
Local Government Unit Debt Act

Part VII of Act 177 of 1996, P.L. 1158, as amended

Commonwealth of Pennsylvania
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PART VII
TAXATION AND FISCAL AFFAIRS

Subpart

B. Indebtedness and Borrowing

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§ 8001. Short title, scope and applicability of subpart.

(a) Short title of subpart.--This subpart shall be known and may be cited as the Local Government Unit Debt

Act.

(b) Scope of subpart.--This subpart shall apply to all local government units.

(c) Exemption of bonds and notes from taxation in this Commonwealth.—This section is the Commonwealth's pledge to and agreement with a person, firm, corporation or Federal agency subscribing to or acquiring any bonds or notes, including tax anticipation notes issued by any local government unit under this subpart, the act of June 25, 1941 (P.L.159, No.87), known as the Municipal Borrowing Law, or the act of July 12, 1972, (P.L. 781, No. 185), known as the Local Government Unit Debt Act, that the bonds or notes, their transfer and the income therefrom, including any profits made on their sale, shall be free from taxation for State and local purposes within this Commonwealth. This exemption does not apply to gift, inheritance, succession or estate taxes, or any other taxes not levied directly on the bonds or notes, their transfer, the income therefrom or the realization of profits on their sale. The exemption under this subsection of profits made on the sale of bonds or notes does not apply to bonds or notes issued on or after February 1, 1994, (the effective date of section 2901 of act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

(d) Exclusive procedure.--A local government unit may borrow money on bonds or notes, including tax anticipation notes, only as provided in this subpart. This subpart provides an exclusive and uniform system on the subjects covered by this subpart.

§ 8002. Definitions.

(a) Classification of debt.--With respect to classifications of debt and subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Debt." The amount of all obligations for the payment of money incurred by the local government unit, whether due and payable in all events, or only upon the performances of work, possession of property as lessee, rendering of services by others or other contingency, except the following:

(1) Current obligations for the full payment of which current revenues have been appropriated, including tax anticipation notes, and current payments for the funding of pension plans.

(2) Obligations under contracts for supplies, services and pensions allocable to current operating expenses of future years in which the supplies are to be expended or furnished, the services rendered or the pensions paid.

(3) Rentals or payments payable in future years under leases, guaranties, subsidy contracts or other forms of agreement not evidencing the acquisition of capital assets. This exception shall not apply to rentals or payments under any instruments which would constitute lease rental debt but for the fact that the lessor or obligee is not an entity described in section 8004(a)(1) (relating to when lease or other agreement evidences acquisition of capital asset).

(4) Interest or assumed taxes payable on bonds or notes which interest or taxes are not yet overdue.

(5) Obligations incurred and payments, including periodic scheduled payments and termination payments, payable pursuant to a qualified interest rate management agreement.

"Electoral debt." All net debt incurred with the assent of the electors, given as provided in this subpart whether issued by a local government unit or through an authority. "Lease rental debt." The principal amount of authority bonds or notes or bonds or notes of another local government unit to be repaid from payments of the local government unit made pursuant to leases, guaranties, subsidy contracts or other forms of agreement where those payments are or may be made out of the tax and other general revenues of a local government unit under leases, guaranties, subsidy contracts or other forms of agreement which evidence the acquisition of capital assets, excluding any amount which has been approved by the electors.

"Net lease rental debt." A portion of lease rental debt as determined under Subchapter B (relating to limitations on debt of local government units).

"Net nonelectoral debt." A portion of nonelectoral debt as determined in accordance with Subchapter B (relating to limitations on debt of local government units).

"Nonelectoral debt." All debt determined as provided in this subpart, incurred or authorized to be incurred, except electoral debt and lease rental debt, in each case whether authorized before or after July 12, 1972, and whether before or after the debt is incurred.

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

"Self-liquidating debt." Debt payable solely from rents, rates or other charges to the ultimate users of the project, to be financed in whole or in part by that debt, or payable solely from special levies or assessments of benefits lawfully earmarked exclusively for that purpose. The term also includes debt or any portion thereof at the time qualified as self-liquidating pursuant to this subpart, whether or not solely payable from those sources. The term "ultimate users" includes the local government unit itself only where its use of the project is incidental to the use of the project by other users.

"Subsidized debt." The amount of debt which is self-liquidating to the local government unit because the annual debt service on the amount for the fiscal year next following the time of determination will be covered by one of the following:

(1) Payments of subsidies on account of the cost of the project or on account of operations, but measured by the cost of the project, or which will be covered by capital account reimbursements, which subsidies or reimbursements will be paid by either the Commonwealth or the Federal Government, or both, where such payments under the legislation in force at the time of determination are stated to be of a recurring nature, if the Commonwealth or the Federal Government shall have preliminarily or finally qualified the project for the subsidy or reimbursement, all as determined under section 8024 (relating to exclusion of subsidized debt from net nonelectoral debt or net lease rental debt).

(2) Payments under a subsidy contract with another local government unit or under a subsidy contract with an authority, and the amount is lawful lease rental debt as to the other local government unit as determined under section 8024.

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

"Accountant." A certified public accountant or public accountant or a firm of either of them.

"Authority." An authority or nonprofit corporation organized under any statute by or on behalf of the Commonwealth or any local government unit or jointly by any one or more of them.

"Bond or note." Any instrument issued by a local government unit imposing an obligation for the repayment of money borrowed, but not including a guaranty endorsed on an instrument issued by an authority. Unless otherwise indicated, the term does not include tax anticipation notes. A bond or a note which is a security as defined in 13 Pa.C.S. Div. 8 (relating to investment securities) shall be governed by 13 Pa.C.S. Div. 8, and every other bond or note shall be governed by 13 Pa.C.S. Div. 3 (relating to negotiable instruments, except in each case as otherwise provided in this subchapter.

"Borrowing base." The annual arithmetic average of the total revenues for the three full fiscal years ended next preceding the date of the incurring of nonelectoral debt or lease rental debt as set forth in a certificate stating the total revenues in each of these years and stating the average, executed by the authorized officials of the local government unit or by an independent accountant. If, within that three-year period, there has been an expansion or contraction of the territorial or functional jurisdiction of a local government unit through transfer, merger, annexation or assumption, in whole or in part, in relation to another local government unit or an authority, the borrowing base shall be calculated as if the expansion or contraction had occurred within or prior to the commencement of the three-year period in the manner as the statutes, charter provisions or court decree provide or direct or, in the absence of those provisions, as the department approves.

"Department." The Department of Community and Economic Development of the Commonwealth.

"General obligation." In the title of a bond or note, means a bond or note for the payment of which the full faith, credit and taxing power of the local government unit is pledged, for the payment of which the local government unit has entered into the required covenant under section 8104 (relating to covenant to pay bonds or notes or a guaranty) and for the payment of which no specific revenues are pledged.

"Governing body." The authorities in each local government unit authorized by law to levy taxes or fix the tax rate of the local government unit. The term also includes the school board of a school district and the board or officers authorized to make binding commitments for joint local government units, even though that body has no power to levy taxes.

"Guaranteed revenue." In the title of a bond or note, means a bond or note of a local government unit payable in whole or in part from pledged revenues, but which becomes wholly or partly a general obligation of the local government unit, as guarantor in the event of deficiency in the pledged revenues.

"Guaranty." A guaranty, whether conditional or unconditional and whether full or partial, to or for the benefit of holders of bonds or notes of the local government unit or holders of bonds or notes or other obligations of an authority or another local government unit, of the payment of the principal of and interest on the bonds or notes, the premium, if any, and assumed taxes, if any, on those obligations.

"Incur" or "incurred." When used with respect to debt, means the point in time when, in the case of debt assented to by the electors, the assent has been given, and, in the case of nonelectoral or other debt, the first ordinance or, in the case of small borrowings under section 8109 (relating to small borrowing for capital purposes), the resolution authorizing the debt has been finally enacted or adopted, unless the authority for the debt has been canceled or terminated as provided in this subpart. Final enactment or adoption means the final act necessary to make an ordinance or resolution, as the case may be, effective pursuant to all requirements of law, including any necessary approval by a mayor or other executive officer or failure of action by the mayor or officer within a specified statutory time limit, or passage over the veto of a mayor or of the officer, but does not include any required advertising subsequent to the date of adoption by the governing body of the local governing unit.

"Independent financial advisor." A person or entity experienced in the financial aspects and risks of interest rate management agreements who is retained by a local government unit to advise the local government unit with respect to a qualified interest rate management agreement. The independent financial advisor may not be the other party or an affiliate or agent of the other party on a qualified interest rate management agreement with respect to which the independent financial advisor is advising a local government unit. For purposes of sections 8281(b)(2) and (e)(5) (relating to qualified interest rate management agreements), the independent financial advisor may be retained by a public authority.

"Interest rate management plan." A written plan prepared or reviewed by an independent financial advisor with respect to a qualified interest rate management agreement, which includes:

(1) A schedule listing the amount of debt outstanding for each outstanding debt issue of the local government unit and the expected annual debt service on that debt. In the case of variable rate debt, the schedule shall set forth the estimated annual debt service thereon and annual debt service on the debt calculated at the maximum rate specified for the variable rate debt.

(2) A schedule listing the notional amounts outstanding of each previously executed qualified interest rate management agreement which is then in effect

(3) A schedule listing all consulting, advisory, brokerage or similar fees, paid or payable by the local government unit in connection with the qualified interest rate management agreement, and a schedule of any finder's fees, consulting fees, or brokerage fees, paid or payable by the other party in connection with the qualified interest rate management agreement.

(4) A schedule listing the estimated and maximum periodic scheduled payments to be paid by the local government unit, and to be received by the local government unit from the other party, in each year during the term of the qualified interest rate management agreement.

(5) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk and other risks of entering into the qualified interest rate management agreement. This paragraph includes schedules of the estimated and maximum scheduled periodic payments which would be due under the qualified interest rate management agreement.

(6) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk and other risks to the local government unit of the net payments due for all debt outstanding and all qualified interest rate management agreements of the local government unit. This paragraph includes schedules of the estimated and maximum net payments of total debt service and scheduled, periodic, net payments, which would be due under all of the qualified interest rate management agreements.

(7) The local government unit's plan to monitor interest rate risk, basis risk, termination risk, credit risk, market-access risk and other risks. This paragraph includes the valuation of the market or termination value of all outstanding qualified interest rate management agreements.

"Issue." All bonds authorized to be sold in respect of a particular project, whether authorized to be sold at one time or from time to time in one or more series.

"Local government unit." A county, county institution district, city, borough, incorporated town, township, school district or any similar, general or limited purpose unit of local government or any unit created by joint action of two or more local government units which is authorized to be created by law. The term does not include a city or county of the first class, an authority as defined in this section or any unit created by joint action of two or more local government units which have not been granted by statute the power to issue bonds. The term includes school districts of the first class presently operating under a home rule charter or home rule charter supplement, and the provisions of this subpart shall govern over inconsistent charter provisions.

"Ordinance." The formal action of a local government unit, whether, under the law applicable to the local government unit, the action is taken by ordinance or by resolution, to which the requirements of section 8003 (relating to advertisement and effectiveness of ordinances) applies.

"Project." Includes any of the following:

(1) Items of construction, acquisition, extraordinary maintenance or repair which have been undertaken by a local government unit.

(2) Preliminary studies, surveying, planning, testing or design work for any undertaking described in paragraph (1).

(3) Lands or rights in land to be acquired.

(4) Furnishings, machinery, apparatus or equipment normally classified as capital items, but these items must have a useful life of five years or more if financed separately and not as a part of a construction or acquisition project.

(5) The local government unit's share of the cost of a project undertaken jointly with one or more other local government units or the Commonwealth or one of its agencies.

(6) Countywide revision of assessment of real property.

(7) Funding of all or any portion of a reserve, or a contribution toward a combined reserve, pool or other arrangement, relating to self-insurance, which has been established by one or more local government units pursuant to 42 Pa.C.S. § 8564 (relating to liability insurance and self-insurance) up to, but not exceeding, the amount provided in section 8007 (relating to cost of project).

(8) Funding of an unfunded actuarial accrued liability or a portion of an unfunded actuarial accrued liability.

(9) Funding or refunding of debt incurred for any or all of the foregoing purposes.

(10) Any combination of any or all of the foregoing as any or all of the above may be designated as a project by the governing body for the financing of which it desires to incur debt.

(11) Any deficit to be funded by bonds or notes as provided in this subpart or the creation of a revolving fund for specific improvements.

(12) Where a local government unit has adopted a capital budget, any unfunded portion of the capital budget selected by ordinance for current funding.

"Qualified interest rate management agreement." An agreement, including a confirmation evidencing a transaction effected under a master agreement, entered into by a local government unit in accordance with, and fulfilling the requirements of section 8281 (relating to qualified interest rate management agreements), which agreement in the judgment of the local government unit is designed to manage interest rate risk or interest cost of the local government unit on any debt a local government unit is authorized to incur under this subpart, including, but not limited to, swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements, float agreements and other similar arrangements which, in the judgment of the local government unit, will assist the local government unit in managing the interest rate risk or interest cost of the local government unit.

"Resolution." A formal action of a governmental unit other than an ordinance, whether, under the law applicable to the local government unit, the action is taken by ordinance or by resolution, to which section 8003 (relating to advertisement and effectiveness of ordinances) does not apply.

"Revenue." In the title of a bond or note not preceded by the word "guaranteed," means a bond or note payable solely from user charges, rates, revenues, rentals, fees, special assessments and receipts pledged for the purpose.

"Series." All the bonds or notes to be sold and delivered at one time in respect of one project or of any two or more projects which have been combined for purposes of financing or where the bonds or notes have been combined for sale as provided in this subpart.

"Sinking fund." The special fund created pursuant to section 8221 (relating to creation of sinking funds and deposits, reserves and surplus funds) for the payment of the principal of and interest on bonds or notes, premium, if any, and assumed taxes, if any, or for the payment of a guaranty.

"Tax anticipation notes." Notes issued in anticipation of taxes, in anticipation of revenues or in anticipation of both as designated in the notes.

"Total revenues." All moneys received by the local government unit in a fiscal year from whatever source derived, except the following:

(1) Subsidies or reimbursements from the Federal Government or from the Commonwealth measured by the cost of or given or paid on account of a particular project financed by debt.

(2) Project revenues, rates, receipts, user charges, special assessments and special levies which are or will be pledged or budgeted for specific self-liquidating debt or for payments under leases, guaranties, subsidy contracts or other forms of agreement which could constitute lease rental debt except that the payments are payable solely from these sources, but that portion thereof that has been returned to or retained by the local government unit shall not be excluded.

(3) Interest on moneys in sinking funds, reserves and other funds, which interest is pledged or budgeted for the payment or security of outstanding debt, and interest on bond or note proceeds, if similarly pledged.

(4) Grants and gifts in aid of or measured by the construction or acquisition of specified projects.

(5) Proceeds from the disposition of capital assets, and other nonrecurring items, including bond or note proceeds not considered income under generally accepted municipal accounting principles.

"Unfunded actuarial accrued liability." With respect to a local government unit retirement system, pension plan or pension trust fund, the excess of the actuarial accrued liability over the actuarial value of assets of the retirement system, pension plan or pension trust fund, computed as follows:

(1) In the case of a local government unit that is subject to the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, in accordance with the requirements of that act.

(2) In the case of a local government unit that is not subject to the Municipal Pension Plan Funding Standard and Recovery Act, in accordance with the applicable laws for that local government unit regarding minimum funding requirements for the unit's retirement system, pension plan or pension trust fund or, if there are no such laws, in accordance with the ordinance, resolution or contract under which the local government unit participates in the retirement system, pension plan or pension trust fund. In the case of a local government unit that participates in a retirement system, pension plan or pension trust fund for employees of more than one local government unit, including an association of local government units cooperating under Subchapter A of Chapter 23 (relating to intergovernmental cooperation), the term includes the local government unit's pro rata share of the total unfunded actuarial accrued liability of the retirement system, pension plan or pension trust fund, as the pro rata share may be determined under the applicable laws or, if there are no applicable laws, under the ordinance, resolution or contract under which the local government unit participates in the retirement system, pension plan or pension trust fund.

§ 8003. Advertisement and effectiveness of ordinances.

(a) Advertisement of ordinances.--Notwithstanding any other statute to the contrary, an ordinance required to be adopted by this subpart shall be advertised not less than three nor more than 30 days prior to its enactment. The

advertisement shall appear once in a newspaper of general circulation in the area of the local government unit, shall set forth a summary of the contents of the ordinance and shall state that a copy of the full proposed text thereof may be examined by any citizen in the office of the secretary of the local government unit at the address and during the reasonable hours stated in the advertisement.

(b) Notice of enactment.--Not later than 15 days after the final enactment of the ordinance, a notice of the enactment shall be advertised once in a newspaper of general circulation in the local government unit. This notice shall state:

(1) Briefly, the substance of any amendments made during final passage and, where applicable:

(i) in respect of lease rental debt, the range of lease rental payments; and

(ii) in other cases, the price bid for bonds or notes and the range of interest rates named in the

successful bid.

(2) That the final text of the ordinance as enacted may be examined by any citizen in the office of the secretary of the local government unit at the address and during the reasonable hours stated in the notice.

(c) Effectiveness of ordinance.--The ordinance shall be valid and effective for all purposes on the fifth day after the second advertisement. The second advertisement shall be conclusive, so far as concerns the effectiveness of the ordinance or the validity of any debt incurred, as to the existence of all matters recited or referred to therein unless an action questioning the validity or effectiveness has been filed in timely manner as provided in this subpart, but the conclusiveness shall not affect the liability of any person for failure to permit inspection. No other or different publication shall be required, notwithstanding the provisions of any other statute.

§ 8004. When lease or other agreement evidences acquisition of capital asset.

(a) General rule.--A lease, guaranty, subsidy contract or other agreement entered into by a local government unit shall evidence the acquisition of a capital asset if:

(1) the lessee or obligor is a local government unit and the lessor or obligee is an authority organized under any law of this Commonwealth, another local government unit, a nonprofit corporation, the State Public School Building Authority or other agency or authority of the Commonwealth;

(2) the payments, or any portion thereof, which are payable in a subsequent fiscal year or subsequent fiscal years and which are applicable to debt service requirements or capital costs are payable, whether in all events or only upon the happening of certain events, under the terms of the instrument from the tax or general revenues of the local government unit; and

(3) upon termination of the lease guaranty, subsidy contract or other agreement or upon dissolution of the lessor or obligee, whether before or after the termination of the lease, title to the subject project or premises or a given part thereof or undivided interest therein shall or, at the option of the local government unit, may vest by agreement or operation of law in the local government unit or in the Commonwealth.

(b) Agreement exceeding useful life of asset.--A lease, guaranty, subsidy contract or other form of agreement entered into by a local government unit shall also evidence the acquisition of a capital asset if the payments to be made in a subsequent fiscal year or subsequent fiscal years applicable to debt service requirements or capital costs are payable, whether in all events or only upon the happening of certain events, under the provisions of the instrument from the tax or general revenues of the local government unit and the term of the instrument is equal to or exceeds the useful life of the asset, regardless of the nature of the lessor or obligee.

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

(a) Classification.--Bonds or notes prior to the authorization thereof shall be classified by the issuing local government unit as one of the following three types of obligation:

(1) General obligation bonds or notes.

(2) Guaranteed revenue bonds or notes.

(3) Revenue bonds or notes.

(b) Guaranteed revenue bonds or notes.--Guaranteed revenue bonds or notes may have either a general or a limited guaranty as the governing body of the local government unit may determine, but, if the guaranty is less than a full unconditional guaranty, the title of the bond or note shall contain the word "limited" before the word "guaranteed." The guaranty of the local government may be of its own revenue bonds or notes or of the revenue bonds or notes of an authority or another local government unit subject, however, to the provisions of subsection (c).

