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# Municipal Authorities in Pennsylvania



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# I. Introduction to Municipal Authorities

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## History of Authorities

Authorities are governmental bodies created to finance and/or operate specific public works projects without tapping the general taxing powers of the municipality.

Municipal authorities in Pennsylvania, as in many other states, had their beginning in the 1930s Depression. As part of its fiscal recovery policy, the federal government granted money to states and municipalities for public works construction to stimulate employment and provide needed public facilities. These grants had to be matched by the recipient unit, but many states and localities were unable to pay their share, due both to reduced revenues and restrictive debt limits. A number of states, including Pennsylvania, then created state authorities to borrow outside constitutional debt limits by making use of revenue bonds. Pennsylvania was one of three states that passed general enabling legislation to allow their municipalities to create authorities. This was the Municipalities Authorities Act of 1935.

The 1935 act was repealed and replaced in 1945 by the present Municipality Authorities Act, which gave greater flexibility in operation and financing. The Municipality Authorities Act was officially codified in the PA Consolidated Statutes in 2001. The latest version of the Municipality Authorities Act is printed at the end of this book.

Approximately 200 municipal authorities were organized under these acts prior to 1951. In 1951, the way was cleared for leaseback authorities by a decision of the Pennsylvania Supreme Court upholding the right of municipalities to sign long-term leases with authorities.<sup>1</sup> This additional flexibility allowed authorities to borrow on the pledge of rentals made by the municipality over the term of the bond issue.

The municipality would operate the project with its own employees and use the revenues collected to make the lease rental payments to the authority. Today, it is estimated that Pennsylvania has more than 1,500 active authorities.

## Function of the Authority

The municipal authority in Pennsylvania is an alternate vehicle for accomplishing public purposes rather than through direct action of counties, municipalities, and school districts. The Municipality Authorities Act of 1945 describes an authority as “a body corporate and politic” authorized to acquire, hold, construct, finance, improve, maintain, and operate projects (by owning or leasing, either as the lessor or lessee), provide financing for insurance reserves, make loans, and borrow money and issue bonds to finance them.<sup>2</sup>

Although local government plays a role in creation of an authority and appoints the members of its board, the authority is not part of the municipal government. An authority is not the creature, agent, or representative of the municipality but is an independent agency of the commonwealth.<sup>3</sup> An authority is a separate legal entity with power to incur debt<sup>4</sup>, own property, and finance its activities by means of user charges or lease rentals.<sup>5</sup> An authority can be a financing agent for a capital project, an operating entity, or both. Authorities finance a significant share of local capital improvements.

## Reasons for Creating Authorities

**Financial Reasons.** Pennsylvania local governments facing local tax increases to address needed projects, facility upgrades, or increased debt have the option to create authorities to manage and operate these functions. Authorities do this by charging fees to users.<sup>6</sup> User fees can result in a more equitable distribution of the burden of government by shifting costs to actual consumers with payments based on the level of service provided or consumed. An authority can be a device to achieve financing when it is difficult for a local government to do so.

As governmental entities, authorities enjoy certain advantages operating services, such as public water supply, sewage treatment, and solid waste disposal. They do not pay corporate taxes or sales taxes when they purchase supplies, they can issue tax-exempt debt at a lower rate than private corporations, and their rate structure does not need to include a return to shareholders.<sup>7</sup>

**Administrative Reasons.** An authority can administer certain services more efficiently than a municipal government. This is primarily true because authorities are often created for a singular purpose (sewage treatment, water provision, garbage collection and disposal, etc.). The operation of their projects does not compete with all the other traditional aspects and affiliated costs of local government, such as police and fire, public works, recreation, parking, codes enforcement, planning and zoning, and general administration. Many functions/projects commonly provided by authorities often require intensive planning and a long-range approach to operation and financing.

Delegation of authority responsibilities, by law, to a board of appointed citizens and their management personnel relieves the burden from the elected governing body, which, as noted above, is already responsible for overseeing a wide range of government functions. Since most authorities often perform only one function, the authority board can concentrate its energies on this single area.

Authority board members have five-year overlapping terms<sup>8</sup> with no change to authority boards due to elections, thus ensuring a degree of board continuity on projects and issues. Often well-qualified individuals who would hesitate to run for elective office will agree to accept an appointment to serve on an authority board.

**Jurisdictional Reasons.** Many public services can be administered efficiently only if a large service area is covered. Political boundaries and the boundaries of this ideal service area seldom coincide. A multi-municipal authority or a joint authority can provide a specific utility service for a larger geographic area. An authority created by only one municipality but serving other political subdivisions (usually by a contractual agreement) is considered a multi-municipal authority. An authority created by several municipalities to serve their residents, and potentially other political subdivisions, is known as a joint authority. Water and sewer authorities commonly serve more than one municipality to take advantage of the economies of scale and natural drainage areas. Larger “territory” authorities also exist to serve expansive needs, such as airports, trash, recycling collection and processing, and mass transit.

## **Distinctions Between Authorities and Municipalities**

Authorities have certain characteristics causing them to resemble a private utility corporation, but they also possess many features of a municipal government. They resemble municipal governments in the following ways:

- 1) They are exempt from taxation.<sup>9</sup> This exemption applies to property owned and transactions conducted by the authority. Furthermore, interest on authority bonds is excluded from state and federal income taxes.
- 2) Authorities may levy and enforce special assessments against properties served.
- 3) Authorities possess the power of eminent domain to acquire real estate.
- 4) Municipal authorities may participate in the Pennsylvania Municipal Retirement System.
- 5) Authorities and municipalities are both subject to general state laws protecting the public interest, including the Sunshine Law, the Open Records Act, and the State Ethics Act.

A municipal authority differs from a municipal government in a number of significant ways such as:

- A municipal governing body is impacted by the outcome of elections. An authority board is appointed, and some distance removed from electoral decisions that can involve changes to board makeup, project referendums, or funding approvals.
- A municipality has the power to tax and can raise additional revenues through a variety of fees, rents, and service charges. Authorities are limited to the revenues generated by their project through user fees, tapping fees, and special assessments.
- Most municipal authorities concentrate on a single service while municipalities are responsible for a multitude of service. Limited by its articles of incorporation, an authority is restricted to the functions it may perform.

## References

1. *Griffith v. McCandless Twp.*, 77 A.2d 430 (Pa. 1951) (a contract between the municipal authority and the township was valid).
2. 53 PA. CONS. STAT. ANN. § 5607 (2012); See also *Evans v. West Norriton Twp. Mun. Auth.*, 87 A.2d 474 (Pa. 1952) (stating that, “[a] Municipal Authority is defined by the Act as ‘a body politic and corporate.’ Its members are appointed by elected public officials. It receives a charter from the Commonwealth of Pennsylvania, which grants it certain characteristic attributes of a corporation. It is authorized by law and by its charter to perform vast private as well as certain limited public functions”).
3. *Commonwealth v. Erie Metropolitan Transit Auth.*, 281 A.2d 882, 444 Pa. 345, at 348, 1971 (“[t]his Court has consistently held that municipal authorities are not the creatures, agents, or representatives of the municipalities which organize them, but rather are ‘independent agencies of the Commonwealth, and part of its sovereignty,’” quoting *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964)); *Simon Appeal*, 184 A.2d 695 (Pa. 1962) (citing *Commonwealth ex rel. McCreary v. Major*, 22 A.2d 686 (Pa. 1941), it was held that a member of a board of a municipal authority created under the act of 1935 was a public official by reason of the fact that such entity is an independent agency of the Commonwealth and part of the sovereignty of the state); *Rhoads v. Lancaster Parking Auth.*, 520 A.2d 122, 126 (Pa. 1987) (“Municipal authorities are independent corporate agents of the Commonwealth, which exercise governmental, as well as private corporate power, in assisting the Commonwealth in meeting the needs of its citizens”); *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 1113, (Pa. Comm. Ct. 1989) (“[h]owever, as noted above, an authority which has been incorporated under the Act becomes an independent Commonwealth agency not subject to the control of the incorporating township”); *White Rock Sewage Corp. v. Pa. Pub. Util. Comm’n.*, 578 A.2d 984, 987 (Pa. Commw. Ct. 1990) (“[m]unicipal authorities are not creatures, agents, or representatives of municipalities, which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty” quoting *Highland Sewer & Water Auth. v. Engelbach*, 220 A.2d 390 (Pa. Super. Ct. 1966); *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1176 (Pa. 2005) (the “fundamental nature” of a municipal authority is that of “a corporate agency of the state, and not a child of a municipality”).
4. 53 PA. CONS. STAT. ANN. § 5607(d)(12) (2012).
5. 53 PA. CONS. STAT. ANN. § 5607(a) (2012).
6. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012).
7. 53 PA. CONS. STAT. ANN. § 5620 (2012).
8. 53 PA. CONS. STAT. ANN. § 5610(a) (2012).
9. 53 PA. CONS. STAT. ANN. § 5620 (2012).



## II. Creating and Dissolving Authorities

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An authority can be organized by any county, city, borough, incorporated town, township, or school district of the Commonwealth, acting singly or jointly with one or more other local governments. Home rule municipalities must use the procedures found in the Municipality Authorities Act for creating, dissolving and withdrawing from authorities.<sup>1</sup>

Authorities may only be created for the purposes listed in the act. However, the list contains a great variety of projects an authority may finance, own, operate, or lease. These include water distribution systems, sewage systems, solid waste disposal systems, mass transit operations, parking facilities, airports, recreation facilities, school buildings, and facilities to produce steam.<sup>2</sup> Projects to supply retail electric power, gas, telephone, and cable television service are not included in the list although authorities may cogenerate electricity at their projects. The act prohibits creation of a new authority or expansion of an existing authority into a field that duplicates or competes with existing private enterprises serving substantially the same purposes.<sup>3</sup>

### Creation of an Authority (Section 5603)

**Determining Need.** A significant amount of planning and debate usually occurs before a decision is made by a municipality to incorporate a municipal authority.<sup>4</sup> Whether to provide a service or significantly expand an existing service (water, wastewater, solid waste collection and disposal) is driven by the need to address local issues and may even be precipitated by regulatory agencies, such as the PA Department of Environmental Protection (DEP).

The local elected officials need to assess the alternatives for providing the service, be it the local government itself, a municipal authority, or a private corporation. The decision can also be impacted by the demands of federal and state statutes pertaining to these areas. Another key element may be the need or opportunity to provide the service at a multi-municipal level and the negotiations and agreements that may ensue with the neighboring municipalities to address the issue. A determination initially must be made that the service is needed or required. A public hearing must be held by a municipality or municipalities proposing to create an authority.

Notice must be advertised in a newspaper at least 30 days before the hearing occurs. Elected officials, planning commission members, citizens of the municipality or municipalities, businesses, and property owners can participate in this process. The elected local government officials will make the final decision on how the service will be provided.

**Process.** Section 5603 of the Municipality Authorities Act defines creation of an authority. When the governing body of a local government decides to create an authority, it adopts a resolution or ordinance expressing its intention.<sup>5</sup> If it is to be a joint authority, each participating unit takes this action. The organizing municipality or municipalities may specify the project or projects to be undertaken by the authority in the ordinance or resolution expressing its intention to incorporate an authority. Further projects or responsibilities can be delineated from time to time by a subsequent ordinance or resolution updating the articles of incorporation. If the local governing body does not specify a project or projects, the authority has the power to undertake any project authorized by the act.<sup>6</sup> However, authorities created by school districts are restricted to construction of public school buildings and other projects for public school purposes.<sup>7</sup> The resolution or ordinance of the elected governing body is then published in the local newspaper and legal periodical,<sup>8</sup> along with a notice of the day the articles of incorporation of the proposed authority will be filed with the Secretary of the Commonwealth of Pennsylvania.<sup>9</sup>

The articles of incorporation filed with the secretary include the following items:

- 1) the name of the authority;
- 2) the name of the incorporating local municipality or municipalities;
- 3) the names, addresses, and terms of office of the first members of the board of the proposed authority;

- 4) a listing of the authorities already organized by the incorporating local government, if any;
- 5) in the case of a business district authority, a statement that the municipal governing body retains the right to approve any authority plan for providing improvements or administrative services;
- 6) the authorized projects the authority may undertake;
- 7) the term of existence of the authority if it is other than the statutory maximum of 50 years; and
- 8) designation of the service area for the authority.<sup>10</sup>

If the Secretary of the Commonwealth finds the articles of incorporation conform to law, a certificate of incorporation is issued and the existence of the authority begins from the date of the certificate and lasts for 50 years,<sup>11</sup> but it may be extended by amendments to the articles of incorporation.<sup>12</sup>

**The Authority Name.** The articles of incorporation must specify the name of the authority,<sup>13</sup> a matter more significant than is generally realized. The name of the authority is its first point of contact with the public. An overly long or complex name hinders communication. This is also significant when the authority borrows money for its project. It is helpful if the name chosen is readily recognizable as a known place name by people in the financial centers and the investing public who ultimately will be deciding on the terms and rates for lending money to the authority.

### **Merger of School District Authorities (Section 5606), Procedures for Others**

The Municipality Authorities Act contains a procedure for the merger or consolidation of authorities, but this procedure is limited only to authorities whose projects are all leased to the same reorganized school district.<sup>14</sup> This provision was added in 1968 following the school consolidation process of the mid-1960s. It was intended to allow the new consolidated school districts to merge the authorities funding their building projects. The act does not include a general provision governing merger of other types of authorities.

