
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 901 Session of
2013

INTRODUCED BY EICHELBERGER, BLAKE, FOLMER, TEPLITZ, YUDICHAK,
PILEGGI, WOZNIAK, SOLOBAY, VANCE AND MENSCH, JUNE 7, 2013

REFERRED TO LOCAL GOVERNMENT, JUNE 7, 2013

AN ACT

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, in indebtedness and borrowing, further providing for definitions, for classification and authority to issue bonds and notes, for cost of project, for exclusion of other self-liquidating debt to determine net nonelectoral debt or net lease rental debt and for preliminary authorizations as to financing; providing for preliminary approval by the department of the issuance of debt; further providing for submission to department, for manner of sale of bonds or notes, for fees for filing, for certificate of approval of transcript, for effect of failure of timely action by department, for records of department; providing for duty of advisors; further providing for treatment of costs upon refunding; providing for the offense of knowingly participating in an ultra vires act of a local government unit and for the offense of knowingly filing materially false or misleading certifications or statements with the department; and making a related repeal.

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

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

§ 8002. Definitions.

* * *

(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.
AThe portion of any debt for which payments have been made under a guaranty shall not be considered self-liquidating.

* * *

(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:

* * *

"Financial advisor." A person, firm or other entity experienced in various aspects of debt and financial transactions, who is retained by a local government unit to advise it with respect to structuring or repaying debt. Such term shall not include the lender, underwriter or other entity purchasing the bonds or notes of the local government unit or authority.

* * *

"Working capital." An amount which constitutes, under generally accepted accounting principles, the cost of the day-to-day operations of the project as well as a proper allowance for contingencies. Reimbursements under a guaranty or amounts to address budgetary deficits not related to the project shall not constitute reasonable working capital in connection with the incurring of debt under this subpart.

Section 2. Sections 8005(c) and (d), 8007, and 8026(a) (5) ~~and 8102~~ of Title 53 are amended to read:

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

* * *

(c) Authority to issue bonds and notes and lease rental debt.--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. Notwithstanding the foregoing, a local government unit may only ~~issue~~make a guaranty of ~~municipal debt of a municipality authority debt when governed by 53 Pa.C.S. Chapter 56 if such guaranty will reduce the interest cost on such debt is incurred in connection with a loan from or if the Federal Government, the Pennsylvania Infrastructure Investment Authority or any other instrumentality or agency of the Commonwealth~~municipality authority is unable to obtain financing for ~~a water or sanitary sewer~~the project upon reasonable rates and terms without the guaranty.

(d) Nature of guaranty and prohibition on fees.--The following shall apply to a guaranty:

(1) 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.

(2) A local government unit is prohibited from collecting a fee to guaranty the debt of an authority or another local government unit; provided that such prohibition shall not extend to reimbursement to the local government unit for reasonable costs or fees actually incurred in connection with providing a guaranty.

§ 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. ~~Costs incurred~~ Reimbursement for costs paid

(from sources other than debt) more than two (2) years before
the ~~fiscal year immediately preceding the date the~~date debt is
incurred may not be included in the cost of a project. ~~financed~~
by such debt unless the local government unit prior to the end
of the fiscal year in which such costs were paid shall have
adopted a resolution or enacted an ordinance, as appropriate,
pursuant to Section 8102 expressing its intent to incur debt to
finance such costs. Reimbursements ~~under~~for amounts paid by a
local government unit pursuant to a guaranty or ~~other~~ amounts ~~to~~
~~address budgetary deficits~~ not related to the project ~~described~~
in the resolution or ordinance authorizing the debt shall not
constitute a cost of a project ~~in connection with the incurring~~
~~of~~under this subpart. Costs that qualify for funding of unfunded
debt under ~~this subpart~~Section 8130 may only constitute a cost
of a project if the local government unit complies with the
requirements of Section 8130.

§ 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:

* * *

(5) The estimated net revenues of the project for each year of the remaining life of the bonds, notes or obligations with a justification for any assumed increase in the gross revenues of more than 5% in any one year and 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.

