

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO SENATE BILL NO. 901

Sponsor:

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1 Amend Bill, page 1, line 8, by inserting after "of" where it
2 occurs the second time
3 certain

4 Amend Bill, page 1, line 9, by inserting after "for" where it
5 occurs the first time
6 small borrowing for capital purposes, for debt statement,
7 for

8 Amend Bill, page 1, lines 9 and 10, by striking out "for
9 manner of sale of bonds or notes,"

10 Amend Bill, page 1, line 12, by striking out the comma after
11 "department" and inserting
12 and

13 Amend Bill, page 1, lines 13 through 18, by striking out all
14 of lines 13 through 17 and "department" in line 18 and inserting
15 for duties of participants in Local Government Unit Debt
16 Act transactions

17 Amend Bill, page 1, line 24, by striking out "a definition"
18 and inserting
19 definitions

20 Amend Bill, page 2, line 18, by striking out "for which" and
21 inserting
22 with respect to which debt service

23 Amend Bill, page 2, line 18, by inserting after "guaranty"
24 of the debt

1 Amend Bill, page 2, by inserting between lines 26 and 27

2 * * *

3 "Financial advisor." A person who for compensation engages
4 in the business of advising others, either directly or in
5 writing, as to the value of securities, bonds or notes or as to
6 the advisability of investing in, purchasing or selling
7 securities, bonds or notes. The term does not include an
8 attorney, accountant or engineer whose performance of such
9 services is solely incidental to the practice of his profession.

10 Amend Bill, page 3, lines 2 through 4, by striking out all of
11 said lines and inserting

12 be used to address budgetary deficits of a local government
13 unit or for other purposes not related to the construction or
14 operation of the project do not constitute reasonable working
15 capital in connection with the incurring of debt under this
16 subpart.

17 Amend Bill, page 3, lines 25 through 29, by striking out all
18 of said lines and inserting

19 debt of an authority when the debt is incurred for a drinking
20 water, storm sewer or sanitary sewer project, the debt is
21 incurred in connection with a plan or recovery plan approved
22 under the act of July 10, 1987 (P.L.246, No.47), known as the
23 Municipalities Financial Recovery Act, or successor legislation,
24 or the guaranty is necessary to enable the authority to obtain
25 the most competitive interest rate available in the marketplace
26 as demonstrated by comparables.

27 Amend Bill, page 5, lines 6 through 11, by striking out
28 "Costs incurred before the fiscal year" in line 6 and all of
29 lines 7 through 11 and inserting

30 Costs paid, from sources other than the debt that is to be
31 refunded, more than two years before an issuance of new debt to
32 finance the costs may not be included in the costs of a project
33 financed by the new debt. Reimbursements under a guaranty or
34 amounts to be used by a local government unit to address
35 budgetary deficits or other purposes not related to the project
36 do not constitute a cost of a project in connection with the
37 incurring of debt under this subpart. Costs that qualify for
38 funding of unfunded debt under section 8130 (relating to
39 approval by court to fund unfunded debt) may only constitute a
40 cost of a project if the local government unit complies with the
41 requirements of section 8130.

42 Amend Bill, page 6, line 23, by inserting after "of "

1 certain

2 Amend Bill, page 6, line 24, by striking out all of said line
3 and inserting

4 (a) General rule.--Except as provided in section 8109
5 (relating to small borrowing for capital purposes), prior to the
6 enactment of an ordinance or adoption of a

7 Amend Bill, page 7, lines 8 through 20, by striking out all
8 of said lines and inserting

9 (1) Evidence satisfactory to the department that the
10 local government unit is current in the filing of its annual
11 financial statements with Commonwealth agencies under
12 applicable State law.

13 (2) A description of the type and amount of payment or
14 performance bond, letter or credit or other financial
15 security proposed to insure the completion of the project.

