

No. 1978-52

AN ACT

HB 1131

Reenacting, amending and revising the act of July 12, 1972 (P.L.781, No.185), entitled, as amended, "An act providing debt limits for local government units, including municipalities and school districts; providing the methods of incurring, evidencing, securing and collecting debt; defining the powers and duties of the Department of Community Affairs and certain other public officers and agencies with respect thereto; exercising the inherent legislative authority of the General Assembly by providing additional over-all limitations on the incurring of lease rental and other obligations for the acquisition of capital assets to be repaid from the general tax revenues of such local government units; imposing penalties for filing false or untrue statements or refusing to give information with respect to proceedings for the incurring of debt; and conferring jurisdiction on the Commonwealth Court with respect to certain proceedings relating to the incurring of debt."

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

Section 1. The article heading of Article I and section 101, act of July 12, 1972 (P.L.781, No.185), known as the "Local Government Unit Debt Act," are reenacted to read:

ARTICLE I

Short Title, Definitions and Preliminary Matters

Section 101. Short Title.—This act shall be known and may be cited as the "Local Government Unit Debt Act."

Section 2. Sections 102 and 103 of the act, amended October 11, 1972 (P.L.901, No.214), are reenacted and amended to read:

Section 102. Definitions.—(a) As used in this act with respect to classifications of debt unless the context clearly otherwise requires:

(1) "Debt" means 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 performance of work, possession of property as lessee [or], rendering of services by others, *or other contingency*, except:

(i) 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;

(ii) 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;

(iii) rentals *or payments* payable in future years under leases, *guaranties, subsidy contracts or other forms of agreement* not evidencing the acquisition of capital assets, *but this exception shall not apply to rentals or payments under such instruments which would constitute lease rental debt but for the fact that the lessor or obligee is not an entity described in section 104(a)(1)*; and

(iv) interest or assumed taxes payable on bonds or notes which interest or taxes is not yet overdue.

(2) "Electoral debt" means all net debt incurred with the assent of the electors, given as herein provided whether issued by a local government unit or through an authority.

(3) "Nonelectoral debt" means all debt determined as herein provided, incurred or authorized to be incurred, except electoral debt and lease rental debt, in each case whether authorized before or after the effective date of this act, and whether before or after the debt is incurred.

(3.1) "Net nonelectoral debt" means a portion of nonelectoral debt as determined in accordance with Article II.

(4) "Lease rental debt" means 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 [*guarantee*] *agreement* where such 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 [*agreements*] *forms of agreement* which evidence the acquisition of capital assets, *excluding any such amount which has been approved by the electors.*

(4.1) "Net lease rental debt" means a portion of lease rental debt as determined in accordance with Article II.

(b) As used in this act with respect to exclusions from any particular category of debt, unless the context clearly otherwise requires:

(1) "Self-liquidating debt" means 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 such debt, or payable solely from special levies or assessments of benefits lawfully earmarked exclusively for the purpose[, and includes lease rental debt, whether or not the leases evidence the acquisition of capital assets, where the rentals are payable solely from one or more of such sources]. The term also includes debt or any portion thereof at the time qualified as self-liquidating pursuant to this act, whether or not solely payable from such 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.

(2) "Subsidized debt" means that amount of debt which is self-

liquidating to the local government unit because the annual debt service on such amount for the fiscal year next following the time of determination (i) will be covered by payments of subsidies on account of 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 of Pennsylvania or the United States of America, 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 United States shall have qualified the project being financed for such subsidy or reimbursement, preliminarily or finally, all as determined pursuant to section 204 of this act or (ii) will be covered by payments under a subsidy contract with another local government unit *or under a subsidy contract with an authority* and such amount is lawful lease rental debt as to such other local government unit all as determined under section 204 of this act.

(c) As used in this act unless the context clearly otherwise requires:

(1) "Accountant" means a certified public accountant or public accountant or a firm of either thereof.

[(1)] (1.1) "Authority" means an authority or nonprofit corporation organized under any law of the Commonwealth by the Commonwealth, any local government unit or jointly by any one or more of the foregoing.

(2) "Bond or note" means any instrument issued by a local government unit imposing an obligation for the repayment of money borrowed, but does not include a guaranty endorsed on an instrument issued by an authority. ["Bond" shall mean an instrument in form qualifying as an investment security under Article 8 of the Uniform Commercial Code. "Note" shall mean a negotiable promissory note in form conforming to the requirements of Article 3 of the Uniform Commercial Code applicable to municipal obligations, except in each case as otherwise provided herein.] Unless otherwise indicated, the phrase "bonds or notes" does not include tax anticipation notes. A bond or a note which falls within the definition of "security" set forth in Article 8 of the act of April 6, 1953 (P.L.3, No.1), known as the "Uniform Commercial Code," shall be governed by said Article 8 and every other bond or note shall be governed by Article 3, except in each case as otherwise provided herein.

(3) "Borrowing base" means 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 such years and stating such average, executed by the *authorized* officials of the local government unit [auditing its financial affairs] or by [the] *an* independent [public accountants regularly auditing the books of account of such local government unit] accountant. *If, within such three-year period, there shall have 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 such expansion or contraction had occurred within or prior to the commencement of such three-year period in such manner as the statutes, charter provisions, or court decree shall provide or direct, or in the absence of such provisions, as the department shall approve.

(4) "Department" means the Department of Community Affairs or any successor department, board or commission to which all or certain of the functions to be performed under this act may hereafter be transferred, either as provided herein or by subsequent legislation.

(5) "General obligation" in the title of a bond or note, means a bond or note for the payment of which the full faith, [and] 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 404, and for the payment of which no specific revenues are pledged.

(6) "Governing body" means the authorities in each local government unit authorized by law to levy taxes or fix the tax rate of the local government unit and 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 such body has no power to levy taxes.

(7) "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.

(7.1) "*Guaranty*" means 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 such bonds or notes, premium, if any, and assumed taxes, if any, on such obligations.

(8) "Incur" or "incurred," when used with respect to debt, means the point in time when (i) in the case of debt assented to by the electors, the assent shall have been given, and (ii) in the case of nonelectoral or other debt the first ordinance *or, in the case of small borrowings under section 409, the resolution* authorizing the debt shall have been *finally enacted or* adopted, unless the authority for such debt shall have been cancelled or terminated as provided in this act. *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 such mayor or officer within a specified statutory time limit, or passage over the veto of a mayor or of such officer but does not include any required advertising subsequent to the date of adoption by the governing body of the local governing unit.*

(9) "Issue" means 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.

(10) "Local government unit" means 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 now or shall hereafter be authorized to be created by the General Assembly; but the term does not include *a city or county of the first class*, an authority as herein defined, [or any political subdivision now, or former local government unit hereafter, operating under a home rule charter.] *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 "local government unit" includes school districts of the first class presently operating under a home rule charter or home rule charter supplement and the provisions of this act shall govern over inconsistent charter provisions on the same subject.

(11) "Ordinance" means [an ordinance in the case of a local government unit having the power to adopt ordinances and a resolution in the case of all other local government units] *the formal action of a local government unit, whether, under the law applicable to such local government unit, such action is taken by ordinance or by resolution, to which the requirements of section 103 of this act shall apply. "Resolution" means all other formal action of a governmental unit, whether, under the law applicable to such local government unit, such action is taken by ordinance or by resolution, to which the requirements of section 103 of this act shall not apply.*

(12) "Project" means (i) any item of construction, acquisition, extraordinary maintenance or repair which has been undertaken by a local government unit, (ii) any preliminary studies, surveying, planning, testing or design work for any such, (iii) any lands or rights in land to be acquired, (iv) any furnishings, machinery, apparatus or equipment normally classified as capital items, but such 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, (v) 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[; or], (vi) *funding or refunding of debt incurred for any or all of the foregoing purposes, or (vii) 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.* The term shall also include any deficit to be funded by bonds or notes as provided herein, or the creation of a revolving fund for specific improvements. Where a local government unit has adopted a capital budget, the term project shall mean any unfunded portion of the capital budget selected by ordinance for current funding.

(13) "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.

(14) "Series" means 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 such bonds or notes have been combined for sale as provided in this act.

(15) "Sinking fund" means [a special fund created for the accumulation and holding of moneys for the payment of bonds or notes at a subsequent date and may also include funds or accounts created for the accumulation and holding of moneys required to be held in respect of specific issues of revenue or guaranteed revenue bonds or notes for use in times of falling revenues or for the costs of maintenance or repair.] *the special fund created pursuant to section 1001 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.*

(15.1) "Tax anticipation notes" means notes issued in anticipation of taxes, in anticipation of revenues, or in anticipation of both as shall be designated in such notes.

(16) "Total revenues" means all moneys received by the local government unit in a fiscal year from whatever source derived, except:

(i) subsidies or reimbursements from the United States of America or from the Commonwealth of Pennsylvania measured by the cost of, or given or paid on account of, a particular project financed by debt;

(ii) *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 such payments are payable solely from such sources*, but such portion thereof as may [be] *have been* returned to *or retained by* the local government unit [by the pledgee for any general operating purpose] shall not be excluded;

(iii) 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*;

(iv) grants and gifts in aid of or measured by the construction or acquisition of specified projects; and

(v) 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.

Section 103. Effectiveness and Required Notice of Ordinances.—Notwithstanding any other law to the contrary, an ordinance required to be adopted by this act shall be advertised not less than three nor more than thirty days prior to its enactment. The advertisement shall appear once in a newspaper of general circulation, published or circulating 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 such advertisement. Not later than the **[seventh] fifteenth** day after the final enactment of such ordinance, a notice of such enactment shall be advertised once in a newspaper of general circulation published or circulating 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, *and the average annual debt service*; and

(2) That **[a copy of such notice has been conspicuously posted and will remain so posted for the next seven days in a designated position, readily viewable by the public, at the public meeting place of the governing body of such local government unit] 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 such notice.**

The ordinance shall be valid and effective for all purposes on the **[later of such seventh] fifth** day **[or the tenth day after the final enactment of such ordinance] 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 action questioning such validity or effectiveness shall have been filed in timely manner as provided in this act, but such conclusiveness shall not affect the liability of any person for failure to **[post and keep posted the notice or for failure to]** permit inspection. No other or different publication shall be required notwithstanding the provisions of any other law.

Section 3. Sections 104, 105, 106, 107 and 108 of the act are reenacted and amended to read:

Section 104. When Lease or Other Agreement Evidences Acquisition of Capital Asset.—*(a)* A lease, guaranty, subsidy contract or other agreement entered into by a local government unit shall evidence the acquisition of a capital asset where:

(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 of Pennsylvania; and

(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 **[or may be payable], whether in all events or only upon the happening of certain**

events, under the terms of such instrument from the tax or general revenues of the local government unit; and

(3) Upon termination of such lease guaranty, subsidy contract or other agreement or upon dissolution of such 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 such local government unit, or in the Commonwealth of Pennsylvania.]; or

(4) **In any case where clause (2) of this section 104 applies and the term of the lease guaranty, subsidy contract or other agreement is equal to or exceeds the useful life of the asset, regardless of the nature of the lessor or obligee.]**

(b) 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 such instrument from the tax or general revenues of the local government unit and the term of such instrument is equal to or exceeds the useful life of the asset, regardless of the nature of the lessor or obligee.

Section 105. Designation of Bonds and Notes; Authority to Issue.—(a) Bonds or notes prior to the authorization thereof shall be classified by the issuing local government unit as one of the following **[four] three** types of obligation: general obligation bonds or notes; guaranteed revenue bonds or notes; **or** revenue bonds or notes**]; or tax anticipation notes]**.

(b) 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 shall be 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 **[nonprofit corporation] another local government unit** subject, however, to the provisions of subsection (c) of this section.

(c) **[Every] 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 **[as provided in this act], 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 such local government unit is authorized to own, acquire, subsidize, operate or lease, or to participate in owning, acquiring, subsidizing, operating or leasing with others, **[and shall also have full power and authority]** to issue tax anticipation notes and funding bonds or notes as herein provided, **and to contract for insurance covering the risks of**

nonpayment of principal, interest and premium of bonds, notes, tax anticipation notes and guaranties. For the purpose of this act, unless debt evidenced by a guaranty shall have been approved as electoral debt in accordance with Article III of this act, such 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 acts such guaranty shall be deemed to create debt or indebtedness of the local government unit making the guaranty.

Section 106. 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, [or] 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.

Section 107. Cost of a Project.—The cost of a project shall include 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 [or its] financing costs, [of preparing bonds or notes,] costs of necessary printing and advertising, the 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 [projects,] *the project* and a proper allowance for contingencies.

Section 108. Local Government Units Hereafter Obtaining Home Rule Charters.—Every local government unit [hereafter] obtaining a home rule charter *after July 12, 1972* shall be subject to the substantive provisions of this act applicable to it as if it were a local government unit, and may adopt the procedural provisions of this act, by incorporation thereof by reference, in its home rule charter.

Section 4. The article heading of Article II of the act is reenacted to read:

ARTICLE II

Limitations on Debt of Local Government Units

Section 5. Section 201 of the act is reenacted and amended to read:

Section 201. No Limitation on Debt Approved by Electors.—All debt of any classification, whenever incurred, which has been or shall hereafter be approved, either before or after such debt is incurred, by majority of the

votes cast upon the question of incurring such debt at a general or special election held as provided [in this act] *by applicable law in effect at the time of the election*, 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 act upon debt of such classification shall not apply thereto.

