
Pennsylvania Municipal Debt Reform Legislation

Sep 15, 2013

Pennsylvania State Senators have introduced a package of Senate Bills (Senate Bills 901 through 904) which amend the Pennsylvania Local Government Unit Debt Act ("Debt Act") and the Pennsylvania Municipality Authorities Act ("Authorities Act") and if enacted into law will have a significant impact on the current process of local governments and municipal authorities of incurring debt in Pennsylvania.

Highlights of these Senate Bills are as follows:

Senate Bill 901

- Effects amendments to the Debt Act
- Requires that prior to the adoption of a debt incurring ordinance or resolution a local government unit ("LGU") obtain a preliminary authorization from the Pennsylvania Department of Community and Economic Development (DCED) (The preliminary authorization procedure is an additional step to obtaining final DCED approval)
- As part of the preliminary authorization filing, the LGU must supply DCED with information that it is up to date on all of its municipal securities disclosure filings with EMMA
- The preliminary authorization filing includes current audited financial statements
- If the new debt is for a refunding of existing debt, information satisfactory to DCED that the refunding is "a sound financial transaction" must be submitted
- DCED has 60 days to approve or disapprove the preliminary authorization filing
- Upon obtaining preliminary authorization, the LGU will have 6 months to incur the debt and the bonds or notes must be sold not more than one year following the date of the preliminary approval
- Provides a cap of 2% of debt proceeds for payment of costs of issuing the debt
- Before selling the debt obligations by a private sale by negotiation (as opposed to a competitively bid sale), if the amount of the debt obligations is more than \$5 million in any fiscal year the LGU must subject to DCED evidence that exceeding the \$5 million fiscal year limit for a negotiated sale is both necessary and in the best financial interest of the LGU
- DCED filing fees are increased by \$250
- The final DCED approval review period has been increased from 20 days to 30 days
- Provides that all submissions, determinations and records of DCED are "public records" available for examination by any citizen of the Commonwealth
- Provides that the attorney or financial advisor to the LGU shall stand in a fiduciary relationship to the LGU and shall perform loyally, in good faith and in a manner that the attorney or financial advisor reasonably believes to be in the best interests of the LGU and shall act with such care, including reasonable inquiry, skill and diligence that a person of ordinary prudence would use under similar circumstances
- Provides for criminal penalties for any officer or member of the LGU or member of a law firm or financial advisor who assists or provides advice to the LGU and who knowingly participates in an "ultra vires act" of the LGU or who knowingly files a materially false or misleading statement with DCED. "Ultra vires act" is defined in the bill to be when the LGU is without authority to perform the act or when the act is not explicitly prohibited, but is in excess of the authority granted to the LGU. Convictions also result in law firms and financial advisors being barred for a 2-year period from assisting the LGU
- Changes the definition of "self-liquidating debt" to provide that debt for which payments have been made under a guaranty shall not be considered self-liquidating
- Provides that a LGU can only guaranty debt of a municipal authority when the debt is incurred in connection with a loan from the Federal Government, PENNVEST or other instrumentality or agency of the Commonwealth for a water or sanitary sewer project
- Prohibits a LGU from collecting a fee to guaranty debt of an authority or another LGU
- Provides that costs incurred before the fiscal year immediately preceding the date the debt is incurred may not be included in the cost of a project
- Provides that with respect to self-liquidating debt filings a "justification" for any assumed increase in gross revenues of more than 5% in any one year must be included with the self-liquidating debt submission
- Other than for refundings which reduce total debt service over the life of the series, the LGU must submit information to DCED that a proposed refunding of debt is a "sound financial transaction and is in the best long-term financial interest" of the LGU

Senate Bill 902

- Effects changes to the Authorities Act
- Incurring of debt cannot be used for a purpose unrelated to the project for which the debt was incurred or placed in an account used by the authority or another LGU for an unrelated purpose
- Provides that a violation of the conflict of interest provisions of the Authorities Act constitutes a violation of the Pennsylvania Ethics Act

Senate Bill 903

- Effects changes to the Authorities Act and the Debt Act relating to Interest Rate Management Agreements (Swaps)
- Adds a prohibition to the Authorities Act of authorities entering into interest rate management agreements including swaps, interest rate caps,

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- collars, corridors, ceiling and floor agreements and float agreements
 - Adds provisions to the Authorities Act similar to SB901, providing that any officer or member of the governing body of an authority or any member of a law firm or a financial advisor firm who assists or provides advice to an authority and who knowingly participates in an ultra vires act is subject to criminal penalties. Convictions also result in law firms and financial advisors being barred for a 2-year period from assisting the authority
 - Provides that any officer or member of the governing body of an authority who knowingly files a materially false or misleading report or certification with the Secretary of the Commonwealth or who aids or abets in the filing of a materially false or misleading report or certification is subject to criminal penalties. Convictions also result in law firms and financial advisors being barred for a 2-year period from assisting an authority
 - Adds a provision to the Debt Act prohibiting a LGU from entering into interest rate management agreements, including swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements and float agreements
 - Repeals prior provisions of the Debt Act relating to Qualified Interest Rate Management Agreements

Senate Bill 904

- Prohibits the City of Philadelphia from entering into an interest rate management agreement, including swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements and float agreements

Senate Bill Sponsors

- Senate Bill 901: Eichelberger, Blake, Folmer, Jeplitz, Yudichak, Pileggi, Wozniak, Solobay, Vance and Mensch
- Senate Bill 902: Blake, Eichelberger, Teplitz, Folmer, Rafferty, Schwank, Yudichak, Pileggi, Wozniak, Solobay, Boscola and Famese
- Senate Bill 903: Folmer, Teplitz, Eichelberger, Blake, Boscola, Browne, Yudichak, Wozniak and Solobay
- Senate Bill 904: Teplitz, Folmer, Blake, Eichelberger, Boscola, Yudichak, Wozniak, Solobay, Brewster, Famese and Waugh

On September 9, 2013, the Senate held a public hearing on this proposed legislation and took testimony. During the public hearing, Senators indicated that additional amendments to the proposed bills would be considered. Therefore, ***it is not too late to contact your State Senator to express your opinion on the Senate Bills, particularly if they are one of the listed sponsors. You should do so as soon as possible.***