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

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

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

§ 8006. Preliminary cost estimates.

Prior to the initial authorization of bonds or notes or the issuance of any guaranty to finance any project involving construction or acquisition, the governing body shall obtain realistic cost estimates through actual bids, option agreements or professional estimates from registered architects, professional engineers or other persons qualified by experience. Any local government unit may retain the services of a financial advisor. Costs of preliminary estimates and the fees of financial advisors may, if initially paid by the local government unit, be reimbursed out of the net proceeds of the issue of bonds or notes as a cost of the project.

§ 8007. Cost of project.

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

§ 8008. Home rule.

Every local government unit obtaining a home rule charter after July 12, 1972, shall be subject to the substantive provisions of this subpart applicable to it as if it were a local government unit and may adopt the procedural provisions of this subpart, by incorporation thereof by reference, in its home rule charter.

§ 8009. Guaranty funds and compulsory associations.

(a) Self-insurance.--No self-insurance program funded pursuant to this subpart shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this Commonwealth, nor shall any such self-insurance program funded pursuant to this subpart, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the coverage provided by such self-insurance program.

(b) Exception.--When a local government unit or group of local government units obtains insurance from a self-insurance program funded pursuant to this subpart, such risks, wherever resident or located, shall not be covered by any insurance guaranty fund or similar mechanism in this Commonwealth.

SUBCHAPTER B
LIMITATIONS ON DEBT OF LOCAL GOVERNMENT UNITS

Sec.

- 8021. No limitation on debt approved by electors.
- 8022. Limitations on incurring of other debt.
- 8023. Transfer to electoral debt of debt incurred without approval of electors.
- 8024. Exclusion of subsidized debt from net nonelectoral debt or net lease rental debt.
- 8025. Exclusion of self-liquidating debt evidenced by revenue bonds or notes to determine net nonelectoral debt.
- 8026. Exclusion of other self-liquidating debt to determine net nonelectoral debt or net lease rental debt.
- 8027. Effect of debt limitations on outstanding debt.
- 8028. Determination of existing net nonelectoral debt and net nonelectoral plus net lease rental debt.

8029. Determination of debt limits.

§ 8021. No limitation on debt approved by electors.

All debt of any classification, whenever incurred, which is approved, either before or after the debt is incurred, by majority of the votes cast upon the question of incurring the debt at a general or special election held as provided by applicable law is excluded from the nonelectoral debt or the lease rental debt, as the case may be, of a local government unit, and the limitations imposed by this subpart upon the debt of the classification shall not apply to such debt.

§ 8022. Limitations on incurring of other debt.

(a) Nonelectoral debt.--Except as provided in subsections (c), (d) and (e) and as otherwise specifically provided in this subpart, a local government unit shall not incur any new nonelectoral debt if the aggregate net principal amount of the new nonelectoral debt, together with all other net nonelectoral debt outstanding, would cause the total net nonelectoral debt of the local government unit to exceed any of the following:

- (1) One hundred percent of its borrowing base in the case of a school district of the first class.
- (2) Three hundred percent of its borrowing base in the case of a county.
- (3) Two hundred fifty percent of its borrowing base in the case of any other local government unit.

(b) Nonelectoral debt plus lease rental debt.--Except as provided in subsections (c), (d) and (e) or as otherwise specifically provided in this subpart, in the exercise of legislative control over the budgets and expenditures of local government units and of the purposes for which tax moneys and general revenues of local government units may be expended, a local government unit shall not incur any new lease rental debt or nonelectoral debt if the aggregate net principal amount of the new debt, together with any other net nonelectoral debt and net lease rental debt then outstanding, would cause the outstanding total of net nonelectoral debt plus net lease rental debt of the local government unit to exceed any of the following:

- (1) Two hundred percent of the borrowing base in the case of a school district of the first class.
- (2) Four hundred percent of its borrowing base in the case of a county.
- (3) Three hundred fifty percent of its borrowing base in the case of all other local government units.

(c) Self-liquidating or subsidized debt.--The limitations and prohibitions of subsections (a) and (b), referred to as the "regular debt limits," shall not apply to electoral debt; to debt excluded in computing net amounts of nonelectoral debt or of lease rental debt, as self-liquidating or because subsidized, when the exclusion is made pursuant to sections 8024 (relating to exclusion of subsidized debt from net nonelectoral debt or net lease rental debt), 8025 (relating to exclusion of self-liquidating debt evidenced by revenue bonds or notes to determine net nonelectoral debt) and 8026 (relating to exclusion of other self-liquidating debt to determine net nonelectoral debt or net lease rental debt); nor to debt incurred to fund an unfunded actuarial accrued liability except to the extent that bonds or notes issued to fund an unfunded actuarial accrued liability shall be limited to the principal amount necessary, after deduction of costs of issuance, underwriter's discount and original issue discount, to fund the unfunded actuarial accrued liability.

(d) Additional nonelectoral or lease rental debt.--Additional nonelectoral or additional lease rental debt or both in the aggregate amount of 100% of the borrowing base may be incurred by a county which has assumed countywide responsibility or, where the county has not assumed countywide responsibility, by a local government unit which has assumed responsibility for its and its adjacent areas for hospitals and other public health services, air and water pollution control, flood control, environmental protection, water distribution and supply systems, sewage and refuse collection and disposal systems, education at any level, highways, public transportation or port operations. The additional debt limit may be so utilized only to provide funds for and towards the cost of capital facilities for any or any combination of the foregoing purposes. Debt, other than electoral debt, at any time incurred for such purposes or any of them may be assigned by ordinance to this additional debt limit if the remaining borrowing capacity within the regular limits is insufficient to finance other projects deemed necessary by the governing body of the local government unit.

(e) Emergency debt.--If replacement of assets is required as a result of fire, flood, storm, war, riot, civil commotion or other catastrophe, or the replacement or any improvements are required for the prevention of dangers to health or safety, or if funds are required for the payment of tort liability not covered by insurance, or if funds are required to be used for and towards the costs of mandated installations of health, safety, antipollution, environmental protection and control facilities or of complying with other mandated Federal or State programs, a local government unit lacking sufficient remaining borrowing capacity as nonelectoral or lease rental debt or being otherwise prohibited by section 8045 (relating to effect of defeat of question) from incurring debt for the purpose, upon petition to the court of common pleas alleging the catastrophe, or the danger to health and safety, or the mandated nature of the program and the estimated costs of the proposed facilities, and upon proof thereof to the satisfaction of the court, shall be authorized, notwithstanding section 8045 or the insufficiency of nonelectoral or lease rental borrowing capacity, to incur debt, as either lease rental or nonelectoral debt, up to an additional 50% of its borrowing base if the

increase is found by the court to have been made necessary under this subsection by reason of the causes set forth in the petition. The increase, together with all outstanding other additional emergency debt which may have been previously authorized under this subsection excluding any allocated to the additional debt limit under subsection (d), shall not exceed 50% of the borrowing base. Public notice of the intention to file such a petition and of the purpose for which the additional emergency debt is to be incurred shall be given by advertisement in at least one and not more than two newspapers of general circulation and in the legal journal not less than five nor more than 20 days before the filing thereof. The additional emergency debt may be incurred only for the purposes and upon the terms approved by the court. The amount of the debt initially in excess of the regular debt limits shall not thereafter be included in computing net amounts of nonelectoral or lease rental debt.

- (f) Limitations on incurring of debt by school districts.—Except for purposes of refinancing existing debt under this subpart, and notwithstanding the other provisions of this section, no school district of the first class A through fourth class shall incur any new nonelectoral debt or lease rental debt, if the aggregate net principal amount of such new debt together with any other net nonelectoral debt and lease rental debt then outstanding, would cause the outstanding total of net nonelectoral debt plus net lease rental debt of the school district to exceed 225% of the school district's borrowing base as defined in section 8002 (relating to definitions). This section shall apply regardless of whether there is an election by the school district under section 8703 (relating to adoption of referendum).

§ 8023. Transfer to electoral debt of debt incurred without approval of electors. The governing body of any local government unit may, by resolution, signify a desire to have any debt theretofore incurred without the approval of the electors transferred to the electoral debt. The resolution shall direct the holding of an election for the purpose of obtaining the approval of the electors to the debt in the manner provided for securing the approval of electoral debt. The question shall be whether the remaining unpaid debt incurred without the approval of the electors for the project named in the question shall be removed from the category of nonelectoral or lease rental debt. If a majority of the votes cast upon the question at the election favor transfer to electoral debt, a certified copy of the resolution, proof of due advertisement of the election and a certified return of the election shall be filed with the department. If the department finds the proceedings to have been taken in conformity with the law, it shall endorse its approval on a duplicate original and return it to the local government unit. The debt shall thereupon be no longer classified as nonelectoral or lease rental debt.

§ 8024. Exclusion of subsidized debt from net nonelectoral debt or net lease rental debt.

(a) Filings with department.--Subsidized debt shall not be excluded from nonelectoral debt or lease rental debt, as the case may be, for the purposes of establishing net outstanding debt of either category until the following have been filed with and approved by the department:

(1) A copy, certified by the secretary of the board of the local government unit or of the authority, of the permanent or preliminary approval from the Commonwealth or from the Federal Government of the project of the related bonds or notes, or of the interest thereon, for subsidization or for reimbursement of all or part of debt service or on account of operations, but measured by the cost of the project or a certified copy of the subsidy contract with another local government unit or an authority.

(2) Evidence satisfactory to the department from the subsidizing agency as to the indicated annual amount of the subsidy.

(3) Appropriate reference to the legislation authorizing the reimbursement or subsidy indicating the legislated recurring nature of the subsidy or, in the case of a subsidy contract with another local government unit, evidence satisfactory to the department that the amount to be excluded is within the debt limitations of the other local government unit or has been approved as electoral debt.

(4) A computation, in reasonable detail, certified by the proper officers of the local government unit or of the authority, or by the financial advisor if one be retained, showing the principal amount of the bonds to be serviced by the reimbursement or subsidy, determined in the proportion that the total indicated subsidy or reimbursement to be received over the remaining life of the issue bears to the total debt service to be paid over the remaining life of the issue, computed to stated maturity or earlier mandatory call dates. The principal amount of the bonds or notes of the local government unit of the authority which will constitute subsidized debt shall, in those instances where the subsidy is related to a percentage of lease rentals or to a percentage of sinking fund payments, in either case applicable solely to debt service, be that stated percentage of the bonds or notes. That proportion of the bonds or of lease rental debt shall be excluded as subsidized debt. The filing may be made simultaneously with the filing for the approval of the balance of the bonds then being issued or may be made or corrected at a later date.

(b) Incurring new debt.--Each time any new debt is to be incurred, if subsidized debt is to be excluded, a new certification shall be made to the department, stating one of the following:

(1) That there has been no decrease in the subsidy.

(2) That there has been a decrease, in which case the certification shall include a recomputation of the principal amount to be excluded.

(3) That there has been an increase and the local government unit desires an increased exclusion certifying all matters so changed and recomputing the principal amount to be excluded.

(c) Approval by department.--If the department approves the exclusion of the principal amount of bonds or notes or lease rental debt as being subsidized debt in accordance with this subpart, originally or upon any recertification it shall return a duplicate original of the filing to the local government unit with its approval endorsed thereon. Upon receipt of the approval by the local government unit, the principal amount of bonds shall be excluded from nonelectoral debt or lease rental debt for the purpose of determining net debt in each category.

§ 8025. Exclusion of self-liquidating debt evidenced by revenue bonds or notes to determine net nonelectoral debt.

Self-liquidating debt evidenced by revenue bonds or notes shall not be excluded from nonelectoral debt for the purpose of establishing net nonelectoral debt until the following have been filed with the department:

(1) A statement by the proper officials of the local government unit certifying the amount of the debt, the project for which it was incurred and the nature of the revenues from which the debt is to be repaid.

(2) A certificate from a qualified professional engineer or architect, or other person qualified by experience appropriate to the project, estimating the revenues and operating expenses of the project and showing that the net revenues so estimated will be sufficient to pay the annual debt service as it falls due.

(3) An opinion of the bond counsel approving the issue to the effect that the holders of the bonds or notes have no claim upon the taxing power or tax revenues of the local government unit issuing the bonds or notes, but only claims upon the specific revenues pledged and rights to the enforcement of any covenants as to the levying or collection of rates and charges for the use of the project being financed or any covenants as to the assessment of benefits upon properties serviceable by the project as provided in the covenants with the holders of the revenue bond.

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

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

(1) The estimated or, if available, the actual cost of construction, acquisition or improvement of the project financed or to be financed.

(2) The principal amount of the general obligation bonds or notes, the bonds, notes or obligations guaranteed or the bonds or notes of an authority or another local government unit secured by an instrument evidencing lease rental debt which are to be issued, the dates, interest rate and amounts of each stated maturity thereof and, set forth separately, the same information with respect to the outstanding bonds, notes or obligations.

(3) The amount or the estimated amount of the annual debt service for each year during the life of all the bonds, notes or obligations or the bonds or notes of an authority or another local government unit secured by an instrument evidencing lease rental debt issued and intended to be issued to finance the project.

(4) The date or estimated date of the completion of the project.

(5) The estimated net revenues of the project for each year of the remaining life of the bonds, notes or obligations with a computation showing, in reasonable detail, that the net revenues, together with other available funds to be received in respect of the project, will be sufficient in each year to pay the annual debt service, other than capitalized debt service, on the bonds, notes or obligations or a specified aggregate principal amount thereof.

(6) The qualified person's certificate that the estimates of net revenues have been computed from the person's best estimate of the gross revenues to be obtained from the rentals, rates, tolls and charges, interest to be received on reserve accounts, established or to be established by ordinance or from payments under bulk service or other contracts with other local government units or authorities for the use of the project, or the gross revenues to be received from special assessments levied to finance the project, by deducting from the gross revenues in each year the total estimated costs of operation and maintenance of the project chargeable against the revenues or assessments and any State taxes assumed on such bonds or notes, all based on assumptions deemed reasonable for the purpose by that person.

(7) The qualified person's further certificate that he is qualified to act with regard to the type of project being financed, stating his experience.

(b) Approval by department.--If the department approves the exclusion of the principal amount of bonds, notes or obligations or bonds or notes of an authority of another local government unit secured by an instrument evidencing lease rental debt stated in the report as being self-liquidating debt as being in accordance with law, it shall endorse its approval upon a duplicate original of the proceedings and return it to the local government unit. Upon receipt of the approval by the local government unit, the principal amount of bonds, notes or obligations shall be excluded from nonelectoral debt or net lease rental debt, as the case may be, during the period of construction and thereafter until new electoral, nonelectoral or lease rental debt is to be incurred. At that time, if the principal is to be excluded, a certification of no decrease, other than decreases resulting from the payment of bonds or notes, in the amount to be excluded shall be included in the debt statement to be filed pursuant to section 8110 (relating to debt statement). If there is a decrease or if more of the debt is desired to be excluded as self-liquidating, a new certification shall be filed.

§ 8027. Effect of debt limitations on outstanding debt.

Notwithstanding anything in other law or in this subpart, this subpart shall not be construed to invalidate any debt which was lawful when incurred or which could have been lawfully incurred if this subpart had been in effect, whether incurred before or after the passage of this subpart, and the percentage limitations set forth in section 8022 (relating to limitations on incurring of other debt) shall be deemed increased to the extent necessary to cover such incurred debt. This subpart shall not be construed to subject any debt incurred and voted upon prior to July 12, 1972, as electoral debt to any of the limitations herein imposed by this subpart on nonelectoral debt.

§ 8028. Determination of existing net nonelectoral debt and net nonelectoral plus net lease rental debt.

(a) Gross nonelectoral and lease rental debt.--From the gross principal amount of all incurred debt shall be subtracted gross incurred electoral debt. The amount remaining shall then be separated into gross incurred nonelectoral debt and gross incurred lease rental debt.

(b) Net nonelectoral and lease rental debt.--Net nonelectoral and net lease rental debt shall then be determined by subtracting separately from gross nonelectoral debt and gross lease rental debt respectively, as may be applicable and as the local government unit may desire to claim, the following:

(1) All funds in the applicable sinking funds, whether controlled by the local government unit or by the authority which incurred the debt, reserve funds or accounts, except maintenance and replacement reserve funds or accounts, and net bond proceeds, held for the payment of the cost of a project financed by the debt, including, in each case, interest accrued thereon, but only to the extent that those funds are available for payment of the principal amount of the debt.

(2) The current appropriation for the payment of the principal of and overdue interest on the nonelectoral debt or for the payment of the net lease rental in the case of lease rental debt, except to the extent that the same has already been deposited in sinking funds.

(3) The uncollected amount of the benefits or costs or the estimates thereof which have been or are authorized to be assessed against owners of property and for which liens may be legally filed, to the extent that the assessments are available for the payment of the principal amount of the debt.

(4) The amount of delinquent taxes from prior years and other undisputed municipal liens actually filed against property less the sum of:

(i) A reserve, reasonable in amount, for so much thereof as may not be collected.

(ii) The amount thereof appropriated for current expenses in the current year's budget.

(5) The amount of self-liquidating debt, subsidized debt and debt issued to fund an unfunded actuarial accrued liability, properly excluded and concurrently excludable from each respective category being computed.

(6) The amount of surplus cash not specifically appropriated to any purpose and available for the payment of the principal amount of debt, but, if this deduction is claimed, the amount so claimed may not thereafter be appropriated to any purpose except the payment of debt.

(7) All other solvent debts due the local government unit directly, the payment of which can be enforced as one of the unit's quick assets, and which have not been committed to any other purpose.

(8) The amount of any insurance coverage indemnifying the local government unit against any outstanding liability to the extent the liability is debt.

(c) Priority of applying exclusions.--In determining net nonelectoral debt, the amounts claimed under subsection (b)(8) shall be exclusively applicable to nonelectoral debt, and subsection (b)(4), (6) and (7) shall be first applied against nonelectoral debt, with any excess being applicable against lease rental debt.

(d) Valuation of legal investments.--In computing the value of any funds, all legal investments therein shall be computed at current market values.

(e) Use of debt determinations.--The net nonelectoral debt so determined shall be used in determining compliance with the limit imposed by section 8022(a) (relating to limitations on incurring of other debt). The sum of the net nonelectoral debt and the net lease rental debt so determined shall be used in determining compliance with the limit imposed by section 8022(b).

§ 8029. Determination of debt limits.

Whenever it is necessary to determine the limitations on the amount of nonelectoral debt or nonelectoral debt plus lease rental debt that may be incurred by any local government unit, the appropriate percentage limitations of section 8022 (relating to limitations on incurring of other debt) shall be applied to the borrowing base of the local government unit. The certificate as to the borrowing base shall be made a part of all proceedings for the sale of bonds or notes, for the guaranty of authority obligations or for the incurring of lease rental debt and a copy shall be filed with the department as a part of all proceedings required to be filed for its approval. The borrowing base set forth in the certificate and a similar certificate as to net nonelectoral debt or net lease rental debt outstanding shall be conclusive as to the respective figures for the purposes of this subpart, upon the approval of the proceedings by the department, unless contested within the specified time limits as provided in this subpart.

SUBCHAPTER C
PROCEDURE FOR SECURING APPROVAL OF ELECTORS

Sec.

- 8041. Desire resolution and expense of certain elections.
- 8042. Advertisement of election.
- 8043. Conduct of election.
- 8044. Finality of result of election.
- 8045. Effect of defeat of question.
- 8046. Issuance of bonds, notes or other instruments to evidence electoral debt.
- 8047. Cancellation or termination of approval of electors.
- 8048. Limitation on use of proceeds of electoral debt.
- 8049. Manner of changing purpose of electoral debt.

§ 8041. Desire resolution and expense of certain elections.

(a) Resolution.--Whenever the governing body of any local government unit shall determine that it is advisable to make an increase in the debt of the local government unit with the assent of the electors or to obtain the assent of the electors to transfer any debt previously incurred without the approval of the electors to electoral debt, it shall adopt a resolution signifying that determination, calling an election for the purpose of obtaining the assent and approving the content and substantial form of notice of election.