Section 6. Section 202 of the act, amended October 3, 1972 (P.L.887, No.206), is reenacted and amended to read:

Section 202. Limitations on the Incurring of Other Debt.—(a) Except as provided in subsections (c), (d) and (e) of this section and as otherwise specifically provided in this act, no local government unit shall incur any new *nonelectoral* debt, if the aggregate net principal amount of such new *nonelectoral* debt together with all other net nonelectoral debt outstanding would cause the total net nonelectoral debt of such local government unit to exceed:

(i) one hundred per cent of its borrowing base in the case of a school district of the first class;

(ii) three hundred per cent of its borrowing base in the case of a county;
or

(iii) two hundred fifty per cent of its borrowing base in the case of any other local government unit.

(b) Except as provided in subsections (c), (d) and (e) of this section or as otherwise specifically provided in this act, 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, the General Assembly determines that no local government unit shall incur any new lease rental debt *or nonelectoral debt*, if the aggregate net principal amount of such 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 such local government unit to exceed:

(i) **[one hundred fifty per cent] two hundred per cent** of the borrowing base in the case of a school district of the first class;

(ii) **[three hundred fifty per cent] four hundred per cent** of its borrowing base in the case of a county; or

(iii) **[three hundred per cent] three hundred fifty per cent** of its borrowing base in the case of all other local government units.

(c) The limitations and prohibitions of the preceding subsections (hereinafter called the "regular debt limits") shall not apply to electoral debt, nor to debt excluded in computing net amounts of nonelectoral debt or of lease rental debt, as self-liquidating or because subsidized, when such exclusion is made pursuant to sections 204, 205 and 206 of this act.

(d) **[An additional debt limit of one hundred per cent of the borrowing base may be utilized for additional nonelectoral or additional lease rental debt or both:] Additional nonelectoral or additional lease rental debt or both in the aggregate amount of one hundred per cent of the borrowing base may be incurred:**

(i) by a county which has assumed, either before or after the effective date of this act, county-wide responsibility for; or

(ii) where the county has not assumed county-wide responsibility, by a local government unit which has **[not]**, *either before or after the effective date of this act*, assumed **[heretofore]** 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, but such additional debt limit may be so utilized only to provide funds for and towards the cost of capital facilities for any **[or all] or any combination** of the foregoing purposes **[combined]**. 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) If replacement of assets is required as a result of fire, flood, storm, war, riot, civil commotion or other catastrophe, or such 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, anti-pollution, environmental protection and control facilities or of complying with other mandated Federal or Commonwealth programs, a local government unit not having sufficient remaining borrowing capacity as nonelectoral or lease rental debt or being otherwise prohibited by section 305 from incurring debt for the purpose, upon petition to the **[Commonwealth Court] court of common pleas of the county where the local government unit is located or, if the local government unit is located in two counties, of either county**, 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 305 or the insufficiency of nonelectoral or lease rental borrowing capacity, to incur debt, as either lease rental or nonelectoral debt, up to an additional fifty per cent of its borrowing base, if such 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 **[net] debt [and all outstanding net nonelectoral and net lease rental debt] which may have been previously authorized under this subsection** (excluding any allocated to the additional debt limit under subsection (d) of this section) shall not exceed **[the sum of the applicable regular and additional emergency debt limits] fifty per cent 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 papers of

general circulation and in the legal journal not less than five nor more than twenty days before the filing thereof. Such additional emergency debt may be incurred only for the purposes and upon the terms approved by the court. The amount of such debt initially in excess of the regular debt limits shall not thereafter be included in computing net amounts of nonelectoral or lease rental debt. Appeals from the order of the court may be taken by any interested party in accordance with the [Appellate Court Jurisdiction Act of 1970.] *act of July 31, 1970 (P.L.673, No.223), known as the "Appellate Court Jurisdiction Act of 1970."*

Section 7. Sections 203, 204, 205, 206, 207, 208 and 209 of the act are reenacted and amended to read:

Section 203. Transfer of [Nonelectoral] Debt *Incurred without the Approval of the Electors* to Electoral Debt.—The governing body of any local government unit may, by [ordinance] *resolution*, signify a desire to have any [nonelectoral] debt theretofore incurred *without the approval of the electors* established as electoral debt. The [ordinance] *resolution* shall direct the holding of an election to be held at the proper places within such local government unit for the purpose of obtaining the approval of the electors to such debt in the same manner as provided for securing the approval of the incurring of electoral debt. The question shall be whether the remaining unpaid [nonelectoral] 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 [such question shall receive] a majority of the votes cast *upon such question* at such election *shall favor transfer to electoral debt*, a certified copy of the [ordinance] *resolution*, proof of due advertisement of the election [and of the ordinance] 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 thereof and return the same to the local government unit. [A copy of the proceedings duly certified by the proper officials of the local government unit together with the approval of the department shall be filed in the office for the recording of deeds in and for the county in which such local government unit is located.] Such debt shall thereupon be no longer classified as nonelectoral *or lease rental* debt.

Section 204. Procedure for Exclusion of Subsidized Debt to Find Net Nonelectoral Debt or Net Lease Rental Debt.—(a) 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 there has 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 of Pennsylvania or from the United States of America 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 such 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 **[the]** electoral debt; and

(4) A computation, in reasonable detail, certified by the proper officers of the local government unit **[and approved as mathematically correct by an independent certified public accountant,]** *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 or bonds or notes of an 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.

Such proportion of the bonds or of lease rental debt shall be excluded as subsidized debt. Such 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) 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 (i) that there has been no decrease in the subsidy or, (ii) *that there has been [no increase or] a decrease and recomputing the principal amount to be excluded* or, (iii) *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) If the department shall approve the exclusion of such principal amount of bonds *or notes* or lease rental debt as being subsidized debt in accordance with this act, 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 **[the filing] receipt** of such approval **[and duplicate original in the office for the recording of deeds in the county in which] by** such local government unit **[is located]**, such principal amount of bonds shall be excluded from nonelectoral debt or lease rental debt for the purpose of determining net debt in each category.

Section 205. Procedure for Exclusion **[to Find Net Nonelectoral Debt of Self-liquidating Debt]** Evidenced by Revenue Bonds or Notes *to*

Determine Net Nonelectoral Debt.—**[(a)]** 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 there has been filed with **[, the recorder of deeds of the county in which such local government unit is located.]** *the department:*

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

(2) A certificate from a qualified professional engineer or architect, or other person qualified by experience as may be 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, 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 such covenants with the holders of the revenue bonds.

[(b)] A duplicate original of the documents shall be filed in the office for the recording of deeds in the county in which such local government unit is located, and upon such filing, the principal amount of such revenue bonds shall be excluded from nonelectoral debt. A certificate as to such filing shall accompany the next debt statement filed pursuant to section 410 of this act.]

Section 206. Procedure for **[the] Exclusion [to Find Net Nonelectoral Debt or Net Lease Rental Debt] of *Other* Self-liquidating Debt [Evidenced by Other Bonds or Notes or a Guaranty] to Determine Net Nonelectoral Debt or Net Lease Rental Debt.**—(a) Self-liquidating debt shall not be excluded in **[finding] determining** net nonelectoral debt, or net lease rental debt for the **[purposes] purpose** of establishing net debt of either category where such debt is evidenced by general obligation bonds or notes, **[guaranteed revenue bonds or notes or a guaranty of obligations of an authority] 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~~]~~:

(1) **A] a** report to the local government unit from qualified registered engineers or architects or other persons qualified by experience as may be appropriate to the project involved, setting forth:

(i) the estimated or, if available, the actual cost of construction, acquisition, or improvement of the project financed or to be financed;

(ii) the principal amount of **[the bonds or notes, guaranteed revenue bonds or notes or of bonds or notes obligations of an authority guaranteed by the local government unit evidencing lease rental debt,] said 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 so much of [such] all said bonds, notes or obligations as may be outstanding;

(iii) the amount [and] *or* the estimated amount of the annual debt service for each year during the life of all *said* 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;

(iv) the date or estimated date of the completion of the project;

(v) 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 such net revenues *together with other available funds to be received in respect of the project* will be sufficient in each such year to pay the annual debt service, *other than capitalized debt service*, on such bonds, notes or obligations or a specified aggregate principal amount thereof;

(vi) such qualified person's certificate that the estimates of net revenues have been computed from such 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 such gross revenues, in each year, the total estimated costs of operation and maintenance of the project chargeable against such revenues or assessments and any State taxes assumed on such bonds or notes all based on assumptions deemed reasonable for the purpose by such person; and

(vii) such person's further certificate that such person is qualified to act with regard to the type of project then being financed stating the experience.

[(2) A certified copy of an ordinance of the governing body of such local government unit approving the report.]

(b) If the department shall approve the exclusion of the principal amount of bonds, *notes or obligations or bonds or notes of an authority or another local government unit secured by an instrument evidencing lease rental debt* stated in such report [and ordinance] as being self-liquidating debt as being in accordance with law, [and the revenue estimates as not unreasonable,] it shall endorse its approval upon a duplicate original of the proceedings and return the same to the local government unit. Upon [the filing] receipt of such approval [and duplicate original in the office for the recording of deeds in the county in which] by such local government unit [is located], such 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 which time, *if such 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 410 of this act. If there is a decrease, or if more of such debt is desired to be excluded as **[self sustaining] self-liquidating**, a new certification shall be filed**[, and a new recording made]**.

Section 207. Effect of Debt Limitations on Outstanding Debt.—Notwithstanding anything in any other law or elsewhere in this act, nothing herein contained shall be construed to invalidate any debt which was lawful when incurred, or which could have been lawfully incurred if **[the] this** act had been in effect, whether incurred before or after the passage of this act, and the percentage limitations set forth in section 202 shall be deemed increased to the extent necessary to cover such incurred debt. Nothing herein contained shall be construed to subject any debt incurred and voted upon prior to the effective date of this act as electoral debt to any of the limitations herein imposed on nonelectoral debt.

Section 208. Determination of Existing Net Nonelectoral Debt and Net Nonelectoral Plus Net Lease Rental Debt.—(a) **[Gross nonelectoral debt shall first be established by subtracting from the gross principal amount of all incurred debt the sum of gross incurred electoral debt plus gross incurred lease rental debt of the local governmental unit.]***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 net lease rental debt shall then be determined by subtracting separately from **[each,] gross nonelectoral debt and gross lease rental debt respectively**, as may be applicable, and as the local government unit may desire to claim:

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

(2) The current appropriation for the payment of the principal of and *overdue* interest on such nonelectoral debt or **[of] for** the payment of the net lease rental in the case of lease rental debt, except to the extent that the same shall already have 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 such

assessments are **[applicable to] available for** the payment of *the principal amount of* such debt;

(4) The amount of delinquent taxes from prior years and other undisputed municipal liens actually filed against property less the sum of (y) a reserve, reasonable in amount, for so much thereof as may not be collected and (z) the amount thereof appropriated for current expenses in the current year's budget;

(5) The amount of self-liquidating debt and subsidized debt 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 such 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 such liability is debt; and].

[(9) To the sum determined above there should be added the interest payable thereon for the current year and a like addition should be made to net lease rental debt.]

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

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

(e) The net nonelectoral debt so determined shall be used in determining compliance with the limit imposed by section 202(a). The sum of such net nonelectoral debt and the net lease rental debt so determined shall be used in determining compliance with the limit imposed by section 202(b).

Section 209. Determination of Debt Limits.—Whenever it shall be 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 202 shall be applied to the borrowing base of such 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 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 such 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 act, upon the

approval of the proceedings by the department, unless contested within the specified time limits as herein provided.

Section 8. The article heading of Article III of the act is reenacted to read:

ARTICLE III

Procedure for Securing Approval of Electors

Section 9. Sections 301, 302 and 303 of the act are reenacted and amended to read:

Section 301. Desire [**Ordinance**] **Resolution**; Expense of Certain Elections.—(a) Whenever the governing body of any local government unit shall determine that it is advisable to make an increase in the debt of such local government unit with the assent of the electors, or to obtain the assent of the electors to **establish** any [**nonelectoral**] debt previously incurred **without the approval of the electors as electoral debt**, it shall adopt [**an ordinance**] **a resolution** signifying such determination, calling an election for the purpose of obtaining such assent, and approving the content and substantial form of notice of election.

(b) 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 such elections shall be more than ninety or less than thirty days from the effective date of the desire [**ordinance**] **resolution** the governing body may fix a date for a special election.

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

Section 302. Advertisement of Election.—(a) Notice of the election shall be given in one but not more than two newspapers published or circulating, in such local government unit and in the legal journal, if any, designated by the rules of court of the county in which such local government unit is located, for the publication of legal notices and advertisements. If published in a daily newspaper or newspapers it shall be published three times at intervals of not less than three days, but if published in a weekly newspaper or newspapers 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 paper shall be not less than fourteen nor more than twenty-one days before the day of the election, but all such publications shall be after the effective date of the [**ordinance**] **resolution**, and need not be upon the same dates in different papers.

(b) The election notice shall contain and state:

(1) The date (determined as provided in section 301 of this act) 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 voters at the election which shall be substantially in the following appropriate form:

“Shall debt in the sum of dollars
 for the purpose of financing Yes
 (insert brief description of project) be (authorized to be
 incurred as) (transferred from nonelectoral debt to) No
 debt approved by the electors?”

Section 303. Conduct of Election.—(a) The governing body, at least forty-five days before any election [**upon an increase in debt**], *called pursuant to section 301* shall cause to be certified to the county board of elections of each county in which such election is to be held a copy of the desire [**ordinance**] *resolution* and the form of the question to be submitted to the electors.

(b) Elections [**to authorize an increase of debt**] *called pursuant to section 301* 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 such election shall be governed by the act of June 3, 1937 (P.L.1333, No.320), known as the “Pennsylvania Election Code.”

(c) At such elections ballots shall only be furnished to, or provision for voting on the question shall only be made for, such voters as are resident in the local government unit the debt of which is to be increased or approved by the electors.