**Other Authority Mergers.** When it becomes desirable to merge other types of authorities, a more roundabout process must be followed. One way this can be done is for the municipality, or municipalities jointly, to create a new authority. To transfer the projects of the old authorities to the new one, the municipality or municipalities go through the procedure for assuming the project and then transfer it to the new authority.<sup>15</sup> Then the old authority, with all its obligations paid off, can be terminated by the municipality or municipalities.<sup>16</sup> This procedure sounds cumbersome but has been used a number of times. A second method is also available. Authorities have the power to convey any and all property they own to another entity. They are not limited to conveying their property solely to the incorporating municipality.<sup>17</sup>

This can even be done when the authority still has outstanding debt. At times, the bond indenture for authority debt will allow the project to be transferred to another authority, which in turn assumes the indebtedness.<sup>18</sup> Where this is not possible, the purchasing authority can issue new debt to defease the debt of the selling authority. For authorities with no outstanding debt, this is not a factor. The incorporating municipality has a contingent interest in the assets of the authority so the authority needs to get its approval prior to the sale of the authority's project to a third party. The sale of an authority's project will not terminate the existence of the authority. That must be done following the termination procedure outlined in the act.<sup>19</sup>

### **Joining or Leaving Joint Authority (Section 5604)**

After a joint authority has been created, additional municipalities may become members of the authority.<sup>20</sup> Occasionally, a municipality, through its elected officials or staff, will express a desire to become a member of an existing authority. Section 5604 of the act details the procedures that must be followed.<sup>21</sup> The authority board members and elected officials of the joining municipality and the incorporating municipality(ies) must negotiate the terms for the entry of the additional municipality and reach a consensus. This is to include any reapportionment of the authority board membership or revision of terms of office of its members. Unanimity among all concerned is required before the

application is filed with the Secretary of the Commonwealth. The municipal governing body enacts an ordinance or resolution to join, and the authority board and existing municipal members must formally consent to the joining. Notice must be published in a newspaper of general circulation and in the county legal journal.<sup>22</sup> An application is filed with the Secretary of the Commonwealth with information similar to the original articles of incorporation.<sup>23</sup> If the application conforms to law, the Secretary of the Commonwealth issues a certificate of joinder.<sup>24</sup>

The same procedure must be followed for the withdrawal of a municipality from an existing authority.<sup>25</sup> However, no municipality is permitted to withdraw from an authority after any financial obligation has been incurred by the authority.<sup>26</sup> These requirements do not apply where the municipalities only have operating agreements but are not formal members of the authority.<sup>27</sup> When a municipality, for whatever reason, decides it wants to withdraw from a joint authority, it may do so by filing an application to withdraw with the Secretary of the Commonwealth.<sup>28</sup> The authority board must formally consent to such withdrawal; procedures to withdraw are found in Section 5604 of the act. Essentially the formal procedures are similar to those used when incorporating an authority or when joining an authority. The Secretary of the Commonwealth, upon determining the application conforms to law, will issue a certificate of withdrawal.<sup>29</sup>

The prohibition on withdrawing from a joint authority after any obligation has been incurred by the authority could raise other issues. The act does not define the term “obligation” as solely one pertaining to a financial commitment, such as bonded debt.<sup>30</sup> If objections were raised to a request for withdrawal based on an obligation of the authority of type other than a financial obligation, the matter would likely need to be resolved by the courts.

### **Assumption of Authority Projects by Municipality or Other Authority (Section 5622)**

The local government or governments creating an authority may acquire any project of the authority (Section 5622) by appropriate resolution or ordinance signifying this desire. On the assumption by the municipality of all outstanding obligations incurred with respect to the project, the authority will convey the project to the municipality. School projects may be acquired by the school district leasing them by the same method.

Projects operated by a county authority for portions only of the county may be acquired by this method by the municipalities benefited with the approval of the county commissioners.<sup>31</sup> The courts have ruled municipalities can unilaterally act to take over an authority project and do not need the approval of the authority board.<sup>32</sup> The municipality can even require the authority board to extinguish its outstanding financial obligations with existing authority funds.<sup>33</sup> Where there is outstanding debt that cannot be extinguished, the terms of the bond indenture can limit whether or not the debt is directly assumable by the municipality. The other choice is for the municipality to issue new debt to defease the outstanding authority debt. In assuming any outstanding debt, the municipality must follow the proper procedures under the Local Government Unit Debt Act.<sup>34</sup> The wording of this section does not preclude the sale or transfer of its property to parties other than the incorporating municipality. The conveyance of a sewer project to an area-wide county sewer authority was upheld. In this case the trust indenture ensured the rights of the bondholders were protected.<sup>35</sup>

The local government assuming an authority project must have in place the administrative mechanism for managing the authority project, including trained personnel to operate it. The acquiring municipality receives the authority reserve funds that have been derived from the operation of the project.<sup>36</sup> However, these reserves must be maintained in a separate fund and used solely for the purposes of operating, improving, or extending the project. Any authority reserve funds representing the proceeds of borrowing must be maintained in a separate fund and used only for capital purposes. These provisions were added to the Municipality Authorities Act in 1996 to prevent municipalities from acquiring authority projects to get control of the reserve funds in order to use them for other municipal purposes.<sup>37</sup>

### **Privatization**

Privatization of government services is not a new concept. All levels of government sometimes find that a certain function may be better performed by the private sector. Sometimes this results in simply contracting out certain services or functions to a private entity. Other times, it may actually involve the sale and transfer of the function or project to a private entity. Financially struggling local governments, weighing their budgetary woes, may feel that the sale of valuable assets, including a water or sewer or parking authority, will help address their municipal financial condition. However, consideration of privatization must include both positive and negative impacts to the community.

The one-time influx of a large sum of money is just that, a one-time influx of cash. The decision of how to distribute, spend, or invest this windfall may determine the future financial fate of a municipality. However, now a prime cash-generating local asset is gone forever, as is the local control over the resource or project. Any local control over rates to the customer base, rates which now may have to satisfy stockholders and private investors, is also lost. A private entity invariably raises the rates formerly charged by a public entity, often dramatically in a short period of time. There will also be likely consequences to the workforce of the former public utility.

Before the outright sale of an authority system, the municipality essentially dissolves the authority, assumes responsibility for the operations, and inherits all of the debt and assets. They can then put out bids for the sale of the project managed by the former authority. The municipality that created the authority receives the net proceeds from the sale of the project after all debt has been paid. The amount of money being paid for authority systems is significant and can amount to tens of millions of dollars for medium-size boroughs and townships. While the incorporating municipality may realize a significant financial infusion, all other municipalities that were served by the authority and helped to “grow” the system are not guaranteed any payback from the sale and will not necessarily share in the proceeds. This is often a large and contentious issue when privatization is considered.

In cases where the dissolution of an authority by a municipality that plans to continue to operate the project, all funds conveyed must be placed and held in certain accounts (Section 5622(d)) pertinent to the project (water, sewer, etc.). However, where a sale (privatization) of the former authority project occurs, the use of these funds is not restricted in any way for use by the municipality.

## Termination of an Authority (Section 5619)

An authority may be terminated after the bonds and interest secured by the pledge of revenues from its project have been paid. The termination is subject to any agreements concerning the disposition of the project or other property owned by the authority. The authority board submits a certificate requesting termination of the authority to the local government that created it. After the elected governing body approves the certificate, it is filed with the Secretary of the Commonwealth. Upon termination, all property and other assets as well as any potential liabilities of the terminated authority pass to the incorporating local government, and the authority ceases to exist.

Unless extended by articles of amendment filed in the Department of State, the authority’s term of existence automatically expires after 50 years without further local action. In most cases, the articles of incorporation are amended to extend the term of the authority before the expiration dates. This almost always occurs when new bonds are issued or bonds are refinanced so that the maturity date of the bonds does not exceed the term of existence of the authority. Even where there is no outstanding debt, active authorities can use the amendment process to extend their term of existence. Section 5623 allow for revival of an expired authority within five years after their expiration.

## References

1. *Deer Creek Drainage Basin Auth. v. County Bd. of Elections of Allegheny County*, 381 A.2d 103 (Pa. 1977) ([A] contract entered into pursuant to an ordinance creating a water district between township and municipal authority was valid).
2. 53 PA. CONS. STAT. ANN. § 5607(a)(1)-(17) (2012).
3. 53 PA. CONS. STAT. ANN. § 5607(b)(2) (2012) (“[N]one of the powers granted by this chapter shall be exercised in the construction, financing, improvement, maintenance, extension, or operation of any project or projects or providing financing for insurance revenues, which in whole or in part compete with existing enterprises serving substantially the same purposes”).
4. 53 PA. CONS. STAT. ANN. § 5607(g) (2012) (“[t]he authority shall make planning or feasibility studies to determine needed improvements or administrative services”); *Altoona Housing Auth. v. City of Altoona*, 785 A.2d 1047 (Pa. Commw. Ct. 2001) (sales of housing authority property must have been preceded by a determination of need before a housing project was conveyed to the city).
5. 53 PA. CONS. STAT. ANN. § 5603(a) (2012).
6. 53 PA. CONS. STAT. ANN. § 5607(c) (2012) (“[e]ffect of specificity.—The municipality or municipalities organizing such an authority may, in the resolution or ordinance signifying their intention so to do or from time to time by subsequent resolution or ordinance, specify the project or projects to be undertaken by the authority, and no other projects shall be undertaken by the authority than those so specified. If the municipal authorities organizing an authority fail to specify the project or projects to be undertaken, then the authority shall be deemed to have all the powers granted by this chapter”); *Municipality Authorities Act*, Section 4.A(c); *Upper Dublin Twp. Auth. v. Pizek*, 218 A.2d 328 (Pa. 1966); *Shannon v. Ashton*, 68 Mun.L.R. 39, 1975 WL 17014 1975 (“[t]he Articles of Incorporation gave Suburban the specific duty to operate/maintain/improve the water system in Forks Township. . .therefore Suburban ha[d] a duty to provide reasonable and nondiscrimination water service).

7. 53 PA. CONS. STAT. ANN. § 5607(b)(1) (2012).
8. 53 PA. CONS. STAT. ANN. § 5603(b) (2012).
9. 53 PA. CONS. STAT. ANN. § 5603(c) (2012).
10. 53 PA. CONS. STAT. ANN. § 5603(c)(1)-(7) (2012).
11. 53 PA. CONS. STAT. ANN. § 5607(d)(1) (2012).
12. 53 PA. CONS. STAT. ANN. § 5605(a)(2) (2012).
13. 53 PA. CONS. STAT. ANN. § 5603(c)(1) (2012).
14. 53 PA. CONS. STAT. ANN. § 5606 (2012) (“[m]erger and consolidation authorized – Any two or more existing authorities, all the projects of all of which are released to the same school district, may be merged into one authority, hereinafter designated as the surviving authority, or consolidated into a new authority”); Municipality Authorities Act, Section 3.3.
15. 53 PA. CONS. STAT. ANN. § 5613 (2012) (“[a]ny municipality, school district, or owner may sell, lease, lend, grant, convey, transfer, or pay over to any authority with or without consideration any project or any part of it”).
16. 53 PA. CONS. STAT. ANN. § 5619 (2012) (“[w]hen an authority has finally paid and discharged all bonds issued and outstanding and the interest due . . . the authority . . . terminate its existence”).
17. *County of Allegheny v. Moon Twp. Mun. Auth.*, 671 A.2d 662, 666, (Pa. 1996) (“the plain and ordinary language of the Municipal Authorities Act specifically authorizes a municipal authority to convey any and all property without limitation”); *Carbo v. Redstone Tp.* 960 A.2d 899 Pa.Cmwth., 2008. November 20, 2008 (citing *County of Allegheny v. Moon Twp. Mun. Auth.*, “the former Municipality Authorities Act . . . authorized a municipal authority to convey any and all property without limitation”); 53 PA. CONS. STAT. ANN. § 5619(b) (2012).
18. *Forward Twp. Sanitary Sewage Auth. v. Twp. of Forward*, 654 A.2d 170 (Pa. Commw. Ct. 1995) ([T]ownship could authorize the authority to dissolve itself, and township could assume all aspects of the projects undertaken by that authority); But see *Twp. of Forks v. Forks Twp. Mun. Sewer Auth.*, 759 A.2d 47 (Pa. Commw. Ct. 2000) (“only after the Authority had completely discharged all debt shall the Authority be ordered to convey the Project to the Township”).
19. 53 PA. CONS. STAT. ANN. § 5619(c) (2012).
20. 53 PA. CONS. STAT. ANN. § 5604(b) (2012).
21. 53 PA. CONS. STAT. ANN. PA.C.S. 5604(c) (2012).
22. 53 PA. CONS. STAT. ANN. § 5604(c) (2012).
23. 53 PA. CONS. STAT. ANN. § 5604(d) (2012).
24. 53 PA. CONS. STAT. ANN. § 5604(e) (2012).
25. 53 PA. CONS. STAT. ANN. § 5604(a)(c)(d)(e) (2012).
26. *City of Chester v. Chester Redevelopment Auth.*, 686 A.2d 30, (Pa. Commw. Ct. 1996), appeal denied 695 A.2d 787; 53 PA. CONS. STAT. ANN. § 5604(d) (2012).
27. *Spring Garden Twp. v. York Area Trans. Auth.*, 556 A.2d 515 (Pa. Commw. Ct. 1989), appeal granted 575 A.2d 573, 525 Pa. 609.
28. 53 PA. CONS. STAT. ANN. § 5604(d) (2012).
29. 53 PA. CONS. STAT. ANN. § 5604(d) (2012).
30. 53 PA. CONS. STAT. ANN. § 5602 (2012) (this section does not define the term, “obligation”).
31. 53 PA. CONS. STAT. ANN. 5622 (2012); *City of Lebanon v. Com.*, 912 A.2d 338 (Pa. Commw. Ct. 2006).
32. *Clearfield Borough v. Clearfield Borough Park Auth.* 285 A.2d 532 (Pa. Commw. Ct. 1974) (“an authority throughout this Act may pass a resolution, but nowhere may it pass an ordinance. . . [holding] that the Legislature intended to permit a transfer of authority property by the unilateral action of a municipality or municipalities”).
33. *Forward Twp. Sanitary Sewage Auth. v. Twp. of Forward*, 654 A.2d 170 (Pa. Commw. Ct. 1995); *Twp. of Forks v. Forks Twp. Mun. Sewer Auth.* 759 A.2d 47 (Pa. Commw. Ct. 2000) (citing *Forward Twp. Sanitary Sewage Auth. v. Twp. of Forward*, stating, “[t]he Township created the Authority and, under Section 18(A) of the Act, it has the power, without the consent of the Authority, to order the Authority to comply with the Township’s Resolutions to pay off all Bonds and debt, convey all of its assets and dissolve the Authority”).
34. *Mifflin County v. Mifflin County Airport Auth.* 437 A.2d 781 (Pa. Commw. Ct. 1981) (“[w]e also agree with the lower court’s conclusion that the Local Government Unit Debt Act does not give the County a clear right, if any right at all, to assume the debt obligations of the Authority simply by enacting an ordinance, as the County sought to do in this case”); see also *Twp. of Forks v. Forks Twp. Mun. Sewer Auth.*, 759 A.2d 47 (Pa. Commw. Ct. 2000) (“for the purpose of dissolving an authority a municipality has the power to unilaterally direct its authority to transfer authority property without the consent of the authority provided however, that no impediment exists at the time of conveyance in the form of a trust indenture of a bond issue or other indebtedness and the authority is not foisting its debts upon the municipality without its consent”).
35. *County of Allegheny v. Moon Township Twp. Municipal Authority*, 671 A.2d 662 (Pa. 1996) (a municipal authority was authorized to convey any and all property without limitation); *Carbo v. Redstone Twp.*, 960 A.2d 899, (Pa. Commw. Ct. 2008) (“the Sewer Authority could acquire property from the Township and sell it . . . as part of a negotiated settlement”); 53 PA. CONS. STAT. ANN. § 5607 (2012).
36. 53 PA.C.S. § 5622(d) (“[T]he municipality, including an incorporated town or home rule municipality, which has acquired the project shall retain the reserves received from the authority which have been derived from operations in a separate fund, and the reserves shall only be used for the purposes of operating, maintaining, repairing, improving, and extending the project. Money received from the authority, which represents the proceeds of financing, shall be retained by the municipality in a separate fund, which shall only be used for improving or extending the project or other capital purposes related to it”).
37. 53 PA. CONS. STAT. ANN. § 5622(d) (2012).