(b) Date of election.--The date fixed shall be that of a municipal, general, primary or special election for other purposes, but, if the date of the nearest of the elections is more than 90 or less than 30 days from the effective date of the desire resolution, the governing body may fix a date for a special election.

(c) Payment of expense of special election.--In the case of a special election to increase debt not held concurrently with an election for other purposes, the expense of holding the election shall be paid by the local government unit for whose benefit it is held.

§ 8042. Advertisement of election.

(a) General rule.--Notice of the election shall be given in one but not more than two newspapers of general circulation in the local government unit and in the legal journal, if any, designated by the rules of court of the county in which the local government unit is located for the publication of legal notices and advertisements. If only newspaper publication is done, the notice shall be published three times at intervals of not less than three days, but, if published in a weekly newspaper and in the legal journal, it shall be published only twice, once a week for two successive weeks. The first publication in at least one newspaper shall be not less than 14 nor more than 21 days before the election, but all publications shall be after the effective date of the resolution and need not be upon the same dates in different newspapers.

(b) Content of election notice.--The election notice shall contain and state:

- (1) The date upon which the election is to be held.
- (2) The estimated amount of the debt to be incurred or to be approved by the electors if already

incurred.

- (3) The project for which the debt will be or was incurred.
- (4) The estimated cost of the project.
- (5) The question to be submitted to the electors at the election, which shall be substantially in the

following appropriate form:

Shall debt in the sum of (insert amount) dollars for the purpose of financing (insert brief description of project) be (authorized to be incurred as) (transferred from nonelectoral debt to) debt approved by the electors?

§ 8043. Conduct of election.

(a) Certification of resolution and question.--The governing body, at least 45 days before any election called pursuant to section 8041 (relating to desire resolution and expense of certain elections), shall cause to be certified to the county board of elections of each county in which the election is to be held a copy of the desire resolution and the form of the question to be submitted to the electors.

(b) Regulation of election.--An election called pursuant to section 8041 shall be held at the place, during the hours and under the same regulations as provided by law for the holding of municipal elections. In receiving, counting and making returns of the votes cast, the inspectors, judges and clerks of the election shall be governed by the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(c) Qualification of electors.--At the elections, only qualified electors of the local government unit, the debt of which is to be increased or approved by the electors, may vote.

(d) Election returns.--The election officers and clerks shall make return on forms provided by the county board of elections of the votes cast on the question to the county board of elections. The county board of elections shall compute the vote and transmit a certified return thereof to the governing body of the local government unit, which shall enter the same on its minutes. If the certified return shows that a majority of those voting on the question have voted in favor thereof, irrespective of any other statute requiring a greater percentage, the local government unit shall file with the department a certified copy of the desire resolution, the certified return and proofs of publication of the notice of election, whereupon the amount of the debt so approved shall constitute electoral debt from the date of the election, subject to the provisions of section 8044 (relating to finality of result of election).

§ 8044. Finality of result of election.

Any interested party or any taxpayer may contest the validity of any election proceedings under this subchapter by filing with the court a complaint in equity specifically alleging any errors complained of in the proceedings, and the petitioner shall have the burden of proof. If no complaint has been filed or if a complaint has been filed and has been finally dismissed, the election shall be conclusively deemed to be valid. If, prior to the timely filing of a complaint, further proceedings in connection with the incurring of the debt have been filed with the department, then any contest shall proceed by way of an appeal from the action of the department upon the proceedings. The petition or appeal provided by this section shall be the party's or the taxpayer's sole and exclusive remedies.

§ 8045. Effect of defeat of question.

If at the election the question is defeated, another election for the same purpose may not be held until 155 days have elapsed since the prior election. During the interim, no bonds or notes may be issued and no lease rental debt may be incurred for such purpose, except that nonelectoral or lease rental debt may be incurred if required to complete projects already under construction, to finance a different portion or portions of a capital budget or to evidence debt incurred for purposes and pursuant to a court approval obtained in accordance with section 8022(e) (relating to limitations on incurring of other debt).

§ 8046. Issuance of bonds, notes or other instruments to evidence electoral debt.

If at the election the question is approved, the governing body shall issue bonds or notes as electoral debt as obligations of the local government unit or shall authorize execution and delivery of an instrument which, but for the electoral approval, would evidence lease rental debt at the times and evidencing the amounts of obligations not exceeding in the aggregate the estimated amount approved by the electors, subject to the provisions of Subchapter C of Chapter 81 (relating to provisions of bonds and notes). The bonds, notes or obligations shall continue for such term as may have been stated in the notice of election or, if none was stated, for the term the governing body determines. The initial series may be of bond anticipation notes or of notes to be refunded by a bond issue. If the governing body determines it advisable, the initial series of bonds or notes constituting a part of the issue may be for a shorter term of years, with the maturity of subsequent series stated to mature later than the last stated maturity of the preceding series for the same project. This subchapter shall not preclude the issue of additional nonelectoral debt or lease rental debt to complete the project or the issue of additional electoral debt for that purpose if authorized by a subsequent election.

§ 8047. Cancellation or termination of approval of electors.

(a) Lapse of time.--On the tenth anniversary of the date on which an assent of the electors obtained under this subpart became final, the authority to issue any or any further bonds or notes, other than as nonelectoral debt or lease rental debt subject to the limitations imposed by this subpart, shall terminate.

(b) Resolution of governing body.--The governing body of any local government unit may by resolution, without the assent of the electors, rescind or cancel, in whole or in part, the authorization to incur electoral debt for any reason stated in the resolution, and thereupon the assent of the electors shall be of no further effect. A certified copy of the resolution with proof of the due publication thereof shall be filed with the department.

§ 8048. Limitation on use of proceeds of electoral debt.

Where bonds or notes have been issued pursuant to an assent of the electors given under this subpart, the proceeds thereof shall be kept in a separate account and shall be invested and used only for the cost, including the retirement of notes previously issued for the same project with the proceeds of bonds, of the project for which the assent was obtained unless such purpose is changed as provided in this subpart. Otherwise, the proceeds shall be kept invested and used for the retirement at maturity, or earlier call date, of the fifth or any subsequent stated maturity of the relevant series of bonds or notes unless the proceeds were previously used to purchase the bonds or notes in the open market or upon tenders at prices not exceeding the principal amount thereof plus accrued and unpaid interest to the date of purchase.

§ 8049. Manner of changing purpose of electoral debt.

If the governing body determines it to be advisable either before or after the issue of bonds or notes to use the proceeds or any part thereof of bonds or notes evidencing electoral debt for any purpose other than the project approved by the electors or the payment or prior redemption or purchase of bonds or notes evidencing debt incurred for the project, the governing body shall by resolution express its desire to do so, specifying the project for which the funds are proposed to be used, and shall provide for an election to be held in like manner, time and place as provided in this subchapter for elections to secure the assent of the electors to the increase of debt, except that the notice of the election shall state:

- (1) The date on which such election is to be held.
- (2) The date and amount of money theretofore borrowed and the project for which borrowed.
- (3) The amount of money remaining unused.
- (4) The new purpose for which the local government unit desires to make use of the money.
- (5) The reason why the money is not being used for the purpose for which it was borrowed.
- (6) The question to be submitted to the electors, which shall be substantially in the following form:

Shall the sum of (insert amount) dollars heretofore borrowed or authorized to be borrowed by this local government unit for the purpose of (state purpose) be used for the purpose of (state purpose)?

The election shall be conducted, return made thereon, notices of election published and certificates filed and recorded as provided in section 8043 (relating to conduct of election). If it appears that a majority of those voting on the question have voted in favor of using the funds for the changed purpose, irrespective of any other statute requiring a greater percentage, the funds specified may be used for the changed purpose.

CHAPTER 81 INCURRING DEBT AND ISSUING BONDS AND NOTES

Subchapter

- A. General Provisions
- B. Tax Anticipation Notes and Funding Debt
- C. Provisions of Bonds and Notes
- D. Sale of Bonds and Notes

SUBCHAPTER A GENERAL PROVISIONS

Sec.

8101. Combining projects for financing or series of bonds or notes for sale.
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- 8113. Lost, stolen, destroyed or mutilated bonds or notes.
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- 8115. Contractual effect of ordinances and resolutions.
- 8116. Unfunded actuarial accrued liability - condition precedent.
- § 8101. Combining projects for financing or series of bonds or notes for sale.

The governing body of a local government unit may by ordinance take any of the following actions in connection with the issuance of bonds or notes or the authorization of the instrument creating lease rental debt:

(1) In lieu of combining two or more items or elements permitted to be combined under the definition of "project" in section 8002 (relating to definitions) as a single project, designate any one or more of the items or elements as a project and combine the projects for financing purposes by one series of bonds or notes. If the series of bonds or notes are revenue bonds or notes, all projects so combined shall be revenue-producing projects, all or a portion of the rates, rentals, receipts, tolls and charges may be combined, common reserve funds may be created and common or cross covenants may be made in respect of each project.

(2) Offer for simultaneous sale under separate or combined bids any two or more series of bonds or notes of any type.

(3) Provide for the financing of a project or projects by the issuance, either simultaneously or in succession, of any combination of instruments evidencing debt applicable to the project or projects and authorized by this subpart. Any ordinance required by this section may be included in any authorizing ordinance required by section 8103 (relating to ordinance authorizing issuance of bonds or notes or instruments evidencing lease rental debt).

§ 8102. Preliminary authorizations as to financing.

The governing body of a local government unit may express its intent to evidence debt as electoral debt, nonelectoral debt or lease rental debt. Action may be taken either by resolution, which may also provide for the submission of proposals to purchase any bonds or notes, or by ordinance. But neither bonds or notes nor lease, guaranty, subsidy contract or other agreement evidencing lease rental debt shall be authorized other than by the enactment of any ordinances required by this subchapter or, in the case of notes issued under section 8109 (relating to small borrowing for capital purposes), other than by adoption of the resolution required under section 8109.

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

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

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

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

(ii) A statement of the aggregate principal amount of bonds or notes proposed to be issued pursuant to the ordinance or, as the case may be, to be secured by the instrument evidencing lease rental debt.

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

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

(v) In the case of nonelectoral or lease rental debt which is subject to exclusion as subsidized debt or self-liquidating debt if the exclusion is presently desired, an authorization to the proper officers of the local government unit to prepare and file any statements required by Subchapter B of Chapter 80 (relating to limitations on debt of local government units) which are necessary to qualify all or any portion of the debt for exclusion from the appropriate debt limit as self-liquidating debt or subsidized debt.

(2) In every case except that of lease rental debt, the following:

(i) A statement whether the bonds or notes when issued will be general obligation bonds or notes, guaranteed revenue bonds or notes or revenue bonds or notes.

(ii) The covenant required by section 8104 (relating to covenant to pay bonds or notes or a guaranty) if the bonds or notes when issued will be general obligation bonds or notes or guaranteed revenue bonds or notes, and the pledge of specific rents, revenues or receipts if the bonds or notes when issued will be guaranteed revenue bonds or revenue bonds and, if limited guaranteed revenue bonds or notes, a statement of the limitations on the guaranty.

(iii) The substantial form of the bonds or notes to be issued, including the substantial form of any coupon or authentication certificate.

(iv) A schedule of stated principal maturity or mandatory redemption amounts and dates, the rate or rates of interest and interest payment dates, places of payment and, if desired, provisions for prior redemption, including call dates and call prices, all of which shall conform with Subchapter C (relating to provisions of bonds and notes).

(v) A statement of the manner in which the bonds or notes are to be or have been sold and, if to be sold at public sale, the matters required or permitted by Subchapter D (relating to sale of bonds and notes) or, if to be sold at negotiated sale, there may be included the matters required or permitted by section 8107 (relating to award of bonds or notes).

(vi) Except in the case of notes issued under section 8109, a covenant creating the sinking fund required by Subchapter B of Chapter 82 (relating to sinking funds and other funds and accounts).

(vii) A statement of any tax or taxes the payment of which is assumed by the local government unit in consideration of the purchase of the bonds or notes and, if desired, authorization for the purchase of bond insurance.

(viii) The authorization to the proper officials of the local government unit to contract with one or more banks or bank and trust companies for services as trustee, fiscal agent, sinking fund depository or paying agent and to contract with any additional copaying agents desired, but compliance with this subparagraph shall not be required in the case of notes issued under section 8109.

(3) In the case of lease rental debt, the authorization to the proper officials of the local government unit to execute and deliver a lease, guaranty, subsidy contract or other agreement, the annual or semiannual rental or payment to be paid thereunder, any sources of payment and, in the case of a guaranty, the covenant required by section 8104.

(4) In the case of revenue or guaranteed revenue bonds or notes, there may be included the matters set forth in sections 8105 (relating to additional provisions in ordinance authorizing issuance of revenue or guaranteed revenue bonds or notes), 8147 (relating to pledge of revenues) and 8148 (relating to deeds of trust and other agreements with bondholders and noteholders).

(b) Date of incurring nonelectoral and lease rental debt.--The nonelectoral debt evidenced by the issuance of bonds or notes or the lease rental debt evidenced by the execution of a lease, guaranty, subsidy contract or other agreement shall be deemed to have been incurred upon the final enactment of the ordinance required by this section or, in the case of small borrowings, upon final adoption of the resolution required by section 8109. Electoral debt is incurred when the assent of the electors has been given.

(c) Change in purpose of nonelectoral general obligation debt.--In the case of nonelectoral general obligation debt, the purpose may be changed by similar action at any time.

§ 8104. Covenant to pay bonds or notes or a guaranty.

(a) General rule.--The local government unit shall, in the ordinance authorizing the issue of bonds or notes or a guaranty or in such bonds or notes, or in the trust indenture securing the same, or in the instrument of guaranty, covenant with the holders from time to time of the bonds or notes or guaranteed bonds or notes, and of the coupons thereto appertaining, that the local government unit shall do the following:

(1) Include the amount of the debt service, or the amounts payable in respect of its guaranty, in each case specified in the covenant, for each fiscal year in which the sums are payable in its budget for that year.

(2) Appropriate those amounts from its general or specially pledged revenues, as the case may be, for the payment of the debt service or guaranty.

(3) Duly and punctually pay or cause to be paid from its sinking fund or any other of its revenues or funds the principal of and interest on every bond or note or, to the extent of its obligation, the amount payable in respect of the guaranty, at the dates and places and in the manner stated in the bonds and in the coupons thereto appertaining or in the guaranty, according to the true intent and meaning thereof.

(b) Obligation of government unit.--For budgeting, appropriation and payment in respect of its general obligation bonds or notes, its guaranteed revenue bonds or notes or its guaranty of the bonds or notes of an authority or other local government unit, the local government unit shall pledge its full faith, credit and taxing power unless a

guaranty is limited to specified revenues of the guarantor. Nothing in the covenant shall obligate the local government unit to budget, appropriate or make any payments on limited guaranteed revenue bonds or on a limited guaranty of bonds or notes of any authority or other local government unit beyond the stated terms of its guaranty. The covenant shall be specifically enforceable. This section does not give any local government unit any taxing power not granted by another provision of law.

§ 8105. Additional provisions in ordinance authorizing issuance of revenue or guaranteed revenue bonds or notes.

In addition to the provisions required or permitted by sections 8103 (relating to ordinance authorizing issuance of bonds or notes or instruments evidencing lease rental debt), 8147 (relating to pledge of revenues) and 8148 (relating to deeds of trust and other agreements with bondholders and noteholders), the ordinance authorizing the issuance of revenue bonds or notes or guaranteed revenue bonds or notes may also contain the following:

(1) Covenants or provisions with respect to the collection, custody, investment and disbursement of rents, revenues, rates and charges for the use of the project as may be desired.

(2) Covenants as to the fixing and collection of rents, rates and charges for the use of the project as may be desired and deemed necessary for the lawful security of the holders of the bonds or notes, except that no covenant and no agreement with the holders of bonds or notes shall require an increase in the rents, rates, tolls and charges to a level which, in the opinion of the registered professional engineer advising the local government unit, will result in a decrease in gross revenues over what would have been received at a somewhat lower rate level.

(3) Provisions granting a security interest in the rents, revenues, rates, tolls and charges for the security and benefit of the holders of the notes, bonds and coupons.

(4) Provisions creating such reserve funds or accounts as deemed desirable for the future security of the notes, bonds and coupons and requiring the observance of such covenants on the part of the local government unit deemed necessary or desirable for the protection of the holders of the notes, bonds and coupons or for the maintenance and preservation of the project.

(5) Authorization to the proper officers of the local government unit to execute and deliver any trust indenture containing any other, further and lawful provisions desired.

§ 8106. Sinking fund depository and trustee for bondholders or noteholders.

(a) General rule.--Every local government unit issuing bonds or notes other than notes issued under section 8109 (relating to small borrowing for capital purposes) shall appoint a sinking fund depository which may also serve as paying agent for the bonds or notes. The sinking fund depository shall be a bank or bank and trust company authorized to do business in this Commonwealth and may serve as one for one or more series of bonds or notes. Funds, which may include interest accrued and to accrue on lawful investments, in an amount sufficient for the payment of the principal of and the interest on the bonds or notes shall be deposited with the sinking fund depository not later than the date fixed for the disbursement thereof unless the ordinance authorizing the issuance of the bonds or notes requires that the deposits be made on an earlier date or on earlier dates.

(b) Fiscal agent or trustee.--If the ordinance authorizing the issuance of the bonds or notes provides for a fiscal agent or authorizes the execution of a trust indenture appointing a trustee, the fiscal agent or trustee shall also be the sinking fund depository.

(c) Remedy for failure to make deposit.--If the local government unit shall fail or refuse to make any required deposit in the sinking fund, the sinking fund depository, the fiscal agent or the trustee, as the case may be, may and, upon request of the holders of 25% in principal amount of the outstanding notes and bonds and upon being indemnified against cost and expense, shall exercise any remedy provided in this subpart or at law or in equity for the equal and ratable benefit of the holders of the outstanding notes, bonds and coupons and shall disburse all funds so collected equally and ratably to the holders of the notes, bonds and coupons as provided in the ordinance authorizing the bonds, subject to any limitations contained in Subchapter D of Chapter 82 (relating to remedies).

§ 8107. Award of bonds or notes.

When an acceptable proposal for the purchase of the bonds or notes, or any part thereof offered separately, has been received and is in conformity with the terms of the official invitation for proposals or is an acceptable proposal at a negotiated or invited sale, and is in compliance with the provisions of this subpart, it may be accepted by resolution or by ordinance. If the acceptance is made by resolution, the acceptance shall be conditional upon compliance with section 8103 (relating to ordinance authorizing issuance of bonds or notes or instruments evidencing lease rental debt). If the acceptance is made by ordinance, the ordinance shall also fix any details of the series of bonds or notes being sold, not fixed by prior ordinance, and award the bonds or notes, or those which have been sold, to specified purchasers at prices

specified in the ordinance. These provisions may be included in the ordinance adopted pursuant to section 8103. Notwithstanding any other provision of this subpart or of any other statute, as between the local government unit and the purchasers, an awarding resolution or ordinance shall be effective upon its final adoption or enactment by the governing body. The advertisement of the ordinance prior to enactment shall be sufficient if it describes the items to be completed from the proposal.

§ 8108. Bond anticipation notes.

(a) Issuance.--The governing body may evidence all or part of any electoral or nonelectoral debt by the issue of a series of bond anticipation notes. These notes shall be payable by exchange for or out of the proceeds of the sale of a designated series of bonds referred to in the bond anticipation notes. The reference to the bonds shall specify a maximum rate of interest to be borne by the series of bonds and provide that the series shall be offered for sale but, if no proposals are received, the sole remedy of the holders of the bond anticipation notes shall be either to accept the bonds at the specified maximum interest rate or to extend the maturity of the bond anticipation notes for one or more specified additional periods of not less than six months each during which time additional offers of the bonds may be made.