(d) The election officers and clerks shall make return on forms provided by the county board of elections of the votes cast on such question to the county board of elections, which shall compute the same and transmit a certified return thereof to the governing body of the local government unit which shall enter the same on its minutes. If [**it appears**] *such certified return shows* that a majority of those voting on such question have voted in favor [**of the increase of debt**] *thereof*, irrespective of any other law requiring a greater percentage, [**the county board of elections shall also file a certified copy of such return together with the copy of the ordinance certified to the county board of elections by the local government unit, in the office for the recording of deeds in and for such county, where the recorder of deeds or similar officer shall enter the same in the debt records of the local government unit. The local government unit shall also file in the same place proofs of the advertisement of the notice of election.**] *the local government unit shall file with the department a certified copy of the desired resolution, the certified return and proofs of publication of the notice of election, whereupon the amount of such debt so approved shall constitute electoral debt from and after the date of the election, subject to the provisions of section 304.*

Section 10. Section 304 of the act is reenacted to read:

Section 304. Finality of Result of Election.—Any interested party or

any taxpayer may contest the validity of any election proceedings under this Article III by filing with the Commonwealth Court within thirty days from the date of the election and not thereafter, a petition in the nature of a bill in equity, specifically alleging the error or errors complained of in the proceedings, and the petitioner shall have the burden of proof. If no such petition has been filed within such period of thirty days from the date of election, or if a petition shall have been filed and shall have been finally dismissed, the election shall be conclusively deemed to be valid for all purposes. If prior to the timely filing of a petition, further proceedings in connection with the incurring of such debt shall have been filed with the department, then any contest shall proceed by way of an appeal to the Commonwealth Court from the action of the department upon such proceedings. The petition or appeal provided by this section shall be such party's, or such taxpayer's, sole and exclusive remedy.

Section 11. Sections 305, 306 and 307 of the act are reenacted and amended to read:

Section 305. Effect of Defeat of Question.—If at the election the question is defeated, another election for the same purpose or purposes may not be held until one hundred fifty-five days have elapsed since the prior election; nor during the interim shall any bonds or notes be issued or any lease rental debt be incurred for such purpose or purposes except that nonelectoral or lease rental debt may be incurred where 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 subsection [(c)] (e) of section 202 of this act.

Section 306. Issue of Bonds or 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 [either] as obligations of the local government unit or [through an authority] *shall authorize execution and delivery of an instrument which, but for such electoral approval, would evidence lease rental debt* at such times and [in] *evidencing* such amounts *of obligations*, not exceeding in the aggregate the estimated amount approved by the electors, subject to the provisions of Article VI of this act. The bonds, *notes or obligations* shall be *or continue* for such term as may have been stated in the notice of election, or if none were stated for such term as the governing body shall determine. 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 or maturities of subsequent series stated to mature later than the last stated maturity of the preceding series for the same project: Provided, That nothing in Article III shall preclude the issue of additional nonelectoral debt or lease rental debt, to complete the project, or the issue of additional electoral debt for the purpose if authorized by a subsequent election.

Section 307. Cancellation or Termination of Approval of Electors.—(a) On the **[seventh] tenth** anniversary of the date on which an assent of the electors obtained under this act 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 act, shall cease and terminate. **[Any terminations of authorization to issue bonds or notes with the assent of the electors shall be reflected in any annual debt statement subsequently filed and recorded pursuant to this act.]**

(b) The governing body of any local government unit may by **[ordinance] 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 such **[ordinance] resolution**, and thereupon such assent of the electors shall be rescinded and of no further effect. A certified copy of such **[ordinance] resolution** with proof of the due publication thereof shall be filed with the department. **[and with the office for the recording of deeds of the county in which such local government unit is located.]**

Section 12. Section 308 of the act is reenacted to read:

Section 308. 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 act, 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 such assent was obtained unless such purpose be changed as provided in this act; otherwise such 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 such proceeds were previously used to purchase such 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.

Section 13. Section 309 of the act is reenacted and amended to read:

Section 309. Manner of Effecting Change of Purpose of Electoral Debt.—If the governing body shall determine 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 such project, the governing body shall by **[ordinance] 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 article 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; and
- (6) The question to be submitted to the electors, which shall be substantially in the following form:

“Shall the sum of dollars Yes
heretofore borrowed or authorized to be borrowed by
this local government unit for the purpose of No
. be used for the purpose of ?”

The election shall be conducted, return made thereon, notices of election published and certificates filed and recorded as provided in section 303 above. 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 law requiring a greater percentage) the funds specified may be used for such changed purpose.

Section 14. The article heading of Article IV of the act is reenacted to read:

ARTICLE IV
Actions of Governing Body with Respect
to Incurring Debt, and Issuing Bonds, Notes, and
Bond Anticipation Notes

Section 15. Sections 401, 402, 403, 404, 405, 406, 407 and 408 of the act are reenacted and amended to read:

Section 401. **Combining Projects for Financing *or Series of Bonds for Sale.***—The governing body of a local government unit may by ordinance [combine any two or more projects for financing purposes, including combining all rates, rentals, receipts, tolls and charges, creating common reserve funds, and the like, and it may also, combine by ordinance any one or more series of general obligation bonds or notes for purposes of simultaneous sale; subject, in each case, to the provisions of section 710 of this act.] *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:*

(a) In lieu of combining two or more items or elements permitted to be combined pursuant to section 102(c)(12) as a single project, designate any one or more of such items or elements as a project and, in such case, combine such projects for financing purposes by one series of bonds or notes provided that if such series of bonds or notes shall be 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 and common reserve funds created and common or cross covenants made in respect of each project.

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

(c) 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 such project or projects and authorized by this act.

Any ordinance required by this section may be included in any authorizing ordinance required by section 403.

Section 402. [Ordinance Authorizing Issuance of Debt] *Preliminary Authorizations as to Financing.*—The governing body of a local government unit[, when it is determined to incur] *may express its intent to evidence* debt[, whether] as electoral debt, nonelectoral debt, or lease rental debt. [may determine by ordinance to evidence such debt by an issue of bonds or notes of the local government unit, or by the incurring of lease rental debt. Such an ordinance shall not take effect unless adopted by the affirmative vote of a majority of the members of the governing body then holding office, and the vote of each member thereon shall be recorded upon the minutes of such governing body.] *Such action may be taken by resolution which may also provide for the submission of proposals to purchase any bonds or notes, or such action may be taken 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 the ordinance or ordinances required hereinafter in this article, or, in the case of notes issued under section 409, other than by adoption of the resolution therein required.*

Section 403. Contents of Ordinance Authorizing [Debt] *Issuance of Bonds or Notes or Instruments Evidencing Lease Rental Debt; Fixing the Date of Incurring Nonelectoral and Lease Rental Debt; Changes in Purpose of Nonelectoral General Obligation Bonds.*—The ordinance or ordinances *or, in the case of notes issued under section 409, the resolution,* authorizing the [incurring of debt] *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:

(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 [lease rentals] *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 a specified officer or specified officers and their successors to prepare *and* certify and; *except in the case of*

notes issued under section 409, to file the debt statement required by section 410 of this act, to execute and deliver the bonds or notes or the [lease] instrument evidencing lease rental debt; and to take other necessary action, and such designation may be changed from time to time thereafter; and

(v) An authorization, in the case of nonelectoral or lease rental debt which is subject to exclusion as subsidized debt or self-liquidating debt if such exclusion is presently desired, to the proper officers of the local government unit to prepare and file **[originally, and annually thereafter as required,]** any statements required by Article II of this act 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 404 of this act 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 **[bond or note] 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, **[sinking fund provisions,]** and, *if desired*, provisions for prior redemption, including call dates and call prices; all of which shall conform with the provisions of Article VI of this act;

(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 Article VII of this act *or if to be sold at negotiated sale, there may be included the matters required or permitted by section 407;*

(vi) **[A] Except in the case of notes issued under section 409, a covenant creating the sinking fund required by Article X of this act [and such accounts in the sinking fund as may be necessary or desirable];**

(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] *and, if desired, authorization for the purchase of bond insurance; and*

(viii) The authorization to the proper officials of the local government unit to contract with **[a bank or bank and trust company] one or more banks or bank and trust companies** for **[its]** services as trustee, fiscal agent, **[or]** sinking fund depository, **[and] or** paying agent, and to contract with such additional co-paying agents as may be desired, *but compliance with*

this subclause shall not be required in the case of notes issued under section 409.

(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, [as lessee, of the project,] ***guaranty, subsidy contract or other agreement***, and the annual or semi-annual rental ***or payment*** to be paid thereunder, and source or sources of payment, ***and, in the case of a guaranty, the covenant required by section 404.***

(4) [In the case of nonelectoral general obligation debt the purpose may be changed by ordinance at any time.] ***In the case of revenue or guaranteed revenue bonds or notes, there may be included the matters set forth in sections 405, 606 and 607.***

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 409. Electoral debt is incurred when the assent of the electors shall have been given.

In the case of nonelectoral general obligation debt the purpose may be changed by similar action at any time.

Section 404. [Covenant to Pay General Obligation or Guaranteed Revenue Bonds or Notes.—The local government unit shall, in the ordinance authorizing the issue of general obligation bonds or notes or guaranteed revenue bonds or notes, covenant with the holders from time to time of the bonds and coupons outstanding pursuant to the ordinance, that the local government unit shall include the amount of the debt service and the amounts payable in respect of its guaranty or guaranteed revenue bonds for each fiscal year in which such sums are payable in its budget for that year, shall appropriate such amounts to the payment of such debt service, and shall duly and punctually pay or cause to be paid the principal of every bond and the interest thereon at the dates and places and in the manner stated in the bonds and the coupons thereto appertaining, according to the true intent and meaning thereof, and for such budgeting, appropriation and payment, the local government unit shall pledge its full faith, credit and taxing power; but nothing in this covenant contained shall in any way oblige the local government unit to make any payments on limited guaranteed revenue bonds beyond the stated terms of its guaranty, as set forth in the bonds. The covenant shall be specifically enforceable.] Covenant to Pay Bonds or Notes or a Guaranty.—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 such bonds or notes or guaranteed bonds or notes, and of the coupons thereto appertaining, that the local government unit (i) shall include the amount of the debt service, or the amounts payable in respect of

its guaranty, in each case specified in such covenant, for each fiscal year in which such sums are payable in its budget for that year, (ii) shall appropriate such amounts from its general or specially pledged revenues, as the case may be, for the payment of such debt service or guaranty, and (iii) shall 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 such bond or note or, to the extent of its obligation, the amount payable in respect of such guaranty, at the dates and places and in the manner stated in the bonds and in the coupons thereto appertaining or in such guaranty, according to the true intent and meaning thereof. For such 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 such guaranty is limited to specified revenues of the guarantor; but nothing in the covenant contained shall in any way 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. Nothing in this section shall be construed to give to any local government unit any taxing power not granted by another provision of law.

Section 405. Additional Provisions in Ordinance Authorizing Issuance of Revenue or Guaranteed Revenue Bonds *or Notes*.—In addition to the provisions required or permitted by [section] *sections 403, 606 and 607*, the ordinance authorizing the issuance of revenue bonds *or notes* or guaranteed revenue bonds *or notes* may also contain:

(1) Such 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) Such 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 such covenant, and no agreement with the holders of bonds or notes shall require an increase in such 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 [creating] *granting* a [perfected] 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 may be deemed desirable for the further security of the notes, bonds and coupons and requiring the observance of such covenants on the part of the local government unit as may be 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) The authorization to the proper officers of the local government unit to execute and deliver any trust indenture containing such other, further and lawful provisions as may be desired.

Section 406. Sinking Fund Depository; Trustee for Bondholders or Noteholders.—(a) Every local government unit issuing bonds or notes (*other than notes issued under section 409*) shall appoint a sinking fund depository which [shall] *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 the Commonwealth of Pennsylvania and may serve as such 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 shall require that such deposit be made on an earlier date or on earlier dates.

(b) 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) 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 twenty-five per cent in principal amount of the outstanding notes and bonds and upon being indemnified against cost and expense, shall exercise any remedy, provided in this act 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 Article XII of this act.

Section 407. Award of Bonds or Notes.—When an acceptable proposal for the purchase of the bonds or notes, or any parcel 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 negotiated *or invited* sale, and is in compliance with the provisions of this act, it may be accepted *by resolution or* by ordinance. [which] *If the acceptance shall be made by resolution, the acceptance shall be conditional upon compliance with section 403. If the acceptance shall be by ordinance, the ordinance* shall also fix any details of the series of bonds or notes being sold not fixed by [the] prior ordinance, and award the bonds or notes, or such of them as have been sold, to specified purchasers at prices specified in such ordinance. Such provisions may be included in the ordinance adopted pursuant to section 403 [in the case of a negotiated sale]. Notwithstanding any other provision of this act or of any other law, 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 [**thereof of the ordinance** prior to enactment shall be sufficient if it describes the items to be completed from the proposal.

Section 408. Bond Anticipation Notes.—(a) If deemed desirable, the governing body may evidence all or part of any electoral or nonelectoral debt by the issue of a series of bond anticipation notes. Such 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 shall be 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 additional offers of the bonds may be made.

(b) 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 said bonds *occurring prior to the refunding of such notes*.

Section 16. Section 409 of the act, amended June 18, 1975 (P.L.20, No.8), is reenacted and amended to read:

Section 409. Small Borrowing *for Capital Purposes*.—(a) Any local government unit is hereby authorized to incur debt by *resolution rather than by ordinance* to be evidenced by notes to provide funds for a project as defined in this act without complying with the requirements of Article VIII provided: (i) that the aggregate amount of such debt outstanding at any one time shall not exceed the lesser of [**fifty thousand dollars**] \$50,000 or thirty percent of the borrowing base; (ii) that the principal of each such debt shall mature not later than five years from the date of issuance; (iii) that the incurrence of such debt shall not cause the debt limits of Article II to be exceeded; [(iv) that a debt statement prepared pursuant to section 410 certifying thereon compliance with this act shall be filed with the department; and (v)] that the provisions of section 10 of Article IX of the Constitution shall have been observed *and provided further that the provisions of section 808 shall apply to notes issued in violation of the foregoing requirements*.