* * *

~~§ 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] After obtaining approval by the department under section 8102.1 (relating to preliminary approval by the department of the issuance of debt), if applicable, 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.~~

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

§ 8102.1. Preliminary approval by the department of the issuance of debt.

(a) General rule.--Prior to the ~~adoption~~enactment of an ordinance or adoption of a resolution authorizing the issuance of any general obligation bonds or notes or guaranteed revenue bonds or notes constituting nonelectoral debt or any agreement evidencing lease rental debt for the purpose of refunding outstanding debt for purposes other than pursuant to section 8241(b)(1) (reducing total debt service over the life of the series) or which a local government unit intends to be qualified as self liquidating or subsidized debt, a local government unit shall obtain a preliminary authorization to incur debt from the department. Authorization shall be obtained by filing a notice with the department in the form of a certificate signed by two officers of the local government unit. The certificate shall include a basic description of the intended financing. The department may prescribe the form of the certificate. The local government unit may not ~~take any action to~~ incur ~~the~~such debt until it receives a preliminary approval from the department. The department may require the local government unit to also provide evidence of any of the following:

(1) ~~Information satisfactory to the department that the local government unit has submitted a current audited financial statement. If the department determines that the most recent audited financial statements~~A description of the local government unit do not include a current audited financial statement, the department may prohibit the local government unit from incurring debt until current audited

~~financial statements covering the designated fiscal year or years are filed with the department.~~

~~(2) As part of the filing made by the local government unit with the department under paragraph (1), information demonstrating the~~ type and amount of payment or performance bond, letter of credit, or other financial security proposed to insure the completion of the project.

~~(3) Information satisfactory to the department that the local government unit is up to date on all of its municipal securities disclosures required under 17 CFR § 240.15c2-12 (relating to municipal securities disclosure). If the department is not satisfied that the local government unit is in compliance with such disclosure obligations, the department may prohibit the local government unit from incurring debt until the local government unit provides the department with proof of compliance that is satisfactory to the department.~~

~~(4)~~ (2) If the local government unit intends for the proposed debt to be self-liquidating, information debt or subsidized debt, evidence satisfactory to the department that the debt will be qualify as self-liquidating or subsidized debt.

~~(5)~~ (3) If the local government unit has existing debt which was previously approved by the department as subsidized debt or self-liquidating, information debt, evidence satisfactory to the department that ~~the~~ such debt continues to be ~~treated as~~ subsidized debt or self-liquidating debt and that no decrease in the amount to be excluded is required by

any change in circumstances, other than resulting from the payments of the debt, or, if there has been a change in circumstances, ~~information~~ evidence demonstrating ~~to the satisfaction of the department~~ the amount of debt that should continue to be ~~treated~~ excluded as subsidized debt or self-liquidating debt.

(~~64~~) If the local government unit wishes to issue refunding debt for a purpose other than as set forth in section 8241(b)(1) (relating to power to refund), ~~information satisfactory to~~ schedules demonstrating the ~~department that the refunding is a sound financial~~ estimated net debt service impact of the transaction and ~~is in the best long-term financial interest of the~~ a certification that the local government unit has adopted or approved a plan to provide the tax or other revenues necessary to pay the debt service on such debt.

(~~75~~) If the local government unit intends that the debt to be issued provides that over 10% of the proceeds of the debt will be used for working capital, ~~information satisfactory to the department that the financing is a sound financial transaction and is in the best long-term financial interest of the local government unit.~~

~~(b) Additional information.--After receipt by the department of a filing by a local government unit under subsection (a), the department may request and the local government unit shall provide additional information which the department deems necessary to avoid an unsound financial transaction or a financial transaction which is not in the best long-term~~

~~financial interest of the local government unit.~~

~~(e) (b)~~ Action by department.--If the department, upon review of the filing made by the local government unit under subsection (a) ~~and any additional information provided under subsection (b), if applicable,~~ finds that:

(1) The requirements are satisfied in connection with the proposed debt, the department shall issue a preliminary approval of the debt.