### III. The Authority Board (Section 5610)

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#### Appointment

Municipal authorities are governed by a board whose members are appointed by the incorporating local government. The board members have overlapping five-year terms. When an authority is first created, some of the original appointments are for shorter periods, so future vacancies occur each year.<sup>1</sup> Boards may not consist of less than five members, and boards of joint authorities must contain at least one representative from each participating municipality. Allocation of representation on the board of a joint authority is agreed upon at the time the authority is created and is specified in the articles of incorporation.<sup>2</sup> If an additional municipality later joins a joint authority, the articles of joinder must specify the representation of the new member municipality and any changes in the board membership allocation among the existing members.<sup>3</sup>

**Terms.** Terms of board members expire on the first Monday in January.<sup>4</sup> After a vacancy has occurred because of the expiration of a member's term, the municipal governing body appoints a member for a term of five years from the date of the expiration of the prior term.<sup>5</sup> Appointments cannot be made by a municipality until the vacancy actually exists, in other words, until the existing member's term has expired. These appointment provisions were amended in 1978 to prevent "lame duck" municipal governing bodies from making appointments to authority boards for terms about to expire before a newly elected governing body took office on the first Monday in January.<sup>6</sup> Board members may succeed themselves.<sup>7</sup>

**Vacancies.** If a vacancy occurs on the board due to death, disqualification, resignation, or removal of a member, the municipal governing body making the original appointment, not the authority board, appoints a successor to fill the unexpired term.<sup>8</sup>

**Removal.** A board member may be removed by the Court of Common Pleas for cause, after at least 10 days' notice and a full hearing by the court.<sup>9</sup> Once appointed by a local government, a qualified board member cannot be arbitrarily removed from the authority board.<sup>10</sup> The municipal governing body has the power to remove a member of a board for missed authority board meetings. Unless excused by the authority board, a member of a board who fails to attend three consecutive meetings of the board may be removed by the appointing municipality up to 60 days after the date of the third meeting of the board that the member failed to attend.<sup>11</sup>

**Qualifications.** An individual appointed to an authority board must be a taxpayer in, maintain a business in, or be a citizen of a municipality into which one or more of the projects of the authority extends or is to extend, or to which one or more projects has been or is to be leased.<sup>12</sup> Except for special service districts located in whole or in part in cities of the first class or on the board of a business improvement district of a borough that was established on or before the effective date of this act, a majority of an authority's board members must be citizens residing in the incorporating municipality or incorporating municipalities of the authority.<sup>13</sup>

The choice of board members must also be conditioned by the conflict of interest section of the Municipality Authorities Act.<sup>14</sup> This section prohibits an authority board member from being in any manner interested in any contract or agreement with the authority for any reason.<sup>15</sup> This prohibition has been held to apply only to certain pecuniary or proprietary interests of the board members. A general interest shared by all residents of the community is not grounds for disqualification.<sup>16</sup> If a board decides to dissolve the municipal authority, there is no conflict of interest.<sup>17</sup>

The eligibility of members of municipal governing bodies to serve on authority boards had been an unsettled issue for some time. However, in 1993, the Pennsylvania Supreme Court determined a township supervisor could legally serve on the board of a municipal authority created by the township.<sup>18</sup> This dual office holding did not violate the Second Class Township Code,<sup>19</sup> which limited the appointed offices supervisors could fill, because authorities are independent

agencies of the Commonwealth and not part of the township government. Any incompatibility of office must be established by the legislature, not by the courts. The legislature in 2013 and 2014 clarified in amendments to the Borough Code and Third Class City Code that elected officers can serve on authority boards and be compensated. This means that members of county, borough, city, and township governing bodies may be appointed to authority boards and be compensated.<sup>20</sup>

All authority board members fall within the provisions of the State Ethics Law. They must file the financial disclosure statement required by the act on an annual basis.<sup>21</sup> The Pennsylvania Commonwealth Court ruled an elected official violated the State Ethics Law when he voted to appoint himself to an authority board where he received compensation.<sup>22</sup> The State Ethics Commission determined that the Ethics Law did not prohibit a municipal authority board member from simultaneously serving as an employee of the authority and receiving a salary and legitimate reimbursable expenses.<sup>23</sup> However, a board member cannot receive reimbursement from an authority for lost wages from his private employment for time spent doing authority business.<sup>24</sup>

## Board Meetings

**Organization Meeting.** Immediately after receiving the certificate of incorporation, the business of organizing the authority commences. Remember, a municipal authority is an instrumentality of the Commonwealth, not a department of the incorporating municipal government(s). This independent agency coordinates its actions with local government, but it is not controlled by that government. The choice of individuals to serve on the initial authority board is critical, for it is these citizens who set the policies and guidelines under which the authority will operate. In all probability, the attorney who serves the municipality or, in the case of a joint authority, an attorney who serves one or more of the incorporating municipalities will represent the incorporating local government(s) in the formation of the authority. That attorney will, most likely, be the individual who, in conjunction with all members of the authority board, sets up the first meeting of the authority.

The business that must be accomplished at the first meeting of a new authority is extensive, and one of the most critical appointments the authority board must make at that first meeting is appointment of its own solicitor. It is the solicitor who will provide the initial guidance to the board members on the powers and limitations on the authority's operation and how the authority can accomplish its purposes to serve the citizens of the incorporating municipality(s). Other issues to address are the selection of board officers, designation of regular meeting dates, organizational structure and hiring of key personnel, and hiring of contract consultants, such as an engineer or accountant.

**Quorum.** A majority of the members constitutes a quorum for the purpose of organizing and conducting business of the board.<sup>25</sup> All action may be taken by a majority vote of the members present, unless the board's bylaws require a larger number in any situation. The board has full authority to manage the properties and business of the authority. It can prescribe, amend, and repeal bylaws and rules and regulations.<sup>26</sup> It determines the number and compensation of any employees,<sup>27</sup> but the board cannot determine its own compensation. This is set by the municipal governing body of the authority.

**Attendance.** Unless excused by the board, a member of the authority board who fails to attend three consecutive meetings of the board may be removed by the appointing municipality up to 60 days after the date of the third meeting of the board that the member failed to attend.<sup>28</sup>

**Sunshine Act.** Municipal authority boards are subject to the Sunshine Act.<sup>29</sup> All formal actions and deliberations leading to formal actions must be taken at a duly advertised public meeting.<sup>30</sup> Citizen comments must be heard at meetings prior to the board taking action on issues in front of it.<sup>31</sup> Minutes and records of the board are public documents, subject to the examination of any citizen of Pennsylvania.<sup>32</sup>

**Agenda.** Active authority boards usually meet on a monthly basis. The day-to-day operation of the authority project is delegated to a manager who works within the policy framework set by the board. The board receives reports on the finances and operations of the authority from staff and consultants at its regular meetings. A typical agenda for an authority board meeting includes the following:

- Public comment
- Approval of minutes of previous meeting
- Communications from local, state, and federal agencies
- Financial reports, including a summary of revenues, expenditures, and balances for all funds for the reporting period and on a year-to-date basis
- Approval of bills
- Opening bids
- Engineer's report, including status of any construction projects
- Solicitor's report
- Approval/award of contracts
- Other old business
- New business
- Adjournment

## Compensation

Members of authorities created by school districts may receive no compensation.<sup>33</sup> Members of boards of other authorities may receive salaries as set by the governing body of the appointing municipality. Salaries of board members cannot be increased or diminished by the municipal governing body during the term of a sitting board member.<sup>34</sup> Any salary change will be effective only for subsequently appointed members. Any change in the salary for authority board members must be approved by the governing body of the incorporating municipality.<sup>35</sup>

Authority boards may create positions of officers for the authority, appoint board members to officer positions, and set officer salaries.<sup>36</sup> There is no prohibition on board members voting for their own appointments to officer positions or their own salaries as officers.<sup>37</sup> Authority board members participating in a board vote to elect themselves to paid officer positions or to set their salaries as officers do not violate the State Ethics Act.<sup>38</sup> As a matter of good public relations, it might be advisable to refrain from doing this. However, the creation of officer positions specifically to circumvent the requirement of the Municipality Authorities Act that board member salaries be set by municipal governing bodies is an abuse of public office and a violation of the Ethics Act.

Board members may be covered by group life and disability insurance policies.<sup>39</sup> They may not be included in any group coverage for hospital and/or medical benefits.<sup>40</sup> They are not eligible for pensions.<sup>41</sup>

## Municipality/Authority Relations

The need for cooperation among the officials of the municipality and the authority board along with the officers, agents, and consultants of both entities is absolutely necessary. On the one hand, the municipality must remember the board is composed of qualified and competent citizens who are giving their time, effort, interest, and talents toward accomplishing the authority's goals to serve the community. On the other hand, the authority board must realize it is not an entity unto itself. It was created by the municipality to provide a public service. The cost of that service is paid by the property owners within the authority's service area, and those property owners elect the officials who appoint the members of the authority board. Neither the municipality nor the authority can operate effectively within a vacuum. Open communication and willing cooperation between them is necessary to maintain the viability of the public services for the community.



Once an authority is created and its members appointed, a municipality has little direct control over the operations of the authority. The municipal governing body may specify the project or projects to be undertaken by the authority in its original ordinance initiating the incorporation process or by a subsequent ordinance.<sup>42</sup> Decisions as to the methods used to accomplish the project are entirely within the power of the authority board. Despite the fact that the authority has full control over the operation of its business affairs, the needs and desires of the municipality as expressed by its elected and appointed officials must be taken into consideration by the board.

**Authority Service Area.** The service area of an authority is a discrete area, typically identified in the articles of incorporation, within which it has the exclusive power to set its rates.<sup>43</sup> If there is an unresolved dispute of the nature and extent of the service area, the courts will interpret the same.<sup>44</sup>

An existing authority service is protected under the act which prohibits another authority from duplicative or competitive enterprises. Additional court case references<sup>(45-47)</sup> are found under References.

**Zoning and Land Use Controls.** A municipal authority's use of its property is subject to the zoning ordinance of the municipality where the property is located.<sup>48</sup> Authority compliance can help cement good working relations between the authority and the municipality. The authority should actively participate in the formulation of any changes to the municipality's comprehensive plan or subdivision and land use ordinance. The ability of a sewer or water authority to extend service is critical to the development of the community. The authority and the municipality must reach agreement on the standards for construction of new water and sewer lines by developers under the subdivision ordinance.

Sections of the Municipalities Planning Code (MPC – Title 53 P.S. §10101) directly apply to municipal authorities, particularly Sections 303, 503.1, 608.1, and 1105 (c) (d).

**Assessments.** Assessments against properties benefited by construction of new water or sewer lines in Section 5607 (d) (22) in the Municipality Authorities Act can be made by an authority only if it has submitted its plan of construction and costs to the municipality where the project is located prior to construction.<sup>49</sup> The municipal governing body must approve the plan and its estimated cost. The aggregate amount assessed against property owners cannot exceed the cost as approved by the municipality.<sup>50</sup>

In the case of business district authorities, the authority must submit its plan for business improvements and administrative services, the estimated costs and proposed method of assessments for business improvements, and charges for administrative services to the municipality where the project is located.

The municipality must approve the plan, cost, method of assessment, and charges before any assessments or charges can be made.<sup>51</sup>

A municipal authority must have the prior approval of the municipal governing body before designating or joining with other local units in designating an area as a transportation development district.<sup>52</sup> Any assessments to be imposed on properties benefited by the transportation facility projects undertaken for the district must be first approved by the municipal governing body.

