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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 882 Session of 2019

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INTRODUCED BY GLEIM, RYAN, LEWIS, MIHALEK, GAYDOS, KAUFFMAN,  
B. MILLER, GROVE, ZIMMERMAN AND ROTHMAN, MARCH 19, 2019

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REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MARCH 19, 2019

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AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania  
2 Consolidated Statutes, in indebtedness and borrowing, further  
3 providing for definitions, for classification and authority  
4 to issue bonds and notes, for cost of project and for  
5 exclusion of other self-liquidating debt to determine net  
6 nonelectoral debt or net lease rental debt; providing for  
7 preliminary filings with department prior to issuance of  
8 certain debt; further providing for small borrowing for  
9 capital purposes, for debt statement, for submission to  
10 department, for certificate of approval of transcript, for  
11 effect of failure of timely action by department and for  
12 records of department; and providing for duties of  
13 participants in transactions relating to incurring debt and  
14 issuing bonds and notes.

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

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

21 § 8002. Definitions.

22 \* \* \*

23 (b) Exclusions from debt.--With respect to exclusions from  
24 any particular category of debt and subject to additional

1 definitions contained in subsequent provisions of this subpart  
2 which are applicable to specific provisions of this subpart, the  
3 following words and phrases when used in this subpart shall have  
4 the meanings given to them in this section unless the context  
5 clearly indicates otherwise:

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

19 \* \* \*

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

26 \* \* \*

27 "Financial advisor." A person retained directly by a local  
28 government unit who for compensation engages in the business of  
29 advising that local government unit, either directly or in  
30 writing, as to the value of securities, bonds or notes or as to

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

7 \* \* \*

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

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

23 § 8005. Classification and authority to issue bonds and notes.

24 \* \* \*

25 (c) Authority to issue bonds and notes and lease rental  
26 debt.--Notwithstanding any other law to the contrary, every  
27 local government unit shall have full power and authority to  
28 issue bonds or notes, and make guaranties, leases, subsidy  
29 contracts or other agreements evidencing the acquisition of  
30 capital assets payable out of taxes and other general revenues,

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

10 (d) Nature of guaranty procedure for issuance and  
11 prohibitions.--The following shall apply to a guaranty:

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

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

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

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

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

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

29 § 8007. Cost of project.

30 The cost of a project includes the amount of all payments to

1 contractors or for the acquisition of a project or for lands,  
2 easements, rights and other appurtenances deemed necessary for  
3 the project, fees of architects, engineers, appraisers,  
4 consultants, financial advisors and attorneys incurred in  
5 connection with the project financing costs, costs of necessary  
6 printing and advertising, costs of preliminary feasibility  
7 studies and tests, cost estimates and interest on money borrowed  
8 to finance the project, if capitalized, to the date of  
9 completion of construction and, if deemed necessary, for one  
10 year thereafter, amounts to be placed in reserve funds, if any,  
11 a reasonable initial working capital for operating the project  
12 and a proper allowance for contingencies and any amount which  
13 constitutes, under generally accepted accounting principles, a  
14 cost of, and which has been determined by an independent actuary  
15 or other expert to be required for the purposes of, a reserve or  
16 a contribution toward a combined reserve, pool or other  
17 arrangement for losses or liabilities covered by a self-  
18 insurance arrangement established by one or more local  
19 government units. Costs paid, from sources other than the debt  
20 that is to be refunded, more than two years before an issuance  
21 of new debt to finance the costs may not be included in the  
22 costs of a project financed by the new debt. Reimbursements  
23 under a guaranty or amounts to be used by a local government  
24 unit to address budgetary deficits or other purposes not related  
25 to the project do not constitute a cost of a project in  
26 connection with the incurring of debt under this subpart. Costs  
27 that qualify for funding of unfunded debt under section 8130  
28 (relating to approval by court to fund unfunded debt) may only  
29 constitute a cost of a project if the local government unit  
30 complies with the requirements of section 8130.

1 § 8026. Exclusion of other self-liquidating debt to determine  
2 net nonelectoral debt or net lease rental debt.

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

13 \* \* \*

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

23 \* \* \*

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

25 § 8102.1. Preliminary filings with department prior to issuance  
26 of certain debt.

27 (a) General rule.--Prior to the enactment of an ordinance  
28 authorizing the sale or issuance of any general obligation bonds  
29 or notes or guaranteed revenue bonds or notes constituting  
30 nonelectoral debt or any agreement evidencing lease rental debt,

1 a local government unit shall obtain proof of having filed with  
2 the department the information and documentation required by  
3 this section. Proof of filing for purposes of subsection (c) may  
4 be obtained by a certified mail return receipt or other delivery  
5 requiring signature, or a notice of receipt from the department.