(b) *Except as otherwise specifically stated in this section or in Articles IV, VI and VII, the provisions of Article IV applicable to ordinances authorizing general obligation bonds or notes and the provisions of Articles VI and VII applicable to general obligation bonds or notes shall apply, respectively, to resolutions authorizing notes and to the notes, authorized under this section. 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 407 in which event the term "ordinance" in section 407 shall have reference to the authorizing resolution required by this section. Refunding notes may be issued in compliance with this section and with the provisions of Article XI 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.

Section 17. Section 410 of the act is reenacted and amended to read:

Section 410. Debt Statement.—(a) Before delivering any *general obligation* bonds or notes, *or guaranteed revenue bonds or notes constituting nonelectoral debt* or executing [a lease evidencing the acquisition of a capital asset,] *an instrument evidencing lease rental debt* the officer or officers [authorized by ordinance] of [the] a local government unit shall prepare and verify under oath or affirmation a debt statement as of a date not more than sixty days before the filing with the department *or, in the case of notes issued under section 409, 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 1110(b) if debt is to be refunded;*

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

[(3) The remaining electoral debt, net nonelectoral debt and net lease rental debt of the local government unit totaled separately for each applicable debt limitation specified in this act;

[(4)] (3) The aggregate principal amount of the bonds or notes being issued or [to be supported by a lease] evidencing lease rental debt;

[(5) The amount thereof constituting new net nonelectoral debt or new net lease rental debt;

(6) The aggregate net nonelectoral debt and the net nonelectoral debt and net lease rental debt combined, stated separately, to be outstanding after settlement for the issue;

[(7)] (4) The borrowing base of the local government unit as shown by an appended borrowing base certificate;

[(8)] (5) The applicable nonelectoral debt limit and the limit for nonelectoral plus lease rental debt computed as provided in this act;

(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 1110(b) after settlement of the issue.

(b) 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 so that less debt is to be excluded or 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 and filed in the office for the recording of deeds in the county in which such local government unit is located to effectuate such exclusion.

Section 18. Section 411 of the act, amended June 18, 1975 (P.L.20, No.8), is reenacted and amended to read:

Section 411. Submission to Department.—(a) Before delivering any bonds or notes [**in excess of fifty thousand dollars (\$50,000) or thirty percent of the borrowing base, whichever is lesser**] *other than notes representing small borrowings issued under section 409*, the local government unit shall apply for **and receive or be deemed to have received** the approval of the department **under section 804 or 806**. The application, in such form as the department shall prescribe, 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 [**or resolution**] authorizing the bonds or notes [**and prescribing the manner of sale**] with proofs of proper publication;

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

(5) The ordinance or [**ordinances**] **resolution** awarding the bonds or notes with proofs of proper publication **of the ordinance**;

(6) The debt statement **if required by section 410** prepared pursuant [**to section 410**] **thereto**;

(7) Such certificates and proofs as 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 such exclusion is desired by the local government unit.

(b) Before becoming bound [**in an amount in excess of fifty thousand dollars (\$50,000) or thirty percent of the borrowing base, whichever is lesser,**] on any lease, **guaranty, subsidy contract, or other agreement** evidencing [**the acquisition of a capital asset**] **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 804 or 806**. The application, in such form as the department shall prescribe, 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**; and

(2) The debt statement prepared pursuant to section 410.

(c) No lease, **guaranty, subsidy contract or other agreement evidencing lease rental debt** executed and delivered after the effective date of the act and prior to the approval [**or the presumed approval**] pursuant to section

804 or 806 of the department shall be valid or obligatory. Except as reference is made in this act to lease rental debt, this act shall have no application to the authorization, issue or sale of its obligations by any authority.

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

Section 19. Sections 412, 413, 414 and 415 of the act are reenacted and amended to read:

Section 412. **Agreements with Bondholders or Noteholders.**—Except as otherwise specified in this act, a local government unit has the authority to 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 act, but no such 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 such 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 [**conspicuously**] made in the text of the bond or note.

Section 413. **Lost, Stolen, Destroyed or Mutilated Bonds or Notes.**—If any temporary or definitive bond or note [**issued under this act**] (**including any tax anticipation note**) **lawfully issued under this act or under applicable law prior to the effective date of this act** shall ~~become~~ mutilated or be 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 such 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, 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 such 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 cancelled. 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 such new bonds or notes and any appurtenant coupons.

Section 414. Evidence of Signatures of Holders [of Bonds or Notes] and of Ownership of Bonds, [or] 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 such holders in person or by their attorneys appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any person of bonds or notes or coupons appertaining thereto, shall be sufficient for the purposes of this act and any proceeding thereunder if made in the following manner:

(1) The certificate shall state that the person or persons signing such instrument were known to be such persons by the individual certifying and that such 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 such 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 hereinafter provided, need not be acknowledged or verified of:

(i) an officer of any bank or bank and trust company which is in Pennsylvania, or which has a correspondent in Pennsylvania certifying to the authenticity of its certificate;

(ii) an authorized signer for any broker or dealer in securities doing business in Pennsylvania, or having a correspondent in Pennsylvania 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 such execution, whose certificate, however, 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 the same 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 such bond, note or coupon may be proved by a like certificate of any person mentioned in subclauses (i) or (ii) of clause (1) of this section 414, stating that such 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 bonds, notes or coupons, the holder shall be deemed to continue as such if he acts as such, for a period of nine months after the date of the proof of holding. Continued ownership after such 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 the same, and not to attorn to any new owner, unless the certificate is presented to such 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 such 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 a trustee or fiscal or paying agent, may require further or other proof in cases where it deems the same desirable.

Section 415. **Ordinances and Resolutions Are Contracts with Holders of Bonds, [or] Notes and Tax Anticipation Notes.**—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 act as in effect when such bonds or notes were authorized shall constitute a contract between the local government unit and the holders from time to time of such 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.

Section 20. The article heading of Article V of the act is reenacted to read:

ARTICLE V

Tax Anticipation Notes and Funding Debt

Section 21. Sections 501 and 502 of the act, amended October 11, 1972 (P.L.901, No.214), are reenacted and amended to read:

Section 501. **Power to Issue Tax Anticipation Notes.**—A local government unit shall 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 **[and] or** current revenues, *or both*, to evidence the **[indebtedness] obligation** by notes, **[denominated tax anticipation notes] appropriately designated**, and to authorize, issue and sell such **[tax anticipation] notes** in the manner, and subject to the limitations provided therefor in this article. *References in this act to tax anticipation notes include also revenue anticipation notes and tax and revenue anticipation notes.* Limitations imposed by this act on the incurring of nonelectoral debt shall not apply to the **[indebtedness] obligations** evidenced by tax anticipation notes. *Such power to borrow*

from time to time shall include but not be limited to, the power to make a single authorization and then issue and sell portions of such amount of authorized notes whenever desired during the fiscal year.

Section 502. Limitation on Amount of Tax Anticipation Notes.—No local government unit shall authorize or issue tax anticipation notes in any one fiscal year [in an amount exceeding] *which in the aggregate shall exceed* eighty-five per cent of: [the sum of the taxes levied for the current fiscal year and the current revenues for such year, not yet received, which]

(1) *in the case of notes solely payable from and secured by a pledge of taxes, the amount of such 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 such revenues pledged; or*

(3) *in the case of notes payable from and secured by a pledge of taxes and other revenues, the sum of such taxes levied and such revenues pledged, which, in all cases, are certified, pursuant to section 506, as remaining to be collected or received in such fiscal year during the period [between the first day of the month next following the date of the delivery of the tax anticipation notes to the first purchasers thereof and the stated maturity date thereof] when the notes will be outstanding.* The certificate shall be as of a date not more than thirty 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. *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 such notes as have already been fully paid and for amounts already paid into appropriate sinking funds, if any.*

Section 22. Section 503 of the act is reenacted to read:

Section 503. Limitation on Stated Maturity Date of Tax Anticipation Notes; Time of Payment of Interest.—No tax anticipation notes shall be stated to mature beyond the last day of the fiscal year in which such tax anticipation notes are issued. Interest on tax anticipation notes from the date thereof shall be payable at the maturity of such notes or payable in installments at such earlier dates and at such annual rate or rates as the governing body of the local government unit may determine.

Section 23. Section 504 of the act, amended October 11, 1972 (P.L.901, No.214), is reenacted and amended to read:

Section 504. Other Terms of Tax Anticipation Notes.—Tax anticipation notes shall be issued in such denominations, shall be subject to such rights of prior redemption, shall have such privileges of interchange and registration, shall be dated, shall be stated to mature (subject to the provisions of section 503) on such dates and in such 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 shall be legal tender for the payment of public and private debts, and shall be payable at such place or places, one of which shall be within the Commonwealth of

Pennsylvania, *all* as the governing body of the issuing local government unit may determine by resolution.

Section 24. Section 505 of the act, amended November 30, 1972 (P.L.1252, No.280), is reenacted and amended to read:

Section 505. Security for Tax Anticipation Notes; Sinking Fund.—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 [first] lien and charge on, the taxes [and] *or* revenues *or both* of the local government unit *specified in the authorizing resolution* to be received [between the first day of the month next following the date of the delivery of such tax anticipation notes to the first purchasers thereof and the last stated maturity date of such notes] *during the period when the notes will be outstanding*. Such 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 such resolution from and after the filing [thereof in the office for the recording of deeds in and for the county in which such local government unit is located notwithstanding the provisions of any other law. Unless otherwise provided in the tax anticipation notes, eighty-five per cent or such lesser percentage of anticipated taxes and revenues as was borrowed plus an added percentage to provide for estimated net interest to maturity of all moneys collected after such first day of the month shall be paid into a separate sinking fund for the tax anticipation notes to be held by a bank or bank and trust company authorized to do business in the Commonwealth of Pennsylvania as sinking fund depository, until the amount held in the sinking fund including any interest to be earned thereon shall equal the principal of and the interest remaining to be paid upon the outstanding tax anticipation notes. The terms of the tax anticipation notes may provide for the payment of specific sums into the separate sinking fund for the tax anticipation notes on specified dates in amounts sufficient to provide moneys for the payment of the principal of and the interest on such tax anticipation notes as the same shall fall due; but no such specified payments in the aggregate shall be in an amount larger than eighty-five per cent plus an added percentage to provide for estimated net interest to maturity of the taxes and revenues estimated to be collected in such fiscal year on and after the date of the notes and before the date of the last of such payments. Such specified amounts shall on such dates be paid into the separate sinking fund by the treasurer of the local government unit. In default of such payment, all tax moneys and revenue thereafter received by the local government unit shall be paid into such separate sinking fund, until such sum shall have been paid in full. Such obligation shall be specifically enforceable by the sinking fund depository for the benefit of the holders of the tax anticipation notes.] *of a financing statement or statements in accordance with the Uniform Commercial Code. For the purpose of such 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 such covenants or other provisions as the local government unit shall determine. The amount of any tax anticipation notes issued in compliance with this act shall be general obligations of the local government unit and, if the same shall not be paid within the fiscal year in which such notes were issued, shall be deemed to be nonelectoral debt enforceable in the manner of a general obligation which unless funded pursuant to this article, 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 such ensuing year notwithstanding that the amount thereof shall cause the nonelectoral debt of such local government unit to exceed the limitations of Article II.

The holder of such tax anticipation notes issued by a first class school district or the sinking fund depository of the applicable sinking fund, *if any*, therefor shall have the right to enforce such pledge of, *security interest in* and **[first]** lien and charge on, the *pledged* taxes and revenues of the first class school district against all State and local public officials in possession of any of such taxes and revenues at any time which may be collected directly from such officials upon notice by such holder or depository for application to the payment thereof as and when due or for deposit in the applicable sinking fund at the times and in the amounts specified in such tax anticipation notes. Any State or local public official in possession of any of such taxes and revenues shall make payment, against receipt therefor, directly to the holder of such tax anticipation notes or to such depository upon such notice and shall thereby be discharged from any further liability or responsibility for such taxes and revenues. If such payment shall be 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 paragraph 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 paragraph 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.

Section 25. Section 506 of the act is reenacted and amended to read:

Section 506. Certification as to Taxes and Revenues to be Collected.—Prior to each **[issuance]** *authorization* of tax anticipation notes, **[the]** *authorized* officers of the local government unit shall make **[a careful monthly]** *an* estimate of the moneys to be received **[in each**

remaining months of the fiscal year] during the period when such notes will be outstanding from taxes then levied and assessed and revenues including, **without limitation**, subsidies or reimbursements to be received. Such 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 such officers and their written certificate dated as of a date not more than thirty days prior to the date of the **authorization of the** notes shall be filed **[of record]** with the proceedings authorizing the tax anticipation notes **[in the office for the recording of deeds in and for the county in which such local government is located] with the department.**

Section 26. Sections 507 and 508 of the act, amended October 11, 1972 (P.L.901, No.214), are reenacted and amended to read:

Section 507. Sale of Tax Anticipation Notes.—Tax anticipation notes may be sold at public, **[or] 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 Article VII of this act, except as modified by this Article V. 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 thereof. **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 thereof that the amount of all such notes to remain outstanding will not exceed the limitations of section 502 calculated, however, from the date of such certificate to the respective maturity dates of all such notes to remain outstanding. Such certificate need not be filed with the department but a copy thereof shall be retained by the local government unit until all tax anticipation notes issued during the fiscal year shall have been paid-in full.**

Section 508. Condition Precedent to Validity of Tax Anticipation Notes.—No tax anticipation note shall be valid or obligatory in the hands of an original purchaser thereof 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 **[for record in the office for the recording of deeds in and for the county in which the local government unit is located and]** with the department. No approval of the department shall be required. **[, nor shall the provisions of Article VIII apply, in the case of tax anticipation notes.]**

Section 27. Sections 509 and 510 of the act, amended November 2, 1977 (P.L.217, No.66), are reenacted and amended to read:

Section 509. Unfunded Debt.—**[Unfunded] For the purpose of this article, unfunded** debt shall mean obligations of the same or a prior year incurred **[or to be incurred]** for current expenses (including tax anticipation notes), **[when] due and owing or judgments against the local**

government unit entered by a court of competent jurisdiction after adversary proceedings, 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 [to pay such obligations] without a curtailment of municipal services to an extent endangering the health or safety of the public or proper education of school children, 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 [be seriously regressive and] not be in the public interest. Unfunded debt shall not, however, include debt incurred under this act nor obligations in respect of a project or part of a project as defined in section 102(c)(12) or incurred in respect of the cost of a project as defined in section 107.