16 Amend Bill, page 7, lines 24 through 30; page 8, lines 1
17 through 4, by striking out "If the" in line 24, all of lines 25
18 through 30 on page 7 and all of lines 1 through 4 on page 8 and
19 inserting

20 (4) If the local government unit intends for the
21 proposed debt to be self-liquidating or subsidized, evidence
22 satisfactory to the department that the debt will qualify as
23 self-liquidating or subsidized debt, including filings
24 required under section 8024 (relating to exclusion of
25 subsidized debt from net nonelectoral debt or net lease
26 rental debt), 8025 (relating to exclusion of self-liquidating
27 debt evidenced by revenue bonds or notes to determine net
28 nonelectoral debt) or 8026 (relating to exclusion of other
29 self-liquidating debt to determine net nonelectoral debt or
30 net lease rental debt), as applicable.

31 Amend Bill, page 8, lines 17 through 27, by striking out "for
32 a purpose other than as set forth in" in line 17 and all of
33 lines 18 through 27 and inserting

34 , schedules demonstrating the estimated net debt service
35 impact of the transaction and a certification that the local
36 government adopted or approved a plan to provide the tax or
37 other revenues necessary to pay the debt service on the debt.

38 (7) The debt statement required by section 8110
39 (relating to debt statement).

40 (8) A statement of the intended manner of sale of the
41 bonds or notes.

1 (9) A project cost statement detailing the intended uses
2 of debt proceeds.

3 Amend Bill, page 9, lines 2 through 4, by striking out "avoid
4 an unsound financial transaction or a" in line 2 and all of
5 lines 3 and 4 and inserting

6 understand the structure and purpose of the proposed
7 transaction, including:

8 (1) justification for costs of issuance exceeding 2% of
9 the principal amount of the proposed debt;

10 (2) justification for the use of more than 10% of the
11 proceeds of the debt for working capital; and

12 (3) if bonds or notes are to be sold at private sale by
13 negotiation, the basis for the local government unit's
14 finding that the bonds or notes are in the best financial
15 interests of the local government unit.

16 Amend Bill, page 9, line 16, by striking out "60" and
17 inserting

18 30

19 Amend Bill, page 9, line 21, by striking out "six months" and
20 inserting

21 one year

22 Amend Bill, page 9, line 23, by striking out "one year" and
23 inserting

24 two years

25 Amend Bill, page 9, by inserting between lines 27 and 28

26 Section 3.1. Sections 8109(a)(1) and 8110(b) of Title 53 are
27 amended to read:

28 § 8109. Small borrowing for capital purposes.

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

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

40 * * *

41 § 8110. Debt statement.

1 * * *

2 (b) Previously excluded self-liquidating or subsidized
3 debt.--Where debt has previously been excluded as self-
4 liquidating or subsidized debt, the debt statement shall be
5 accompanied by a certification that either:

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

17 (2) a decrease in the amounts to be excluded is required
18 due to a change in circumstances, in which case the change in
19 circumstances must be described.

20 A debt previously established as self-liquidating for which
21 payments are made under a guarantee of the local government unit
22 is no longer considered self-liquidating unless and until the
23 local government unit files with the department a new report
24 satisfying the requirements of section 8025 (relating to
25 exclusion of self-liquidating debt evidenced by revenue bonds or
26 notes to determine net nonelectoral debt) or 8026 (relating to
27 exclusion of other self-liquidating debt to determine net
28 nonelectoral debt or net lease rental debt), as the case may be.

