PROPOSED SB 340 OF 2015
AMENDING THE LOCAL GOVERNMENT UNIT DEBT ACT
COMPARISON TO PRIOR SB 901

SB 901 was introduced in February, 2014, proposing to make a number of changes to debt approval proceeding under the Local Government Unit Debt Act. Although reported out of Committee to the floor of the Senate, the Bill was not passed before the expiration of that General Assembly.

On February 20, 2015, the sponsors as SB 901 of 2014 introduced new SB 340 resurrecting former SB 901. Although it is similar that are a few notable changes including:

- Limitation on reimbursements beyond two years **REMOVED**
- "Justification" for forecasted 5% or higher revenue increases to pay debt **REMOVED**
- 30 day Preliminary Approval time period reduced to 10 days
- All refunding exempted from Preliminary Approval
- Requirement to incur debt within one year of Preliminary Approval **REMOVED**
- Additional filing fees **REMOVED**

There is also softening of several provisions reducing or eliminating DCED discretion. Generally, the preliminary approval and additional requirements for final approval require furnishing of specific information with limited explanations or justifications. The table below summarizes the proposed amendments by comparing old SB 901 as modified by new SB 340 to the existing provisions of the Local Government Unit Debt Act.

Old SB 901	Analysis	New SB 340
Add to definition of Self-liquidating Debt a statement that debt paid by drawing on a guaranty is not self-liquidating.	No change from current law; a clarification.	Same
Add definition of Financial Advisor.	Used in new liability provisions. Does not distinguish between bankers, investment bankers, and independent financial advisors; may conflict with and be preempted by recent Dodd Frank federal legislation and regulation.	Same
Modifies definition of Working Capital to prohibit reimbursement of prior expenditures if "used to address budgetary deficits".	Consistent with current law.	Same

Requires LGU to conduct "due diligence" to determine risk in providing a guaranty of debt of an authority or other LGU, including impact of the guaranty, financial condition of guaranteed entity, likelihood of default. Vote must be preceded by demonstration of such due diligence at a public meeting.	Due Diligence will likely take the form of a self-liquidating debt report. *Note* that LGU's planning to issue self-liquidating debt will be required to secure preliminary approval of the self-liquidating debt report. Will have to be based on estimated debt service.	Same with minor editorial revisions and renumbering
LGU may not guaranty sums due under an interest rate management agreement or projects that "involve untested technology or experimentation."		Same
Prohibits collecting a fee for a guaranty.	A rare practice; question whether local government unit may be reimbursed for actual costs and fees incurred in providing guaranty.	Same
Prohibits reimbursement of project costs incurred more than two years prior to issuance of debt.	This arbitrary cutoff may require local governments to borrow feasibility, design, or startup costs of a large project even though these costs could be carried until permanent financing is sought; added expense.	Removed
Requires "justification" of assumed increases in "gross revenues" of more than 5% per annum for self-liquidating debt.	Apparently intended to ensure that local governments understand the economic consequences of their projects.	Removed
Adds a 30 day Preliminary Approval by DCED for all debt (other than small borrowing) by an application requiring 1. the debt statement, 2. self-liquidating debt report,	Ties issuance of debt to a host of underlying project related issues. Adds cost and time for all debt. While not expressly substituting DCED's judgment for that of elected officials,	30 Day Approval reduced to 10 days with automatic approval if DCED fails to respond within 10 days. Small Borrowing and

if applicable, 3. "evidence satisfactory to the Department" of filing annual financial statements, 4. compliance with federal SEC disclosure obligations, 5. description of any legally required project performance or payment security, 6. refunding schedules, 7. certification that the local government unit has adopted or approved a taxing plan to pay debt service on refunding debt, 8. statement of intended manner of sale of bonds or notes (i.e., negotiated with single bank or underwriter or public bidding), and 9. Project cost breakdown. Additional Information the Department may request including: 1. "Justification" for costs of issuance more than 2% of debt, 2. "Justification" for working capital greater than 10% of debt, 3. "basis" for private sale by negotiation rather than public bidding.	requires elected officials to justify their decisions to bureaucrats. This requirement could prevent local governments from taking advantage of drops in interest rates by adding a pre-approval requirement before the local government can lock in rates through a sale of debt. Will require self-liquidating debt reports first based on pre-bid or pre-sale estimates that will need to be followed by actual project based information. May require local government unit to secure new and additional information from project professionals. Debt issuance could be delayed for innocent delay in receiving audits from third parties. Ties state borrowing power to compliance with a specific current federal securities law rule applicable to only certain public bond issuers.	all refunding debt exempt (unless an interest rate management agreement will attach to the refunding). Filing requirements are substantively the same with addition of interest rate management plans to list and statement of guaranty classification under Section 8005(d). Some "certifications" replaced by "file a description."
Requires debt to be incurred within one year of preliminary approval and issued within two years thereof.	A new limitation. Probably not a significant problem for most issuers who tend to sell, file, and issue debt within a 60 day time frame. Might limit debt incurred under "parameters" resolutions or ordinances that allow local government unit	Removed

	administrations to authorize the sale of debt that achieves or exceeds previously approved parameters.	
For self-liquidating debt that loses its qualification, the reason must be described in future filings and will require a new self-liquidating debt report to restore the qualification.	Current law requires disclosure of loss of self-liquidating qualification; new report requirement adds cost.	Same
Application for "Final" approval for debt will now require "written proof" of provision for project completion security and itemized statement of project costs.	Current law requires local government unit to know project costs before approving debt, limited added burden; requiring proof of compliance with other state laws regarding project cost security increases administrative costs and is questionable since DCED has no power to enforce compliance with such requirements and they are unrelated to debt.	"Written statement" replaces written proof.
Increases filing fee for debt proceedings from $50 plus 1/32 mil per dollar of debt to $250 plus 1/32 mil per dollar of debt. Establishes restricted account within Commonwealth's General Fund earmarked solely for costs of administration of LGUDA.	Current law sets fee pursuant to the Commonwealth's general Administrative Code and fees become part of General Fund, Appropriations for DCED handled separately. Fee amount has not been adjusted in past 40 years.	Removed Existing fee retained
Increases period for final approval of debt from 20 days to 30 days.	Would create serious problem for marketing debt since PA is already among slower states for delivering bonds after sale; could increase interest costs. Senate Local Government Committee Staff reports this is meant to be withdrawn as unnecessary in light of new	Removed

	pre-approval requirement.	
Requires "attorneys" and financial advisors to advise in writing the source of their compensation and whether it is contingent on issuance of debt.	Already required for lawyers under Supreme Court rules of professional responsibility; new Dodd Frank rules for advisors also require disclosure for financial advisors (although definitions may conflict with this proposed amendment). Probable unconstitutional statutory regulation of lawyers. Subjects local government officials to liability for "certifications" to Department.	Similar. certification requirement removed
Imposes "fiduciary duty" on lawyers and financial advisors.	Adds nothing to lawyer responsibility, in conflict with and may be preempted by Dodd Frank notion of financial advisor; arguably confuses role of advisors from advice on law and markets to giving their judgment rather than elected official judgments.	Same
Creates new crime for local government officials for "ultra vires" acts: making false statements or participating in actions without lawful authority or in excess of lawful authority.	Very broad criminal penalties not tied in any way to incurrence of debt.	Same
Allows local government units to seek civil penalties for damages caused by the new criminal actions including bar to lawyers and financial advisors who violate statute.	Presumably such remedies already exist but no one has sought enforcement because debt issuance problems are so rare. Local governments however are not harmed by statutory statements of additional rights.	Same