(b) Procedure.--Bond anticipation notes may be authorized, issued and sold in the same manner as the bonds in anticipation whereof the notes are being issued and principal amounts thereof shall be retired in accordance with the specified stated maturity dates of the bonds occurring prior to the refunding of the notes.

§ 8109. Small borrowing for capital purposes.

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

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

(2) The principal of each debt shall mature not later than five years from the date of issuance.

(3) The incurrence of the debt shall not cause the debt limits of Subchapter B of Chapter 80 (relating to limitations on debt of local government units) to be exceeded.

(4) The provisions of section 10 of Article IX of the Constitution of Pennsylvania shall have been observed.

(5) The provisions of section 8208 (relating to invalidity of instruments which are delivered without compliance with requirements or conditions precedent to issuance or delivery) shall apply to notes issued in violation of the requirements of this subsection.

(b) Applicability of other provisions.--Except as otherwise specifically stated in this section or in Subchapters A (relating to general provisions), C (relating to provisions of bonds and notes) and D (relating to sale of bonds and notes), the provisions of Subchapter A applicable to ordinances authorizing general obligation bonds or notes and the provisions of Subchapters C and D applicable to general obligation bonds or notes shall apply, respectively, to resolutions authorizing notes and to the notes authorized under this section.

(c) Sale of notes.--Notes authorized under this section may be sold, without formal documents of sale, by delivery of the notes upon receipt of the purchase price, or, at the option of the local government unit, they may be sold in compliance with section 8107 (relating to award of bonds or notes), in which event the term "ordinance" in section 8107 shall have reference to the authorizing resolution required by this section.

(d) Refunding notes.--Refunding notes may be issued in compliance with this section and with the provisions of Subchapter C of Chapter 82 (relating to refunding of debt) for the purpose of refunding notes previously issued under this section, provided that the maturity of the refunding notes shall not extend beyond five years from the date of issuance of the notes originally evidencing the debt refunded.

§ 8110. Debt statement.

(a) General rule.--Before delivering any general obligation bonds or notes or guaranteed revenue bonds or notes constituting nonelectoral debt or before executing an instrument evidencing lease rental debt, the officer or officers of a local government unit shall prepare and verify under oath a debt statement as of a date not more than 60 days before the filing with the department or, in the case of notes issued under section 8109 (relating to small borrowing for capital purposes), before the final adoption of the resolution authorizing their issue, showing:

(1) The gross indebtedness of the local government unit, giving prospective effect to the provisions of section 8250(b) (relating to use of proceeds of refunding bonds and when refunded bonds are no longer deemed outstanding) if debt is to be refunded.

(2) By items, the claimed credits and exclusions from the gross indebtedness permitted by this subpart in determining net debt.

(3) The aggregate principal amount of the bonds or notes being issued or evidencing lease rental debt.

(4) The borrowing base of the local government unit as shown by an appended borrowing base certificate.

(5) The applicable nonelectoral debt limit and the limit for nonelectoral plus lease rental debt computed as provided in this subpart.

(6) In the case of a refunding, the principal amount of bonds or notes which will no longer be deemed to be outstanding pursuant to section 8250(b) after settlement of the issue.

(b) Previously excluded self-liquidating or subsidized debt.--Where debt has previously been excluded as self-liquidating or subsidized debt, the debt statement shall be accompanied by a certification that no decrease in the amounts to be excluded is required by any change of circumstances or, if there has been a change, other than decreases resulting from the payments of bonds or notes, so that less debt is to be excluded. If it has become possible to exclude a greater amount of debt and the local government unit desires to do so, the debt statement shall be accompanied by appropriate certificates supporting the revised amount to be excluded, and a revised approval shall be obtained from the department.

§ 8111. Submission to department.

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

(1) The ordinance calling the election in the case of electoral debt with proofs of all proper advertisements.

(2) The return of election.

(3) The ordinance or ordinances authorizing the bonds or notes with proofs of proper publication.

(4) The accepted proposal for the purchase of the bonds or notes.

(5) The ordinance or resolution awarding the bonds or notes with proofs of proper publication of the ordinance.

(6) The debt statement if required by section 8110 (relating to debt statement) prepared pursuant thereto.

(7) Any certificates and proofs that may be necessary for the exclusion of any portion of the series proposed to be delivered or any prior series as self-liquidating debt or subsidized debt if the exclusion is desired by the local government unit.

(b) Lease rental debt submissions.--Before becoming bound on any lease, guaranty, subsidy contract or other agreement evidencing lease rental debt, a local government unit shall apply for and receive or be deemed to have received the approval of the department under section 8204 or 8206. The application, in a form the department prescribes, shall be accompanied by certified copies of the following:

(1) The ordinance authorizing the execution of the lease, guaranty, subsidy contract or other agreement with proofs of proper publication.

(2) The debt statement prepared pursuant to section 8110.

(c) Validity of lease rental debt agreements.--No lease, guaranty, subsidy contract or other agreement evidencing lease rental debt executed and delivered after July 12, 1972, and prior to the approval pursuant to section 8204 or 8206 of the department shall be valid or obligatory. Except as reference is made in this subpart to lease rental debt, this subpart shall have no application to the authorization, issue or sale of its obligations by any authority.

(d) Number of counterparts.--The application may be made in as many counterparts as desired. The department, if it approves the application, shall return all counterparts, except one, with its certificate of approval appended to each.

§ 8112. Agreements with bondholders or noteholders.

Except as otherwise specified in this subpart, a local government unit may enter into and perform contracts with the holders of its bonds or notes, binding upon the original purchasers and their respective transferees, placing greater reasonable and lawful restrictions on the local government unit or on the action of individual holders of bonds or notes than are provided in this subpart, but no additional agreement restricting the action of a holder of a bond or note shall be binding upon a remote holder of a bond or note unless the substance of the agreement is set forth in the text of the bond

or note, or set forth in a bond resolution or indenture of trust which is kept available in one or more designated public offices and to all of which a reference is made in the text of the bond or note.

§ 8113. Lost, stolen, destroyed or mutilated bonds or notes.

(a) General rule.--If any temporary or definitive bond or note, including any tax anticipation note, lawfully issued under this subpart or under applicable law prior to July 12, 1972, becomes mutilated or is destroyed, stolen or lost, the local government unit shall execute, and any sinking fund depository, fiscal agent or trustee for bondholders shall, if required, authenticate and deliver a new bond or note, with appropriate coupons attached in the case of a bond or note in coupon form, of like series and principal amount as the bond or note and attached coupons, if any, so mutilated, destroyed, stolen or lost, upon surrender and cancellation of the mutilated bond or note and attached coupons, if any, or in lieu of and in substitution for the bond or note and coupons, if any, destroyed, stolen or lost.

(b) Procedure.--The local government unit shall proceed as required under subsection (a) upon filing with the local government unit or, if so provided in the bond ordinance, with the sinking fund depository, fiscal agent or trustee, evidence satisfactory to it that the bond or note and attached coupons, if any, have been destroyed, stolen or lost and proof of ownership thereof and upon furnishing of satisfactory indemnity and complying with such other reasonable regulations as the local government unit shall prescribe and paying any reasonable expenses, including counsel fees, as the local government unit or the sinking fund depository, fiscal agent or trustee may incur. Mutilated bonds or notes and appurtenant coupons, if any, surrendered shall be canceled.

(c) Status of replacement bonds and notes.--The new bonds or notes and coupons, if any, so issued shall be independent obligations and all limitations and debt limits shall be deemed increased to the extent necessary to validate the new bonds or notes and any appurtenant coupons.

§ 8114. Evidence of signatures of holders and of ownership of bonds, notes and tax anticipation notes.

Any request, consent or other instrument which may be required or permitted to be executed by the holders of bonds or notes, including tax anticipation notes, may be in one or more instruments of similar tenor and shall be signed or executed by the holders in person or by their attorneys appointed in writing. Proof of the execution of the instrument, or of an instrument appointing any such attorney, or the holding by any person of bonds or notes or coupons appertaining thereto, shall be sufficient for the purposes of this subpart and any proceeding thereunder if made in the following manner:

(1) The certificate shall state that the person or persons signing the instrument were known to be such persons by the individual certifying and that the person or persons acknowledged the execution of the instrument as his or their act. The authority of an attorney or agent may be proven by like statement of the principal acknowledged in a like manner, but a certificate as to authority shall not be necessary if an instrument is executed on behalf of a corporate holder of bonds, notes or coupons by a person purporting to be the president or a vice president of the corporation with the corporate seal affixed and attested by a person purporting to be its secretary or an assistant secretary. The fact and date of the execution by the holder of any bond, note or coupon, or the attorney thereof, of any instrument may be proved by the certificate, which, except as provided in this section, need not be acknowledged or verified, of any of the following:

(i) An officer of any bank or bank and trust company which is in this Commonwealth or which has a correspondent in this Commonwealth certifying to the authenticity of its certificate.

(ii) An authorized signer for any broker or dealer in securities doing business in this Commonwealth or having a correspondent in this Commonwealth certifying to the authenticity of its certificate.

(iii) Any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act.

(iv) Any other witness to the execution whose certificate must be verified before a notary public or other officer authorized to take acknowledgments of deeds in the state in which he purports to act.

(2) The ownership of fully registered bonds or notes or of notes issued payable to the order of a named person, or bonds or notes registered as to principal, and the amount, number and date of holding them shall be proved by the registry records maintained for the series in question.

(3) The amount of bonds or notes transferable by delivery held by any person executing any instrument as the holder of a bond, note or coupon, the number thereof and the date of holding the bond, note or coupon may be proved by a like certificate of any person mentioned in paragraph (1)(i) or (ii) stating that the holder exhibited to the person executing the certificate or had on deposit with him the bonds or notes described in the certificate. For purposes of action to be taken by the holders of the bonds, notes or coupons, the holder shall be deemed to continue if he acts for a period of nine months after the date of the proof of holding. Continued ownership after this period shall require a new certificate or shall be taken as continuing if the original certificate contains a statement that the bonds, notes or

coupons are on deposit with the signer and an undertaking not to release them, and not to attorn to any new owner, unless the certificate is presented to the depository.

(4) Any request, consent or vote of the owner of any bond, note or coupon shall bind all future holders thereof if a notation of the action is placed on the bond, note or coupon and also, even if not so noted, if notice thereof is given once by publication in a newspaper of general circulation in the county in which the local government unit is located and in a journal of general circulation among dealers in investment securities.

(5) In cases of disputed ownership and in other cases, in its discretion, a court, a local government unit or trustee or fiscal or paying agent may require further or other proof in cases where it deems it desirable.

§ 8115. Contractual effect of ordinances and resolutions.

Except as otherwise provided in any ordinance or resolution authorizing or awarding bonds or notes or tax anticipation notes, the terms thereof and of this subpart as in effect when the bonds or notes were authorized shall constitute a contract between the local government unit and the holders from time to time of the bonds and notes subject to modification by the vote of a majority of the holders or such larger portion thereof as may be provided in the bond or note.

§ 8116. Unfunded actuarial accrued liability - condition precedent.

No bond or note issued to fund an unfunded actuarial accrued liability shall be valid or obligatory in the hands of an original purchaser until certified copies of the ordinance or ordinances authorizing bonds or notes, the ordinance or resolution awarding the bonds or notes and the certificate of approval of the department have been filed with the Public Employee Retirement Commission. No approval of the Public Employee Retirement Commission shall be required.

SUBCHAPTER B TAX ANTICIPATION NOTES AND FUNDING DEBT

Sec.

- 8121. Power to issue tax anticipation notes.
- 8122. Limitation on amount of tax anticipation notes.
- 8123. Maturity date and time of payment of interest.
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- 8126. Certification as to taxes and revenues to be collected.
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- 8129. Scope of unfunded debt.
- 8130. Approval by court to fund unfunded debt.

§ 8121. Power to issue tax anticipation notes.

A local government unit may have power and authority, by resolution of its governing body, to borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes or current revenues, or both, to evidence the obligation by notes, appropriately designated, and to authorize, issue and sell the notes in the manner and subject to the limitations provided therefor in this subchapter. References in this subpart to tax anticipation notes include also revenue anticipation notes and tax and revenue anticipation notes. Limitations imposed by this subpart on the incurring of nonelectoral debt shall not apply to the obligations evidenced by tax anticipation notes. The power to borrow from time to time shall include the power to make a single authorization and then issue and sell portions of that amount of authorized notes whenever desired during the fiscal year.

§ 8122. Limitation on amount of tax anticipation notes.

(a) General rule.--No local government unit shall authorize or issue tax anticipation notes in any one fiscal year which in the aggregate shall exceed 85% of:

(1) In the case of notes solely payable from and secured by a pledge of taxes, the amount of the taxes levied for the current fiscal year.

(2) In the case of notes solely payable from and secured by a pledge of revenues other than tax revenues, the amount of the revenues pledged.

(3) In the case of notes payable from and secured by a pledge of taxes and other revenues, the sum of the taxes levied and the revenues pledged.

The taxes or revenues or both shall be certified, pursuant to section 8126 (relating to certification as to taxes and revenues to be collected), as remaining to be collected or received in the fiscal year during the period when the notes will

be outstanding. The certificate shall be as of a date not more than 30 days prior to and no later than the date of the vote on the resolution authorizing the issue and sale of the tax anticipation notes.

(b) Computation of notes outstanding.--In computing the aggregate amount of tax anticipation notes outstanding at any given time during the fiscal year for the purpose of the limitation imposed by this section, allowance shall be made for notes that have already been fully paid and for amounts already paid into appropriate sinking funds, if any.

§ 8123. Maturity date and time of payment of interest.

No tax anticipation notes shall be stated to mature beyond the last day of the fiscal year in which the tax anticipation notes are issued. Interest on tax anticipation notes from the date thereof shall be payable at the maturity of the notes or payable in installments at such earlier dates and at such annual rate or rates determined by the governing body of the local government unit.

§ 8124. Other terms of tax anticipation notes.

Tax anticipation notes shall be issued in denominations, shall be subject to rights of prior redemption, shall have privileges of interchange and registration, shall be dated, shall be stated to mature, subject to the provisions of section 8123 (relating to maturity date and time of payment of interest), on dates and in amounts, shall be in registered or bearer form with or without coupons, shall be payable in such coin or currency as at the place and at the time of payment is legal tender for the payment of public and private debts and shall be payable at any place or places, one of which shall be in this Commonwealth, all as the governing body of the issuing local government unit may determine by resolution.

§ 8125. Security for tax anticipation notes and sinking fund.

(a) General rule.--All tax anticipation notes issued in a single fiscal year shall be equally and ratably secured by the pledge of, security interest in and a lien and charge on the taxes or revenues, or both, of the local government unit specified in the authorizing resolution to be received during the period when the notes will be outstanding. The pledge, lien and charge shall be fully perfected as against the local government unit, all creditors thereof and all third parties in accordance with the terms of the resolution from and after the filing of any financing statement or statements required under Title 13 (relating to commercial code). For the purpose of this filing, the sinking fund depository, if any, otherwise, the fiscal agent or paying agent designated in the notes, may act as the representative of noteholders and, in such capacity, execute and file the financing statement and any continuation or termination statements as secured party. The authorizing resolution may establish one or more sinking funds and provide for periodic or other deposits therein and may contain covenants or other provisions as the local government unit determines. The amount of any tax anticipation notes issued in compliance with this subpart shall be general obligations of the local government unit and, if the amounts are not paid within the fiscal year in which the notes were issued, they shall be deemed to be nonelectoral debt enforceable in the manner of a general obligation which, unless funded pursuant to this subpart, shall be included in the budget of the local government unit for the ensuing fiscal year and shall be payable from the taxes and revenues of the ensuing year, notwithstanding that the amount thereof shall cause the nonelectoral debt of the local government unit to exceed the limitations of Subchapter B of Chapter 80 (relating to limitations on debt of local government units).

(b) First class school districts.--The holder of the tax anticipation notes issued by a first class school district or the sinking fund depository of the applicable sinking fund, if any, shall have the right to enforce the pledge of security interest in and lien and charge on the pledged taxes and revenues of the first class school district against all Commonwealth and local public officials in possession of any of the taxes and revenues at any time which may be collected directly from the officials upon notice by the holder or depository for application to the payment as and when due or for deposit in the applicable sinking fund at the times and in the amounts specified in the tax anticipation notes. Any Commonwealth or local public official in possession of any of the taxes and revenues shall make payment, against receipt therefor, directly to the holder of the tax anticipation notes or to the depository upon the notice and shall thereby be discharged from any further liability or responsibility for the taxes and revenues. If the payment is to a holder of tax anticipation notes, it shall be made against surrender of the notes to the payor for delivery to the first class school district in the case of payment in full; otherwise, it shall be made against production of the notes for notation thereon of the amount of the payment. The provisions of this subsection with respect to the enforceability and collection of taxes and revenues which secure tax anticipation notes of a first class school district shall supersede any contrary or inconsistent statutory provision or rule of law. This subsection shall be construed and applied to fulfill the legislative purpose of clarifying and facilitating temporary borrowings by a first class school district by assuring to holders of tax anticipation notes the full and immediate benefit of the security therefor without delay, diminishment or interference based on any statute, decision, ordinance or administrative rule or practice.

§ 8126. Certification as to taxes and revenues to be collected.

Prior to each authorization of tax anticipation notes, authorized officers of the local government unit shall make an estimate of the moneys to be received during the period when the notes will be outstanding from taxes then levied and assessed and revenues, including subsidies or reimbursements to be received. The estimate shall take due account of the past and anticipated collection experience of the local government unit and of current economic conditions. The estimate shall be certified by the officers and their written certificate dated not more than 30 days prior to the date of the authorization of the notes and filed with the proceedings authorizing the tax anticipation notes with the department.

§ 8127. Sale of tax anticipation notes.

Tax anticipation notes may be sold at public, private or invited sale as the governing body of the local government unit may determine. Any public sale shall be advertised and conducted in the manner and subject to the conditions provided for a public sale of bonds in Subchapter D (relating to sale of bonds and notes), except as modified by this subchapter. The governing body of the local government unit shall award the notes by resolution to specified purchasers at a specified price not less than the principal amount. At the time of delivery of each issue, series or subseries of tax anticipation notes, authorized officers of the local government unit shall certify to the original purchasers that the amount of all such notes to remain outstanding will not exceed the limitations of section 8122 (relating to limitation on amount of tax anticipation notes) calculated, however, from the date of the certificate to the respective maturity dates of all the notes to remain outstanding. The certificate need not be filed with the department, but a copy of it shall be retained by the local government unit until all tax anticipation notes issued during the fiscal year have been paid in full.

§ 8128. Condition precedent to validity of tax anticipation notes.

No tax anticipation note shall be valid or obligatory in the hands of an original purchaser until certified copies of the authorizing and awarding resolution, the certificate as to the taxes and revenues remaining to be collected and a true copy of the accepted proposal for the purchase of the tax anticipation notes shall have been filed with the department. No approval by the department shall be required.

§ 8129. Scope of unfunded debt.

For the purpose of this subchapter, "unfunded debt" means obligations of the same or one or more prior years incurred for current expenses, including tax anticipation notes and payments, including termination payments, required to be made under qualified interest rate management agreements, due and owing or judgments against the local government unit entered by a court after adversary proceedings, including a judgment under section 8283(B)(2)(I) (relating to remedies), for the payment of either of which category the taxes and other revenues remaining to be collected in the fiscal year and funds on hand will not be sufficient without a curtailment of municipal services to an extent endangering the health or safety of the public or proper public education, and the local government unit either may not legally levy a sufficient tax for the balance of the fiscal year, or a sufficient tax, if legally leviable, would not be in the public interest. Unfunded debt does not, however, include debt incurred under this subpart or obligations in respect of a project or part of a project as incurred in respect of the cost of a project.