[Section 510. Procedure to Fund Unfunded Debt.—Whenever the governing body of a local government unit shall be of opinion that it has outstanding unfunded debt, it may, with the approval of the department, in the cases covered by section 511 of this act, fund such unfunded debt by electoral or by nonelectoral debt within the limits prescribed by Article II of this act, or it may, in the cases covered by section 512 of this act, petition the court of common pleas of the county where the local government unit is located for leave to fund such unfunded debt pursuant to the provisions of this Article V.]

Section 28. Section 511 of the act is repealed.

Section 29. Section 512 of the act, amended November 2, 1977 (P.L.217, No.66), is reenacted and amended to read:

Section [512]510. Approval by Court.—(a) [In all cases not covered in section 511, including cases covered thereby in which the funding debt would exceed applicable debt limitations, the local government unit shall, except as provided for in subsection (a.1),] *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 of the county where the local government unit is located or, if located in two counties, of either county, 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 such unfunded debt if the court shall find that such unfunded debt [was lawfully incurred,] 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 such obligation; that paying such 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 such amounts and over such number of years, not exceeding ten, as the court shall find will accomplish the payment of the debt without endangering the rendering of municipal services or requiring*

the levying of excessive taxes. [The provisions of section 409 of this act shall not be applicable to such notes.] If the funding of the unfunded debt has not been approved by a vote of the [people] *electors*, the order of the court [shall] *upon cause shown may* fix the portion thereof, if any, which shall not be charged against the nonelectoral debt limitations of the local government unit under [section 202] *sections 202 and 505* of this act, during the time such funding debt is outstanding [, so as to leave some available borrowing capacity for other situations]. The percentages fixed by section 202 of this act shall be deemed increased to the extent required for such funding debt.

(a.1) Notwithstanding the provisions of section 511 or of subsection (a) of this section, school districts of the first class may, by petition to the court of common pleas of the county where the local government unit is located 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 such unfunded debt if the court shall find that paying such debt by curtailing municipal or educational services will be dangerous to the public health, safety or education, that the funding debt does not exceed applicable debt limitations and that it is not feasible for school districts of the first class to levy additional taxes in the current fiscal year. The funding debt so approved shall be stated to mature in such amounts and over such number of years, not exceeding ten, as the court shall find will accomplish the payment of the debt without endangering the rendering of municipal or educational services or requiring the levying of excessive taxes. The provisions of section 409 shall not be applicable to such bonds or notes. The funding of the unfunded debt shall be charged against the nonelectoral debt limitations of the school district of the first class under section 202.]

(b) 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 act [except that no approval of the department shall be required, but the local government unit shall file a certified copy of the proceeding together with a certified copy of the order of the court in the office for the recording of deeds in and for the county in which such local government unit is located prior to the delivery of any bonds or notes evidencing such debt.] *in respect of general obligation bonds except as such 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 such funding bonds under section 801 shall include certified copies of the petition and of the order of the court.*

(c) [The provisions of this section are hereby declared and found as a legislative determination to be substantive and not procedural.] *This section shall not be applicable to the funding of obligations in respect of a project or part of a project as defined in section 102(c)(12) or incurred in respect of the cost of a project as defined in section 107.*

Section 30. The article heading of Article VI of the act is reenacted to read:

ARTICLE VI

Limitations on Provisions of Bonds or Notes; Required Terms and Stated Maturities

Section 31. Sections 601, 602, 603, 604, 605 and 606 of the act are reenacted and amended to read:

Section 601. 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 such 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; and shall be stated to mature, *or may be payable in installments*, on such 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; all as the governing body of the issuing local government unit may *determine* by ordinance or ordinances [*determine*] adopted prior to the delivery of the bonds or notes, subject to the limitations and restrictions specified in this act.

Section 602. Limitations on Stated Maturity Dates.—(a) [*Except as provided in subsection (b) of section 710 on combining for purposes of sale, or in Articles V or XI hereof, no*] *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 [*first incurring of any*] *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

(2) The useful life of the project being financed as stated in the ordinance of the local government unit enacted in connection with the [*first*] series of [*notes or*] bonds *or notes* to be issued for such project [*after the effective date of this act*], which statement in such [*first*] ordinance shall be conclusive for all purposes[, *including any subsequent financing*]. *If projects have been combined for financing pursuant to section 401 and such projects have different useful lives, it shall be 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 shall have been stated to mature prior to the end of such useful life, and the balance prior to the end*

of the longest useful life. For the purpose of this section, 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 such project shall be that of the building, structure or improvement constructed or acquired.

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 thirty years may be used.

(b) **[The bonds or notes of an issue may be authorized to be sold in one or more consecutively maturing series, the first to be issued having the first stated maturity dates, and so on in sequence. Such bonds or] Bonds or notes may be serial bonds or notes, or term bonds or notes any combination thereof that may be selected by the governing body of the issuing local government unit. If term bonds or notes[, other than as required by section 610,] are issued, such bonds or notes must be subject to [a] mandatory redemption, [sinking fund designed,] and, if serial or installment bonds or notes, [bonds,] 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) of this section 602; or (2) so that [only one-quarter of the principal amount of the issue is amortized on the level annual debt service plan, and the balance is stated to mature or be subject to a mandatory sinking fund in such a manner as to bring] the debt service on outstanding debt of the same classification (and for this purpose lease rental debt [not excluded as subsidized or self-sustaining may] shall be considered as the same classification as general obligation debt) will be brought more nearly into an over-all level annual debt service plan. [provided that no bond or note in such balance of the issue shall be stated to mature at a date later than the shorter of (i) three-quarters of the remaining estimated useful life of the project as stated in the first ordinance incurring debt for the project enacted after the effective date of this act, or (ii) thirty years from date of issue.]**

(c) **[Stated maturities of principal in any issue or the operation of a mandatory call for debt retirement may not be deferred beyond the later of:] Except as provided by subsection (e), stated installments or maturities of principal of any series of bonds or notes or the mandatory redemption of such principal may not be deferred beyond the later of:**

- (1) two years from date of issue, or
- (2) 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 or such revenues as may remain after payment of interest and operating expenses up to such fixed amount conforming to subsection (b) above as shall be specified in the ordinance pursuant to which the bonds or notes are issued. **[Where an issue is sold in two or more consecutive series, the first stated maturity of a later series shall be stated to mature not later than**

fifteen months after the last stated maturity date of the next preceding series.]

(d) Nothing in this section shall 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 act.

(e) Nothing in this section shall 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 fifteen months later than, the last stated maturity of the next preceding series.

Section 603. Number of Interest Rates; Variation.—A series of bonds or notes may have any number of interest rates, 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, **[the rate of interest fixed at the time of original issue, for any stated maturity date in the last two-thirds of the period of the series may not be at a lower rate than the interest rate stated for an earlier year in such last two-thirds.]** ***no fixed interest rate 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 such last two-thirds period.***

Section 604. 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 such place or places as may be determined by the local government unit **[by ordinance]**. If more than one place of payment is specified, one or more of the additional places of payment may be outside of the Commonwealth of Pennsylvania or outside of the United States of America.

Section 605. Execution of Bonds or Notes.—Bonds or notes ***(including tax anticipation notes)*** shall be signed by such officers **[as the governing body shall determine,]** ***of the local government unit,*** and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of **[the treasurer]** ***such officer*** of the local government unit, and ***such*** bonds or notes may be sealed with the seal of the local government unit or a facsimile thereof, all as may be determined by **[ordinance]** ***the governing body.*** Bonds or notes may provide that they shall not be valid nor 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) shall be manual, **[the ordinance may provide that]** all other signatures may be by facsimile. If any officer whose signature, or a facsimile of whose signature, shall appear on any notes, bonds or coupons shall cease to be such officer before the delivery of such notes or bonds, such signature, or such facsimile, shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery, and, also, any note, bond or coupon may bear the facsimile signature of, or may be signed by, such persons as at the actual

time of the execution of such note, bond or coupon shall be the proper officers to sign although at the date of such instrument such persons may not have been such officers.

Section 606. 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. Such pledge or priority shall be perfected as *a security interest* against *all creditors of* the local government unit[, *all creditors thereof,*] and all third parties, in accordance with the terms of such ordinance, from and after the filing of [*such ordinance in the office for the recording of deeds in the county in which such local government unit is located, notwithstanding the provisions of any other law.*] *a financing statement or statements in accordance with the Uniform Commercial Code. For the purpose of such filing the sinking fund depository may act as representative bond or note holders and, in such capacity, execute and file the financing statement and any continuation or termination statements as secured party.*

Section 32. Section 607 of the act is reenacted to read:

Section 607. Deeds of Trust and Other Agreements with Bondholders and Noteholders.—(a) 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 such notes or bonds; the authentication of the original issue thereof; 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; the maintenance of records as to registration, exchanges and transfers and the effecting of the same;

(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 of Pennsylvania, 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 such holders); and

(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 act, 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) 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; and

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

(c) In lieu of a deed of trust, trust indenture or other agreement specified above, 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) No such deed of trust shall delegate the performance of essential governmental functions to a trustee, fiscal agent or receiver. The matters enumerated herein are hereby determined not to be essential governmental functions.

Section 33. Sections 608 and 609 of the act are reenacted and amended to read:

Section 608. Negotiable Qualities of Bonds and Notes.—(a) Bonds *or notes* issued pursuant to this act, **[shall] including tax anticipation notes, which** have all the qualities and incidents of securities under Article 8 of the Uniform Commercial Code **[and]** shall be negotiable instruments.

(b) **[Notes] Such bonds and notes** issued pursuant to this act **which are not securities** shall have all the qualities and incidents of commercial paper under Article 3 of the Uniform Commercial Code and shall be negotiable instruments notwithstanding any references therein 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 such note, or any limitations 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.

Section 609. 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.

Section 34. Section 610 of the act is repealed.

Section 35. The article heading of Article VII of the act is reenacted to read:

ARTICLE VII Sale of Bonds

Section 36. Section 701 of the act, amended October 11, 1972 (P.L.901, No.214), is reenacted and amended to read:

Section 701. Manner of Sale of Bonds or Notes.—(a) Except as otherwise specifically provided in this act and subject to the following subsection, bonds or notes may be sold at public *sale* or private sale *by negotiation or upon invitation* and at such price all as the governing body of the issuing local government unit shall determine. Bonds or notes may be conditionally sold before the final details of the series are fixed.

(b) **[Except for the sale of tax anticipation notes or of term-bonds authorized pursuant to section 610 of this act, bonds]** *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. **[and in the legal journal, if any, designated by the rules of court for the publication of legal notices and advertisements, and may be combined with the advertisement of the adoption of the ordinance authorizing the sale.]** The advertisement **[shall]** *may* also be published **[once]** in a financial journal circulating among the underwriters of securities. Advertisements shall be published not less than ten nor more than thirty days prior to the date fixed for opening proposals, and need not appear on the same date nor successively in each newspaper journal.

Section 37. Sections 702, 703 and 704 of the act are reenacted and amended to read:

Section 702. Contents of Public Advertisement and of Official Notice of Sale.—(a) 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; and

(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) The local government unit shall adopt an official notice of sale which shall set forth, succinctly:

(1) The time and place for the receipt of proposals *and* the officer designated to receive the same[, **the extent of his power of delegation, and whether and for how long the hour for receipt may be adjourned by announcement prior to opening of any bids**];

(2) A description of the bonds or notes being offered, including but not limited to, the title and type of bonds or notes being offered, the date thereof, the stated maturity dates and amounts at each date, the dates of interest payments, 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), the form and denominations of the notes or bonds being offered, **[the] any** provisions for **[registrability] registration**, exchange and interchange, the terms of any sinking fund or reserve funds to be established, the terms of other provisions made for the security of the bonds or notes, *and* the dates, prices and terms of any provision for the redemption thereof prior to stated maturity dates[, **and any other relevant provisions of the bonds or notes**];

(3) A statement of the terms of the bidding, including, but, without limitation: the method for determining net interest cost, 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; the limitation on the number and variation between high and low interest rates to be permitted; the required bid security; the permitted discount from par, if any, the funds in which the balance of the purchase price shall be paid; the place at which the balance may be paid or the method of determining such place; 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; the **[terms] nature** of the opinion of bond counsel to be delivered at the time of payment for the bonds or notes; the effect of any failure to deliver such opinion; **[and other relevant terms] and the reserved right to reject bids provided for in section 707**; and

(4) **[Any additional] Such additional** provisions *as may be desired, including, without limitation, 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 such 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.