6 (b) Required filings.--A local government unit shall file  
7 with the department a basic description of the intended  
8 financing and, as applicable, the following information and  
9 documentation:

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

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

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

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

24 (5) If the local government unit intends for the  
25 proposed debt to be self-liquidating or subsidized, a  
26 statement that the debt will qualify as self-liquidating or  
27 subsidized debt, including filings required under section  
28 8024 (relating to exclusion of subsidized debt from net  
29 nonelectoral debt or net lease rental debt), 8025 (relating  
30 to exclusion of self-liquidating debt evidenced by revenue



1 bonds or notes to determine net nonelectoral debt) or 8026  
2 (relating to exclusion of other self-liquidating debt to  
3 determine net nonelectoral debt or net lease rental debt), as  
4 applicable.

5 (6) If the local government unit has existing debt which  
6 was previously approved by the department as self-liquidating  
7 or subsidized, an explanation as to why the debt should  
8 continue to be treated as self-liquidating or subsidized and  
9 that no decrease in the amount to be excluded is required by  
10 any change in circumstances, other than resulting from the  
11 payments of the debt, or, if there has been a change in  
12 circumstances, information demonstrating the amount of debt  
13 that should continue to be treated as self-liquidating or  
14 subsidized.

15 (7) Schedules demonstrating the estimated net debt  
16 service impact of the transaction and information  
17 demonstrating that the local government unit adopted or  
18 approved a plan to provide the tax or other revenues  
19 necessary to pay the debt service on the debt, if applicable.

20 (8) The debt statement required by section 8110  
21 (relating to debt statement).

22 (9) A statement of the intended manner of sale of the  
23 bonds or notes, and if bonds or notes are to be sold at  
24 private sale by negotiation, the basis for the local  
25 government unit's finding that selling the bonds or notes in  
26 such manner are in the best financial interests of the local  
27 government unit.

28 (10) A project cost statement detailing the intended  
29 uses of debt proceeds.

30 (11) If a guaranty from another local government unit is

1 proposed as a portion of the proposed borrowing, information  
2 demonstrating compliance with section 8005(d) (relating to  
3 classification and authority to issue bonds and notes).

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

6 (c) Action by department.--

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

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

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

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

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

1           (2) Transactions under Subchapter C of Chapter 82  
2           (relating to refunding of debt) which consist exclusively of  
3           the issuance and sale of obligations, the proceeds of which  
4           are to be used solely for purposes specified in section  
5           8241(b)(1) (relating to power to refund) for the payment or  
6           redemption of outstanding obligations upon or prior to  
7           maturity and the costs of issuing the obligations. A  
8           refunding transaction which includes a qualified interest  
9           rate management agreement shall not be exempt from the  
10           requirements of this section.

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

14           Section 4. Sections 8109(a)(1) and 8110(b) of Title 53 are  
15 amended to read:

16 § 8109. Small borrowing for capital purposes.

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

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

28           \* \* \*

29 § 8110. Debt statement.

30           \* \* \*

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

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

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

18 (i) The change in circumstance must be described. If  
19 it has become possible to exclude a greater amount of  
20 debt and the local government unit wants to do so, the  
21 debt statement shall be accompanied by appropriate  
22 certifications supporting the revised amount to be  
23 excluded and a revised approval shall be obtained from  
24 the department.

25 (ii) No debt service payments have been made under a  
26 guaranty of debt previously established as self-  
27 liquidating. Debt service payments that have been made  
28 under a guarantee of the local government unit shall no  
29 longer be considered self-liquidating unless and until  
30 the local government unit files with the department a new

1 report satisfying the requirements of section 8025  
2 (relating to exclusion of self-liquidating debt evidenced  
3 by revenue bonds or notes to determine net nonelectoral  
4 debt) or 8026 (relating to exclusion of other self-  
5 liquidating debt to determine net nonelectoral debt or  
6 net lease rental debt), as the case may be.

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

9 § 8111. Submission to department.

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

21 \* \* \*

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

26 (9) An itemized statement of all estimated disbursements  
27 for costs to be made from the proceeds of the borrowing to  
28 the extent possible.

29 \* \* \*

30 Section 6. Sections 8204, 8206 and 8207(a) and (c) of Title

1 53 are amended to read:

2 § 8204. Certificate of final approval [of transcript].

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

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

13 (2) If the debt requires preliminary filings to be made  
14 under section 8102.1 (relating to preliminary filings with  
15 department prior to issuance of certain debt), the  
16 preliminary filings shall become part of the transcript and  
17 be a requirement for final approval under this section.

18 (b) Duty to certify.--If, upon completion of its  
19 examination, a transcript or other filing is found by the  
20 department to be in conformity with the Constitution of  
21 Pennsylvania and this subpart, the department shall certify its  
22 approval to the local government unit if required under other  
23 provisions of this subpart.

24 § 8206. Effect of failure of timely action by department.