§ 8130. Approval by court to fund unfunded debt.

(a) General rule.--Whenever the governing body of a local government unit shall be of the opinion that it has outstanding unfunded debt, it may, by petition to the court of common pleas setting forth the facts, request approval for the issuance of bonds or notes to fund the unfunded debt. After hearing, on such notice to the local government unit and its taxpayers as the court may prescribe, the court shall make an order granting authority to fund all or a part of the unfunded debt if the court finds that the unfunded debt is a lawful obligation of the local government unit; that there has been an unforeseeable decline in revenues or that taxes levied have not produced the revenues anticipated or that it was not reasonable to foresee the obligation; that paying the debt by curtailing municipal services will be dangerous to the public health, safety or education; and that it is not feasible or not in the public interest to levy additional taxes in the current fiscal year. The funding debt so approved shall be stated to mature in the amounts and over the number of years, not exceeding ten, as the court finds will accomplish the payment of the debt without endangering the rendering of municipal services or requiring the levying of excessive taxes. If the funding of the unfunded debt has not been approved by a vote of the electors, the order of the court upon cause shown may fix the portion, if any, which shall not be charged against the nonelectoral debt limitations of the local government unit under sections 8022 (relating to limitations on incurring of other debt) and 8125 (relating to security for tax anticipation notes and sinking fund) during the time the funding debt is outstanding.

(b) Issuance and sale of bonds or notes.--The bonds or notes representing funding debt so authorized by the court shall be issued and sold by the governing body as provided by other provisions of this subpart in respect of general obligation bonds except as these provisions are modified by this section or by orders of the court issued under this

section, and the proceedings filed by the local government unit in respect of the funding bonds under section 8201 relating to certification to department of bond or note transcript or lease, guaranty, subsidy contract or other agreement) shall include certified copies of the petition and of the order of the court.

(c) Applicability.--This section shall not apply to the funding of obligations in respect of a project or part of a project or incurred in respect of the cost of a project.

SUBCHAPTER C PROVISIONS OF BONDS AND NOTES

Sec.

- 8141. Form of bonds or notes.
- 8142. Limitations on stated maturity dates.
- 8143. Disposition of proceeds notwithstanding certain limitations.
- 8144. Number of interest rates.
- 8145. Place and medium of payment.
- 8146. Execution of bonds or notes.
- 8147. Pledge of revenues.
- 8148. Deeds of trust and other agreements with bondholders and noteholders.
- 8149. Negotiable qualities of bonds and notes.
- 8150. Temporary bonds or notes or interim receipts.
- § 8141. Form of bonds or notes.

Bonds or notes may be issued in such denominations, in coupon form payable to bearer or registrable as to principal or in fully registered form, with such provisions for exchangeability and interchangeability; shall bear such identifying designation or title, including words indicating whether the bonds or notes are general obligation, revenue, guaranteed revenue or limited guaranty revenue bonds or notes; shall be dated; shall bear such rate or rates of interest, including supplemental, contingent or variable interest, but, if contingent or variable interest is specified, a maximum rate or amount shall also be specified; shall be payable on those dates; may be subject to such provisions for prior redemption in whole or in part or both, at such price or prices and at such times; shall be stated to mature or may be payable in installments on a date or dates and in such amounts; may provide for the payment by the issuer of such tax or taxes on the bonds or notes, either absolutely or out of pledged revenues; and may provide for such pledge of revenues, the establishment of such reserves and other terms, as the governing body of the issuing local government unit may determine by ordinance or ordinances adopted prior to the delivery of the bonds or notes, subject to the limitations and restrictions specified in this subpart.

§ 8142. Limitations on stated maturity dates.

(a) General rule.--No bonds or notes shall be issued with a stated maturity date exceeding the sooner to occur of:

(1) Forty years from the date of the series of any bonds or notes issued to evidence debt for the purpose of financing the cost of actually constructing, acquiring or improving a project or a separately financed portion of a project or funding an unfunded actuarial accrued liability.

(2) (i) The useful life of the project being financed as stated in the ordinance of the local government unit enacted in connection with the series of bonds or notes to be issued for the project, which statement in the ordinance shall be conclusive for all purposes. If projects have been combined for financing pursuant to section 8101 (relating to combining projects for financing or series of bonds or notes for sale) and the projects have different useful lives, it is sufficient for this section if an aggregate principal amount of bonds or notes equal to the separate cost of each project having a shorter useful life have been stated to mature prior to the end of the useful life, and the balance prior to the end of the longest useful life. For the purpose of this paragraph, the inclusion of furnishings, machinery, apparatus or equipment for a construction or acquisition project shall not be deemed to be the combining of projects, but the useful life of the project shall be that of the building, structure or improvement constructed or acquired.

(ii) Where capital budgeting is practiced and bonds are issued to fund the current portion of a capital budget involving projects of varying useful lives, a uniform term of 30 years may be used.

(iii) Where the project being financed is a countywide revision of assessment of real property, the useful life shall be a term of no more than ten years.

(iv) Where a project consists of the funding of all or a portion of a reserve, or a contribution toward a combined reserve, pool or other arrangement, relating to self-insurance, the useful life shall be the term specified in the ordinance of the local government unit, not to exceed 20 years, or, if none is specified, then the useful life shall be deemed to be 20 years.

(b) Mandatory redemption and stated maturities or installments.--Bonds or notes may be serial bonds or notes or term bonds or notes or any combination thereof that may be selected by the governing body of the issuing local government unit. Except for bonds or notes issued to fund an unfunded actuarial accrued liability, if term bonds or notes are issued, the bonds or notes shall be subject to mandatory redemption, and, if serial or installment bonds or notes, the amounts of the stated maturities or installments shall be fixed:

(1) so as to amortize the issue on at least an approximately level annual debt service plan during the period specified for the payment of principal in subsection (c); or

(2) so that the debt service on outstanding debt of the same classification, and for this purpose lease rental debt shall be considered as the same classification as general obligation debt, will be brought more nearly into an overall level annual debt service plan.

(c) Deferral of stated installments or maturities or mandatory redemption.--Except as provided by subsection (e), stated installments or maturities of principal of any series of bonds or notes or the mandatory redemption of the principal may not be deferred beyond the later of two years from date of issue or one year after estimated completion of construction. In the case of revenue or guaranteed revenue bonds, this provision will be satisfied by a covenant for the mandatory application to term bonds of such revenues as may remain after payment of interest and operating expenses up to a fixed amount conforming to subsection (b) as shall be specified in the ordinance pursuant to which the bonds or notes are issued.

(d) Fixing earlier maturity dates.--This section does not prevent the fixing of the amount of stated maturity dates so that a greater percentage of a series will mature on earlier dates than those allowable by this subpart.

(e) Maturity dates for different series.--This section does not prevent the authorization of bonds or notes of an issue for sale in one or more series, in which case the first stated maturity of a later series may be later than, but not more than 15 months later than, the last stated maturity of the next preceding series.

§ 8143. Disposition of proceeds notwithstanding certain limitations.

A local government unit which issues bonds or notes to fund an unfunded actuarial accrued liability shall contribute to the applicable pension trust fund the proceeds of the bonds or notes, after deduction of costs of issuance, underwriter's discount and original issue discount, notwithstanding that the contribution may exceed a limitation on contributions to retirement systems, pension plans or pension trust funds otherwise applicable to the local government unit.

§ 8144. Number of interest rates.

A series of bonds or notes may have any number of interest rates or yields, subject to any limitation on such number fixed by the governing body of the issuing local government unit, but, unless further limited by the issuing local government unit in the official notice of sale, no yield for any stated maturity date in the last two-thirds of the period of the series may be less than that stated for the immediately preceding year which falls within the last two-thirds period.

§ 8145. Place and medium of payment.

Bonds or notes shall be payable in such coin or currency as at the respective dates of payment thereof shall be legal tender for the payment of public and private debts at the place or places of payment. Both principal and interest shall be payable at the place or places determined by the local government unit. If more than one place of payment is specified, one or more of the additional places of payment may be outside of this Commonwealth or outside of the United States.

§ 8146. Execution of bonds or notes.

Bonds or notes, including tax anticipation notes, shall be signed by such officers of the local government unit, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of such officer of the local government unit, and the bonds or notes may be sealed with the seal of the local government unit or a facsimile thereof, all as may be determined by the governing body. Bonds or notes may provide that they are not valid or enforceable unless authenticated by a specified bank, bank and trust company or trust company. If any one signature on a bond or note, including the signature of the authenticating party, is manual, all other signatures may be by facsimile. If any officer whose signature or a facsimile of whose signature appears on any notes, bonds or coupons ceases to be such officer before the delivery of the notes or bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until delivery. Any note, bond or coupon may bear the facsimile signature of or may be signed by those persons as at the actual time of the execution of the note, bond or coupon were the proper officers to sign although at the date of the instrument these persons may not be such officers.

§ 8147. Pledge of revenues.

The governing body of any local government unit which has determined to issue any revenue bonds or notes or any guaranteed revenue bonds or notes may provide by ordinance for such pledges of or priorities in such rentals, revenues, receipts, rates and charges to be received from projects of the issuing local government unit as may be desirable. The pledge or priority shall be perfected as a security interest against all creditors of the local government unit and all third parties, in accordance with the terms of the ordinance, from and after the filing of a financing statement or statements in accordance with Title 13 (relating to commercial code). For the purpose of filing, the sinking fund depository may act as representative of the bond or note holders and, in that capacity, execute and file the financing statement and any continuation or termination statements as secured party.

§ 8148. Deeds of trust and other agreements with bondholders and noteholders.

(a) General rule.--A local government unit shall have the power to enter into any deed of trust, trust indenture or other agreement with any bank, bank and trust company, trust company or other person or persons in the United States having power to enter into such agreements or accept such trusts, including any Federal agency, as security for any notes or bonds of the local government unit providing for the following:

(1) The payment of the interest on and principal of the notes or bonds; the authentication of the original issue; the custody of sinking funds or other funds held or to be held pending presentation of coupons, notes or bonds for payment; the custody of debt service reserve funds or other funds to be held as reserves; the disbursement of interest to holders of fully registered bonds or notes; the cremation or other destruction of coupons, bonds or notes which have been paid; and registration, exchanges and transfers and the maintenance of records of those transactions.

(2) The construction, improvement, operation, maintenance and repair of any project being financed.

(3) Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued in connection with the project, or of any loan or grant by the United States or the Commonwealth, may be applied.

(4) The rights and remedies of such trustee or other person and the holder of the bonds or notes, which may include reasonable restrictions upon the individual right of action of the holders.

(5) The terms and provisions, including stated maturities and sinking fund and other reserve fund provisions, not in conflict with the limitations imposed by this subpart, but which may be more limiting, of or provided for the bonds or notes being issued or which may hereafter be issued in connection with the project being financed.

(b) Revenue and guaranteed revenue bonds.--In connection with any revenue bonds or guaranteed revenue bonds, such deeds of trust, trust indentures or other agreements may contain provisions as to the following:

(1) The rate of rents, charges, rates or tolls to be imposed for the use of the project being financed or the rendering of services through the use of the project, or both, to ensure a sufficiency of revenues to cover operating expenses, debt service and an appropriate surplus.

(2) The setting aside of reserves or other earmarked funds, and limitation upon the use, investment and disposition thereof for the better security of the bonds or notes.

(3) Limitations on the issue of additional bonds or notes ranking equally or having priority in claim on revenues with the bonds being issued.

(4) Any other or additional agreements with the holders of bonds or notes as may be customary in these agreements, provided no delegation of essential governmental powers is made.

(c) Ordinance provisions in lieu of agreement.--In lieu of a deed of trust, trust indenture or other agreement specified in this section, the bond ordinance of the local government unit may contain similar provisions which shall be a contract between the local government unit and the holders from time to time of its bonds or notes.

(d) Limitation on delegation of function.--No deed of trust shall delegate the performance of essential governmental functions to a trustee, fiscal agent or receiver. For purposes of this section, the matters enumerated are not deemed to be essential governmental functions.

§ 8149. Negotiable qualities of bonds and notes.

(a) Securities.--Bonds or notes issued pursuant to this subpart, including tax anticipation notes, which have all the qualities and incidents of securities under Title 13 (relating to commercial code), shall be negotiable instruments.

(b) Commercial paper.--Such bonds and notes issued pursuant to this subpart which are not securities shall have all the qualities and incidents of commercial paper under Title 13 and shall be negotiable instruments notwithstanding any references in them to the terms of the authorizing bond ordinance or any trust indenture, deed of trust or other agreement, or any variations in the rate of interest provided in the note, or any limitation upon the funds from which or limitations as to the bonds with which the notes may be paid or any restriction upon the remedies of the holders.

§ 8150. Temporary bonds or notes or interim receipts.

Pending the preparation of definitive bonds or notes, including tax anticipation notes, temporary bonds or notes or interim receipts may be issued in such form and containing such terms and such provisions for exchange for definitive bonds or notes as the local government unit may determine.

SUBCHAPTER D SALE OF BONDS AND NOTES

Sec.

- 8161. Manner of sale of bonds or notes.
- 8162. Contents of public advertisement and of official notice of sale.
- 8163. Proposals for purchase.
- 8164. Opening of bids.
- 8165. Determination of highest and best bid.
- 8166. Required bid security.
- 8167. Reserved right to reject bids.
- 8168. Failure to receive conforming bid.
- 8169. Determination of net interest cost and net interest rate.
- § 8161. Manner of sale of bonds or notes.

(a) General rule.--Except as otherwise specifically provided in this subpart and subject to subsection (b), bonds or notes may be sold at public or private sale by negotiation or upon invitation and at the price the governing body of the issuing local government unit shall determine. Before making any private sale by negotiation of bonds or notes, the governing body shall adopt a resolution finding that a private sale by negotiation is in the best financial interest of the local government unit. Bonds or notes may be conditionally sold before the final details of the series are fixed.

(b) Public sale.--Bonds or notes, if sold at public sale, shall be sold to the highest responsible bidder or bidders after one public notice by advertisement of either the official notice of sale, or of the availability of the official notice of sale, in at least one and not more than two newspapers of general circulation in the county in which the local government unit is located. The advertisement may also be published in a financial journal circulating among the underwriters of securities. Advertisements shall be published not less than ten nor more than 30 days prior to the date fixed for opening proposals and need not appear on the same date nor successively in each newspaper or journal.

§ 8162. Contents of public advertisement and of official notice of sale.

(a) Advertisement.--The advertisement of the availability of the official notice of sale shall contain the following:

- (1) The title, designation and principal amount of the bonds or notes to be sold.
- (2) A general statement of the term of the issue and whether it will consist of term bonds or notes, serial bonds or notes, or both.
- (3) A statement whether proposals must be for all but not less than all of the notes or bonds being sold, or, if separate lots may be bid separately, a statement as to the composition of each lot.
- (4) The place and time for the receipt of sealed proposals.
- (5) The amount of the bid security to be furnished by the bidder and the method selected for determining net interest cost.
- (6) A statement of the names and addresses of the officer and any other persons from whom an official notice of sale, other details concerning the issuing local government unit, the project and the official form of proposal, if any, may be obtained.

(b) Official notice of sale.--The local government unit shall adopt an official notice of sale which shall set forth succinctly all of the following:

- (1) The time and place for the receipt of proposals and the officer designated to receive them.
- (2) A description of the bonds or notes being offered, including:
 - (i) The title and type of bonds or notes being offered.
 - (ii) The date thereof.
 - (iii) The stated maturity dates and amounts at each date.
 - (iv) The dates of interest payments.
 - (v) The place or places of payment of interest and principal, which amounts, dates and places may be left open to selection by the successful bidder.
 - (vi) The form and denominations of the notes or bonds being offered.
 - (vii) Any provisions for registration, exchange and interchange.
 - (viii) The terms of any sinking fund or reserve funds to be established.
 - (ix) The terms of other provisions made for the security of the bonds or notes.

(x) The dates, prices and terms of any provision for the redemption thereof prior to stated maturity dates.

(3) A statement of the terms of the bidding, including:

(i) The method for determining net interest cost.
(ii) Whether bids must be for all but not less than all or, if separate bids for separate lots may be submitted, a description of each lot.

(iii) The limitation on the number and variation between high and low interest rates to be permitted.

(iv) The required bid security.

(v) The permitted discount from par, if any.

(vi) The funds in which the balance of the purchase price shall be paid.

(vii) The place at which the balance may be paid or the method of determining that place.

(viii) The effect on the obligation to purchase the notes or bonds of litigation pending or change in tax or other applicable laws occurring before the settlement for the bonds or notes.

(ix) The nature of the opinion of bond counsel to be delivered at the time of payment for the bonds or notes and the effect of any failure to deliver such opinion.

(x) The reserved right to reject bids provided for in section 8167 (relating to reserved right to reject bids).

(4) Such additional provisions as may be desired, including statements as to the furnishing of copies of documents, including an official statement of essential facts, the estimated date for delivery of bonds or notes and whether the bonds or notes will be delivered in definitive or temporary form and, if temporary, the time and manner of exchange for definitive bonds or notes.

§ 8163. Proposals for purchase.

Every bid or proposal for bonds or notes shall be in writing, shall be properly executed and, in the case of public sale, shall be placed in a sealed envelope sufficiently labeled to indicate that it is a bid or proposal for the bonds or notes being sold, before being delivered to the officer designated to receive it or to an authorized delegate.

§ 8164. Opening of bids.

In the case of public sale, at the time and place fixed in the notice, the bids or proposal received shall be publicly opened by the designated officer or his authorized delegate and publicly read aloud unless the governing body determines to return all bids unopened.

§ 8165. Determination of highest and best bid.

(a) General rule.--The highest responsible bidder shall be the one who, having complied with the terms of the official notice of sale, offers to take all of the bonds or notes or any separate lot thereof on which separate bids may be made at the lowest net interest cost to the local government unit, or, if required by the terms of any agreement with the Federal government or the Commonwealth or any agency of either of them, the highest responsible bidder shall be the one bidding in conformity with the requirements for the successful bidder stipulated in the agreement. The net interest cost shall be computed in accordance with section 8169 (relating to determination of net interest cost and net interest rate).

(b) Tie bids.--If two or more proposals are found to be the highest and best bids on identical terms conforming to the offering, the bonds or notes shall with the consent of the bidders be awarded to them jointly or absent such consent may be awarded to any one of the bidders selected by lot in any manner deemed fair by the local government unit.

§ 8166. Required bid security.

In the case of public sale, bid security shall be given by each bidder, shall be in cash or by certified or official bank check payable to the local government unit and shall be not less than 2% of the principal amount of the bonds or notes to be purchased. The bid security of the unsuccessful bidder or bidders shall be returned to each unsuccessful bidder, without interest, in accordance with written instructions of the bidder conforming to the official notice of sale, promptly upon an award of the bonds or notes or upon the rejection of all bids. The bid security of the successful bidder shall be retained by the treasurer of the local government unit and, with or without allowance for interest as the official notice of sale may specify, shall be applied on the purchase price when the bonds or notes are actually delivered and paid for, retained as liquidated damages if the bidder defaults or returned to the bidder with interest at the judgment rate if, after an acceptance of the proposal, the bonds or notes are not issued for any reason not constituting a default by the

bidder. Unless required by the local governing body, no bid security shall be required in the case of tax anticipation notes, bond anticipation notes or notes to be issued under section 8109 (relating to small borrowing for capital purposes).

§ 8167. Reserved right to reject bids.

Every official notice of sale of bonds or notes shall provide that the right is reserved to the governing body of the local government unit to reject all bids or proposals, but, in a case where conforming bids have been received, opened and rejected, any subsequent sale within a period of two calendar months of bonds or notes in substantially the same amount and for the same purpose must be a public sale to be held at such later time as the governing body may determine to be advantageous.

§ 8168. Failure to receive conforming bid.