Section 703. Proposals for Purchase.—Every bid or proposal for bonds or notes **[to be sold at public or private sale]** shall be in writing, *shall be properly executed*, and, *in the case of public sale, bids* 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 the same, or to his or her authorized delegate.

Section 704. Opening of Bids.—**[At] *In the case of public sale, at the time and place fixed in the notice, [or at a subsequent hour on the same date to which the time may have been adjourned prior to the opening of any proposals pursuant to any right of adjournment reserved in the official notice of sale,]* the bids or proposals received shall be publicly opened by the designated officer, or his or her authorized delegate, and publicly read aloud, *unless the governing body determines to return all bids unopened.***

Section 38. Section 705 of the act is reenacted to read:

Section 705. Determination of Highest and Best Bid; Tie Bids.—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 United States of America or the Commonwealth of Pennsylvania or any agency of either thereof, the highest responsible bidder shall be the one bidding in conformity with the requirements for the successful bidder stipulated in any such agreement. The net interest cost shall be computed in accordance with section 709 of this act. 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 such bidders selected by lot in any manner deemed fair by the local government unit.

Section 39. Sections 706, 707, 708 and 709 of the act are reenacted and amended to read:

Section 706. Required Bid Security.—**[The bid] *Bid* security [to] 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 two per cent 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 409.***

Section 707. Reserved Right to Reject Bids; Effect of Rejection.—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 *[the amount of such series] substantially the same amount and* for the same *[project] purpose* must be a public sale to be held at such later time as the governing body may determine to be advantageous.

Section 708. Public Sale; 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 such series *of* bonds or notes, or any part or parts thereof, 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 such six-month period the local government unit may sell any unsold portion of the series in any manner permitted by this act, with such appropriate changes in the call prices or dates of 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 such series is a part are in conformity with the requirements of this act as to term, interest rate and stated maturities.

Section 709. Determination of Net Interest Cost and Net Interest Rate.—(a) 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) 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) 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) 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: (i) **[one thousand dollars]** \$1,000 multiplied by (ii) 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 **[one thousand dollars]** \$1,000 of principal amount shall be outstanding and less than full years shall be fractionalized on a **[three hundred and sixty-five-day]** *three hundred and sixty-day* year basis.

Section 40. Section 710 of the act is repealed.

Section 41. The article heading of Article VIII of the act is reenacted to read:

ARTICLE VIII

Filing with and Duties of the Department

Section 42. Sections 801 and 802 of the act are reenacted and amended to read:

Section 801. Certification *to Department* of Bond or Note Transcript **[to Department] or Lease, Guaranty, Subsidy Contract or Other Agreement.**—The governing body of each local government unit shall, before any bonds or notes (except **[funding bonds issued with court approval]) tax anticipation notes issued pursuant to section 501 and notes representing small borrowings issued pursuant to section 409)** are actually delivered to the initial purchasers, or before becoming bound on any lease, *guaranty, subsidy contract or other agreement*, evidencing **[the acquisition of a capital asset] 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 had for the incurring of debt, as provided in section 411 of this act. *The provisions of this section shall not be construed to eliminate the filing requirements of sections 204, 205, 206, 506 and 508.*

Section 802. Filing of Statements of **[Completion] Noncompletion** of Sale with Department **[; Penalty].**—**[If a bond or note settlement] 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** shall fail of completion, in whole or in part the local government unit shall file with the department **[within twenty days]** a notification of noncompletion of sale, stating what part **[, if any,]** of the issue shall have been delivered. **[From and after the prescribed filing date required by this section no certificate of approval of any debt shall be issued by the department if any filing required to be made by this section, with the required fee, shall not have been made prior to the issuance of such certificate. The provisions of this section are not subject to waiver by the department.]**

Section 43. Section 803 of the act, amended November 30, 1972 (P.L.1252, No.280), is reenacted and amended to read:

Section 803. Fees for Filing.—Every filing with the department shall be accompanied by a filing fee of **[fifteen dollars]** \$15. No submission shall constitute a filing until the proper fee is paid. All fees received hereunder

shall be paid by the department into the State Treasury through the Department of Revenue.

Section 44. Section 804 of the act is reenacted and amended to read:

Section 804. Examination of Bond or Note Transcript and Other Filings by Department; Certificate of Approval.—The department shall, upon receipt of any bond *or note* transcripts, or other filings, carefully examine the same to determine whether the debt outstanding and to be outstanding is within the applicable limitations imposed by this act, **[whether prior debt was lawfully incurred]** 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 and all then applicable laws. If, upon completion of its examination, a transcript or *other* filing is found by the department to be in conformity with the Constitution and existing laws, **[and is consistent with the record of prior filings by the local government unit,]** the department shall certify its approval, *if required under other provisions of this act*, to the local government unit.

Section 45. Sections 805 and 806 of the act are reenacted to read:

Section 805. Certificate of Disapproval; 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 such 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 such other terms as the department may specify, and thereupon the department shall certify its approval. If the deficiency shall not be subject to correction, the department shall certify its disapproval to the local government unit.

Section 806. Effect of Failure of Timely Action by Department; Extension of Time to Act.—If the local government unit shall have submitted a filing to the department by certified mail, return receipt requested, or shall otherwise have an official receipt therefor from the department, and the local government unit shall not, within twenty days of the date of receipt of the filing by the department have 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 shall have 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 such extension. Extensions shall not exceed one additional period of twenty days.

Section 46. Sections 807, 808, 809 and 810 of the act are reenacted and amended to read:

Section 807. Records of Department.—(a) 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 such proceedings shall be pending and not finally determined.

(b) 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 such series represents nonelectoral lease rental or electoral debt, and the extent to which such 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 [or], lease *or other document* to be executed with the approval number assigned to each [series or] *such 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) Documents no longer required to be kept in file by the provisions of subsection (a) of this section 807 and from which all record entries required by the preceding subsection have been made, may be disposed of as waste paper in the manner prescribed by law.

(d)](c) The records of the department shall be public records, available for examination by any citizen of the Commonwealth or any bondholders or noteholders, and copies thereof, certified as correct by the secretary of the department under the seal of the department, shall be admitted as evidence of the facts therein stated in all courts of this Commonwealth and elsewhere.

Section 808. Invalidity of Bonds, [or] Notes, [Required to be Approved by the Department] *Tax Anticipation Notes, Leases or Other Instruments* Which are Delivered [Prior to Approval by the Department.] *without Compliance with Requirements or Conditions Precedent to Issuance or Delivery.*—[Bonds or notes sold and delivered to the initial purchasers prior to an approval of the series by the department under section 804 or section 806 of this act shall be invalid and of no effect in the hands of the initial purchasers except to the extent provided in this section 808. In the hands of a bona fide purchaser (other than an initial purchaser or member of an underwriting or selling group) for value without actual notice of the lack of a prior approval by the department, any bonds or notes containing a recital that the series had been approved by the department shall be valid and subsisting instruments enforceable in accordance with

their terms, and any applicable borrowing base shall be deemed increased to the extent necessary to validate and keep such bonds valid, but not for the purpose of reducing the liability of any person under the next sentences.] *In all cases in which the approval of the department is required by this act 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 409 is required, and in the case of tax anticipation notes in respect of which compliance with the conditions of sections 506, 507 and 508 is required, if such bonds or notes or such lease or other instrument shall be sold, or executed, and delivered prior to receipt of actual or deemed approval under section 804 or 806, or as the case may be, without compliance with applicable conditions of issuance, or prior to a required filing with the department, as aforesaid, such 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 such bonds or notes or of the obligations secured by such lease or other instrument, except to the extent provided in this section 808. If the bonds or notes or the obligations secured by such lease or other instrument shall be 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 shall contain a recital that such prior approval, filing or compliance was received, made or observed, then such 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 such bonds, notes, lease or other instrument, but not for the purpose of reducing the liability of any person under this section.* The local government unit shall be entitled to recover all interest and principal *or other amounts* payable thereon *or thereunder* 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 such invalidity or for the recovery provided by the preceding sentence for the amount of:

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

(2) The lesser of either: (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] *such* bonds, [or] notes *or other obligations*; or (ii) the remaining nonelectoral borrowing capacity of the local government unit.

Section 809. Finality of Proceedings; Validity of Bonds, [or] Notes, *Tax Anticipation Notes, Leases, Guaranties, Subsidy Contracts or Other Agreements.*—(a) Where a certificate of approval has been issued by the

department or has been deemed issued under section 806, *or, in the case of tax anticipation notes where the filing with the department required by section 508 has occurred*, and no [appeal] *petition for a declaratory order* has been [taken,] *filed within the applicable time limits specified in section 901*, or when after [appeal,] *a petition for a declaratory order has been filed*, the proceedings have been approved finally by the court, the validity of the proceedings, the right of the local government unit *lawfully* to issue its bonds or notes [lawfully] *or to enter into a lease, guaranty, subsidy contract or other agreement evidencing lease rental debt* pursuant to [those] *such* proceedings, and the validity and due enforceability of the bonds, [or] 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 [except where a constitutional question is involved]. 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 508*, shall be to ratify, validate and confirm[, so far as good faith purchasers of the bonds or notes are concerned,] such 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 such proceedings, except as specifically provided hereinafter in this section, and any debt limit imposed by this act shall be deemed increased to the extent necessary to validate such debt *or obligation*. Nothing herein contained shall, however, free 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 all such bonds or notes valid and enforceable in the hands of an initial purchaser unless the issuer shall have received a substantial consideration for the series as a whole.

(b) Nothing herein contained shall, however, relieve any person participating in such 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 such proceedings.

Section 810. Power of Department to Define Terms, Issue Rules and Regulations and Prescribe Forms.—[The] *Subject to the definitions in Article I*, the department shall have power *to define terms and* to prescribe rules and regulations regarding, and to prescribe forms for, reports and filings to be submitted to the department pursuant to this act. Such definitions, rules and regulations when published and made available to the public shall have the force of law.

Section 47. Section 811 of the act is repealed.

Section 48. The article heading of Article IX of the act is reenacted and amended to read:

ARTICLE IX

[Appeals Concerning Debt]

*Petitions for Declaratory Orders and
Complaints to the Department; Jurisdiction of
Department; Appellate Review by Commonwealth Court*

Section 49. Section 901 of the act, amended June 18, 1975 (P.L.20, No.8), is reenacted and amended to read:

Section 901. [Appeals by Interested Parties and Taxpayers.—(a) Where proceedings for the incurring of debt and sale of bonds or notes or the exclusion of debt as self-liquidating or subsidized have been taken by a local government unit and the department shall have certified or shall have been deemed to have certified its approval or disapproval of the series or the exclusion of any debt from net nonelectoral and net lease rental or where department approval is not required and the fact of final adoption of the ordinance approving the sale or the exclusion shall have been advertised one time in a newspaper of general circulation in the area of the local government unit, such local government unit or any other interested party, or any taxpayer of the local government unit may appeal within fifteen days from the earlier of:

(1) The date of advertisement of the fact of the final passage of the ordinance approving the sale of the bonds; or

(2) The date of the department's certificate of approval, the date it is deemed to have been approved, or the date of its disapproval. The appeal shall be by petition to the Commonwealth Court. The petition shall allege the error or errors in the proceedings in the manner required of bills in equity, and the burden of persuading the trier of fact as to all matters of fact shall be upon the appellant.

(b) Jurisdiction is hereby conferred upon the Commonwealth Court to hear and determine such appeals, and all other appeals and actions provided for in this act.] *Petitions for Declaratory Orders and Complaints to the Department; Exclusive Jurisdiction of Department.—(a) Where 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, such 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 such proceedings, or any part thereof. Any such complaint asserting the invalidity of such proceedings or part thereof taken under section 409 may be filed at any time not later than one year after final adoption of the resolution authorizing the debt. Any such complaint asserting the invalidity of such proceedings or part thereof excluding debt as self-liquidating under section 205 or authorizing tax anticipation notes under Article V may be filed at any time not later than*

fifteen days after the filing with the department of the documents required by section 205 or of the proceedings pursuant to section 506, as the case may be. Any such complaint asserting the invalidity of any such proceedings or part thereof in cases in which, under this act, the approval or deemed approval of the department is required, may be filed with the department at any time not later than fifteen days after the date of the submission of the proceedings by the local government unit to the department for approval.

If a petition for a declaratory order or complaint shall be 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.

(b) Exclusive jurisdiction is hereby conferred on the department to hear and determine all procedural and substantive matters arising from the proceedings of a local government unit taken pursuant to this act, including without limitation, 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 such obligations are to be issued. If a local government unit shall file a petition for a declaratory order with the department, relating to such proceedings, the department may require such 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 shall have the power, after appropriate proceedings in accordance with such regulations, to approve or disapprove the proceedings of the local government unit or to direct correction as provided in section 805. A determination by the department under this act shall, except as provided in section 902, be conclusive and binding as to all procedural and substantive matters which were or could have been presented to the department hereunder. A determination in favor of the local government unit under this section shall have the effect provided in section 809.

Section 50. Section 902 of the act is reenacted and amended to read:

Section 902. [Action to Contest Proceedings Before Departmental Approval.—Any local government unit, taxpayer, or other interested party may bring an action in the Commonwealth Court asserting the validity or invalidity of any action concerning the incurring or exclusion of debt from nonelectoral debt or lease rental debt prior to action thereon by the department, in like manner as an appeal from departmental action; except in cases where this act expressly confers jurisdiction upon another tribunal.] *Appellate Review by Commonwealth Court.—In all cases in which proceedings of a local government unit shall have been approved, disapproved or deemed approved and in all cases in which the department shall have determined the issues presented upon petition for a declaratory*

order or complaint under section 901, the local government unit, any taxpayer of the local government unit, or any other interested party, aggrieved by the determination of the department, may petition the Commonwealth Court for review of the determination of the department asserting the validity or invalidity of the local government unit proceedings or any part thereof or the error or errors of the department in respect of such proceedings. The Commonwealth Court shall have exclusive appellate jurisdiction to review all determinations of the department (including deemed approvals under section 806), to affirm, modify or reverse any actions taken by the department, or to remand the matter for further proceedings. The time within which petitions for review shall be filed with the Commonwealth Court and all other appellate procedure before the Commonwealth Court shall be governed by the Pennsylvania Rules of Appellate Procedure. Pending the effective date of such general rules, appeals from action of the department shall be taken to the Commonwealth Court not later than fifteen days after the action of the department.