**Rates and Charges.** A municipal authority has the power in Section 5607(d)(9) and (24) to set its own rates and other charges.<sup>53</sup> The municipality has no role in this process except where authorized by contract between it and the authority. Rates must be uniform and reasonable.<sup>54</sup> The municipal authority has the exclusive authority to tapping fees.<sup>55</sup> It is the authority's fee schedule, and not the incorporating municipality's, that is controlling.<sup>56</sup>

**Services.** The authority also has the sole right to determine the services and improvements required to provide adequate, safe, and reasonable service, including extensions.<sup>57</sup> An authority as the successor to a municipal water department is not bound by the municipality's prior service line maintenance policy, but has full power to make its own determination on maintenance responsibilities in determining its services and setting its rates.<sup>58</sup> Any person, including a

municipal government, questioning the reasonableness or uniformity of any authority rate or the adequacy, safety, and reasonableness of the authority's services, including extensions, may bring suit in the Court of Common Pleas.<sup>59</sup>

Ordinarily, the amount of control exercised by a municipality over an authority is generally limited to annual appointments to the authority board, as well as any limitations that may be established by the municipality in the articles of incorporation. The municipality and the authority can enter into contractual agreements that grant the elected officials additional controls over authority activities. The municipality does have the right to reacquire an authority's projects by amending the articles of incorporation, or dissolving the authority.

## Public Responsiveness

All authority board meetings are open to the public, and under the 1998 amendment to the Sunshine Act, the authority board (as well as municipal governing bodies) must hear public comments from those attending the meeting prior to taking official action.<sup>60</sup>

## References

1. 53 PA. CONS. STAT. ANN. § 5610(a)(1) (2012).
2. 53 PA. CONS. STAT. ANN. § 5603(c) (2012).
3. 53 PA. CONS. STAT. ANN. § 5604 (2012).
4. 53 PA. CONS. STAT. ANN. § 5610(a)(1)(2) (2012).
5. *Suplee v. Warrington Twp.*, 30 Pa. D. & C.3d 554 (C.P. Bucks Co. 1984).
6. 53 PA. CONS. STAT. ANN. § 5610(d)(a) (2012); Commonwealth ex rel. *Waltman v. Graczyk*, 460 A.2d 1098 (Pa. 1983) (board membership expired on Sunday, December 31, 1979, not Sunday, January 7, 1979, because the first Monday was January 1, 1979); *Ross Twp v. Menhorn*, 588 A.2d 1347 (Pa. Commw. Ct. 1991) (vacancies can be filled only after the board's term expired, so all midnight appointments done by the "lame duck" board were invalid); *Rastall v. DeBouse* 736 A.2d 756 (Pa. Commw. Ct. 1999) (citing *Ross Twp v. Menhorn*, which stated that "lame-duck" appointments are invalid). *Borough of Middletown and John Patten v. Peter Pappas*, No. 2012 CV 9612, Dauphin County. *Anna Maria Caldara v. Bangor Borough Authority (Sewer)*, No. C-48-CV-2011-3593, Northampton County.
7. 53 PA. CONS. STAT. ANN. § 5610(d) (2012) ("[m]embers shall hold office until their successors have been appointed and may succeed themselves").
8. 53 PA. CONS. STAT. ANN. § 5610(d) ("[i]f a vacancy shall occur by reason of the death, disqualification, resignation, or removal of a member, the municipal authorities shall appoint a successor to fill his unexpired term. In joint authorities such vacancies shall be filled by the municipal authorities of the municipality in the representation of which the vacancy occurs. If any municipality withdraws from a joint authority, the term of any member appointed from the municipality shall immediately terminate").
9. 53 PA. CONS. STAT. ANN. § 5610(d) (2012) ("[a] member may be removed for cause by the Court of Common Pleas of the county in which the authority is located after having been provided with a copy of the charges against him for at least 10 days and after having been provided a full hearing by the court").
10. *Ambridge Water Auth. v. Ambridge Borough*, 13 Pa. D. & C.3d 303, at 308 (C.P. Beaver Co., 1980).
11. 53 PA. CONS. STAT. ANN. § 5610(f) (2012) ("[u]nless excused by the board, a member of a board who fails to attend three consecutive meetings of the board may be removed by the appointing municipality up to 60 days after the date of the third meeting of the board which the member failed to attend").
12. 53 PA. CONS. STAT. ANN. § 5610(b)(1) (2012).
13. 53 PA. CONS. STAT. ANN. § 5610 (b)(1) (2012) ("[e]xcept for special service districts located in whole or in part in cities of the first class or as provided in paragraph (2), a majority of an authority's board members shall be citizens residing in the incorporating municipality or incorporating municipalities of the authority").
14. 53 PA. CONS. STAT. ANN. § 5614(e) (2012).
15. Id. ("[n]o member of the authority or officer or employee of the authority may directly or indirectly be a party to or be interested in any contract or agreement with the authority if the contract or agreement establishes liability against or indebtedness of the authority. Any contract or agreement made in violation of this subsection is void, and no action may be maintained on the agreement against the authority").
16. *Mount Gretna Auth. v. Mt. Gretna Heights Ass'n.*, 369 A.2d 1356 (Pa. Commw. Ct. 1977) (municipal authority bought sewage system from nonprofit and because the savings in maintenance costs were shared equally by all borough residents, the municipal authorities' statute regarding competition in award of contracts was not violated).
17. *Salem Twp. Mun. Auth. v. Twp. of Salem*, 820 A.2d 888 (Pa. Commw. Ct. 2003) (vote of board members to dissolve a municipal authority is not a conflict of interest).
18. *Commonwealth v. Lucas*, 632 A.2d 868 (Pa. 1993) (appellant could be a township supervisor and be on an authority board because "appointive township office or position" in 53 PA. STAT. ANN. § 65410(b) did not include being a member of a municipal authority board).
19. 53 PA. STAT. ANN. § 65403 ("except as otherwise provided in this act, no supervisor shall at the same time hold any other elective or appointive township office or position).
20. Act 37 of 2013 amending the Borough Code and Act 22 of 2014 amending the Third Class City Code.
21. 65 PA. CONS. STAT. ANN. § 1104 (2012) ("[e]ach public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position).

22. *Koslow v. Commonwealth, State Ethics Comm'n*, 540 A.2d 1374, 116 Pa.Cmwth. 19, appeal denied 533 A.2d 971, 520 Pa.609 (township commissioner violated the State Ethics Act by using his township office to appoint himself to membership on a municipal authority because he received compensation for the municipal authority board appointment).
23. State Ethics Commission, Opinion No. 91-006 (1991).
24. State Ethics Commission, Opinion No. 94-003 (1994).
25. 53 PA. CONS. STAT. ANN. § 5610(e) (2012) (“[a] majority of the members shall constitute a quorum of the board for the purpose of organizing and conducting the business of the authority and for all other purposes, and all action may be taken by vote of a majority of the members present unless the bylaws shall require a larger number”).
26. 53 PA. CONS. STAT. ANN. § 5610(e) (2012) (“[t]he board shall have full authority to manage the properties and business of the authority and to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised and embodied”).
27. 53 PA. CONS. STAT. ANN. § 5610(e) (2012) (“[t]he board shall fix and determine the number of officers, agents, and employees of the authority and their respective powers, duties, and compensation and may appoint to such office or offices any member of the board with such powers, duties, and compensation as the board may deem proper”).
28. 53 PA. CONS. STAT. ANN. § 5610(f) (2012) (“[u]nless excused by the board, a member of a board who fails to attend three consecutive meetings of the board may be removed by the appointing municipality up to 60 days after the date of the third meeting of the board which the member failed to attend”).
29. 65 PA. CONS. STAT. ANN. §§ 701-716 (2012).
30. 65 PA. CONS. STAT. ANN. § 702 (a)(b) (2012) (“(a) the right of the public to be present at all meetings is vital to the enhancement and proper functioning of the democratic process); 65 PA. CONS. STAT. ANN. § 704 (2012) (“[o]fficial action and deliberations by a quorum of the members of the agency shall take place at a meeting to the public unless closed under Section 707, 708, or 712”); *Erie Mun. Airport Auth. v. Automation Devices, Inc.*, 325 A.2d 501 (Pa.Commw. Ct. 1974) (there was a violation of the Right to Know Act).
31. 65 PA. CONS. STAT. ANN. § 710.1(a) (2012) (“the board . . . shall provide a reasonable opportunity at each advertised regular meeting . . . for residents . . . to comment on matters of concern, official action, or deliberation, which are or may be before the board or council prior to taking official action”).
32. 65 PA. STAT. § 67.301.
33. 53 PA. CONS. STAT. ANN. § 5610(d) (2012) (“[m]embers of the board of any authority organized or created by a school district shall receive no compensation for their services”).
34. 53 PA. CONS. STAT. ANN. § 5610(d) (2012) (“[m]embers shall hold office until their successors have been appointed and may succeed themselves and, except members of the boards of authorities organized or created by a school district, shall receive such salaries as may be determined by the governing body of the municipality, but no salaries shall be increased or diminished by a governing body during the term for which the member shall have been appointed.”)
35. *McGuire v. State Ethics Comm'n*, 657 A.2d 1346 (Pa.Commw. Ct. 1995) (to violate the Ethics law, the public official must “use” his or her office to obtain financial gain. However, “use” is not defined, and the court found that “use” of public office requires action by a public official that in some way facilitates his receipt of compensation to which he is not entitled).
36. 53 PA. CONS. STAT. ANN. § 5607(d)(8) (2012) (“[t]o appoint officers, agents, employees, and servants, to prescribe their duties and to fix their compensation”).
37. *Rebottini v. State Ethics Comm'n*, 634 A.2d 743 (Pa. Commw. Ct. 1993); McGuire, supra, note 36.
38. McGuire, supra, note 36 (the Ethics Act was not violated when the public official did not actively do anything to get an increase in salary when he was appointed to the municipal authority board).
39. 53 PA. CONS. STAT. ANN. § 5607 (d)(20)(i) (2012).
40. 53 PA. CONS. STAT. ANN. § 5607 (d)(20)(ii) (2012).
41. 53 PA. CONS. STAT. ANN. § 5607 (d)(20) (2012) (“but not its appointed officers and officials nor their dependents for hospital and medical benefits and to contract for its employees but not its appointed officers and officials with an insurance company, association, or exchange authorized to transact business in this Commonwealth granting annuities or to establish, maintain, operate, and administer its own pension plan covering its employees, but not its appointed officers and officials”).
42. 53 PA. CONS. STAT. ANN. § 5607(c) (2012).
43. *Highridge Water Auth. v. Lower Indiana County Mun. Auth.*, 689A.2d 374 (Pa. Commw. Ct. 1997) (“the rights and duties of Highridge and LICMA are limited to those set forth in the contract between them”).
44. *Beaver Falls Mun. Auth. v. Mun. Auth. of the Borough of Conway*, 689 A.2d 379 (Pa. Commw. Ct. 1997) appeal denied 704 A.2d 639 (municipal authority is authorized in its legislation to service the City of Beaver Falls and is not entitled to additional protections that are outside of stipulated contractual rights).
45. *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 (Pa. Commw. Ct. 1989); 53 PA. CONS. STAT. ANN. § 5607 (b)(2) (2012) (“the purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety, and prosperity and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises”).
46. *Evansburg Water Co, v. Perkiomen Twp.*, 569 A.2d 428 (Pa. Commw. Ct. 1990), appeal denied 582 A.2d 326, 525 Pa. 660 (municipal water authority succeeded in enjoining township water authority from interfering with or duplicating water service that the municipal water authority already served); *Chester Water Auth. v. Pa. Pub. Util.*, 868 A.2d 384 (Pa. 2005).
47. Highridge, supra, note 43; Beaver Falls, supra, note 44.
48. *Wilksburg-Penn Joint Water Auth. v. Churchill Borough*, 207 A.2d 905 (Pa. 1965); *Berk v. Wilksburg Zoning Hearing Bd.*, 410 A.2d 904 (Pa. Commw. Ct. 1980).
49. 53 PA. CONS. STAT. ANN. § 5607(d)(22) (2012) (“[n]o charge shall be assessed unless prior to the construction of a sewer or water main the authority submitted the plan of construction and estimated cost to the municipality in which the project is to be undertaken and the municipality approved it”).

50. PA. STAT. ANN. § 306 *Evans v. West Norriton Twp. Mun. Auth.*, 87 A.2d 474, 476, (Pa. 1952) (“and the municipal authority shall have approved such plan and estimated cost: And provided further, that the cost of the construction shall not have exceeded the estimated cost as approved by the municipal authority”).
51. 53 PA. CONS. STAT. ANN. § 5607(d)(27) (2012); Municipality Authorities Act.
52. 53 PA. STAT. ANN. § 1622 (a) (“[h]owever, a municipal authority may not designate or join in the designation of an area or areas as a transportation development district without the express approval of the governing body or bodies of the municipality or municipalities that organized that municipal authority”).
53. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012).
54. *Id.*
55. 53 PA. CONS. STAT. ANN. § 5607 (d)(24)(c) (2012).
56. *Smith v. Athens Twp. Auth.*, 685 A.2d 651, (Pa. Commw. Ct. 1996), appeal denied 693 A.2d 591 (because the authority had the exclusive power to regulate sewer rates and tap-in fees, the municipality’s ordinance establishing fees was invalid).
57. 53 PA. CONS. STAT. ANN. § 5607 (d)(9) (2012).
58. *Glennon’s Milk Serv. v. West Chester Area Mun. Auth.*, 538 A.2d 138 (Pa. Commw. Ct. 1988) (holding that municipal authority had discretion under Municipality Authorities Act to implement rules and regulations requiring customers to keep their service pipes, on and off their property, in good working order at their own expense).
59. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012) *Windber Area Auth. v. Lasky Landfill, Inc.*, 602 A.2d 418, 420 (Pa. Commw. Ct. 1992) (holding that the express language of that section of the act provides that the Court of Common Pleas must have exclusive jurisdiction over questions involving rates or service); *White Rock Sewage Corp. v. Pa. Pub. Util. Comm’n*, 578 A.2d 984 (Pa. Commw. Ct. 1990).
60. 65 PA. CONS. STAT. ANN. § 710.1 (a)(2012).