If bonds or notes are advertised for public sale and no conforming bid is received or if all bids are returned unopened, then the local government unit may cancel the sale and devise a new series for sale or, in the alternative, it may sell the series parts from time to time during the ensuing six months at private sale in accordance with the terms originally advertised with any changes in call price or dates of call for prior redemption or both as may be deemed desirable. After the six-month period, the local government unit may sell any unsold portion of the series in any manner permitted by this subpart, with such appropriate changes in the call prices or dates or call for prior redemption or both or in other terms as may be deemed advisable, provided that, as so changed, the two portions of the series when combined and any issue of which the series is a part are in conformity with the requirements of this subpart as to term, interest rate and stated maturities.

§ 8169. Determination of net interest cost and net interest rate.

(a) Net interest cost.--Net interest cost may be determined by using either the street method or the present worth method, whichever method shall be specified in the official notice of sale.

(b) Street method.--Under the street method, a dollar amount shall be determined by computing the total amount of interest payable over the life of the series to stated maturity dates or earlier mandatory call dates and subtracting therefrom the amount of any premium paid above the aggregate principal amount of the bonds or notes or adding thereto the amount of any discount lawfully allowed in the sale.

(c) Present worth method.--Under the present worth method, there shall be ascertained the semiannual rate, compounded semiannually, necessary to discount to present worth as of the date of the bonds or notes, the amounts payable on each interest payment date and on each stated maturity or earlier mandatory redemption date so that the aggregate of such amounts will equal the purchase price offered therefor, exclusive of interest accrued to the date of delivery. The net interest cost shall be stated in terms of an annual percentage rate and shall be that rate of interest which is twice the semiannual rate so ascertained.

(d) Net interest rate.--The net interest rate for a series sold under the present worth method shall be the rate of the net interest cost. For a series sold under the street method, the net interest rate shall be determined by dividing the net interest cost by the product of \$1,000 multiplied by the number of bond years from the date of the bonds or notes to the stated maturity or earlier mandatory call dates. A bond year shall be one full year that \$1,000 of principal amount shall be outstanding and less than full years shall be fractionalized on a 360-day-year basis.

CHAPTER 82
MISCELLANEOUS PROVISIONS

Subchapter

- A. Department of Community Affairs
- B. Sinking Funds and Other Funds and Accounts
- C. Refunding of Debt
- D. Remedies
- E. Penalties

SUBCHAPTER A
DEPARTMENT OF COMMUNITY AFFAIRS

Sec.

- 8201. Certification to department of bond or note transcript or lease, guaranty, subsidy contract or other agreement.
- 8202. Filing of statements of noncompletion of sale with department.
- 8203. Fees for filing.

8204. Certificate of approval of transcript.
8205. Certificate of disapproval and correction of proceedings.
8206. Effect of failure of timely action by department.
8207. Records of department.
8208. Invalidity of instruments which are delivered without compliance with requirements or conditions precedent to issuance or delivery.
8209. Finality of proceedings as to validity of instruments.
8210. Power of department to define terms, issue rules and regulations and prescribe forms.
8211. Petitions for declaratory orders and complaints to department.
- § 8201. Certification to department of bond or note transcript or lease, guaranty, subsidy contract or other agreement.
- (a) General rule.--The governing body of each local government unit shall, before any bonds or notes except tax anticipation notes issued pursuant to section 8121 (relating to power to issue tax anticipation notes) and notes representing small borrowings issued pursuant to section 8109 (relating to small borrowing for capital purposes) are actually delivered to the initial purchasers or before becoming bound on any lease, guaranty, subsidy contract or other agreement evidencing lease rental debt, cause to be certified to the department, under the signature of the clerk or secretary of the governing body and its corporate seal, a complete and accurate copy of the proceedings for the incurring of debt, as provided in section 8111 (relating to submission to department).
- (b) Other requirements unaffected.--The provisions of this section do not eliminate the filing requirements of sections 8024 (relating to exclusion of subsidized debt from net nonelectoral debt or net lease rental debt), 8025 (relating to exclusion of self-liquidating debt evidenced by revenue bonds or notes to determine net nonelectoral debt), 8026 (relating to exclusion of other self-liquidating debt to determine net nonelectoral debt or net lease rental debt), 8126 (relating to certification as to taxes and revenues to be collected) and 8128 (relating to condition precedent to validity of tax anticipation notes).
- § 8202. Filing of statements of noncompletion of sale with department.
- If settlement for an issue of bonds or notes or bonds or notes representing lease rental debt, which have received a required approval by the department, fails of completion in whole or in part, the local government unit shall file with the department a notification of noncompletion of sale stating what part of the issue has been delivered.
- § 8203. Fees for filing.
- Every filing with the department shall be accompanied by a filing fee as determined in section 605-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. No submission shall constitute a filing until the proper fee is paid. All fees received under this section shall be paid by the department into the State Treasury through the Department of Revenue.
- § 8204. Certificate of approval of transcript.
- The department shall, upon receipt of any bond or note transcripts or other filings, carefully examine them to determine whether the debt outstanding and to be outstanding is within the applicable limitations imposed by this subpart and whether the proceedings for incurring the debt, for issuing and selling the bonds or notes and for excluding self-liquidating and subsidized debt have been taken in conformity with the Constitution of Pennsylvania and this subpart. If, upon completion of its examination, a transcript or other filing is found by the department to be in conformity with the Constitution of Pennsylvania and this subpart, the department shall certify its approval to the local government unit if required under other provisions of this subpart.
- § 8205. Certificate of disapproval and correction of proceedings.
- If the department, upon completion of its examination, finds it cannot issue a certificate of approval, it shall notify the local government unit of the reasons why it cannot do so. If the proceedings or any prior filings are subject to correction for demonstrated typographical or computational error, or otherwise, or for failure to include a necessary document or certification and the correction is approved by the department, the error shall be corrected in all places or the additional document or certification shall be furnished to the department within ten days and upon any other terms the department specifies. Thereupon, the department shall certify its approval. If the deficiency is not subject to correction, the department shall certify its disapproval to the local government unit.
- § 8206. Effect of failure of timely action by department.
- If the local government unit has submitted a filing to the department by certified mail, return receipt requested, or otherwise has an official receipt from the department, and the local government unit has not, within 20 days of the date

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

§ 8207. Records of department.

(a) Retention period.--The department shall keep all proceedings on file for a period of not less than four months after issuance of its certificate of approval or disapproval and thereafter as long as any appeal respecting the proceedings is pending and not finally determined.

(b) Content.--The department shall keep a public record with respect to each local government unit showing:

(1) The name of the local government unit.

(2) The purpose of each series issued or lease executed.

(3) Whether the series represents nonelectoral, lease rental or electoral debt and the extent to which the debt is subsidized or self-liquidating and, if subsidized or self-liquidating in part, the principal amount thereby eliminated from nonelectoral debt.

(4) The schedule of stated maturity dates, interest rates and mandatory sinking fund payments for each outstanding issue of bonds or notes or the schedule of lease rentals.

(5) The dates and designations of each issue of bonds or notes, lease or other document to be executed with the approval number assigned to the issue, lease or other document approved.

(6) The local government unit's most recently certified borrowing base and regular debt limits computed therefrom.

(7) The date and manner of authorization of any use of any additional debt limit.

(c) Records open for inspection.--The records of the department shall be public records available for examination by any citizen of this Commonwealth or any bondholders or noteholders.

§ 8208. Invalidity of instruments which are delivered without compliance with requirements or conditions precedent to issuance or delivery.

(a) General rule.--In all cases in which the approval of the department is required by this subpart prior to the issuance of bonds or notes or the execution of a lease, guaranty, subsidy contract or other agreement evidencing lease rental debt, in the case of small borrowings evidenced by notes in respect of which compliance with the conditions of section 8109 (relating to small borrowing for capital purposes) is required, and in the case of tax anticipation notes in respect of which compliance with the conditions of sections 8126 (relating to certification as to taxes and revenues to be collected), 8127 (relating to sale of tax anticipation notes) and 8128 (relating to condition precedent to validity of tax anticipation notes) is required, if the bonds or notes or the lease or other instrument is sold, or executed, and delivered prior to receipt of actual or deemed approval under section 8204 (relating to certificate of approval of transcript) or 8206 (relating to effect of failure of timely action by department) or, as the case may be, without compliance with applicable conditions of issuance, or prior to a required filing with the department, the bonds, notes, lease or other instrument shall be invalid and of no effect in the hands of or for the security of the holder of the bonds or notes or of the obligations secured by the lease or other instrument, except to the extent provided in this section.

(b) Bona fide purchasers.--If the bonds or notes or the obligations secured by the lease or other instrument are held by a bona fide purchaser, other than an initial purchaser or member of an underwriting or selling group, for value without actual notice of a lack of such prior approval, filing or compliance as the case may be, and such bonds, notes or other obligations contain a recital that such prior approval, filing or compliance was received, made or observed, then the bonds, notes, lease or other instrument shall be valid and enforceable in accordance with their terms, and any applicable debt limits shall be deemed increased to the extent necessary to validate and keep valid the bonds, notes, lease or other instrument, but not for the purpose of reducing the liability of any person under this section.

(c) Recovery of interest, principal and other amounts.--The local government unit may recover all interest and principal or other amounts payable thereon from the initial purchasers and the individuals, including the officers of the local government unit, responsible for making the unapproved or unauthorized delivery. Notwithstanding the invalidity of the instruments as to them, the initial purchasers and such individuals shall be entitled to credit in any action determining the invalidity or for the recovery provided by this subsection for the amount of the following:

(1) Any proceeds of the sale of the instruments still held unexpended by the local government unit.

(2) The lesser of the following:

(i) The cost or fair market value, whichever is the lesser, of any capital project or part thereof or interest therein acquired by the local government unit by an expenditure of a portion or all of the proceeds of the bonds, notes or other obligations.

(ii) The remaining nonelectoral borrowing capacity of the local government unit.

§ 8209. Finality of proceedings as to validity of instruments.

(a) General rule.--Where a certificate of approval has been issued by the department or has been deemed issued under section 8206 (relating to effect of failure of timely action by department) or, in the case of tax anticipation notes, where the filing with the department required by section 8128 (relating to condition precedent to validity of tax anticipation notes) has occurred and no petition for a declaratory order or complaint has been filed within the applicable time limits specified in section 8211 (relating to petitions for declaratory orders and complaints to the department) or when, after a petition for a declaratory order or complaint has been filed, the proceedings have been approved finally by the department and no appeal to court has been taken, or if an appeal to court has been taken and the proceedings have been approved finally by the court or the appeal has been dismissed, the validity of the proceedings, the right of the local government unit lawfully to issue its bonds or notes or to enter into a lease, guaranty, subsidy contract or other agreement evidencing lease rental debt pursuant to those proceedings, and the validity and due enforceability of the bonds, notes or other instruments in accordance with their terms shall not thereafter be inquired into judicially, in equity, at law or by civil or criminal proceedings, or otherwise, either directly or collaterally. The effect of the approval by the department or by the court on appeal or, in the case of tax anticipation notes, the effect of filing in compliance with section 8128 shall be to ratify, validate and confirm the proceedings absolutely, including the lawful nature of the project and, in the case of tax anticipation notes, the accuracy of the estimates contained in the certificate as to taxes and revenues to be collected, notwithstanding any defect or error in the proceedings, except as specifically provided otherwise in this section, and any debt limit imposed by this subpart shall be deemed increased to the extent necessary to validate the debt or obligation. This section does not relieve an initial purchaser of bonds or notes from liability to a local government unit for the payment of the consideration agreed in the contract of sale or make the bonds or notes valid and enforceable in the hands of an initial purchaser unless the issuer has received a substantial consideration for the series as a whole.

(b) Liability for willful violations or fraud.--This section does not relieve any person participating in the proceedings from liability for knowingly participating in an ultra vires act of a local government unit or from any civil or criminal liability for false statements in any certificates filed or delivered in the proceedings.

§ 8210. Power of department to define terms, issue rules and regulations and prescribe forms.

Subject to the definitions in section 8002 (relating to definitions), the department may define terms and prescribe other rules and regulations regarding, and prescribe forms for, reports and filings to be submitted to the department pursuant to this subpart.

§ 8211. Petitions for declaratory orders and complaints to department.

(a) General rule.--If proceedings for the incurring of debt represented by bonds or notes or by a lease, guaranty, subsidy contract or other agreement evidencing the acquisition of a capital asset, for the issuance of tax anticipation notes or for the exclusion of debt as self-liquidating or subsidized, have been taken by a local government unit, the local government unit or any taxpayer of the local government unit or other interested party may file with the department a petition for a declaratory order asserting the validity or a complaint asserting the invalidity of the proceedings or any part thereof.

(b) Time for filing.--A complaint asserting the invalidity of the proceedings or part thereof taken under section 8109 (relating to small borrowing for capital purposes) may be filed not later than one year after final adoption of the resolution authorizing the debt. Any such complaint asserting the invalidity of the proceedings or part thereof excluding debt as self-liquidating under section 8025 (relating to exclusion of self-liquidating debt evidenced by revenue bonds or notes to determine net nonelectoral debt) or authorizing tax anticipation notes under Subchapter B of Chapter 81 (relating to tax anticipation notes and funding debt) may be filed at any time not later than 15 days after the filing with the department of the documents required by section 8025 or of the proceedings pursuant to section 8126 (relating to certification as to taxes and revenues to be collected), as the case may be. A complaint asserting the invalidity of any such proceedings or part thereof in cases in which, under this subpart, the approval or deemed approval of the department is required may be filed with the department not later than the later of:

(1) fifteen days after the date of the submission of the proceedings by the local government unit to the department for approval even though the proceeding may be subject to correction as provided in section 8205 (relating to certificate of disapproval and correction of proceedings) or otherwise; or

(2) five days after the date of the last submission of any corrected document or certification to the department.

(c) Departmental approval pending proceeding.--If a petition for a declaratory order or complaint is filed in respect of proceedings requiring the approval of the department after the submission of the proceedings to the department but prior to approval, disapproval or deemed approval, the department shall not be deemed to have approved the proceedings during the pendency of the matter before the department.

(d) Jurisdiction and authority of department.--The department has exclusive jurisdiction to hear and determine all procedural and substantive matters arising from the proceedings of a local government unit taken under this subpart, including the regularity of the proceedings, the validity of the bonds, notes, tax anticipation notes or other obligations of the local government unit and the legality of the purpose for which the obligations are to be issued. If a local government unit files a petition for a declaratory order with the department relating to proceedings, the department may require service by publication on taxpayers as the circumstances warrant. In all other respects the proceedings before the department shall be governed by regulations of the department. The department may, after appropriate proceedings in accordance with its regulations, approve or disapprove the proceedings of the local government unit or to direct correction as provided in section 8205. A determination by the department under this subpart shall, except as provided in this subsection, be conclusive and binding as to all procedural and substantive matters which were or could have been presented to the department hereunder. All determinations by the department under this subpart are reviewable as provided in 2 Pa.C.S. Ch. 7 (relating to judicial review).

SUBCHAPTER B SINKING FUNDS AND OTHER FUNDS AND ACCOUNTS

Sec.

8221. Creation of sinking funds and deposits, reserves and surplus funds.

8222. Assessment fund.

8223. Duty of treasurer.

8224. Deposit and investment of moneys in sinking funds and other funds.

8225. Management of sinking and other funds.

8226. Inspection of sinking funds and orders to comply.

8227. Sinking fund not required for small borrowings.

§ 8221. Creation of sinking funds and deposits, reserves and surplus funds.

(a) General rule.--Every local government unit having outstanding any bonds or notes, other than tax anticipation notes and other than notes issued under section 8109 (relating to small borrowing for capital purposes), shall create forthwith, subject to the terms of any existing contracts with the holders of such bonds or notes, and every local government unit issuing any bonds or notes shall create simultaneously with or prior to the delivery of the bonds or notes, and thereafter maintain until the bonds or notes are paid in full, a sinking fund:

(1) for the aggregate or for one or more issues or series of its general obligation bonds and notes; and

(2) separately for each project or combination of projects financed by revenue or guaranteed revenue bonds or notes as to which different revenues are pledged. If a sinking fund is established for more than one issue of bonds, a separate debt service account for each issue may be established in the sinking fund. The sinking fund shall be maintained with a bank, trust company or bank and trust company located and lawfully conducting a banking or trust business in this Commonwealth and appointed from time to time as a sinking fund depository.

(b) Deposit of moneys.--Moneys for the payment of taxes assumed and principal and interest on outstanding bonds or notes shall be deposited in the applicable sinking fund or sinking fund account from the sources, at the times and in the amounts provided in any contract with the holders of the bonds and notes but, in any event, prior to the time when payment of the taxes, principal and interest become due and payable. All moneys deposited in sinking funds as required by this subpart and all investments and proceeds of investments thereof shall, without further action or filing, be subject to a perfected security interest for the holders of the bonds or notes for which the sinking fund is held until the money or investments have been properly disbursed or sold.

(c) Revenues from use of capital project.--A local government unit pledging the rates, rentals, receipts, charges and tolls from the use of a capital project for the security of revenue or guaranteed revenue bonds or notes may by ordinance provide for the deposit thereof as and when received in the sinking fund for the project.

(d) Other funds and accounts.--A local government unit may provide by ordinance for the creation and maintenance of other accounts in the sinking fund or of other funds for revenue or guaranteed revenue bonds or notes, including operating accounts or funds for financed projects, reserve accounts or funds for various purposes, a bond or note redemption account or fund and a surplus account or fund, and may prescribe the purposes for which the moneys and investments in each account or fund may be withdrawn and the amounts, times and sources of deposits therein. No

ordinance shall restrict the application of the rates, receipts, charges and tolls received in respect of a capital project or combined capital projects, exclusive of assessments and contributions for capital improvements, in any fiscal year in excess of the amount required during the year for operating expenses, plus 140% or such lesser percent as may be fixed by ordinance of the amount required to be deposited during the year from the revenues in the applicable sinking fund for the payment, at maturity or scheduled mandatory redemption, of the principal of and interest on the related bonds or notes. This excess shall at all times be available for use by the local government unit for any lawful purpose, and no contract with the holders of bonds or notes shall provide to the contrary.

§ 8222. Assessment fund.

If a local government unit issues bonds or notes as general obligation bonds or guaranteed revenue bonds to provide funds for and towards the cost of making permanent street, sidewalk, water or sewer improvements or other assessable improvements and the cost is assessed against the properties benefited, the assessments as collected shall be paid into a separate assessment fund. Moneys to the credit of the assessment fund may be used for any one or more of the following purposes in any proportions and subject to any priorities set forth in the ordinance incurring the debt:

- (1) Payments to the sinking fund.
- (2) Payment of the cost of such improvements.
- (3) Creation and maintenance of a revolving fund if permitted by the laws governing the local government unit.

(4) Payment to the general fund or any other fund of the local government unit. The fund may be continued as a revolving fund if permitted by law or discontinued at any time. Unless otherwise provided in the ordinance incurring the debt, upon discontinuance of the fund, the proceeds of the assessments shall be used to pay any bonds or notes remaining outstanding and to reimburse the general fund of the local government unit for the moneys paid on account of the bonds or notes.

§ 8223. Duty of treasurer.

The treasurer of each local government unit shall deposit into the applicable sinking fund or other fund the moneys to be deposited therein pursuant to the pledge or covenant made or adopted by the local government unit at the times and in the amounts provided in the pledge or covenant or, if no pledge or covenant has been made or adopted, as provided in the appropriations made by the governing body. If no appropriation of moneys has been made or if it appears that, as a result of other expenditures, the appropriated revenues will not be received in sufficient amounts in time to make either the deposits required to be made for the payment of the taxes assumed and the interest on and principal of general obligation bonds and notes or the amount due on a guaranty of guaranteed revenue bonds or notes or on a guaranty of any authority or other local government unit obligation, the treasurer shall pay into the applicable sinking fund or other fund that portion of each receipt of tax moneys and other available revenues, subject, in the case of a limited guaranty, to the terms thereof, as will result in the deposit of sufficient moneys in the sinking fund or other fund to pay the taxes assumed and the principal of the interest on the bonds or notes or to meet the guaranty obligation of the local government unit as and when they become due and payable. The governing body of a local government unit may issue its tax anticipation notes under Subchapter B of Chapter 81 (relating to tax anticipation notes and funding debt) to provide all or any part of any moneys needed for deposit in the sinking funds or other funds.

