

MEMORANDUM

9 September, 2013

TO: Senate Local Government Committee

From: Michael A. Wolf, Managing Director
Boenning & Scattergood, Inc.
4 Tower bridge
200 Barr Harbor Drive, Suite 300
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RE: Comments to SB-901 Session of 2013 – Amending Local Government Unit Debt Act
53 Pa. C.S. § 8001 *et seq.* as amended (“LGUDA.”).

My name is Michael Wolf. I am a public finance banker for Boenning & Scattergood, Inc., in West Conshohocken, Montgomery County, Pennsylvania. For more than 28 years, I have assisted municipalities, authorities and school districts in Pennsylvania with the issuance of bonds to finance many different kinds of infrastructure. Prior to my career in public finance, I spent 15 years serving local governments (in Pennsylvania) as a city planner, so I have a combined 43 years of night meetings and driving the back roads to serve local governments!

I appreciate the opportunity to speak to you today on behalf of the “little guys.” By that I mean those that borrow infrequently and prudently and who have no access to, or interest in, Wall Street and its products or professionals. To the folks I serve, Harrisburg, its default and subsequent restructuring are as far away as the moon. The people I serve only borrow when they have no alternative. They pay their debts when due and they rely heavily on their trusted advisors, bond counsel and solicitors for guidance. The only thing my customers know about swaps is the bad news they read in the newspapers.

The general gist of my remarks will be to urge that you not damage the Local Government Unit Debt Act (LGUDA) and the many small issuers in Pennsylvania as part of an attempt to rein in the ill-advised or illegal behavior of a few bad actors. Many others are scheduled to speak today and there will, no doubt, be a good deal of overlap and repetition. For this reason, I will attempt to be brief and to stress the items you may not otherwise hear. I will confine my remarks to SB 901.

We support:

1. The concept of ending payments for municipal guarantys (at §8005) is entirely appropriate! We did not even know that this practice existed. Lawyers I have spoken with think this practice is highly questionable under federal tax law, so the change may not be required.
2. The 5% limit on increase in gross revenue in any one year (at §8026), without justification, also makes total sense. We would have expected such projections and forecasts to be documented and footnoted.

However we foresee certain problems:

3. The biggest change to LGUDA is the proposed pre-approval by DCED (at §8102.1). This should be waived for “plain vanilla” refundings which generate debt service savings. These transactions are similar to refinancing a home mortgage at lower interest rates to lower monthly payments and timing is frequently critical. It currently takes about 90 days to complete a refinancing, from inception to settlement. Adding 60 to 90 days to the start of the process will, potentially, harm the borrowers.



4. §8005 (c) proposes limiting the use of municipal guarantys to loans from the federal Government (typically USDA – Rural Development) and PennVest for water and sanitary sewer purposes only. We think this would hinder capital projects and, for example, emphasize that we have successfully used Guaranteed Revenue Bonds, which were also determined to be self-liquidating, to finance:
 - (a) a parking garage in Kennett Square Borough – which stabilized the community and kept the largest employer in town, using parking revenues.
 - (b) open space purchases in at least a dozen Chester and Montgomery County communities, in accordance with Act 153 of 1996, which authorizes an additional Earned Income Tax, enacted following a successful voter referendum, dedicated to open space only.
 - (c) several significant highway projects using assessments on benefited businesses to pay debt service in accordance with the Transportation Partnership Act of 1985.
 - (d) The Authorities Act of 1945 has just been amended (SB 351 on 6/12/13) to permit authorities to enact fees and issue bonds for storm water improvements. It is highly likely that some of these bond issues will benefit from a municipal guaranty AND also qualify as self-liquidating from a dedicated revenue stream.
5. Manner of sale (at §8161). The benefits of Negotiated vs. Competitive (auction method) sale have been debated for generations without any meaningful conclusion. In 2012, in PA, 8,269 bond issues (66% of total) were sold at private sale by negotiation (the way I do it) and 4,276 issues (34%) were sold at auction, often on the internet. This is not an area where LGUDA can help local governments make a meaningful choice and the \$5 million cutoff can not be justified.
6. §8111 proposes limiting costs of issuance to 2%. Under most normal circumstances that would be adequate. However, I have issued bonds for communities, in amounts as small as \$1 million. This only occurs in rare cases when local banks are unresponsive or disinterested. In such a case the project must proceed in spite of the costs exceeding \$20,000.
7. §8102.1 proposes prohibiting local governments from issuing debt if a current audit has not been submitted. The Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) have created a robust, national database, called EMMA and issuers are required to file audits AND other financial and operating information, on an annual basis or more often for certain material events. Recently issuers and bankers have been charged with fraud in connection with lack of compliance with the rules on Continuing Disclosure. This function has already been undertaken by a higher authority and additional oversight by DCED is not needed.
8. §8212 admonishes attorneys and financial advisors to always perform as loyal fiduciaries. The MSRB just finished telling underwriters that they are NOT fiduciaries and since August, 2012 we have been required to notify our clients, in writing, prior to every engagement that we are NOT serving as fiduciaries! Warning- it has taken the SEC more than 2 years to define a Financial Advisor and so far there is no published guidance. Therefore the definition of Financial Advisor must exclude underwriters.
9. §8007 attempts to prohibit the financing of project costs incurred prior to the fiscal year immediately preceding the year of debt issuance. Section 103 of the Federal Tax Code already has strict rules governing what can be financed and how far back a tax-free loan can reach. Further regulations by DCED can only 'muddy the waters.'
10. Similarly, federal tax law already regulates the use of loan proceeds for working capital (§8102.1) and every issue requires detailed documentation on rates of spend down and anticipated project completion.

In closing, please remember the little guys who play by the book.

Don't try to fix what isn't broken.

LGUDA has worked very well for thousands of bond issues, since 1972 and the number of problems (although high profile) is very small.

Thank you.