## IV. Authority Operations (Section 5607 (d))

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### Powers of the Authority

The Municipality Authorities Act specifies the rights and powers of the authority and vests them in the authority board. The board exercises these powers through its officers, employees, and consultants. They include the following powers (in abbreviated form):<sup>1</sup>

- 1) To exist for 50 years as a corporation.
- 2) To sue and be sued.
- 3) To adopt a corporate seal.
- 4) To acquire, hold, lease, and use any property or franchise necessary or desirable for carrying out its purpose, and to sell, lease, or dispose of its property at any time.
- 5) To acquire projects by purchase, lease, or otherwise and to construct, improve, maintain, repair, and operate projects.
- 6) To finance projects by making loans.
- 7) To adopt bylaws for the management and regulation of its affairs.
- 8) To appoint officers, agents, and employees, prescribe their duties, and fix compensation.
- 9) To fix, alter, charge, and collect reasonable and uniform rates and other charges in its service area.
- 10) To notify and bill owner for non-payment of tenant water bill.
- 11) To notify and bill owner for non-payment of tenant sewer bill.
- 12) To borrow money and issue notes, bonds, and other evidences of indebtedness or obligations of the authority.
- 13) To make contracts and execute all instruments necessary or convenient for carrying out its business.
- 14) To borrow money, accept grants from, and enter into contracts, leases, or other transactions with any federal or state agency, any municipality, school district, corporation, or authority.
- 15) To exercise the power of eminent domain.
- 16) To pledge or otherwise encumber the revenues or receipts of the authority as security for its obligations.
- 17) To do anything necessary or convenient for promoting its business and the general welfare of the authority and to carry out its legal powers, and adopt reasonable rules and regulations.
- 18) To contract with any municipality, corporation, or public authority of Pennsylvania or any adjoining state for projects crossing state lines.
- 19) To enter into contracts to supply water and other services to municipalities not members of the authority and to fix the amount to be paid.
- 20) To make contracts for employee benefits, including life and health insurance coverage.
- 21) To make assessments for sewer or water main construction to properties benefitted.
- 22) To charge water and sewer assessments according to the front foot rule.
- 23) To require posting of financial security for developer-installed water and sewer lines.
- 24) To assess tapping fees for water and sewer projects (lengthy detailed explanations of this section are in the Municipality Authorities Act).

- 25) To construct tunnels, bridges, underpasses, etc. with PUC approval for grade crossings.
- 26) To appoint police officers for protection of the property of the authority.
- 27) To make assessments for business improvements and administrative services.
- 28) To adopt rules and regulations for facility safety at airport authorities.
- 29) To provide financing for insurance reserves.
- 30) To permit developer/property owner to install and dedicate water and sewer lines.
- 31) To provide mandatory reimbursement for new connections to developer-installed and dedicated water and sewer lines.
- 32) Deleted in the Municipality Authorities Act.
- 33) To transfer provisions of (30) and (31) to other served jurisdictions.
- 34) To allow stormwater authorities' rates to reflect adoption of best management practices.

## Bylaws, Rules, and Regulations

The board must write and adopt bylaws generally describing the management of its affairs and the appointment of officers, agents, and employees and prescribe their duties.<sup>2</sup> The bylaws should establish employee policy including hours of work, compensation, benefits, discipline, supervision, and other related issues. The bylaws should include regulations on the care and control of property of the authority handling of finances, accounting system, investments, procurement, and insurance.

It is important that authorities adopt by resolution a set of rules, rates, and regulations governing the form of service to its customers on record. The development of such a document provides the board and staff with a mechanism to deal with essentially all questions or challenges that staff may be confronted with in the day-to-day operation of the authority. The rules and regulations must be in conformance with the Municipality Authorities Act and must be specific so as to remove ambiguities that may occur in the absence of such a document.

For example, the rules and regulations for an operating water authority should generally cover the following areas:

- 1) The history, service area, definition of terms, and the authority's responsibility during periods when interruption of service may occur.
- 2) The application for service, billing, reasons for service terminations, delinquent bills, and customer responsibility.
- 3) Connection and tapping fees.<sup>3</sup>
- 4) Cross connections and backflow prevention. This program protects customers from possible contamination from backflow into the distribution system from the customer's side of the meter.<sup>4</sup>
- 5) The authority's policy regarding the service line from the main in the street to the customer's premises including size of service, type of materials permitted, and maintenance responsibility for the customer's portion of the service line.
- 6) Location and installation of fire hydrants both public and private and conditions of use of operation.<sup>5</sup>
- 7) Installation of residential, commercial, and industrial water meters, including the size of meters and the authority's specifications for meter pits as well as the maintenance responsibility for the meters and the meter pit.<sup>6</sup>
- 8) Water main extensions. The authority should have a policy covering the cost sharing of main extensions requested by customers and developers. The policy should include specific language defining the conditions that must be met by any applicant requesting a main extension, a formula for computing capacity charges, tapping fees, connection charges, and a clearly spelled-out policy on refunds.<sup>7</sup>
- 9) The authority's schedule of rates.<sup>8</sup>

The above items include most but not necessarily all subjects to be covered. Each authority is unique and may require specific information not listed above. The important point is that the board and staff must have a set of rules and regulations, a legal basis for decision making when administering the authority's business.

## Authority Employees

The board appoints officers and employees to carry out its instructions<sup>9</sup> regarding the operation of the authority. The board has full power to devise its own administrative framework and hire its own employees.<sup>10</sup> One of the most important decisions of the board is to hire a manager who has the professional expertise to carry out the duties as defined by the board of directors. Once hired, it is of critical importance to allow the manager the lead role in hiring employees in conjunction with the board. It is the board's responsibility to set policy and to require the staff to carry out these policies. Inasmuch as the board has the ultimate fiduciary responsibility for the authority, it is prudent for the board to require staff reports on the entire operation on a monthly basis, or more often in some cases.

Authorities are subject to the Public Employees Relations Act.<sup>11</sup> Terms of collective bargaining agreements entered into under the act can supersede an authority's otherwise exclusive power to manage its own employees.<sup>12</sup>

The authority may purchase individual or group insurance policies covering life, accidental death and dismemberment, and disability income for employees.<sup>13</sup> It may provide hospital and medical insurance benefits.<sup>14</sup> It may establish pension plans for employees or join the Pennsylvania Municipal Retirement System.<sup>15</sup> Authorities are included under the Municipal Pension Plan Funding Standard and Recovery Act.<sup>16</sup> Any authority establishing a pension plan for its employees is subject to the actuarial reporting and minimum funding standards established in the act.

## Professional Advisors

Authority boards receive assistance from professional advisors during the organization and later phases of an authority's existence. These experts devote a considerable amount of time and energy to the authority's activities. Because of this, they are frequently influential in authority affairs even though they have no official decision making role.

The **solicitor** serves as the authority's legal advisor in its daily operation. Since these various legal duties necessitate constant contacts with board members, the solicitor often exerts a strong influence on authority business.

An **architect or engineer** prepares plans for the project and supervises construction. They also make rate studies for sewer, water, and other projects.

A **bond counsel** is employed to supply specialized legal advice and to furnish the authority with a statement its bonds have been legally issued. This statement, called a legal opinion, is necessary before bonds can be marketed. Bond buyers rely on the legal opinions of recognized law firms as evidence the bonds are valid and binding obligations on the authority.

A **financial advisor**, usually an investment banking house, assists the authority by estimating interest costs, determining an appropriate schedule for the maturity of bonds and preparing the prospectus.

A **trustee bank** serves the authority by receiving the proceeds of the bond issue and paying the contractors or other parties as directed. It receives current revenues and applies them to appropriate funds as specified in the bond indenture, pays the principal and interest on the bonds when due, and attends to such chores as the destruction of bonds and interest coupons when paid. If surplus funds are available, it may invest them for the authority. It chooses by lot the bonds selected for early redemption or purchases them in the open market if available at less than the current redemption price.

The Municipality Authorities Act requires a **certified public accountant** to examine the authority books at least once a year.<sup>17</sup> This audit report must be delivered to the local government creating the authority and filed with DCED. A financial statement must be published annually.<sup>18</sup> Because of this close association with authority affairs, the certified public accountant may be an informal advisor on financial and administrative matters. The architect or engineer, solicitor, bond counsel, and investment banker usually serve in the early stages of a project.

## Acquiring Facilities

An authority may need certain physical properties to supply its intended services to the public. These facilities may be acquired by grant or purchase from the parent local government or from a private company, or the authority may construct them.

An authority has the power to acquire, subject to the limitations of the act, fee simple title or interest or easement in lands, water, and water rights considered necessary for its purposes by purchase or eminent domain proceedings.<sup>19</sup> It cannot condemn property owned or used by the United States, the Commonwealth of Pennsylvania, any political subdivision, or another authority. It cannot condemn the property of a public service company, property used for burial places, or places of public worship. The authority may exercise eminent domain powers both inside and outside the boundaries of its incorporating local government.<sup>20</sup> An example of the need for such an exercise is right of way for a pipeline from a distant water supply source or a connector to reach a sewage treatment plant along a river. The amount of land to be acquired for a project is a matter within the authority's discretion.<sup>21</sup>

If an authority wishes to purchase or lease property subject to the jurisdiction of the Public Utility Commission, it must first notify its incorporating local government of the terms and conditions of the purchase or lease agreement.<sup>22</sup> Before completing acquisition, the municipal governing body must approve it by a two-thirds vote.<sup>23</sup> For joint authorities, a two-thirds vote of the governing body of each parent municipality is required.<sup>24</sup>

## Operating Facilities

An operating authority operates its own facilities. It is responsible for the sale of the service, purchase of supplies, personnel administration, and maintenance of the facilities, in addition to financing the project. Professionally trained employees handle the daily affairs of the operation, but responsibility for a great many policy decisions rests with the board. An authority has wide freedom to do anything necessary or convenient for the conduct of its business<sup>25</sup> and is not subject to many of the restrictions found in the municipal codes.<sup>26</sup> It may establish reasonable standards, rules, and regulations for operation of its facilities, but may not unduly infringe on the property rights of its customers.<sup>27</sup>

In dealing with personnel and budgetary matters, an authority is free from many of the restraints imposed on municipalities by the Commonwealth, but authorities must adhere to certain procedures in letting contracts. The act requires all contracts of \$19,100 (subject to annual CPI adjustment) or more for construction or supplies to be awarded on the basis of competitive bidding after the specifications have been advertised.<sup>28</sup> For authorities, these bidding requirements apply only to construction or supplies. Competitive bidding is not required for a solid waste disposal contract<sup>29</sup> or for professional services.<sup>30</sup> The bidding requirements apply only where the authority is a party to the construction contract; when the authority serves merely as a financing conduit for a private, nonprofit corporation, such as a hospital, the bidding requirements of the act do not apply.<sup>31</sup>

In most respects, however, an authority is free to manage its own affairs. An operating authority may contract for the services of a management firm. In this case, the contracting firm supplies the technical ability and is the operating agent in all other respects. This method has the advantage of relieving the board of the detailed problems of management. In return, a fee must be paid to the managing firm.

Operating authorities manage projects, such as water supply or sewage disposal, where the revenue from the sale of the service can be estimated with considerable accuracy. Joint authorities in these fields are usually operating authorities.

## Authority Service Area

The service area of an authority is a discrete area, typically identified in the articles of incorporation, within which it has the exclusive power to set its rates.<sup>32</sup> Lack of clear definition of the service area can give rise to disputes over the rights or obligations for an authority to serve areas beyond the boundaries of the incorporating municipality. Recent amendments to the act require further coordination of consent by the host municipality when an authority proposes to require property or conduct projects outside of their incorporating municipality or municipalities.<sup>33</sup> Where the articles of



incorporation fail to specify a service area, the courts can interpret the service area to be the limits of the incorporating municipality,<sup>34</sup> or they can refer to some other document such as a county comprehensive plan.<sup>35</sup> A municipality may not transfer a portion of an authority's existing service area to another authority. The existing authority is protected by 53 PA. CONS. STAT. ANN. § 5607 (b)(2) of the act, which prohibits the new authority from establishing duplicative or competitive enterprises.<sup>36</sup> However, this section of the act did not preclude a township from establishing a public water system for a planned residential development which then lacked water service.<sup>37</sup> The service duplication has to be real and not potential, that is the service must be existing already and not just a possibility. Sale of water by one authority to another is governed by contract; the buyer is not within the "service area" of the seller.<sup>38</sup>

Within the defined service area, no matter how poorly defined, the authority cannot discriminate in access to its services between customers located inside and outside the incorporating municipality's boundaries.<sup>39</sup> The best solution to defining the service area of an authority outside the boundaries of its incorporating municipality is through an intergovernmental agreement between the authority and the municipality to be served. The agreement should include an accurate description of the extraterritorial service area, designation of the authority as the exclusive agent to provide service under the outside municipality's comprehensive plan and/or Act 537 plan, right of the authority to use and open public rights of way, allocation of financial responsibility for needed capacity or system upgrades, right of the authority to set rates and charges by board resolution in place of fixing them by contract, and the duration of the agreement. In a case where an authority provided sewer service to an outside developer on a contractual basis, the court required the authority to charge only the fees and charges stipulated in the original 1980 contract rather than those set later by board resolution.<sup>40</sup>

## Keeping Authorities Competitive

Services provided by authorities are not subject to direct competition, but local elected officials, business leaders, and citizens are well aware that inadequate authority service can be replaced. Authorities, therefore, are competing against potential acquirers of their projects. Authorities must improve the effectiveness of their operations, reengineering to employ the latest in technology. Upgrade of data systems in all phases of the operation will provide management more information and allow staff to work more effectively, resulting in greater productivity, improved service to customers, and lower rates for all customers. This can only be achieved by a real commitment from the board and authority management for retraining and continuing education of the staff.

## Legal Liability

Authorities are included within the terms of the Political Subdivision Tort Claims Act.<sup>41</sup> The act delineates the areas of legal liability and establishes procedures for suits against local government units. Authorities are authorized to purchase liability insurance, employ professional risk managers, pool public liability insurance risks with other local agencies, and establish self-insurance programs.<sup>42</sup>

## Financing (Leaseback) Authorities

Unlike an operating authority, which is totally responsible for issuing and paying debt and directly operating the project, a financing or leaseback authority borrows money to finance the construction or acquisition of the project and then leases it back to the municipality to operate. The lease is for a stipulated time, usually for the life of the outstanding bonds, and obligates the municipality to pay an amount of rent sufficient to meet authority operating costs and debt service payments. The municipality may pay this rental out of project revenues or other resources.