§ 8224. Deposit and investment of moneys in sinking funds and other funds.

(a) Deposit with financial institutions.--Any moneys in sinking funds and other funds established by ordinance as provided in this subpart, if not required for prompt expenditure, may be deposited at interest in time accounts or certificates of deposit of any bank or bank and trust company, accounts with any savings bank or deposits in building and loan associations or savings and loan associations. Moneys required for prompt expenditure shall be held in demand deposits. To the extent that the deposits or accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, they need not be secured; otherwise, the deposits shall be secured as public deposits whether or not title, by virtue of the deposit with a fiscal agent or trustee for bondholders, is in the fiscal agent or trustee, except that moneys held by the fiscal agent, trustee or sinking fund depository itself may be secured as trust funds.

(b) Investment in securities.--Any moneys in funds or accounts not required for prompt expenditure and not deposited at interest shall, to the extent practicable and reasonable, be invested in any securities in which the Commonwealth may, at the time of investment, invest moneys of the Commonwealth not required for prompt expenditure, subject to any stricter requirements in any contract with the holders of bonds or notes for which the particular fund or account was created or maintained.

(c) Control of account.--All such deposits and investments shall be in the name of the local government unit, but moneys and investments in the sinking fund shall be subject to withdrawal or collection only by the sinking fund depository for proper purposes in accordance with this subpart.

(d) Disposition of income.--Income received from any deposit or investment shall be a part of the fund or account invested and may be applied if so desired by the local government unit in reduction of or to complete any required deposits in the fund or account.

(e) Combining accounts.--For the purposes of investment or deposit at interest, all accounts in a sinking fund or other accounts or funds established in respect of one or more series of bonds or notes having the same depository may be combined, and each combined account shall be entitled to its pro rata share of each deposit or investment.

(f) Return of unclaimed moneys.--The sinking fund depository shall return to the local government unit all moneys deposited in a sinking fund for the payment of bonds, notes or coupons which have not been claimed by the holders thereof after two years from the date when payment is due, except where the funds are held for the payment of outstanding checks, drafts or other instruments of the sinking fund depository. This subsection or any action taken under this subsection does not relieve the local government unit of its liability to the holders of unrepresented bonds, notes or coupons.

(g) Sale of investments.--Any investments of a sinking fund, including bonds of the local government unit held therein, may be sold at any time by the sinking fund depository if cash is required for expenditure, or as directed by the managers of the sinking fund, through any broker or dealer in securities, any other law concerning dispositions of assets of a local government unit to the contrary notwithstanding.

§ 8225. Management of sinking and other funds.

The management and control of sinking and other funds and investments thereof subject to the provisions of this subpart shall be vested in the governing body of the local government unit except:

- (1) Where by any other law there has been created any board or commission for the management and control of sinking funds of a particular class of local government units, in which case the board or commission shall have the management and control of the sinking funds of the local government units.
 - (1.1) To the extent otherwise provided in this subpart.
 - (2) To the extent otherwise lawfully provided in any contract with the holders of bonds or notes.

§ 8226. Inspection of sinking funds and orders to comply.

(a) General rule.--The department may from time to time audit the sinking funds and all records pertaining thereto of local government units which have any outstanding debt, except those annually submitting to the department reports of their sinking funds audited by an independent public accountant and except for school districts of the first class or cities of the second class and second class A.

(b) Order to comply.--If such audit or reports disclose that any local government unit has refused or neglected to establish sinking funds as required by this subpart or has failed to provide sufficient moneys for any sinking fund to meet the payments of assumed taxes, principal and interest to be made therefrom, is not investing a sufficient amount of the sinking fund moneys or is otherwise in violation of this subchapter, the department shall make an order requiring the local government unit or any officer thereof or the governing body to take any steps as, in the opinion of the department, will cause the sinking funds to comply with this subchapter or to be sufficient.

(c) Mandamus to compel compliance with order.--In addition to the criminal prosecutions provided for in Subchapter E (relating to penalties) or in lieu thereof, the department may apply to the court for an order in mandamus to issue to the officer or governing body of the local government unit to compel compliance with the order of the department or with the order with any modifications thereof as to the court may seem just and proper.

§ 8227. Sinking fund not required for small borrowings.

A local government unit may, but shall not be required to, comply with the provisions of this subchapter in respect of notes issued in compliance with section 8109 (relating to small borrowing for capital purposes).

SUBCHAPTER C REFUNDING OF DEBT

- Sec.
8241. Power to refund.
8242. Treatment of costs upon refunding.
8243. Limitation on extending term of debt by refunding.

- 8244. Effect of debt limits on refunding nonelectoral bonds or notes or lease rental debt.
- 8245. Refunding of electoral debt.
- 8246. Procedure for authorization, sale, issue and approval of refunding bonds or notes.
- 8247. Special limitation on refunding of funding debt.
- 8248. Approval of refunding by the electors.
- 8249. Refunding with bonds of another type.
- 8250. Use of proceeds of refunding bonds and when refunded bonds are no longer deemed outstanding.
- 8251. Cessation of interest on called bonds or notes.
- § 8241. Power to refund.

(a) General rule.--Subject to the provisions of the outstanding bonds, notes or obligations evidencing lease rental debt and subject to the provisions of this subchapter, a local government unit may refund any outstanding debt, in whole or in part, at any time and may refund any outstanding notes with bonds or bonds with notes.

(b) Authorized purposes.--The refunding may be for any one or more of the following purposes:

- (1) Reducing total debt service over the life of the series.
- (2) Reducing the annual debt service in any particular year or years by extending the life of the issue subject to the limitations imposed by section 8247 (relating to special limitation on refunding of funding debt).
- (3) Eliminating any covenant or restriction in or applicable to any outstanding series or issue of bonds or notes determined by the local government unit to be unduly burdensome or restrictive.
- (4) Refunding any maturity or maturities or any portions thereof to a later date subject to the limitations imposed by section 8247.
- (5) Substituting bonds for notes or bond anticipation notes or substituting notes for bonds.
- (6) Adjusting lease rentals upon refunding of lease rental debt for any one or more of the foregoing purposes. It is immaterial whether or not any such refunding under paragraph (2), (3), (4) or (5) increases the total debt service payable over the life of the series.

(c) Definition.--As used in this section, the term "refund" and its variations shall mean the issuance and sale of obligations, the proceeds of which are used or are to be used for the payment or redemption of outstanding obligations upon or prior to maturity.

§ 8242. Treatment of costs upon refunding.

(a) General rule.--In any refunding, a principal amount of refunding bonds or notes or obligations evidencing lease rental debt equal to the sum of the following:

- (1) the call premium payable on the bonds, notes or obligations being refunded;
- (2) the discount allowed on the sale of the refunding bonds, notes or obligations;
- (2.1) any funds borrowed in order to pay any termination payment required to be paid under a qualified interest rate management agreement in which the notional amount is identified as corresponding to all or any portion of the bond or note being refunded.
- (3) any funds borrowed to pay interest on bonds, notes or obligations being refunded; and
- (4) the costs of issue and sale of the refunding bonds, notes or obligations; may be considered as interest on the refunding bonds, notes or obligations and may be separately stated in all reporting of debt and in all computation of debt limits and, if so considered and reported by the local government unit, shall not be considered as electoral, nonelectoral or lease rental debt. In subsequent debt statements, any such separately stated principal amount of bonds, notes or obligations shall be reported as being amortized in the same proportion as the series of which they are a part.

(b) Comparison of debt service.--For the purpose of computing whether savings are being effected, the comparison of debt service which would be payable on the refunded bonds, notes or obligations shall be with debt service on the refunding bonds, notes or obligations without reference to the designation of the costs in subsection (a)(1) through (4), adjusted in each case by projected receipt of interest on invested funds of excess revenues or application of reserves to make the comparison reasonable and proper.

§ 8243. Limitation on extending term of debt by refunding.

(a) General rule.--Subject to the terms of section 8247 (relating to special limitation on refunding of funding debt) and to the terms of subsection (b), a local government unit shall not extend the term of outstanding debt through refunding to a maturity date that could not have been included in the original issue, except in the case of an emergency refunding of stated maturity date to avoid a default occasioned by an unforeseen shortage in total revenues proven to the satisfaction of the department upon petition, filed by the governing body of the local government unit, alleging the emergency and the unforeseen loss of revenues. Public notice of the intention to file a petition shall be given by

advertisement not less than five nor more than 20 days before the filing thereof. The emergency refunding shall be made only in the amount and with the stated maturity date or dates approved by the department. The first maturity of a refunding issue need not occur until the year after the last stated maturity date of the bonds not called in the series being refunded.

(b) Increasing amount of principal payable.--Except in the case of refundings for the purposes specified in section 8241(b)(1) and (5) (relating to power to refund) and except for emergency refundings approved by the department, no refunding bonds shall be issued which will increase the amount of principal payable, after provision for earlier mandatory calls, in any year or years after the latest stated maturity date of the bonds being refunded, over the amount of the principal which would have been payable on the bonds or notes originally issued for the project in each such year if the original bonds or notes had been structured on a 6% level annual debt service plan to the last stated maturity date of the proposed refunding bonds, computed to the nearest whole multiple of \$5,000, as the amounts shall be computed by a financial advisor, other qualified person or public accountant.

§ 8244. Effect of debt limits on refunding nonelectoral bonds or notes or lease rental debt.

If any debt originally incurred was lawfully incurred and issued and, at the time the debt was incurred, the portion constituting nonelectoral debt or lease rental debt was within the limitations imposed thereon by law, the issue of refunding bonds or notes or the adjustment of lease rentals in respect of the debt shall be lawful and valid, notwithstanding that the aggregate of outstanding debt shall thereby exceed the then applicable limitations set by section 8022 (relating to limitations on incurring of other debt), which limitations shall be deemed increased but only to the extent necessary to effectuate and amortize the refunding lawfully. Any portion of the refunding bonds, notes or obligations may be excluded from nonelectoral debt or lease rental debt, either as subsidized debt or self-liquidating debt, in accordance with the procedure provided in Subchapter B of Chapter 80 (relating to limitations on debt of local government units).

§ 8245. Refunding of electoral debt.

A local government unit may, by action of its governing body and in accordance with the limitations of this subchapter, refund any debt originally incurred as electoral debt. The refunding bonds, notes or obligations so issued shall not thereby be considered nonelectoral debt or lease rental debt for any purpose.

§ 8246. Procedure for authorization, sale, issue and approval of refunding bonds or notes.

Bonds or notes issued for refunding purposes shall be authorized, issued, sold, approved and settled and refunding of lease rental debt shall be authorized and approved in the manner provided in this subpart for the authorization, issue, sale and approval of the original debt, subject to any additional limitations provided in this subchapter. No refunding bonds or notes shall be delivered to the purchasers thereof unless, simultaneously therewith, the notes or bonds being refunded become no longer outstanding in accordance with section 8250 (relating to use of proceeds of refunding bonds and when refunded bonds are no longer deemed outstanding). No adjustment in lease rentals shall be made unless appropriate provision for the retirement of the outstanding lease rental debt has been made.

§ 8247. Special limitation on refunding of funding debt.

A debt incurred for funding purposes pursuant to section 8130 (relating to approval by court to fund unfunded debt) or under law in existence prior to July 12, 1972, shall not be refunded except under section 8241(b)(1) (relating to power to refund) until the refunding has been approved as necessary by the court of common pleas. The approval shall be obtained by petition to reopen the proceedings in which the funding debt was originally incurred, and the court shall grant the petition if, after hearing, the court is satisfied that the refunding is necessary and is in the public interest. Public notice of the filing of the petition shall be given by advertisement not less than five nor more than 20 days before the filing thereof. All subsequent proceedings in respect of the refunding of the funding debt shall be taken in accordance with the provisions of this subpart applicable to the incurring of the original debt. Bonds or notes issued to refund funding debt shall be stated to mature at the dates and in the amounts on each date as may be approved by the court, notwithstanding any limitation on the term of funding debt imposed elsewhere in this subpart.

§ 8248. Approval of refunding by the electors.

The governing body of any local government unit may also obtain the approval of the electors to any refunding of nonelectoral or lease rental debt in the manner prescribed for an original issue by Subchapter C of Chapter 80 (relating to procedure for securing approval of electors) and may issue general obligation bonds or guaranteed revenue bonds or incur other obligations in the refunding if approved by the electors regardless of the class of bonds, notes or obligations originally issued.

§ 8249. Refunding with bonds of another type.

Subject to the limitations of section 8022 (relating to limitations on incurring of other debt) or after a referendum held pursuant to section 8248 (relating to approval of refunding by the electors), the governing body of any local government unit may for any purpose specified in section 8241 (relating to power to refund) refund with its general obligation bonds or notes or its guaranteed revenue bonds or notes all or any part of any outstanding revenue bonds or notes or bonds, notes or obligations of any authority or other local governmental unit constituting lease rental debt of the local government unit or may refund any outstanding revenue bonds or guaranteed revenue bonds or notes with like bonds or notes. The local government unit may also refund any general obligation or guaranteed revenue bonds with its revenue bonds, by the incurring of lease rental debt or by guaranteeing the obligations of an authority.

§ 8250. Use of proceeds of refunding bonds and when refunded bonds are no longer deemed outstanding.

(a) General rule.--The proceeds of refunding bonds, together with any other moneys made available for the purpose, shall be used solely for the purpose of retiring the bonds being refunded and for the purpose of paying the costs of the refunding.

(b) When obligations no longer deemed outstanding.--Any bonds or notes to be redeemed or paid shall no longer be deemed to be outstanding for the purpose of determining the net debt of the local government unit or for the purposes of any indenture limitations on replying revenues when the local government unit has irrevocably deposited with a bank or bank and trust company in a sufficient amount:

(1) Moneys.

(2) Noncallable securities of the Federal Government or of the Commonwealth maturing or payable at par at the option of the holders at or prior to the dates needed for disbursement.

(3) Time deposits or certificates of deposit, with a firm rate of interest or stated minimum rate of interest, issued by a bank or bank and trust company and insured or adequately secured as required by section 8224 (relating to deposit and investment of moneys in sinking funds and other funds).

(4) Any combination of the foregoing.

(c) Deposits equal to principal and interest.--Subject to any relevant contrary law or regulation, the amount deposited may be equal to the principal and interest to become due on the bonds or notes being refunded to the date on which the bonds or notes are stated to mature or any lesser amount computed in accordance with the provisions of subsection (d).

(d) Test of sufficiency.--The deposited amount shall be sufficient when it, together with the interest to be earned thereon, will equal the principal, premium and interest to become due on the bonds or notes being refunded to the earlier of the date at which any bonds or notes are stated to mature or have been called for prior redemption, except that the local government unit shall simultaneously have given the bank or bank and trust company instructions and authority, stated to be irrevocable, to publish any notices of redemption remaining to be published.

(e) Irrevocable call for redemption.--When stated to be irrevocable, the instructions and authority to call bonds or notes for redemption shall become irrevocable upon the delivery thereof or upon the deposit of the moneys or securities in a sufficient amount to effect the redemption, whichever occurs later. Until the irrevocability has occurred, a call for redemption may be revoked by notice given in the same manner as the notice of redemption.

§ 8251. Cessation of interest on called bonds or notes.

Upon the date fixed for redemption, if the irrevocable deposit has been made and the required notice of the redemption has been given, no further interest on the bonds or notes so called for redemption shall accrue. This subchapter does not relieve the issuing local government unit of its obligation to see that the holders of the bonds or notes called for redemption are paid in full on the date fixed for redemption. From and after that date, if the irrevocable deposit was made at the proper amount on that date, the holders of bonds or notes called for redemption shall have no rights against the local government unit except to receive payment from the deposited funds or from the local government unit to the extent of the moneys returned to it pursuant to section 8224(f) (relating to deposit and investment of moneys in sinking funds and other funds).

SUBCHAPTER D
REMEDIES

Sec.

8261. Failure to budget debt service.

8262. Failure to pay principal or interest.

8263. Trustee for bondholders.

- 8264. Receiver for revenue projects.
- 8265. Costs of suits or proceedings.
- 8266. Distribution of moneys realized for bondholders.
- § 8261. Failure to budget debt service.

If a local government unit having outstanding any general obligation bonds or notes or guaranteed revenue bonds or notes, lease rental debt or guaranty of authority obligations fails or refuses to make adequate provision in its budget for any fiscal year for the sums payable in respect of the bonds or notes, lease rental or guaranty in the year or fails to appropriate or pay the moneys necessary in that year for the payment of the amount of the lease rental or guaranty, as the case may be, of the maturing principal of and the interest on the bonds or notes or any of them, or any tax anticipation notes, or any sinking fund obligation for the bonds or notes or tax anticipation notes, or guaranty or the lease rental payment coming due in the fiscal year of the budget or for which the appropriations or payments should have been made, then at the suit of the holder of any bond, note or tax anticipation note or coupon or guaranty, or the holder of any authority obligation secured by a lease evidencing the acquisition of a capital asset or of any taxpayer of the local government unit, the court of common pleas shall, after a hearing held upon such notice to the local government unit as the court may direct and upon a finding of such failure or neglect, by order of mandamus require the treasurer of the local government unit to pay into the sinking fund for each series of bonds or notes then outstanding, or for each guaranty or lease rental payment, the first tax moneys or other available revenues or moneys thereafter received in the fiscal year by the treasurer, equally and ratably for each series for which provision has not been made in proportion to debt service for the year on each series then outstanding, or the amounts due upon guaranties or as payments with respect to lease rental debt, as the case may be. Any priority on incoming tax moneys accorded to a separate sinking fund for tax anticipation notes under the authority of section 8125 (relating to security for tax anticipation notes and sinking fund) shall not be affected by this provision until the sum on deposit in each sinking fund equals the moneys that should have been budgeted or appropriated for each series.

§ 8262. Failure to pay principal or interest.

(a) General rule.--If a local government unit fails or neglects to pay the interest or principal on any of its general obligation bonds or notes or tax anticipation notes as the same becomes due and payable, whether at the stated maturity date or upon an unrevoked call for prior redemption, or to perform its payment obligations with respect to any lease rental debt or guaranteed revenue bonds or notes, and the failure continues for 30 days, the holder thereof may, subject to priorities created under sections 8125 (relating to security for tax anticipation notes and sinking fund), 8261 (relating to failure to budget debt service) and 8263 (relating to trustee for bondholders) and to any limitations upon individual rights of action properly provided in the bond ordinance or any indenture, recover the amount due in an action in the court of common pleas. The judgment recovered shall have an appropriate priority upon the moneys next coming into the treasury of the local government unit and shall be a judgment upon which funding bonds may be issued pursuant to **Subchapter B** of Chapter 81 (relating to tax anticipation notes and funding debt).

(b) Revenue bonds and notes.--If a local government unit fails or neglects to pay or cause to be paid the principal of or the interest upon any revenue bond or note as the same shall become due, whether at the stated maturity or upon call for prior redemption, the holder thereof may, subject to priorities created under sections 8125, 8262 (relating to failure to pay principal or interest) and 8263 and to any limitations upon individual rights of action properly provided in the bond ordinance or any indenture, recover the amount due in an action in the court of common pleas, but the judgment shall be limited to payment out of the assessments, revenues, rates, rents, tolls and charges from the project which are pledged for the payment of the bonds or notes.

§ 8263. Trustee for bondholders.