Section 51. Sections 903, 904, 905, 906 and 907 of the act are repealed.

Section 52. The article heading of Article X of the act is reenacted and amended to read:

ARTICLE X

Sinking *and* Assessment Funds: Reserves and Pledged Revenues

Section 53. Sections 1001, 1002, 1003, 1004, 1005 and 1006 of the act are reenacted and amended to read:

Section 1001. Creation of Sinking [Fund] *Funds* and [Accounts] *Deposits* Therein, *Reserves and Surplus Funds*.—(a) Every local government unit having outstanding any bonds or notes, *other than tax anticipation notes and other than notes issued under section 409*, shall create forthwith, subject to the terms of any existing contracts with the holders of such bonds or notes, and every local government unit hereafter issuing any bonds or notes shall create simultaneously with or prior to the delivery of the bonds or notes, and thereafter maintain until such bonds or notes are paid in full a sinking fund *(i)* for the aggregate or for one or more *issues or* series of its general obligation bonds and notes, and *(ii)* 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 [the Pennsylvania] a bank, trust company or bank and trust company *located and lawfully conducting a banking or trust business in the Commonwealth of Pennsylvania* and appointed from time to time as sinking fund depository [and all moneys deposited therein and the investments thereof shall without further action or filing be subject to a perfected security interest for

the bonds and notes for which such sinking fund is operated until such moneys or funds shall have been properly disbursed].

(b) Moneys for the payment of taxes assumed, and principal and interest on outstanding bonds or notes shall be deposited in [a separate debt service account in] the *applicable* sinking fund [for each series] 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 such taxes, principal and interest become due and payable. All moneys deposited in sinking funds as required by this act 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 such sinking fund is held until such money or investments shall have been properly disbursed or sold.*

(c) 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, [shall] *may*, by ordinance, provide for the deposit thereof as and when received in the sinking fund for the project.

(d) 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 [funds] *moneys and investments* in each such account *or fund* may be withdrawn and the amounts, times and sources of deposits therein. [but every such ordinance shall provide that moneys in the surplus fund may be used by the local government unit for any lawful purpose of such local government unit, and no contract with the holders of bonds or notes shall provide to the contrary.] *However, no such 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 such year for operating expenses plus one hundred and forty per cent, or such lesser per cent as may be fixed by ordinance, of the amount required to be deposited during such year from such 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 but such 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.*

(e) Deposits in the surplus account of the sinking fund for revenue or guaranteed revenue bonds or notes shall be made in each year of all pledged revenues in excess of the sum of the operating expenses plus one hundred and forty per cent of the annual debt service (which term shall include funds

set aside for the amortization of term bonds) for such year but this provision shall not apply to receipts from contracts for construction for additions or betterments which are held for application to such purpose.]

Section 1002. [**Sinking**] *Assessment* Fund [**for Assessments**].—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 such cost is assessed against the properties benefited thereby, the assessments as collected shall be paid into [**the sinking**] *a separate assessment* fund [**for such bonds**]. [The ordinance authorizing such bonds may provide for the payment of such assessments into a revolving fund account to provide moneys for and towards the cost of other such improvements, and in such case, the ordinance shall also provide for the payment into the sinking fund from other sources of moneys sufficient to pay the principal of and the interest on such bonds or notes and such bonds or notes shall not by virtue of such assessment revenues be excluded from nonelectoral debt. To the extent that such other moneys are paid into the sinking fund, the revenues from the assessments may be used to make other assessable improvements.] *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) *for the payments to the sinking fund;*
- (2) *for payment of the cost of such improvements;*
- (3) *for the creation and maintenance of a revolving fund if permitted by the laws governing the local government unit; and*
- (4) *for 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. [Upon] *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 theretofore paid on account of the bonds or notes.

Section 1003. Duty of Treasurer [**with Respect to Sinking Fund**].—It shall be the duty of the treasurer of each local government unit to deposit into the *applicable* sinking fund *or other fund* the moneys to be deposited therein pursuant to the *pledge or covenant* [entered into] *made or adopted* by the local government unit [**with the holders of its bonds and notes,**] at the times and in the amounts provided in [**the pledges made by the local government unit**] *such 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 shall have been made, or if it shall appear that, as a result of other expenditures, the appropriated revenues will not be received in sufficient amounts in time to make 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, it shall be the duty of the treasurer to 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 [timely accumulation] *deposit* of sufficient moneys in the sinking fund *or other fund* to pay the taxes assumed and the principal of and interest on the bonds or notes, or to meet the guaranty obligation of the local government unit *as and when the same shall become due and payable*. The governing body of a local government unit may issue its tax anticipation notes under Article V of this act to provide all or any part of any moneys needed for deposit in [the] *such* sinking funds [of the local government unit] *or other funds*.

Section 1004. Deposit of and Investment of Moneys in Sinking Funds and Other Funds.—(a) Any moneys in sinking funds *and other funds established by ordinance as in this act provided*, not required for prompt expenditure may be deposited at interest in time accounts or certificates of [deposits] *deposit* of any bank or bank and trust company, *accounts with any savings bank*, or [in shares of] *deposits in* building and loan associations or [Federal] savings and loan associations. Moneys required for prompt expenditure shall be held in demand deposits. To the extent that such 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 such deposits shall be secured as public deposits whether or not title shall, by virtue of the deposit with a fiscal agent or trustee for bondholders, be in such fiscal agent or trustee, except that moneys held by the fiscal agent, trustee or sinking fund depositary itself may be secured as trust funds.

(b) Any moneys in [sinking] 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 the time being for expenditure, subject to any stricter requirements in any contract with the holders of bonds or notes for which the particular [sinking] fund *or account* was created or maintained.

(c) 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 depositary for proper purposes in accordance with this act.

(d) 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 such fund or account.

(e) 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 depositary may be combined and each such combined account shall be entitled to its pro rata share of each deposit or investment.

(f) The sinking fund depositary 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 such funds are held for the payment of outstanding checks, drafts or other instruments of the sinking fund depositary. Nothing in this subsection or in any action taken hereunder shall relieve the local government unit of its liability to the holders of unrepresented bonds, notes, or coupons.

(g) 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 depositary 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.

Section 1005. Management of Sinking [Fund] and Other Funds.—The management and control of sinking **and other** funds, and investments thereof, subject to the provisions of this act 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 such board or commission shall have the management and control of the sinking funds of such local government units;

(2) To the extent otherwise provided by this act; and

(3) To the extent otherwise lawfully provided in any contract with the holders of bonds or notes.

Section 1006. Inspection of Sinking Funds; Orders to Comply.—(a) The department **[shall] may** from time to time**[, not less frequently than triennially,]** 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 **[certified]** public accountant and except for school districts of the first class or cities of the second class and second class A.

(b) If such audit or reports shall disclose that any local government unit has refused or neglected to establish sinking funds as required by this act, 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 sufficient of the sinking fund moneys or is otherwise in violation of this article, the department shall make an order requiring the local government unit or any officer thereof or the governing body to take such steps as, in the opinion of the department, will cause such sinking funds thereafter to comply with this article or to be sufficient.

(c) In addition to the criminal prosecutions provided for in Article XIII of this act, or in lieu thereof, the department may, in its discretion, apply to the Commonwealth Court for a writ of mandamus to issue to such officer or governing body of the local government unit to compel compliance with such order of the department or such order with such modifications thereof as to the court may seem just and proper.

Section 54. The act is amended by adding a section to read:

Section 1007. Sinking Fund not Required for Small Borrowings.—A local government unit may, but shall not be required to, comply with the provisions of this Article X in respect of notes issued in compliance with section 409.

Section 55. The article heading of Article XI of the act is reenacted to read:

ARTICLE XI Refunding of Debt

Section 56. Sections 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109 and 1110 are reenacted and amended to read:

Section 1101. Power to Refund.—Subject to the provisions of the outstanding bonds, [or] notes *or obligations evidencing lease rental debt*, and subject to the provisions of this article, a local government unit shall have the right and power to refund any outstanding debt in whole, or in part, at any time [by the issue of bonds or notes of the same type as the bonds or notes being refunded or by adjustments of lease rentals in connection with any refunding of lease rental debt,] and shall have the right and power to refund any outstanding notes with bonds [of the same type] *or bonds with notes*.

For the purpose of this Article XI, 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. The refunding may be for any one or more of the following purposes:

(1) Reducing total [interest payable] *debt service* over the life of the series; [by issuing bonds or notes of a shorter term or at a lower interest rate or rates;]

(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 1107;

(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 1107; [or]

(5) Substituting [a bond issue] *bonds* for notes or bond anticipation notes *or substituting notes for bonds; and*

(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 clauses (2), (3), (4), or (5) increases the total [interest] *debt service* payable over the life of the series.

Section 1102. [Treatment of Refunding Premium and Costs of Issue on Refunding Bonds] *Treatment of Costs Upon a Refunding.*—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*;

(3) Any funds [needed] *borrowed* to [cover] *pay* interest [payable] on bonds, *notes or obligations* being refunded [not otherwise made available]; 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* 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, [or] nonelectoral *or lease rental* debt. In subsequent debt statements, any such separately stated principal amount of bonds, [or] notes *or obligations* shall be reported as being amortized in the same proportion as the series of which they are a part. [In computing whether savings are being effected by a refunding, the interest on the bonds or notes being refunded and the interest on all refunding bonds or notes being issued shall be calculated to stated maturity dates or earlier mandatory call dates on both series except as provided in the last sentence of this section. The amounts computed from clauses (1) to (4) above shall be added to the interest computed on the refunding bonds or notes to determine the total interest on such bonds or notes. In computing interest on the bonds or notes being refunded, surplus revenues pledged to the series shall, subject to subsection (e) of section 1001 be applied to reduce outstanding bonds or notes at the earliest optional call dates covered by available funds.]

For the purpose of computing whether savings are being effected, however, 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 clauses (1) through (4) above, 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.

Section 1103. Limitation on Extending Term of Debt by Refunding.—(a) Subject to the terms of section 1107 and to the terms of subsection (b) of this section, no local government unit shall 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 such a petition shall be given by advertisement not less than five nor more than twenty days before the filing thereof. Such 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) Except in the case of refundings [**which effect savings in interest cost**] *for the purposes specified in clauses (1) and (5) of section 1101*, 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 payable in each such year, computed to the nearest whole multiple of five thousand dollars (\$5,000), as if the bonds or notes originally issued for the project were payable at six per cent on the level annual debt service plan with a final maturity at the last stated maturity date proposed for the refunding bonds, as such amounts shall be computed by a financial advisor, other qualified person, or by a certified public accountant.**] *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 such original bonds or notes had been structured on a six per cent 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 such amounts shall be computed by a financial advisor, other qualified person, or by a public accountant.*

Section 1104. 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 such debt was incurred, the portion constituting nonelectoral debt *or lease rental debt* was within every limitation imposed thereon by law, the issue of refunding bonds or notes *or the adjustment of lease rentals* in respect of such debt shall be lawful and valid, notwithstanding that the aggregate of outstanding debt shall thereby exceed the then applicable limitations set by section 202 of this act, which limitations shall be deemed increased but only to the extent necessary to effectuate and amortize the refunding lawfully. Any portion of such refunding bonds, [**or**] 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 Article II of this act.

Section 1105. Refunding of Electoral Debt.—A local government unit may, by action of its governing body, and in accordance with the limitations of this Article XI, refund any debt originally incurred as electoral debt. The refunding bonds, [or] notes *or obligations* so issued shall not thereby be considered nonelectoral debt *or lease rental debt* for any purpose.

Section 1106. 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 act for the authorization, issue, sale and approval of the original debt, subject to any additional limitations provided in this Article [XI]. 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 1110 and no adjustment in lease rentals shall be made unless appropriate provision for the retirement of the outstanding lease rental debt shall have been made.

Section 1107. Special Limitation on Refunding of Funding Debt.—No debt incurred for funding purposes *pursuant to section 510, or under law in existence prior to the effective date of this act*, shall be refunded except pursuant to clause (1) of section 1101 until such refunding shall have been approved as necessary by the [**Commonwealth Court**] *court of common pleas*. Such approval shall be obtained by petition to reopen the proceedings in which the funding debt was originally incurred, and the court shall grant such petition, if, after hearing, the court shall be satisfied that such refunding is necessary and is in the public interest. Due public notice of the filing of the petition, shall be given by advertisement not less than five nor more than twenty days before the filing thereof. All subsequent proceedings in respect of the refunding of such funding debt shall be taken in accordance with the provisions of this act 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 such date as may be approved by the court, notwithstanding any limitation on the term of funding debt imposed elsewhere in this act.

Section 1108. Approval of a 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 Article III of this act, and may issue general obligation bonds or guaranteed revenue bonds *or incur other obligations* in such refunding if approved by the electors regardless of the class of bonds, *notes or obligations* originally issued.

Section 1109. Refunding with Bonds of Another Type.—Subject to the limitations of section 202 of this act, or after a referendum held pursuant to section 1108, the governing body of any local government unit may for any purpose specified in section 1101, refund with its general

obligation bonds or notes or its guaranteed revenue bonds, or notes *all* or any part of any outstanding [callable] revenue bonds or notes or bonds, [or] notes *or obligations* of any authority [formed by it or of which it is a member] *or other local governmental unit constituting lease rental debt of the local government unit* or may refund any outstanding [callable] revenue bonds or guaranteed revenue bonds or notes with like bonds or notes. It 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.