The lease rental debt of the municipality becomes a general obligation backed by its full faith and credit.<sup>43</sup> If necessary, the municipality may supplement user charge revenues with general revenues, including taxes, to make the required payments. The full faith and credit pledge, including the ability to use taxes, in turn, lowers the interest cost of the bond issue. In some cases, municipalities prefer to keep the management of the project in-house, drawing on the management resources of the general municipal government. School authorities are all leasebacks since there is no user charge for pupils and the school district is the only suitable operator of the plant. Most parking authorities are leasebacks because of the difficulty of estimating user revenue with sufficient accuracy to make the bonds readily marketable.

Problems may arise in a leaseback arrangement when the user revenues exceed the amount needed by the municipality to operate the system and make the lease rental payments. This can be troubling to those project customers outside of the incorporating municipality. There were a number of cases where the customers outside of the municipality challenged the authority and the municipality, raising the question of Public Utility Commission (PUC) jurisdiction over the establishment of rates for those customers beyond the border of the incorporating municipality. The Supreme Court of Pennsylvania has held that the PUC has jurisdiction over leaseback rates where the project serves other municipalities<sup>44</sup> except where bulk purchase agreements exist between the authority and municipality. See *Financing (Leaseback) Authorities* in next chapter.

## References

1. 53 PA. CONS. STAT. ANN. § 5607(d) (2012).
2. 53 PA. CONS. STAT. ANN. § 5604(d)(7) (2012) (“[t]o make bylaws for the management and regulation of its affairs”); 53 PA. CONS. STAT. ANN. § 5604(d)(8) (2012) (“[t]o appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation”); 53 PA. CONS. STAT. ANN. § 5610(e) (2012).
3. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(A)(C) (2012).
4. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(C)(III) (2012).
5. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(C)(II) (2012).
6. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(B) (2012).
7. 53 PA. CONS. STAT. ANN. § 5607(d)(21)-(24) (2012).
8. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(C)(V)(e) (2012).
9. 53 PA. CONS. STAT. ANN. § 5607(d)(8) (2012) (“[e]very authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers: (8) To appoint officers, agents, employees, and servants, to prescribe their duties and to fix their compensation”).
10. 53 PA. CONS. STAT. ANN. § 5607(a)(17); 53 PA. CONS. STAT. ANN. § 5607(d)(8) (2012).
11. 43 PA. STAT. ANN. § 1101.101(1) (“[p]ublic employer” means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof”); § 1101.401 (2012) (“[i]t shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement”); § 1101.501 (2012) (“[t]he board shall exercise those powers and perform those duties which are specifically provided for in this act. These powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by other statutory enactments”).
12. *Pa. Labor Relations Board. v. Franklin Twp. Mun. Sanitary Auth.*, 395 A.2d 606 (Pa. Commw. Ct. 1978) (municipal authority had the power to enter into collective bargaining because of the Public Employee Relations Act); but see *Phila. Housing. Auth. v. Com. Pa.*, 499 A.2d 294, (Pa. 1985) (the requirement to bargain collectively did not apply to security officers employed by the municipal housing authority because the municipal housing authority was not the “Commonwealth” required as a public employer to bargain collectively).
13. 53 PA. CONS. STAT. ANN. § 5607(d)(20)(i) (2012) (authority has the power “[t]o make contracts of insurance with an insurance company, association, or exchange authorized to transact business in this Commonwealth, insuring its employees and appointed officers and officials under a policy or policies of insurance covering life, accidental death and dismemberment, and disability income”).
14. 53 PA. CONS. STAT. ANN. § 5607(d)(20)(ii) (2012) (authority has the power “[t]o make contracts with an insurance company, association or exchange, or any hospital plan corporation or professional health service corporation authorized to transact business in this Commonwealth insuring or covering its employees and their dependents but not its appointed officers and officials nor their dependents for hospital and medical benefits and to contract for its employees but not its appointed officers and officials with an insurance company, association or exchange authorized to transact business in this Commonwealth granting annuities or to establish, maintain, operate, and administer its own pension plan covering its employees, but not its appointed officers and officials”).
15. *Id.*
16. 53 PA. STAT. ANN. § 895.101, § 895.301(a) (2012) (“[a]pplication – Notwithstanding any provision of law, municipal ordinance, municipal resolution, municipal charter, pension plan agreement, or pension plan contract to the contrary, the applicable provisions of this chapter shall apply to any municipality which has established and maintains, directly or indirectly, a pension plan for the benefit of its employees, irrespective of the manner in which the pension plan is administered, and to the respective pension plan”).
17. 53 PA. CONS. STAT. ANN. § 5612(b) (2012) (“[e]very authority whose fiscal year ends December 31 shall file on or before July 1 an annual report of its fiscal affairs covering the preceding calendar year with the Department of Community and Economic Development and with the municipality creating the authority on forms prepared and distributed by the Department of Community and Economic Development”).
18. *Id.* (“[e]very authority shall have its books, accounts, and records audited annually by a certified public accountant, and a copy of his audit report shall be filed in the same manner and within the same time period as the annual report. A concise financial statement shall be published annually at least once in a newspaper of general circulation in the municipality where the principal office of the authority is located”).
19. 53 PA. CONS. STAT. ANN. § 5615(a) (2012) (“[t]he authority shall have the power to acquire by purchase or eminent domain proceedings either the fee or the rights, title, interest, or easement in such lands, water and water rights as the authority deems necessary for any of the purposes of this chapter. Water and water rights may not be acquired unless approval is obtained from the Department of Environmental Protection”); 53 PA. CONS. STAT. ANN. § 5607(d)(4) (2012) (the authority can “acquire, purchase, hold, lease as lessee, and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it”).

20. *In re 203.76 Acres of Land in Franklin Twp., Beaver County*, 245 A.2d 451, 453 (Pa. 1968) (a municipal authority may condemn outside the county limits as well as within the municipality or municipalities); *Upper Dublin Twp. Auth. v. Piszek*, 218 A.2d 328, 330 (Pa.1966) (“[t]he Authority, being validly constituted, has under law been given the power of eminent domain within or without the municipality”); *Franklin Twp. Mun. Auth. v. Clark*, 36 Pa. D. & C.3d 598, 1985 WL 5524 (Pa. Com. Pl. 1985) (citing *Upper Dublin Twp. Auth. v. Piszek*); *In re Tanner*, 2010 WL 2747474 (Pa. Com. Pl. 2010) (municipal authority has the right to condemn).
21. *Truitt v. Borough of Ambridge Water Auth.*, 133 A.2d 797 (Pa. 1957) (water authority has discretion when determining amount of land to be acquired using eminent domain, as long as the amount is reasonable); Appeal of Waite, 641 A.2d 25 (Pa. Commw. Ct. 1994) (citing *Truitt v. Borough of Ambridge Water Auth.*).
22. 53 PA. CONS. STAT. ANN. § 5613(b)(1) (2012) (“[a]n authority may not acquire by any device or means, including a consolidation, merger, purchase, or lease, or through the purchase of stock, bonds, or other securities, title to or possession or use of all or a substantial portion of any existing facilities constituting a project as defined under this chapter if the project is subject to the jurisdiction of the Pennsylvania Public Utility Commission without first reporting to and advising the municipality which created or which are members of the authority of the agreement to acquire, including all its terms and conditions”).
23. 53 PA. CONS. STAT. ANN. § 5613(b)(2) (2012) (“[t]he proposed action of the authority and the proposed agreement to acquire shall be approved by the governing body of the municipality which created or which are members of the authority and to which the report is made. Where there are one or two member municipalities of the authority, such approval shall be by two-thirds vote of all of the members of the governing body or of each of the governing bodies. If there are more than two member municipalities of the authority, approval shall be by majority vote of all the members of each governing body of two-thirds of the member municipalities”).
24. *Id.*
25. 53 PA. CONS. STAT. ANN. § 5607(d) (2012); *Susquehanna Area Regional Airport Authority v. Pa. Util. Commission*, 911 A.2d 612, 618 (Pa. Commw. Ct. 2006) (an authority “may exercise all powers necessary or convenient ... [including the power] to ... lease ... any property ... acquired by it”).
26. *Golumbeski v. Zabowski*, 449 A.2d 84, 86 (Pa. Commw. Ct. 1982) (an authority may “do all acts and things necessary or convenient for the promotion of its business and the general welfare of the Authority, to carry out the powers granted to it by this Act or any other acts”).
27. *Northampton Builders Ass’n. v. Northampton Bucks County Mun. Auth.* 367 A.2d 800, 801 (Pa. Commw. Ct., 1976) (the court had “no reservation that this Authority may establish standards, rules and regulations under which such water and sewage facilities may be constructed anywhere within its service area. The manner in which a citizen must comply in meeting the standards reasonably set will be enforced by the courts”).
28. 53 PA. CONS. STAT. ANN. § 5614(b) (2012) (“[s]upplies and materials – All supplies and materials with a base price costing at least \$19,100, subject to adjustment under subsection (c.1), shall be purchased only after advertisement as provided in this section. The authority shall accept the lowest bid, kind, quality, and material being equal, but the authority shall have the right to reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer’s authorized dealer”).
29. *Niebauer v. Centre County Solid Waste Auth.*, 429 A.2d 1210, 2012 (Pa. Commw. Ct. 1981) (“the right to deposit municipal waste on the land of another is not within . . . [the section] because the contract is not one for the ‘construction, reconstruction, repairs or work...’”); *Wright v. Wagner*, 175 A.2d 875, 877 (Pa. 1961) (it would be impracticable to require competitive bidding for a waste disposal contract).
30. *Comerford v. Factoryville Borough*, 75 D.&C.2d 542, at 546, 551, 1976, C.P. Wyoming Co. (Factoryville Sewer Authority was not required to engage in competitive bidding in order to legally contract for engineering services).
31. *Willman v. Children’s Hospital Hosp. of Pittsburgh*, 479 A.2d 452, 455 (Pa. 1984) (“public competitive bidding is not required where . . . the Authority has not undertaken to manage or construct the project in question”).
32. *Highridge Water Auth. v. Lower Indiana County Mun. Auth.*, 689A.2d 374 (Pa. Commw. Ct. 1997) (“the rights and duties of Highridge and LICMA are limited to those set forth in the contract between them”).
33. 53 PA. CONS. STAT. ANN. § 5607(b)(3)(i)(ii) (2012).
34. *Beaver Falls Mun. Auth. v. Mun. Auth. of the Borough of Conway*, 689 A.2d 379 (Pa. Commw. Ct. 1997) appeal denied 704 A.2d 639 (municipal authority is authorized in its legislation to service the City of Beaver Falls, and is not entitled to additional protections that are outside of stipulated contractual rights).
35. *Ohrum v. York Springs Mun. Auth.*, 34 Adams County L.J. 315, 1993; *Pa. Indep. Waste Haulers Ass’n v. County of Northumberland*, 885 A.2d 1106 (Pa. Commw. Ct. 2005) (like municipalities, municipal authorities must follow a comprehensive recycling plan when the legislature did not intend the plan to be supplemented by municipal bodies);
36. *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 (Pa. Commw. Ct. 1989); 53 PA. CONS. STAT. ANN. § 5607 (b)(2) (2012) (“the purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety, and prosperity and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises”).
37. *Evansburg Water Co. v. Perkiomen Twp.*, 569 A.2d 428 (Pa. Commw. Ct. 1990), appeal denied 582 A.2d 326, 525 Pa. 660 (municipal water authority succeeded in enjoining township water authority from interfering with or duplicating water service that the municipal water authority already served); *Chester Water Auth. v. Pa. Pub. Util.*, 868 A.2d 384 (Pa. 2005).
38. *Highridge, supra*, note 31; *Beaver Falls, supra*, note 33.
39. *Shall v. Sandy Twp.*, 641 A.2d 618 (Pa. Commw. Ct. 1994); *Ohrum, supra*, note 34; *Reigle v. Smith*, 134 A. 380 (Pa. 1926) (a municipal authority cannot make unfair discriminations or give unreasonable preferences in providing services); see also Shannon v. Ashton, 68 Mun. L.R. 39, 320, 1975 WL 17014 (1975); *J. A. Myers Building & Develop., Inc. v. New Oxford Mun.*, 16 Pa. D. & C.3d 506, 507 1980 WL 738 (Pa. Com. Pl. 1980) (citing *Reigle v. Smith and Shannon v. Ashton*).
40. *Cumru Twp. Auth. v. Snekul*, 618 A.2d 1080, (Pa. Commw. Ct. 1993) (an authority cannot unilaterally modify the terms of a contract and expect a court to enforce the modification without the support of an express term in the contact allowing for such unilateral modification).

41. 42 PA. CONS. STAT. § Pa.C.S. 8501; *Olympic, Inc. v. McKeesport Mun. Water Auth.*, 555 A.2d 790, (Pa. 1989) (municipality and water authority were not immune from claim that they maintained a dangerous condition at the water facility); *Gall v. Allegheny County Health Dept.*, 555 A.2d 786, (Pa. 1989) (water authority cannot enjoy government immunity); *Rhoads v. Lancaster Parking Auth.*, 520 A.2d 122, 125, (Pa. Commw. Ct. 1987) (parking authority was entitled to government immunity).
42. 42 PA. CONS. STAT. § 8564(a)-(e) (2012) ([a] local agency may . . . a) purchase insurance, b) employ a professional risk manager, c) join together with one or more agencies, jointly contract, and pool their public liability insurance, d) undertake a group risk management program as a county, or e) self-insure).
43. 53 PA. CONS. STAT. ANN. § 5608(b)(1)(4) (2012).
44. *East Hempfield Tp. v. City of Lancaster*, 273 A.2d 333, 335 (Pa. 1971) (“Public Utility Commission is the proper forum for hearing any challenges to the reasonableness of the rates”).