29 Amend Bill, page 10, line 13, by striking out "Proof of
30 obtainment of" and inserting

31 Written proof of obtainment of or agreement to obtain

32 Amend Bill, page 10, line 15, by striking out "disbursements"
33 and inserting

34 estimated disbursements for costs

35 Amend Bill, page 10, lines 16 through 18, by striking out
36 "Not more than 2% of" in line 16 and all of lines 17 and 18

37 Amend Bill, page 10, lines 22 through 30; page 11, lines 1
38 through 6, by striking out all of said lines on said pages

39 Amend Bill, page 12, line 30, by striking out "and" where it
40 occurs the first time and inserting

41 including

1 Amend Bill, page 13, line 2, by striking out "and" and
2 inserting a comma

3 Amend Bill, page 13, line 3, by inserting after "department)"
4 and 8201 (relating to certification to department of bond
5 or note transcript or lease, guaranty, subsidy contract or
6 other agreement

7 Amend Bill, page 13, line 24, by inserting after "6. "
8 Chapter 82 of

9 Amend Bill, page 13, line 24, by striking out "section" and
10 inserting
11 subchapter

12 Amend Bill, page 13, lines 25 through 30; pages 14 and 15,
13 lines 1 through 30; page 16, lines 1 through 15, by striking out
14 all of said lines on said pages and inserting

15 SUBCHAPTER G

16 MISCELLANEOUS PROVISIONS

17 § 8291. Duties of participants in Local Government Unit Debt
18 Act transactions.

19 (a) Certification of representation.--With regard to each
20 transaction under this subpart, an attorney or financial advisor
21 shall advise the local government unit in writing as to the
22 party being represented by the attorney or financial advisor,
23 the source from which the attorney or financial advisor will
24 receive compensation for services related to the transaction and
25 whether the compensation is dependent upon the issuance of debt
26 by the local government unit.

27 (b) Fiduciary duty.--An attorney or financial advisor
28 retained by or who purports to advise a local government unit
29 with regard to a transaction under this subpart shall stand in a
30 fiduciary relationship to the local government unit and shall
31 perform loyally, in good faith and in a manner the attorney or
32 financial advisor reasonably believes to be in the best
33 interests of the local government unit. The attorney or
34 financial advisor shall act with such care, including reasonable
35 inquiry, skill and diligence that a person of ordinary prudence
36 would use under similar circumstances and provide opinion both
37 as to positive and negative possible impacts of the transaction.
38 An attorney or financial advisor in the course of his
39 representation is entitled to rely on reasonable representations
40 and certifications made to them by architects, engineers and
41 other persons retained by and the officers and employees of the
42 local government unit in connection with the transaction.

1 (c) Ultra vires acts.--An officer or member of the governing
2 body of a local government unit or a financial advisor or
3 attorney may not knowingly participate in an ultra vires act.
4 For purposes of this subsection, an act is ultra vires when:
5 (1) the local government unit is without authority to
6 perform the act; or
7 (2) the act is not explicitly prohibited but is in
8 excess of the authority granted to the local government unit.
9 (d) Materially false or misleading certifications.--An
10 officer or member of the governing body of a local government
11 unit or an attorney or financial advisor may not knowingly file
12 a materially false or misleading certification or statement with
13 the department under this act.
14 (e) Penalties.--
15 (1) An officer or member of the governing body of a
16 local government unit or an attorney or financial advisor who
17 aids or participates in the commission of an act prohibited
18 in subsection (c) or (d) commits a misdemeanor of the second
19 degree and shall, upon conviction, be sentenced to pay a fine
20 of not more than \$5,000 or to imprisonment for not more than
21 two years, or both.
22 (2) Notwithstanding paragraph (1), a local government
23 may seek civil judicial redress for a violation of this
24 section that results in damages to the local government unit
25 not caused by the local government unit or its agents. A
26 local government unit shall prohibit or restrict the future
27 participation in transactions under this subpart of an
28 attorney or financial advisor who violates this section and
29 may also prohibit or restrict participation of a firm that
30 employs the attorney or financial advisor for a period not to
31 exceed two years.

32 Amend Bill, page 16, line 16, by striking out "9" and
33 inserting

34 7

35 Amend Bill, page 16, line 26, by striking out "8161(a),"

36 Amend Bill, page 16, line 27, by striking out ", 8212,
37 8242(a), 8272 and 8273" and inserting

38 and 8291

39 Amend Bill, page 16, line 28, by striking out "10" and
40 inserting

41 8