Section 1110. Use of Proceeds of Refunding Bonds; When Refunded Bonds Are No Longer Deemed Outstanding.—(a) 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) 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 shall have irrevocably deposited with a bank or bank and trust company in a sufficient amount:

- (1) Moneys;
- (2) Noncallable securities of the United States of America 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 [public deposits] *required by section 1004*; or
- (4) Any combination of the foregoing.

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 the next sentence.

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 such bonds or notes are stated to mature, or have been called for prior redemption: Provided, however, That the local government unit shall simultaneously have given such bank or bank and trust company instructions and authority, stated to be irrevocable, to publish any notices of redemption remaining to be published.

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 shall occur the later. Until such

irrevocability shall have occurred, a call for redemption may be revoked by notice given in like manner as the notice of redemption.

Section 57. Section 1111 of the act is reenacted to read:

Section 1111. Cessation of Interest on Called Bonds or Notes.—Upon the date fixed for redemption, such irrevocable deposit having been made, and due notice of the redemption having been given, no further interest on the bonds or notes so called for redemption shall accrue. Nothing in this article shall, however, relieve the issuing local government unit of its obligation to see to it that the holders of the bonds or notes called for redemption are paid in full on the date fixed for redemption. From and after such date, such irrevocable deposit having been made and being the proper amount on such 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 subsection (f) of section 1004 of this act.

Section 58. The article heading of Article XII of the act is reenacted to read:

ARTICLE XII

Remedies

Section 59. Sections 1201, 1202, 1203 and 1204 of the act are reenacted and amended to read:

Section 1201. 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 such bonds or notes, lease rental or guaranty in such year or shall fail to appropriate or pay the moneys necessary in such year for the payment of the amount of the *lease rental or guaranty*, or as the case may be, of the maturing principal of and the interest on such bonds or notes or any of them, *or any tax anticipation notes*, or any sinking fund obligation for such bonds or notes *or tax anticipation notes*, or guaranty or the lease rental payment coming due in the fiscal year of such budget or for which such 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 of the county in which such local government unit is located, *or, if located in two counties, then of either county*, 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 writ of mandamus, require the treasurer of the local government unit and it shall be the duty of such treasurer 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 such fiscal year by such treasurer, equally and ratably for each series for which provision has not been made in proportion to debt service for such year on each such series then outstanding, or the amounts due upon guaranties or as **[rental under leases evidencing the acquisition of capital assets,] payments with respect to lease rental debt**, as the case may be, **(except that any priority on incoming tax moneys accorded to a separate sinking fund for tax anticipation notes under the authority of section 505, shall not be affected by this provision)**, until the sum on deposit in each sinking fund shall equal the moneys that should have been budgeted or appropriated for each such series.

Section 1202. Failure to Pay Principal or Interest.—(a) If a local government unit fails or neglects to pay or cause to be paid 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 such failure shall continue for thirty days, the holder thereof shall, subject to **[section] priorities created under sections 505, 1201 and 1203** of this act and to any **[reasonable]** limitations upon individual rights of action properly provided in the bond ordinance or any indenture, have the right to recover the amount due in an action in assumpsit in the court of common pleas of the county in which such local government unit is located, **or if located in two counties, of either county**. The judgment recovered shall have **[first] 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 Article V of this act.

(b) 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 shall, subject to **[section] priorities created under sections 505, 1202 and 1203** of this act and to any **[reasonable]** limitations upon individual rights of action properly provided in the bond ordinance or any indenture, have the right to recover the amount due in an action in assumpsit in the court of common pleas of the county in which such local government unit is located, **or, if located in two counties, of either county** 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 such bonds or notes.

Section 1203. Trustee for Bondholders.—(a) 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 the same shall become due, whether at the stated maturity or upon call for prior redemption, and such default shall continue for thirty 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 twenty-five per cent in aggregate principal amount of the bonds or notes of such series then outstanding, by an instrument or instruments filed in the office for the recorder of deeds in the county in which such local government unit is located, signed and acknowledged in the same manner as a deed to be recorded, may appoint a trustee, who may be the sinking fund depository, to represent the holders of all such bonds or notes, and such representation shall be exclusive for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of twenty-five per cent in principal amount of such bonds or notes then outstanding and upon being furnished with identity satisfactory to it shall, in his or its own name take one or more of the actions set forth below and the taking of such actions shall preclude similar action whether previously or subsequently initiated by individual holders of bonds or notes.

(1) By mandamus or other suit, action or 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 impose and collect rents, rates, tolls and charges adequate to carry out any agreement or covenant as to, or pledge of such rents, rates, tolls or charges, for the use of the project or projects financed by such bonds or notes, or to require the local government unit to carry out any other agreements with the holders of such bonds or notes;

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

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

(4) In the case of general obligation bonds or notes, petition the court to levy, and the court is hereby empowered 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* guarantee ~~[or]~~ *of* authority obligations or unpaid lease rentals under leases evidencing the acquisition of capital assets, to petition the court to levy, and the court is hereby empowered to levy, after hearing upon such 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 such 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 such bonds, notes, guaranty, or authority obligations under a lease evidencing the acquisition of capital assets;

(7) After thirty 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 such bonds or notes to be, and it shall thereby become forthwith due and payable with interest at the rates stated in the bonds until final payment, and, if all defaults shall be made good then to annul such declaration and its consequences.

Any assessment levied pursuant to clauses (4) and (5) above 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) The court of common pleas of the jurisdiction in which such local government unit is located shall have jurisdiction of any suit, action, or proceeding by the trustee on behalf of bondholders under this section, and, in cases of extreme hardship may provide for the payment of sums levied in five or less annual installments with interest at a rate sufficient to cover the interest accruing on the bonds or notes. Appeals shall be to the Commonwealth Court in accordance with the Appellate Court Jurisdiction Act of 1970.

(d) 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 ~~[confined]~~ **conferred** upon a trustee appointed by this section, no trustee appointed in the manner provided in this section shall have the powers herein set forth unless the appointment under this section was executed by or pursuant to the authority of the holders of a principal amount of such bonds or notes sufficient to remove such originally appointed trustee or fiscal agent.

Section 1204. Receiver for Revenue Projects.—A trustee for the holders of defaulted bonds or notes, whether or not the series of bonds presented by the trustee has been declared to be and has become forthwith due and payable, shall be entitled as of right to the appointment, by the court of common pleas of the county in which such local government unit is located, **or, if located in two counties, then of either county**, 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 such series. **[Such] Except as otherwise provided in the section, such receiver shall have no power [of sale] to 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 such 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 such 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.

Section 60. Section 1205 of the act is reenacted to read:

Section 1205. 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 act 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 such 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.

Section 61. Section 1206 of the act is reenacted and amended to read:

Section 1206. 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 1205, 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 shall have become or have 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 such installments of such interest and, if the amount available shall not be sufficient to pay any installment in full, then to the payment ratably, according to the amounts due on such 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; and (ii) to the payment to the persons entitled thereto of the unpaid principal of any bonds or notes which shall have 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 shall not be 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 such 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 such moneys shall have become or shall have 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 [accounts] *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 such series, and distribution to the holders of the bonds, notes and coupons of each series shall be made according to whichever of clauses (1) and (2) above may be applicable.

Section 62. The article heading of Article XIII of the act is reenacted to read:

ARTICLE XIII

Miscellaneous; Repeals; Effective Date

Section 63. Section 1301 of the act is reenacted and amended to read:

Section 1301. False Statement in Documents Constitute Perjury; Fines and Penalties Therefor.—Whoever wilfully and corruptly makes *under oath* false oral or written statements or any false statement in any document required to be filed in the department, [or] in the office of the recorder of deeds *or in the office of the prothonotary* of the appropriate county is guilty of perjury, [a felony,] *or false swearing, as the case may be*, and whoever wilfully and corruptly procures or suborns any other person to make any such false statement, is guilty of [subornation of perjury, a felony] *a crime*, and on conviction of either offense, shall be sentenced to pay a fine [not exceeding ten thousand dollars (\$10,000),] or undergo imprisonment [by separate or solitary confinement at labor not exceeding seven years], or both *within the limits prescribed by Title 18 Pa.C.S. (relating to crimes and offenses).*

Section 64. Section 1302 of the act is reenacted and amended to read:

Section 1302. Failure to Obey Sinking Fund Directive of Department Constitutes a Misdemeanor; Fines and Penalties Therefor.—Any officer or any member of the governing body of any local government unit who shall refuse or neglect to obey any order of the department made under the provisions of Article X concerning sinking funds or who shall refuse to furnish requested information required by the department, or refuse agents of the department access to any books, records or documents relating to sinking funds shall be guilty of a misdemeanor, and upon conviction thereof, shall be each sentenced to pay a fine not exceeding **[five hundred dollars]** \$500 for each day of violation.

Section 65. Section 1303 of the act is reenacted and amended to read:

Section 1303. Exemption of Bonds and Notes from Taxation in Pennsylvania.—The Commonwealth does hereby pledge to and agree with any person, firm, or corporation or Federal Agency subscribing to or acquiring any bonds or notes, *including tax anticipation notes* issued by any local government unit pursuant to the provisions of this act or the act approved June 25, 1941, as amended, that such bonds or notes, their transfer and the income therefrom **[including any gains made on the sale thereof (other than the underwriting spread in a distribution thereof)]** *(including any profits made on the sale thereof)* shall at all times be free from taxation *for State and local purposes* within **[and by]** the Commonwealth of Pennsylvania, but this exemption shall not extend to **[underwriting profits or to]** gift, *estate*, succession or inheritance taxes or any other taxes not levied directly on the bonds or notes, *the transfer thereof*, the **[receipt of the]** income therefrom, or the realization of **[gains]** *profits* on the sale thereof.

Section 66. Section 1304 of the act is reenacted to read:

Section 1304. Exclusive Method of Borrowing on Bonds or Notes, Including Tax Anticipation Notes.—Hereafter a local government unit, as defined in this act, may borrow money on bonds or notes, including tax anticipation notes, only as provided in this act, it being the intention that this act shall provide an exclusive and uniform system on the subjects covered by this act: Provided, however, That school districts of the first class may for their first four full fiscal years following the effective date of this act borrow on tax anticipation notes and other short term borrowing authority in accordance with prior law.

Section 67. Section 1305 of the act is reenacted and amended to read:

Section 1305. Duties of **[Recorders of Deeds;]** *Prothonotaries*; Filing Fees.—(a) It shall be the duty of the **[recorders of deeds]** *prothonotaries of the several courts of common pleas* in each county to accept, file and index the several statements, resolutions and other matters required by this act to be filed in **[the office for the recording of deeds. A separate index of debt records shall be established and maintained in which the filings of each local government unit will be indexed under the name of the local government unit making the filing.]** *their respective offices. Such officers*

shall to the extent that such filing shall not fall within established indexing and filing dockets, establish appropriate records and indices for such filings under the name of the local government unit making the filing or in respect of the debt of which such filing is made. If a microfilm record is made of the filings, the originals may be destroyed by [the recorder of deeds] *such officer*, and his certificate as to the filings and as to the accuracy of any copy of a filing shall be admitted in evidence in any court of this Commonwealth as proof [of what was filed] *thereof*.

(b) The local government unit *or other person* making the filing shall pay to [the recorder of deeds] *such officer* a filing fee based upon the fees charged for the filing of [deeds or mortgages of the same length] *similar documents under established procedures*.

Section 68. Section 1306 of the act is reenacted to read:

Section 1306. Severability.—The provisions, terms, and the applications of this act shall be severable, and if any term or provision or any application of this act to any situation including, but without limitation, the restrictions on lease rental debt and the application of this act thereto, shall be held to be unconstitutional, such decision shall not affect the validity of any other term or provision or the application of this act or of any expressed limits on debt to any other situation. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional application been expressly excluded or had such unconstitutional term or provision not been included herein.

Section 69. Section 1307 of the act is reenacted and amended to read:

Section 1307. Repeals.—[(a) The following acts are repealed absolutely:

(1) The act of June 25, 1941 (P.L.159), known as the “Municipal Borrowing Law.”

(2) The act of March 6, 1970 (P.L.145), known as “The General Obligation Non-debt Bond Act.”

(b) The following parts of acts are repealed in so far as they relate to the authorization, issue and sale of tax anticipation notes:

(1) Section 1 of the act of June 23, 1931 (P.L.922), entitled “A supplement to the act, approved the seventh day of March, one thousand nine hundred and one (Pamphlet Laws, twenty), entitled ‘An act for the government of cities of the second class,’ as amended, authorizing the mayor, city controller, and council to make emergency loans.”

(2) Section 1811.2 of the act of June 23, 1931 (P.L.932), known as “The Third Class City Code.”

(3) Section 1703 of the act of June 24, 1931 (P.L.1206), known as “The First Class Township Code.”

(4) Section 903 of the act of May 1, 1933 (P.L.103), known as “The Second Class Township Code.”

(5) Section 640 of the act of March 10, 1949 (P.L.30), known as the “Public School Code of 1949.”

(6) Clause (3) of section 1005 of the act of February 1, 1966 (P.L.1656), known as "The Borough Code."

(c)] All [other] acts and parts of acts are repealed insofar as they are inconsistent herewith.

Section 70. Section 1308 of the act is repealed.

Section 71. This act shall take effect immediately. All bonds or notes sold prior to the effective date may be settled and delivered either in accordance with the provisions hereof or in accordance with the provisions of the act of which this is a reenactment.

APPROVED—The 28th day of April, A. D. 1978.

MILTON J. SHAPP