## V. Authority Projects (Section 5607)

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### Types of Authorities

Authorities fall into two general types: operating and leaseback.

**Operating Authorities.** An operating authority is engaged in selling bonds to finance its projects, operating the project, and paying off its debt from project revenues. Municipal officials have no role in operating or paying for the project. Authority personnel operate the project and collect user charges directly. The municipality has no financial liability. The only income available to pay off principal and interest on the authority's bonds is the revenue from the project itself.

**Financing (Leaseback) Authorities.** The other traditional method of handling authority financing is known as the leaseback. In this approach, the authority is only used for the financing, while the local government operates the project. The authority sells bonds to finance the project and then leases the project to the municipality to operate. The lease is for a period of time equal to the term of the authority bonds, and the annual rental is set as an amount sufficient to pay off the debt, principal, and interest. The local government operates the project and pays lease rentals out of project revenues. When the lease expires and the bonds are paid off, the authority may return ownership of the project to the local government. The local government has responsibility for operating the project. However, lease rentals to support the bonds are payable out of any revenues of the local government if project revenues are insufficient by themselves. This can include taxes. Within a leaseback or service contract, the authority can also operate the project but agrees under long-term contract to the municipality to provide service in return for regular payments calculated to be sufficient to meet operating, administrative, and debt service expenses.

All authority involvement in financing buildings for schools and nonprofit institutions is leaseback, because the school board or institution itself is the only suitable operator of the facility. Most parking and public building financing through authorities is leaseback, because the revenues from these projects cannot be estimated with sufficient assurance to produce the necessary degree of investor confidence to minimize interest cost. Sewer and water authority financing is either leaseback or operating, depending on local decisions on the desirability of municipal or authority operation and the possible difference in interest costs in each case. Since 1988, municipal authorities have had the power to finance projects of local governments or nonprofit institutions by making direct loans secured by mortgages or other loan agreements. *Also see Financing (Leaseback) Authorities in previous chapter.*

**Types of Projects.** Municipal authorities may be created only for purposes specified in the act. The act lists a great variety of projects an authority may finance, own, operate, or lease.<sup>1</sup> Among the most common are water supply systems, sewage collection and treatment systems, mass transit, parking facilities, airports, solid waste disposal facilities, and recreation facilities.<sup>2</sup> Authorities may not construct facilities to supply retail electric power, gas, telephone, or cable TV service. However, authorities may cogenerate electricity at one or more of their projects and, in so doing, use the power itself or sell it.<sup>3</sup> The act restricts authorities from constructing projects that will burden or interfere with existing businesses by establishing competitive enterprises.<sup>4</sup>

When incorporating an authority, the municipality may designate the type project or projects to be undertaken by the authority.<sup>5</sup> The articles of incorporation of the authority may specify what project(s) the authority has the power to undertake.<sup>6</sup> If the governing body does not specify a project or projects, then the authority has the power to undertake any project authorized by the act,<sup>7</sup> except authorities created by school districts are restricted to constructing public schools.<sup>8</sup> An authority may be incorporated for one or more of the following purposes:<sup>9</sup>

- 1) Leasing equipment to local governments
- 2) Public buildings, including public schools and courthouses; parts of these buildings may be leased to private interests to generate revenue.
- 3) Transportation, airport, flood control, parking, etc.

- 4) Parks and recreation facilities
- 5) Sewers and sewer systems
- 6) Sewage treatment works, including for industrial waste
- 7) Solid waste collection and disposal by incinerators, landfills, etc.
- 8) Steam heating plants and distribution systems
- 9) Incinerator plants
- 10) Waterworks, water supply works, and water distribution systems
- 11) Steam-producing facilities
- 12) Facilities generating surplus electric power at authority incinerator plants, dams, water supply works, water distribution systems, or sewage treatment plants
- 13) Swimming pools, playgrounds, lakes, and low-head dams
- 14) Hospitals and health centers
- 15) Buildings and facilities for private, nonprofit, nonsectarian colleges and universities, state-related universities, and community colleges
- 16) Bus and subway systems
- 17) Industrial development projects for new or existing industries
- 18) Stormwater planning, management, and implementation

## Steps for Initiating a Typical Authority Project

Shown below are common steps that take place during the planning for an authority project.

**Determine Need for Project.** An authority, often working with the municipality or municipalities and their staff, Planning Commission, etc., determine the need for a project.<sup>10</sup>

**Establish Authority Planning Process.** The authority board consults with its manager, solicitor, and/or engineer as to what steps or functions are required and necessary in planning for the project.

**Appoint Project Architect or Engineer.** The authority may have an in-house or contract engineer to oversee a project. Or, they may choose to have a project-specific engineer or firm. It may be in the authority's best interest to retain one engineer/architect to plan a project and a different engineer/architect to design the project. The pros and cons involved in planning and designing projects must be debated and decisions reached as to what is in the best interests of the public to be served.

**Apply for Initial State Approvals.** The appropriate department within the Commonwealth must be consulted at the beginning of the planning process, and initial approvals, if required, must be obtained from that department.<sup>11</sup>

**Financing Project.** A decision must be reached on how the project is to be financed. If bonds are to be sold, the authority will need to appoint a qualified attorney as bond counsel. The need and/or desire to appoint an investment banker should be considered. As an alternative, some authorities retain an investment advisor,<sup>12</sup> on a fee basis, whose job it is to analyze the authority's financial position and then make a recommendation as to how to finance any given project. The authority board, after receiving advice from its solicitor, bond counsel, and investment advisor (banker), will choose whether to sell the authority bonds at public sale or in a negotiated, private sale with an investment banker.<sup>13</sup> Either method is legal, and there are pros and cons to both. The reputation of the community, the authority, the size and scope of the project, and the past performance of the authority in previous projects will affect the method chosen.

**Acquire Site.** For a newly incorporated authority, the authority board will have to make financial arrangements to pay for its consultants' services during the initial planning phases for the project. In addition, in many cases, it will be necessary to acquire a site on which to construct the planned project. In some cases, appropriate land is already owned by the municipality, but often funds for site acquisition must be obtained. Commonly used sources are an advance from the incorporating municipality or a short-term bank loan. Where the initial sums needed are large, pledging the municipality's full faith and credit will be necessary to secure a bridge loan from a bank.<sup>14</sup>

**Initial Engineering Evaluation.** The engineer/architect studies the proposed general concept for the project and then submits an initial evaluation of the project in a report to the authority detailing project requirements, design philosophy, cost estimates, and the timetable for project construction. This initial report should contain advice as to what state and/or federal loans or grants are available to the authority for assistance in planning, design, and construction.

**Study and Approve Preliminary Plans.** The authority board next approves the engineer's/architect's preliminary or initial plans and authorizes loan or grant application preparation.

**Apply for State Approvals.** The authority must apply for appropriate permits and seek approval from all required state and federal agencies.

**Financial Feasibility Study.** The investment banker studies the financial alternatives, prepares and recommends the most suitable financing arrangements, and, along with bond counsel, prepares the prospectus. The authority board must receive and approve the financial studies and prospectus. If bonds are to be sold, the board authorizes the investment banker to prepare the preliminary statement required before offering the bonds for sale.

**Final Plans.** The architect/engineer submits final plans for the project to be approved by board. Once approved, the authority seeks state approvals as applicable based on the actual cost figures. The authority obtains any required permits from the regulatory agencies and directs completion of final design of the project by the engineer/architect. Approval of final design is required, and authorization of the bidding process must be directed. The first step is advertising for bids by contractors.

**Receive Contractors' Bids.** The authority receives and opens bids from qualified contractors. After receiving the engineer's/architect's analysis of the bids together with their recommendation of award, the board selects the contractor(s). The total amount of money required to complete the project is calculated after bids are awarded.

**Prepare Bond Sale.** Bond counsel prepares the opinion covering the anticipated bonds to be sold, drafts the trust indenture, oversees preparation of the bonds, and works with the authority solicitor in preparing all documentation required in sale of the bonds. Bond counsel, the investment banker, and/or the financial advisor will advise the authority on the need for bond insurance. The authority board, based on recommendations from its advisors, will decide whether to sell the bonds at a public sale or a negotiated, private sale.

**Grant/Loan Approval.** Federal and/or state loans or grant offers are reviewed and, if desired, approved.

**Settlement for Bonds.** The bid for bonds (if a private sale) is received from the syndicate managed by the investment banker, or the bonds are sold at a public sale. The board appoints a trustee bank (based on proposals previously requested and received), the trust indenture is approved, and bonds are printed.

**Sign Contracts.** The board awards construction contracts. Any preconstruction loans or advances from the municipality are repaid from the bond funds. The board decides on a supervising engineer for the construction phase and orders construction to commence.

## References

1. 53 PA. CONS. STAT. ANN. § 5607(a) (2012) (“[e]very authority incorporated under this chapter shall be a body corporate and politic and shall be for the purposes of financing working capital; acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of the following kind and character and providing financing for insurance reserves”).
2. *Id.*
3. 53 PA. CONS. STAT. ANN. § 5607(a)(12) (2012) (authority can use “[f]acilities for generating surplus electric power which are related to incinerator plants, dams, water supply works, water distribution systems, or sewage treatment plants pursuant, where applicable”).
4. 53 PA. CONS. STAT. ANN. § 5607(b)(2) (2012) (“[t]he purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety, and prosperity and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises; none of the powers granted by this chapter shall be exercised in the construction, financing, improvement, maintenance, extension, or operation of any project or projects or providing financing for insurance reserves which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes”).
5. 53 PA. CONS. STAT. ANN. § 5607(c) (2012) (“[t]he municipality or municipalities organizing such an authority may, in the resolution or ordinance signifying their intention so to do or from time to time by subsequent resolution or ordinance, specify the project or projects to be undertaken by the authority, and no other projects shall be undertaken by the authority than those so specified. If the municipal authorities organizing an authority fail to specify the project or projects to be undertaken, then the authority shall be deemed to have all the powers granted by this chapter”).
6. *Id.*
7. *Id.*
8. 53 PA. CONS. STAT. ANN. § 5607(b)(1) (2012) (“[l]imitations. An authority created by a school district or school districts shall have the power only to acquire, hold, construct, improve, maintain, operate and lease public school buildings and other school projects acquired, constructed or improved for public school purposes”).
9. 53 PA. CONS. STAT. ANN. § 5607(a) (2012).
10. 53 PA. CONS. STAT. ANN. § 5607(g) (2012) (“[a]n authority may be established to make business improvements or provide administrative services in districts designated by a municipality or by municipalities acting jointly and zoned commercial or used for general commercial purposes or in contiguous areas if the inclusion of a contiguous area is directly related to the improvements and services proposed by the authority. The authority shall make planning or feasibility studies to determine needed improvements or administrative services”).
11. 53 PA. CONS. STAT. ANN. § 5603(e) (2012) (for certification of the authority, “[i]f the Secretary of the Commonwealth finds that the articles of incorporation conform to law, he shall, but not prior to the day specified in the notice published in accordance with subsection (b), endorse his approval of them and, when all proper fees and charges have been paid, shall file the articles and issue a certificate of incorporation to which shall be attached a copy of the approved articles. Upon the issuance of a certificate of incorporation by the Secretary of the Commonwealth, the corporate existence of the authority shall begin. The certificate of incorporation shall be conclusive evidence of the fact that the authority has been incorporated, but proceedings may be instituted by the Commonwealth to dissolve an authority which was formed without substantial compliance with the provisions of this section”); 53 PA. CONS. STAT. ANN. § 5604(e) (2012) (for withdrawal or joinder, “[i]f the Secretary of the Commonwealth finds that the application conforms to law, he shall, but not prior to the day specified in the notice, endorse his approval of it and, when all proper fees and charges have been paid, shall file the same and issue a certificate of withdrawal or a certificate of joinder, as the case may be, to which shall be attached a copy of the approved application. The withdrawal or joining shall become effective upon the issuing of the certificate.”).
12. 53 PA. CONS. STAT. ANN. § 5608(a)(2) (2012) (“[a] bond must be authenticated by an authenticating agent, a fiscal agent, or a trustee, if required by the authorizing resolution”).
13. 53 PA. CONS. STAT. ANN. § 5608(a)(3) (2012) (“[a] bond may be sold at public or private sale for a price determined by the authority”).
14. 53 PA. CONS. STAT. ANN. § 5611(d)(4) (2012) (“[o]bligations of the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, the Commonwealth or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth or of any political subdivision of the Commonwealth or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision”).



## VI. Authority Project Funding

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### Initial Steps

The method chosen to fund a project undertaken by an authority depends on a number of factors.

- How large is the project?
- How much money does the authority have in reserve for capital projects?
- What kind of reputation does the authority have in the financial markets?
- What kind of reputation does the community have in the financial markets?

The answers to all of these questions will help decide how the authority finances its project.

**Project Size.** If the contemplated project is large, say greater than a few million dollars, the authority probably will choose a bond issue to raise the required funds to build its project. Most construction projects fall into this category.

**Available Reserve Funds.** If the authority has been in business for quite some time and has practiced sound financial management, a portion of the authority's reserve funds may be available to underwrite some, if not all, of the project costs for a relatively small capital project. The authority manager will be able to advise the board on how large a project the authority can handle itself without the need to borrow money. Where reserve monies are insufficient to complete a small project, perhaps a bank loan, negotiated with favorable terms, is the financial vehicle the board should choose.<sup>1</sup>

An authority seeking loans or bonds may stand on its own financially with lending institutions due to the return of funds to cover costs through user fees. However, they may get a better fiscal deal if their incorporating municipality agrees to guarantee the loan. The hiring of financial advisors and/or bond counsel for large, costly projects is often necessary to help navigate the funding market.

**Initial Funds.** Funds for preliminary surveys, feasibility studies, and other organizational expenses may be supplied by grants or loans from the parent local government or a state or federal agency. These funds can be repaid when the authority issues bonds or establishes a revenue stream to pay it back.