(2) The requirements are not satisfied in connection with the proposed debt, the department shall issue a preliminary disapproval of the debt and the local government may not proceed to incur the debt.

~~(e) (c)~~ Timely action required.--The department shall have 60 days after receipt of the filing required under subsection (a) to issue a preliminary approval or disapproval of the debt.

~~(e) (d)~~ Incurrence of debt.--Upon issuance of preliminary approval of the department, the local government unit shall have ~~six months~~one year to incur the debt under this subpart. The bonds or notes ~~shall be sold,~~ or instruments evidencing lease rental debt shall be delivered, not more than ~~one year~~two years following the date of the preliminary approval.

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

Section 4. Section 8103 (a) of Title 53 is amended to read:
§ 8103. Ordinance authorizing issuance of bonds or notes or instruments evidencing lease rental debt.

(a) General Rule. - After obtaining approval by the

department under section 8102.1 (relating to preliminary approval by the department of the issuance of debt), if applicable, a local government shall incur debt by enactment of an ordinance or adoption of a resolution, as applicable. 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 shall contain, in substance:

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

§ 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:

* * *

~~(8) Proof of obtainment of the required financial security to insure the completion of the project.~~

(8) Information satisfactory to the department that the

local government unit is current in the filing of its annual financial statements with Commonwealth agencies pursuant to applicable state law.

(9) An itemized statement of ~~all disbursements to be made from the proceeds~~the estimated costs of the project for which such debt is incurred.

* * *

Section 6. Section 8201 of Title 53 is amended by relabeling paragraph (b) as paragraph (c) and adding a new paragraph (b) to read:

(b) Additional information.--After receipt by the department of ~~the borrowing. Not more than~~a filing by a local government unit under subsection (a), the department may request and the local government unit shall provide additional information which the department deems necessary to understand the structure and purpose of the proposed transaction, including (i) explanation for costs of issuance that are estimated to exceed 2% of ~~debt proceeds may be distributed for~~the ~~cost~~principal amount of ~~issuing~~the proposed debt and (ii) in the case of private sale of bonds or notes by negotiation, the local government unit's reasoning for doing so.

~~* * *~~

Section ~~5.7.~~ Sections ~~8161(a),~~ 8203, 8204, 8206, and 8207(a) and (c) of Title 53 are amended to read:

~~§ 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] of more than \$5,000,000 in any fiscal year, the governing body shall submit to the department satisfactory evidence that exceeding the limit is necessary and 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.~~

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§ 8203. Fees for filing.

Every filing under this subpart 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.] of \$250. In addition, the filing shall be accompanied by an additional fee of 1/32 mill on each dollar of the aggregate principal amount of the debt relating to the filing. 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.] deposited into the Local Government Unit Debt Act Administrative Account, established as follows:

(1) There is hereby established a restricted receipt account within the General Fund of the State Treasury which shall be known as the Local Government Unit Debt Act Administrative Account.

(2) All moneys in the Local Government Unit Debt Act

Administrative Account shall be held in trust solely for the purpose of defraying the costs of the administration of this subpart and shall be earmarked for the use of and annually appropriated to the department for disbursement solely for that purpose. The account shall be subject to audit by the Auditor General.

§ 8204. Certificate of final 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.

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

If the local government unit has submitted [a filing] an application for final approval 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+~~30 days of the date of receipt of the filing by the department, received the certificate of final 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+~~30 days.

§ 8207. Records of department.

(a) Retention period.--The department shall keep all proceedings and all applications and statements by a local government unit under sections 8102.1 (relating to preliminary approval by the department of the issuance of debt) and 8111 (relating to submission to department) 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.] five years after the debt issuance has been paid off by the local government unit. The department shall also keep copies of all documents filed with the department relating to a qualified interest rate management agreement for as long as the qualified interest rate management agreement is in effect.