(a) Appointment.--Notwithstanding any provision in the bonds or notes or in any authorizing ordinance, if a local government unit defaults in the payment of the principal of or the interest on any series of bonds or notes after it becomes due, whether at the stated maturity or upon call for prior redemption, and the default continues for 30 days or if the local government unit fails to comply with any provision of the bonds or notes, or in any authorizing resolution or indenture of trust, the holders of 25% in aggregate principal amount of the bonds or notes of the series then outstanding, by an instrument or instruments filed in the office of the recorder of deeds in the county in which the local government unit is located, signed and acknowledged as a deed to be recorded, may appoint a trustee, who may be the sinking fund depository, to represent the holders of all the bonds or notes, and the representation shall be exclusive for the purposes provided in this section.

(b) Powers and duties.--The trustee may and, upon written request of the holders of 25% in principal amount of the bonds or notes then outstanding and upon being furnished with indemnity satisfactory to it, shall, in his or its own

name, take one or more of the following actions, and the taking of such action shall preclude similar action whether previously or subsequently initiated by individual holders of bonds or notes:

(1) By mandamus or other proceeding at law or in equity, enforce all rights of the holders of the bonds or notes, including, in the case of revenue or guaranteed revenue obligations, the right to require the local government unit to:

(i) impose and collect rents, rates, tolls and charges adequate to carry out any agreement or covenant as to or pledge of the rents, rates, tolls or charges for the use of the project or projects financed by the bonds or notes; or

(ii) carry out any other agreements with the holders of the bonds or notes.

(2) Bring suit on the bonds or notes without the necessity for producing the bonds or notes, and with the same effect as a suit by any holder.

(3) In the case of revenue or guaranteed revenue bonds or notes, require the local government unit to account, as if it were the trustee of an express trust for the holders of the bonds or notes, for any pledged revenues received.

(4) In the case of general obligation bonds or notes, petition the court to levy, after a hearing upon such notice to the owners of assessable real estate as the court may prescribe, the amount due before or after the exercise of any right of acceleration on the bonds or notes, plus estimated costs of collection as an assessment upon the properties benefited by the improvement pursuant to the front-foot rule if the project is an assessable improvement, otherwise upon all taxable real estate and other property subject to ad valorem taxation in the local government unit, in proportion to the value thereof as assessed for tax purposes, and the trustee may collect or cause the local government unit to collect such assessments as by foreclosure of a mortgage or security interest on the realty or other property if not paid on demand.

(5) In the case of guaranteed revenue bonds or notes or a guaranty of authority obligations or unpaid lease rentals under leases evidencing the acquisition of capital assets, to petition the court to levy, after hearing upon the notice to the owners of assessable real estate and other property subject to ad valorem taxation as the court may prescribe, the amount due on the guaranty or under the lease plus estimated costs of collection as an annual assessment for the current and future years upon all taxable real estate and other properties subject to ad valorem taxation in the local government unit in proportion to the value thereof as assessed for tax purposes, and the trustee may collect or cause the local government unit to collect the assessments as by foreclosure of a mortgage or security interest on the realty or other property if not paid on demand. The levy shall bear interest, until paid, at a rate sufficient to cover accruing interest on the bonds or notes.

(6) By suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds, notes, guaranty or authority obligations under a lease evidencing the acquisition of capital assets.

(7) After 30 days' prior written notice to the local government unit and subject to any limitations in the bond ordinance or relevant indenture, declare the unpaid principal of all the bonds or notes to be immediately due and payable with interest at the rates stated in the bonds until final payment. If all defaults are made good, the trustee may annul the declaration and its consequences. Any assessment levied pursuant to paragraphs (4) and (5) shall have the same priority and preference as to other liens or mortgages on the real estate or security interests in fixtures thereon or other property as a lien for unpaid taxes.

(c) Installment payments.--The court of common pleas in cases of extreme hardship may provide for the payment of sums levied in five or fewer annual installments with interest at a rate sufficient to cover the interest accruing on the bonds or notes.

(d) Trustee or fiscal agent under original issue.--If a trustee or fiscal agent for the bondholders or noteholders was appointed in connection with the original issue of the bonds or notes and is willing to serve and exercise the powers conferred upon a trustee appointed by this section, the trustee appointed in the manner provided in this section shall have the powers set forth unless the appointment under this section was executed by or pursuant to the authority of the holders of a principal amount of the bonds or notes sufficient to remove the originally appointed trustee or fiscal agent.

§ 8264. Receiver for revenue projects.

(a) Appointment.--A trustee for the holders of defaulted bonds or notes, whether or not the series of bonds represented by the trustee has been declared to be and has become immediately due and payable, shall be entitled as of right to the appointment by the court of common pleas of a receiver of all or any part or parts of a project or the projects, the rents, rates, revenues, tolls and charges of which are pledged for the security of the bonds or notes of the series.

(b) Powers and duties.--Except as otherwise provided in this section, the receiver may not sell, assign, mortgage or otherwise dispose of, but may enter and take possession of, the project or projects or part or parts thereof and, subject to the equal or prior rights of the holders of any other series of bonds or notes, shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance, repair and reconstruction of the project or projects or parts thereof. The receiver may thereafter proceed with any construction or other work thereon

which the local government unit is under obligation to do. The receiver may operate, maintain, repair and reconstruct the project or projects or parts thereof and collect and receive all rents, rates, receipts, tolls, other charges and revenues arising therefrom, subject to the equal or prior rights of the holders of any other series of bonds or notes therein. As part of his power to operate and maintain a project, the receiver may sell or otherwise dispose of equipment which is no longer used or usable by the project. The receiver shall perform the public duties and carry out the lawful agreements and obligations of the local government unit with respect to the project or projects or parts thereof, all under the direction of the court, but shall not perform any essential governmental functions.

§ 8265. Costs of suits or proceedings.

In any suit, action or proceeding by or on behalf of the holders of defaulted bonds or notes of a local government unit brought under this subpart, the fees and expenses of a trustee or receiver, including operating costs of a project and reasonable counsel fees, shall constitute taxable costs, and all costs and disbursements allowed by the court shall be deemed additional principal due on the bonds or notes and shall be paid in full from any recovery prior to any distribution to the holders of the bonds or notes.

§ 8266. Distribution of moneys realized for bondholders. Moneys or funds collected for the holders of defaulted bonds or notes entitled to share equally and ratably therein shall, after the payment of costs and fees as provided in section 8265 (relating to costs of suits or proceedings), be applied by the trustee or receiver, unless the terms of the bonds or notes provide otherwise, as follows:

(1) Unless the principal of all of the bonds or notes represented has become or has been declared due and payable:

(i) To the payment to the persons entitled thereto of all installments of interest then due in the order of the stated maturity dates of the installments of the interest and, if the amount available is not sufficient to pay any installment in full, then to the payment ratably, according to the amounts due on the installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest expressed in the bonds or notes or coupons for interest.

(ii) To the payment to the persons entitled thereto of the unpaid principal of any bonds or notes which has become due, whether at stated maturity dates or by call for redemption, in the order of their respective due dates and, if the amount available is not sufficient to pay in full all the bonds or notes due on any date, then to the payment ratably, according to the amounts of principal due on the dates, to the persons entitled thereto without any discrimination or preference.

(2) If the principal of all of the bonds or notes entitled to share equally in the moneys has become or has been declared due and payable, to the payment of the principal and interest then due and unpaid upon the bonds or notes without preference or priority of principal over interest or interest over principal, or of any installment of interest over any other installment of interest, or of any bond or note over any other bond or note, ratably according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds, notes and coupons.

(3) If more than one series is involved and the principal of all bonds or notes of one or more series has become or has been declared due and payable, and that if one or more others has not, the funds available shall be apportioned to each series according to the respective amounts of principal of each series then outstanding less, as to each series, any amounts held earmarked for the series, and distribution to the holders of the bonds, notes and coupons of each series shall be made according to whichever of paragraphs (1) and (2) may be applicable.

SUBCHAPTER E
PENALTIES

Sec.

8271. Failure to obey sinking fund directive of department.

§ 8271. Failure to obey sinking fund directive of department.

Any officer or any member of the governing body of any local government unit who refuses or neglects to obey any order of the department made under Subchapter B (relating to sinking funds and other funds and accounts) concerning sinking funds or who refuses to furnish requested information required by the department or refuses agents of the department access to any books, records or documents relating to sinking funds commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not more than \$500 for each day of violation.

SUBCHAPTER F
INTEREST RATE RISK AND INTEREST COST MANAGEMENT

Sec.

8281. Qualified interest rate management agreements.

8282. Covenant to pay amounts due under qualified interest rate management agreements.

8283. Remedies.

8284. Notice and retention of records.

8285. Financial reporting.

§ 8281. Qualified interest rate management agreements.

(a) General rule.--

(1) Except as set forth in paragraph (4), notwithstanding any other law to the contrary, a local government unit may negotiate and enter into qualified interest rate management agreements consistent with the provisions of this subchapter.

(2) The local government unit must authorize and award by resolution each qualified interest rate management agreement or any confirmation of a transaction. The resolution is subject to section 8003(a) and (b) (relating to advertisement and effectiveness of ordinances) but may be valid and effective for all purposes immediately upon adoption or as otherwise provided in the resolution.

(3) A local government unit has the power to contract for insurance covering the risks of nonpayment of amounts due under qualified interest rate management agreements.

(4) The authority granted in this subchapter shall not apply to any local government unit which has been declared distressed by the Department of Community and Economic Development.

(b) Requirements for resolution.--The resolution authorizing and awarding a qualified interest rate management agreement, or authorizing a transaction under the agreement must include in the resolution or as an appendix to the resolution all of the following:

(1) A copy of the qualified interest rate management agreement or confirmation of the transaction under the qualified interest rate management agreement in substantially the form to be executed pursuant to the resolution.

(2) The interest rate management plan meeting the requirements under this subpart:

(i) adopted by the local government unit; or

(ii) if the local government unit is incurring indebtedness under this chapter which has or will be issued to a public authority that has entered into or will enter into an interest rate management agreement meeting the requirements of a qualified interest rate management agreement under this subpart, adopted by that public authority.

(3) A statement of the manner of the award of the qualified interest rate management agreement under subsection (e).

(c) Contents of qualified interest rate management agreements.--In addition to other provisions approved by the local government unit, a qualified interest rate management agreement must contain all of the following:

(1) The covenant of the local government unit to make payments required by the qualified interest rate management agreement and the covenants authorized by section 8282 (relating to covenant to pay amounts due under qualified interest rate management agreements).

(2) The notional amount of the qualified interest rate management agreement and the principal amount of bonds or notes or lease rental debt, or portions of the notional or principal amounts, issued or to be issued by the local government unit under this subpart or guaranteed by the local government unit under this subpart, to which the agreement relates.

(3) The term of any qualified interest rate management agreement, which must not exceed the latest maturity date of the bonds or notes referenced in the qualified interest rate management agreement.

(4) A provision requiring the termination of the agreement if all debt to which the qualified interest rate management agreement relates is no longer outstanding.

(5) The maximum annual interest rate which the local government unit may pay thereunder.

(6) A provision that the maximum net payments by fiscal year of a local government unit shall not exceed the maximum interest rate specified in the qualified interest rate management agreement for:

(i) periodic scheduled payments, not including any termination payments, due under the qualified interest rate management agreement; and

(ii) the interest on the bonds or notes to which the qualified interest rate management agreement relates.

(7) The source of payment of the payment obligations of the local government unit, which must be either

general revenues or revenues specifically identified in the agreement.

(8) A provision addressing the actions to be taken if the credit rating of the other party changes.

(9) A provision that periodic scheduled payments due under the qualified interest rate management agreement and debt service due on the related bonds or notes or payments due under the related instrument evidencing lease rental debt or guaranty of the local government unit shall be senior in right and priority of payment to termination payments due under the qualified interest rate management agreement.

(d) Other provisions of the qualified interest rate management agreement.--The qualified interest rate management agreement may include:

(1) A covenant to include any termination payment or similar payment for a qualified interest rate management agreement in its current budget at any time during a fiscal year or in a budget adopted in a future fiscal year.

(2) A provision that the following shall be equally and ratably payable and secured under the applicable covenants authorized in section 8282:

(i) Periodic scheduled payments due under the qualified interest rate management agreement; and

(ii) Any of the following to which the agreement relates:

(A) the debt service due on the bonds or notes;

(B) payment under an instrument evidencing lease rental debt; or

(C) payment under a guaranty of the local government unit.

(3) A provision that the qualified interest rate management agreement may be terminated at the option of the local government unit without cause but that the qualified interest rate management agreement may not be terminated at the option of the other party to the qualified interest rate management agreement without cause.

(e) Award of qualified interest rate management agreements.--

(1) The local government unit shall establish a process for selecting other parties before entering into a qualified interest rate management agreement.

(2) The local government unit shall establish qualifications for other parties before entering into a qualified interest rate management agreement. The qualifications shall include a rating for the other party of at least the third highest rating category from a nationally recognized rating agency.

(3) A qualified interest rate management agreement must be awarded by public sale, private sale by negotiation or private sale by invitation.

(4) The local government unit shall select the qualified interest rate management agreement which the local government unit determines is in its best financial interest. The qualified interest rate management agreement selected must contain financial terms and conditions which in the opinion of the independent financial advisor to the local government unit are fair and reasonable to the local government unit as of the date of award.

(5) The local government unit may satisfy the requirements of paragraph (4) by obtaining a finding from an independent financial advisor to the public authority that the financial terms and conditions of the agreement are fair and reasonable to the public authority as of the date of the award if all of the following apply:

(i) The local government unit is incurring indebtedness under this chapter which has or will be issued to a public authority.

(ii) In connection with the incurring of debt under subparagraph (i), the local government unit will become obligated for all or a portion of the public authority's costs under an interest rate management agreement.

§ 8282. Covenant to pay amounts due under qualified interest rate management agreements.

(a) Contents.--The local government unit shall include in a qualified interest rate management agreement a covenant that the local government unit shall do the following:

(1) Include the periodic scheduled amounts payable in respect of the qualified interest rate management agreement for each fiscal year in its budget for that fiscal year.

(2) Appropriate those amounts from its general or specially pledged revenues for the payment of amounts due under the qualified interest rate management agreement.

(b) Pledge.--

(1) Except as set forth in paragraph (2), the local government unit may pledge its full faith, credit and taxing power for the budgeting, appropriation and payment of periodic scheduled payments due under a qualified interest rate management agreement.

(2) A local government unit may not make a pledge under paragraph (1) if the payment obligations of the local government unit under the qualified interest rate management agreement are limited as to payment to specified revenues of the local government unit.

(c) Security interest.--If the periodic scheduled payment obligations of the local government unit are specified in the qualified interest rate management agreement to be made from specified revenues of the local government unit, the local government unit may include in the qualified interest rate management agreement a covenant granting a security interest in those revenues to secure its periodic scheduled payment obligations under the agreement. The security interest shall be perfected under section 8147 (relating to pledge of revenues).

§ 8283. Remedies.

(a) Failure to budget amounts due under a qualified interest rate management agreement.--

(1) This subsection applies if a local government unit fails or refuses to budget for any fiscal year a periodic scheduled payment:

- (i) due in that year pursuant to the provisions of a qualified interest rate management agreement; and
- (ii) payable from the general revenues of the local government unit.

(2) If a local government unit commits a failure or refusal under paragraph (1), the following apply:

(i) The other party to the interest rate management agreement may bring an enforcement action in a court of common pleas.

(ii) After a hearing held upon notice to the local government unit as the court may direct, if the court finds a failure or refusal under paragraph (1), the court may, by order of mandamus, require the treasurer of the local government unit to pay to the other party out of the first tax money or other available revenue or money thereafter received in the fiscal year by the treasurer the periodic scheduled payments due pursuant to the provisions of the qualified interest rate management agreement. The order shall be subject to section 8281(c)(8) (relating qualified interest rate management agreements).

(iii) Any priority on incoming tax money accorded to a separate sinking fund for tax anticipation notes under the authority of section 8125 (relating to security for tax anticipation notes and sinking fund) shall not be affected by an order under subparagraph (ii) until the sum on deposit in each sinking fund equals the money which should have been budgeted or appropriated for each series.

(b) Failure to pay amounts due under a qualified interest rate management agreement.--

(1) This subsection applies if:

- (i) a local government unit fails to pay any amount due under a qualified interest rate management agreement when it becomes due and payable; and
- (ii) the failure continues for 30 days.

(2) If there is a failure under paragraph (1), the other party to the qualified interest rate management agreement may bring an action in a court of common pleas to recover the amount due. This paragraph is subject to:

- (i) the priorities under sections 8125 and 8281(c)(8); and
- (ii) any limitations upon rights of action properly provided in the qualified interest rate management agreement.

(3) The judgment recovered under paragraph (2) shall:

- (i) have an appropriate priority upon the money next coming into the treasury of the local government unit; and
- (ii) be a judgment upon which funding bonds may be issued pursuant to Ch. 81 Subch. B (relating to tax anticipation notes and funding debt).

(c) Failure to pay by school districts.--

(1) This subsection applies if a board of directors of a school district fails to pay or to provide for the payment of periodic scheduled payments, not including any termination payments, due pursuant to the provisions of a qualified interest rate management agreement.

(2) A party to a qualified interest rate management agreement must notify the Secretary of Education of a failure under paragraph (1).

(3) Upon notice under paragraph (2), the following apply:

- (i) The secretary shall notify the Department of Community and Economic Development and the offending board of school directors.
- (ii) If the secretary finds that the amount due and payable by the school district has not been paid, the secretary shall withhold out of any State appropriation due the school district an amount equal to the

amount due pursuant to the qualified interest rate management agreement and shall pay over the amount so withheld to the party to the qualified interest rate management agreement to whom the amount is due.

§ 8284. Notice and retention of records.

(a) Notice.--

(1) The local government unit shall file with the Department of Community and Economic Development certified copies of a resolution authorizing a qualified interest rate management agreement, including any appendix to the resolution, 15 days following adoption.

(2) If the maximum net payments by fiscal year for periodic scheduled payments of the local government unit, not including any termination payments, and interest on the bonds or notes to which the qualified interest rate management agreement relates, exceed the amount of interest approved in proceedings of the local government unit with respect to such bonds or notes filed with and approved by the department, the local government unit shall adopt an amendment to the ordinance or resolution authorizing such bonds or notes reflecting such increase. The amendment shall be advertised and effective as provided in section 8003 (relating to advertisement and effectiveness of ordinances), and filed with the department. No approval by the department or filing fee by the local government unit shall be required for any filing under this subsection.

(b) Records.--The department shall keep copies of all documents filed with the department under this section as long as a qualified interest rate management agreement is in effect. Documents filed with the department under this section are public records available for examination by any citizen of this Commonwealth; any party to the qualified interest rate management agreement; or any bondholder or noteholder, including holders of tax anticipation notes, of the local government unit filing any document pursuant to this section.

§ 8285. Financial reporting.

A local government unit which has entered into a qualified interest rate management agreement shall include in its annual financial statements information with respect to each qualified interest rate management agreement it has authorized or entered into, including any information required pursuant to any statement issued by the Governmental Accounting Standards Board.

ADDENDUM

Act 36 of 2002, effective April 18, 2002, amends/suspends portions of the LGUDA with respect to the funding of unfunded debt by a School District of the First Class which has been declared to be distressed by the Secretary of Education under Section 691 of the Public School Code of 1949, as amended. This would cover the School District of the City of Philadelphia. The Act eliminates the requirement of Court approval to fund unfunded debt and requires the School Reform Commission or its' successor to approve the funding; eliminates the requirement of finding that the deficit was unforeseen; extends the potential term of the bond/note from ten to thirty years; provides that the bond/note shall not be charged against the District's debt limits, and provides that the Pa. Supreme Court, and not DCED has exclusive jurisdiction to hear challenges concerning the debt. Act 36 has a sunset date of July 1, 2003.