25 If the local government unit has submitted [a filing] an  
26 application for final approval to the department by certified  
27 mail, return receipt requested, or otherwise has an official  
28 receipt from the department, and the local government unit has  
29 not, within 20 days of the date of receipt of the filing by the  
30 department, received the certificate of final approval or

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

8 § 8207. Records of department.

9 (a) Retention period.--The department shall keep all  
10 proceedings including all applications and statements by a local  
11 government unit under sections 8102.1 (relating to preliminary  
12 filings with department prior to issuance of certain debt), 8111  
13 (relating to submission to department) and 8201 (relating to  
14 certification to department of bond or note transcript or lease,  
15 guaranty, subsidy contract or other agreement) on file for a  
16 period of not less than [four months after issuance of its  
17 certificate of approval or disapproval and thereafter as long as  
18 any appeal respecting the proceedings is pending and not finally  
19 determined.] five years after the debt issuance has been paid  
20 off by the local government unit. The department shall also keep  
21 copies of all documents filed with the department relating to a  
22 qualified interest rate management agreement for as long as the  
23 qualified interest rate management agreement is in effect.

24 \* \* \*

25 (c) Records open for inspection.--[The records of the  
26 department shall be public records available for examination by  
27 any citizen of this Commonwealth or any bondholders or  
28 noteholders.] All submissions, determinations and records of the  
29 department under this subpart, including those related to  
30 qualified interest rate management agreements and including

1 correspondence with the interested parties to any debt  
2 proceeding, shall be public records available for examination by  
3 any citizen of this Commonwealth, any interested parties or any  
4 bondholder or noteholder, including holders of tax anticipation  
5 notes, of the local government unit.

6 Section 7. Chapter 82 of Title 53 is amended by adding a  
7 subchapter to read:

8 SUBCHAPTER G

9 OTHER PROVISIONS

10 Sec.

11 8291. Duties of participants.

12 § 8291. Duties of participants.

13 (a) Declaration of representation.--

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

21 (i) Which party is being represented by the attorney  
22 or financial advisor.

23 (ii) The source from which the attorney or financial  
24 advisor will receive compensation for services related to  
25 the transaction.

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

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



1 (b) Fiduciary duty of representatives retained by local  
2 government units.--

3 (1) An attorney or financial advisor, including an  
4 independent financial advisor under section 8281 (relating to  
5 qualified interest rate management agreements) who is  
6 retained and compensated by a local government to represent  
7 the local government unit in a transaction under this  
8 subpart, shall stand in a fiduciary relationship to the local  
9 government unit.

10 (2) (i) With regard to a financial advisor who  
11 represents a local government unit, the term "fiduciary  
12 duty" shall mean the duty to perform loyally, in good  
13 faith and in a manner the financial advisor reasonably  
14 believes to be in the best interests of the local  
15 government unit. The financial advisor shall act with  
16 such care, including reasonable inquiry, skill and  
17 diligence that a person of ordinary prudence would use  
18 under similar circumstances, and provide opinion as to  
19 possible positive and negative impacts of a transaction.

20 (ii) With regard to attorneys licensed to practice  
21 law in this Commonwealth, the fiduciary duty shall be as  
22 prescribed by the Pennsylvania Supreme Court, including  
23 the Pennsylvania Rules of Professional Conduct.

24 (3) An attorney or financial advisor in the course of  
25 the representation shall be entitled to rely on reasonable  
26 representations and certifications made to the attorney or  
27 financial advisor by architects, engineers and other persons  
28 retained by and the officers and employees of a local  
29 government unit.

30 (4) Pursuant to subsection (f) of Municipal Securities

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

21 (c) Ultra vires acts.--An officer or member of the governing  
22 body of a local government unit or a financial advisor or  
23 attorney may not knowingly participate in a violation of this  
24 title.

25 (d) Materially false or misleading certifications.--An  
26 officer or member of the governing body of a local government  
27 unit or an attorney or financial advisor may not knowingly file  
28 a materially false or misleading certification or statement with  
29 the department under this subpart.

30 (e) Penalties.--

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

8           (2) Notwithstanding paragraph (1), a local government  
9 unit may seek civil judicial redress for a violation of this  
10 section that results in damages to the local government unit  
11 not caused by the local government unit or its agents. A  
12 local government unit shall prohibit or restrict the future  
13 participation in transactions under this subpart of an  
14 individual attorney or financial advisor who violates this  
15 section and may also prohibit or restrict participation of a  
16 firm that employs the attorney or financial advisor for a  
17 period not to exceed two years.

18       Section 8. All acts and parts of acts are repealed insofar  
19 as they are inconsistent with the amendment or addition of 53  
20 Pa.C.S. §§ 8002(b) and (c), 8005(c) and (d), 8007, 8026(a)(5),  
21 8102.1, 8111(a), 8204, 8206, 8207(a) and (c) and 8291.

22       Section 9. This act shall take effect in 60 days.