* * *

(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.] All submissions, determinations and records of the department under this subpart, including those related to qualified interest rate management agreements and including correspondence with the interested parties to any debt

proceeding, shall be public records available for examination by any citizen of this Commonwealth, any interested parties or any bondholder or noteholder, including holders of tax anticipation notes, of the local government unit.

Section ~~6.8.~~ Title 53 is amended by adding a section to read:

§ 8212. Duty of advisors.

In regards to a transaction under this subpart, an attorney or financial advisor to a local government unit shall stand in a fiduciary relationship to the local government unit and shall perform loyally, in good faith and in a manner the ~~attorney or~~ financial advisor reasonably believes to be in the best ~~financial~~ interests of the local government unit. ~~or the attorney believes fulfills the duties of a legal counselor to the local government unit under the rules of professional responsibility of the Supreme Court of Pennsylvania.~~ The attorney or financial advisor shall act with such care, including reasonable inquiry, skill and diligence that a person of ordinary prudence would use under similar circumstances. ~~The attorney and financial advisor in the course of their representation shall be entitled to rely on reasonable representations and certifications made to them by architects, engineers and other persons retained by, and the officers and employees of, the local government unit in connection with such transaction.~~

~~Section 7. Section 8242(a) of Title 53 is amended to read:
§ 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.~~

~~* * *~~

~~Section 8.~~ Section 9. Title 53 is amended by adding sections to read:

§ 8272. Knowingly participating in an *ultra vires* act of a

local government unit.

(a) General rule.--Any officer or any member of the governing body of any local government unit or any member of a law firm or a financial advisor firm who knowingly ~~(a) General rule.--Any officer or any member of the governing body of any local government unit or any member of a law firm or a financial advisor firm who~~ assists or provides advice to a local government unit and who knowingly participates in performing an ultra vires act of a local government unit in connection with proceedings governed by this Act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.

(b) Prohibition.--A law firm or financial advisor firm which has had a member convicted under subsection (a) shall be prohibited for two years from assisting a local government unit with or providing advice to a local government unit for any activity under this subpart.

(c) Definition.--An act is an "ultra vires act" when a reasonable person of comparable education, experience, and information would know that the local government unit is without statutory authority or power to perform the act ~~or when the act is not explicitly prohibited, but is in excess of the authority granted to the local government unit~~ question.

§ 8273. Knowingly filing materially false or misleading certifications or statements with the department.

(a) General rule.--Any officer or any member of the governing body of any local government unit or any lawyer,

financial advisor, engineer, architect, or other person who knowingly ~~(a) General rule. Any officer or any member of the governing body of any local government unit or any member of a law firm or a financial advisor firm who knowingly~~ files a materially false or misleading certification or statement with the department commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both. The lawyer, financial advisor, engineer, architect or other person, in the course of their representation, shall be entitled to rely on reasonable representations and certifications made to them by other persons retained by, and the officers and employees of, the local government unit in connection with making a certification or statement to the department.

(b) Aiding Prohibition.— The company or abetting. ~~Any officer or any firm having a member of the governing body of any local government unit or any member of a law firm or a financial advisor firm who assists or provides advice to a local government unit and who aids or abets in the commission of the offense or employee convicted~~ under subsection (a) ~~commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.~~

(c) Prohibition. ~~A law firm or financial advisor firm which has been convicted or which has had a member convicted under subsection (b)~~ shall be prohibited for two years from assisting at the local government unit with or providing advice to at the

local government unit for any activity under this subpart.

Section 9. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of 53 Pa.C.S. § 8203.

(2) Section 605-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(3) All acts and parts of acts are repealed insofar as they are inconsistent with the amendment or addition of 53 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007, 8026(a)¶(5), 8102, 8102.1, 8111(a), 8161(a), 8203, 8204, 8206, 8207(a) and (c), 8212, 8242(a), 8272 and 8273.

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