliminary
30 filings with the department prior to the issuance of certain

1 debt), shall be accompanied by a filing fee as determined in
2 section 605-A of the act of April 9, 1929 (P.L.177, No.175),
3 known as The Administrative Code of 1929. No submission shall
4 constitute a filing until the proper fee is paid. All fees
5 received under this section shall be paid by the department into
6 the State Treasury through the Department of Revenue. A
7 preliminary filing under section 8102.1 shall be accompanied by
8 a fee of \$50.

9 § 8204. Certificate of final approval [~~of transcript~~].

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

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

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

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

1 § 8206. Effect of failure of timely action by department.

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

15 § 8207. Records of department.

16 (a) Retention period.--

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

29 (2) The department shall also keep copies of all
30 documents filed with the department relating to a qualified

1 interest rate management agreement for as long as the
2 qualified interest rate management agreement is in effect.

3 * * *

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

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

17 SUBCHAPTER G

18 OTHER PROVISIONS

19 Sec.

20 8291. Duties of participants.

21 § 8291. Duties of participants.

22 (a) Declaration of representation.--

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

30 (i) Which party is being represented by the attorney

1 or financial advisor.

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

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

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

10 (b) Fiduciary duty of representatives retained by local
11 government units.--

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

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

29 (ii) With regard to attorneys licensed to practice
30 law in this Commonwealth, the fiduciary duty shall be as

1 prescribed by the Pennsylvania Supreme Court, including
2 the Pennsylvania Rules of Professional Conduct.

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

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

30 (c) Ultra vires acts.--An officer or member of the governing

1 body of a local government unit or a financial advisor or
2 attorney may not knowingly participate in a violation of this
3 title.

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

9 (e) Penalties.--

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

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

27 Section 9. All acts and parts of acts are repealed insofar
28 as they are inconsistent with the amendment or addition of 53
29 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007, 8026(a) (5)
30 and (c), 8102.1, 8111(a), 8204, 8206, 8207(a) and (c) and 8291.

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