A newly organized authority may issue short-term notes to cover its initial expenses. In this case, the notes will be repaid after bonds for the project have been sold. Grants from state or federal agencies may defray some of the costs of capital construction. This is an important factor for airport and transit authorities.

### Bonds

Before commencing on the construction of its project, an authority will usually issue bonds. Operating authority bonds pledge solely the prospective revenues from the project. For many authorities across Pennsylvania, the revenue and/or assessment bond issue is the vehicle chosen to underwrite the costs to be incurred in building the authority's project. An assessment bond issue is used to partially defray capital costs for providing service to an explicitly defined area.

**Tax Exemption.** If certain financial conditions are met, the interest paid on bonds issued by a Pennsylvania municipal authority is exempt from federal income tax and from Pennsylvania state and local income taxes.<sup>2</sup> Such tax exemptions make this type of investment especially attractive to purchasers in high-income brackets and institutional investors, such as insurance companies and large pension plans. Tax-exempt status allows authority bonds to be sold at a rate of interest lower than taxable corporate bonds of equivalent quality.

**Term.** The term for revenue bonds may not exceed 40 years but often is less than the maximum.<sup>3</sup> The authority may issue serial bonds, with some maturing each year, or term bonds where a group or all of the bonds mature in a specified year. Assessment bonds usually are much shorter in length, typically 5 or 10 years, and are of the term type where all bonds mature at once. The term of the assessment bonds is no longer than the period allowed to property owners to pay the assessments levied against their properties.

The assessment bond issue gives an authority an opportunity to partially finance a capital project at a lower rate of interest [the term of the bonds is short, therefore the interest (coupon) rate is lower] than does the revenue bond issue. The lien of assessments levied against properties served by the project is pledged as security for the assessment bonds. Experience has shown that the vast majority of property owners pay their assessments in full and on a timely basis.

**Leaseback Authorities.** The revenue pledged by financing or leaseback authorities is the stream of lease rental payments pledged by the incorporating local government (or nonprofit institution, where applicable). When the authority leases its project to a municipality, the leasing local government pledges its full faith and credit<sup>4</sup> to make the lease rental payments. The total amount of lease rentals payable by the municipality are then included within the total outstanding debt for computing a local government's debt limit. This pledge of the taxing power of the municipality in addition to user revenues makes the authority's bond issue more attractive to investors.

## Trust Indenture

To provide security for the bondholders and to make the bonds more attractive to investors, the authority typically enters into a trust indenture with a qualified banking institution.<sup>5</sup> The revenues generated by the authority's user charges are assigned to the trustee bank for administering the terms of the trust indenture and the bonds. The trust indenture lasts as long as bonds are outstanding. It gives bond buyers assurances that authority revenues will be used exactly as required by the indenture.

The typical trust indenture contains many clauses and provisions that control how the authority is financially managed. Requirements for debt service reserve funds, operating and maintenance reserve funds, insurance (and beneficiaries under the insurance policies) are detailed in the trust indenture.<sup>6</sup> Bonds created by an authority are negotiable instruments.<sup>7</sup> The size and experience of the authority will control, to some extent, how tightly the authority's hands are tied in controlling its financial operations. An experienced bond counsel prefers to write tight trust indentures to provide maximum protection for the bond holders, while an experienced authority manager often resists the limitations imposed on the operation of the authority by these restrictive clauses in the trust indenture.<sup>8</sup> A compromise is hammered out while the trust indenture is being drafted. A tighter indenture will reduce the premium for bond insurance and will be a useful selling point when marketing the bonds to investors.

**Coverage.** One of the more restrictive provisions of the typical trust indenture is the requirement that the authority include in its rate structure additional monies above the amount required, on an average annual basis, to service its debt and pay its operating costs. This amount, called coverage, is designed to provide additional protection for the bondholders by ensuring sufficient revenues will be collected to any potential shortfalls in the flow of funds for operating and administrative expenses of the authority together with debt service costs. Operating authorities subsist solely on user charges, and these are not considered as reliable as lease rentals paid by tax levying local governments. Coverage is a safety factor allowing accumulation of a reserve fund available in case of emergencies or unexpected revenue shortfalls and can be used to redeem bonds early or to expand facilities.

A trust indenture that protects the revenue stream can allow title to the project to be changed. In one case, an authority's trust indenture precluded entering into any contract or taking any action that might diminish the rights of bondholders as long as bonds were outstanding. This did not prevent conveyance of the sewer treatment plan to an area-wide authority as long as the court was assured the rights of the bondholders were protected.<sup>9</sup>

## Bond Sales

There are two methods for selling authority bond issues: 1) public sale, or 2) a private sale to an investment banker.<sup>10</sup> Early in its project planning, the authority must decide which type bond sale should be used. This is one of the reasons why a qualified bond counsel is appointed by the authority. The bond counsel advises the authority on the best sale method to use. In either case, a qualified investment advisor or investment banker will recommend a maturity schedule for the bonds and prepare a preliminary and final statement describing the authority, the community, the project, and the terms of the proposed bond issue.

**Public Sale.** When public sale is selected, bids are requested by public advertisement.<sup>11</sup> After receiving the bids and seeking advice from the investment advisor and/or banker, the authority selects the bidder who has offered the most favorable terms. The majority of bond sales are of the negotiated type. Advertised public sales are most likely to occur when the bond issue is quite large and the authority is well known or information concerning its offering is readily available.

**Private Sale.** When the authority chooses private sale, the investment banker, on the date selected by the authority, submits an offer to buy all the bonds, listing in the proposal the terms of the offer. But, if the sale is of the private type, the investment banker earns its fee through the bond discount. The authority does not receive the entire face amount of its issue. The amount of the discount represents the investment banker's fee for taking all the risk in reselling the bonds and for its services during the planning phase of the project. The majority of bond issues are of the private or negotiated type. This method works because information regarding interest costs and other terms of bond sales is widely disseminated. The nation's money market is competitive, and results of negotiations are public knowledge. Authority officials can compare an offer with recent sales by similar organizations. Ethical standards among investment bankers are high, and the reputation of a house is its chief stock in trade.

## Interest Rates

The interest costs on authority bonds will vary from one year to another and from one authority to another.<sup>12</sup> They may also display a pattern of rates distinct from federal government issues or corporate bonds. Many factors affecting interest costs are beyond the control of the issuing authority or the parent community. Supply and demand for municipal bonds on any given day will have an effect on the interest rate. The current monetary policy of the Federal Reserve System, the fiscal policy of the federal government, and the condition of the national economy are other powerful determinants causing the whole array of interest costs to vary over time.

Within the national economy, conditions of a localized nature affect the risk factor and thus the specific bond issue's position in the competitive market. For example, an authority in a chronically depressed area finds its interest costs are higher than its more prosperous neighbor.

The past debt record or reputation of the community is important. Even though the authority is a separate entity and may be borrowing for the first time, it is judged, in part at least, by the debt record of the incorporating municipality and all overlapping governmental jurisdictions, including the county and school district. This is especially true if it is a leaseback authority supported by rentals from a taxing unit. Obviously, this influence operates in the reverse direction as well. Consequently authorities and parent local governments are not as separate entities in economic fact as they are in legal principle.

Size of the bond issue affects interest costs because the unit cost of investigation and preparation decreases as the amount underwritten by an investment bank increases. Time to maturity is still another rate determining factor, with longer terms involving higher risks and higher rates. Longer-term bonds can and do demand a higher rate because risk is greater due to future unknowns in the out years.

Finally, authorities issue revenue-type bonds, and this characteristic affects the interest cost. Where the revenue source consists of rentals paid by a tax-levying local government, the risk is approximately the same as that applying to the local government's general obligation bonds. Revenue bonds based on user charges involve higher interest cost since

buyers have less confidence in the estimates of authority income. The project type will also have an effect on the interest rate that must be offered. For instance, sewer systems offer a more solid and assured revenue stream than do parking facilities or swimming pools.

## **Bond Redemption**

Authority bonds often are redeemed ahead of schedule when it is in the authority's best financial interests to do so. Sometimes market conditions will allow an authority manager to buy back some of the authority's bonds on the open market at a significant discount.

An entire bond issue, or a significant part of it, may also be redeemed ahead of time or called as a result of refunding if the bond agreement contains such an option. Refunding happens when the pattern of interest rates falls after the authority has issued bonds or its own credit rating improves and thus causes its position in the market to change. The authority is then able to issue new, lower cost bonds and use the proceeds to redeem the original issue at the premium or penalty included in the agreement.

Authority bonds can also be defeased. In a defeasal, the authority issues new bonds (at a lower interest rate) and deposits the money with a trustee bank, which invests it and assumes the responsibility for paying off the original bonds as they come due. This process is useful where the bond agreement does not permit advance redemption of the original issue.

## **Default**

If an authority fails to pay the interest and principal when due, it is in default. Many failsafe factors have been built into authority financing to prevent default. However, the Municipality Authorities Act does provide remedies to the bondholders in the event of a default or failure of the authority to fulfill any of the covenants in the indenture.<sup>13</sup>

In the event of default on the payment of principal or interest, the trustee can file suit in the Court of Common Pleas to require the authority to collect rates adequate to meet its obligations.<sup>14</sup> The court may appoint a receiver to operate the authority's facilities and to collect the rentals or other revenue. In a leaseback situation, the receiver could bring court action to force the leasing local government to raise the necessary money by rates, charges, or taxes to pay the lease rentals. In either case, the projects and other assets of the authority cannot be sold in order to satisfy the creditors.<sup>15</sup> This ability to seize revenue combined with the inability to seize property is the key characteristic of revenue bonds.

Municipal authorities cannot file for bankruptcy under Chapter 9 of the Bankruptcy Code. Federal law requires affirmative action from a state before a public entity can file for bankruptcy. Pennsylvania has no legislation permitting municipal authorities to file.<sup>16</sup>

## **Bank Loans and Other Alternatives**

Bank loans are used frequently where the project is relatively small and attractive repayment terms can be negotiated with a bank. Interest earned on a loan to a municipal authority may be tax exempt to the bank if its "qualified" portfolio is within the bounds set by the IRS. If so, the bank may be in a position to offer extremely competitive rates on a loan to the authority. A few financing authorities have sold bonds and used the proceeds to finance capital projects by municipalities and other authorities. The rules and regulations for using this type of financing vary from authority to authority. On a case-by-case basis, the bond counsel and/or investment banker can provide information and advice on the availability and appropriateness of these other sources.

## **Government Grants and Loans**

The era of large grants from the federal government to finance authority projects, especially sewer collection and treatment systems, is over. In the late 1960s and early '70s, it was not unusual for the federal government to underwrite 70 percent of a sewer project. Those large grants are no longer available, but some grant money is available for water and sewer projects. PENNVEST loans and grants to eligible communities can provide needed relief; the authority's

engineer can assist with the application. As with all grants and loans, there are advantages and disadvantages to using these type of vehicles to finance a project. PENNVEST representatives can answer any questions or provide detailed information on their programs.<sup>17</sup> Check PENNVEST's website at [www.pennvest.state.pa.us](http://www.pennvest.state.pa.us). The Commonwealth Financing Authority (CFA), like PENNVEST, has state money available at times from several sources to provide funding for water and sewer projects. CFA's website is [www.new.PA.com/CFA](http://www.new.PA.com/CFA).

## References

1. 53 PA. CONS. STAT. ANN. § 5611(a) (2012) (“the board shall have the power to invest funds”).
2. 53 PA. CONS. STAT. ANN. § 5620 (2012) (“[t]he bonds issued by any authority, their transfer and the income from the bonds, including any profits made on their sale, shall be free from taxation within the Commonwealth.”).
3. 53 PA. CONS. STAT. ANN. § 5608(a)(1)(iii) (2012) (“[d]ate of maturity not exceeding 40 years from date of issue”).
4. 53 PA. CONS. STAT. ANN. § 5608 (b)(1) (2012) (“[p]ledging the full faith and credit of the authority but not of the Commonwealth or any political subdivision for the bond or restricting the obligation of the authority on the bond to all or any of the revenue of the authority from all or any projects or properties”).
5. 53 PA. CONS. STAT. ANN. § 5608(c) (2012) (“[a]n authority may enter into any deed of trust, indenture or other agreement with any bank or trust company or other person in the United States having power to enter into such an arrangement, including any Federal agency, as security for a bond and may assign and pledge all or any of the revenues or receipts of the authority under such deed, indenture, or agreement. The deed of trust, indenture, or other agreement may contain provisions as may be customary in such instruments or as the authority may authorize...”).
6. 53 PA. CONS. STAT. ANN. § 5608(c)(4) (2012) (the authority may authorize the “[t]erms and provisions of the bond or the resolution authorizing the issuance of the bond.”).
7. 53 PA. CONS. STAT. ANN. § 5608(d) (2012) (“[n]egotiability – A bond shall have all the qualities of negotiable instruments under 13 Pa.C.S. Div. 3 [FN1] (relating to negotiable instruments”).
8. 53 PA. CONS. STAT. ANN. § 5608(c)(3) (2012) (authority may authorize the “[r]ights and remedies of trustee and bondholder, including restrictions upon the individual right of action of a bondholder.”).
9. *Moon Twp. Mun. Auth. v. County of Allegheny*, 596 A.2d 1181, (Pa. Commw. Ct. 1991) (rights of the bondholders must be protect and were protected in the conveyance of a wastewater treatment plant).
10. 53 PA. CONS. STAT. ANN. § 5608(a)(3) (2012) (“[a] bond may be sold at public or private sale for a price determined by the authority”).
11. *Cox v. Connellsville Borough*, 22 Pa.C.C. 657, 1899 WL 3660, (Pa. Com. Pl. 1899) (sale of public bonds was invalid because the sale was not properly advertised).
12. 53 PA. CONS. STAT. ANN. § 5608(a)(1)(iii) (2012) (when issuing bonds, “the board may specify (iii) Interest”).
13. 53 PA. CONS. STAT. ANN. § 5609(a) (2012) (“[t]he rights and the remedies conferred upon bondholders under this section shall be in addition to and not in limitation of rights and remedies lawfully granted them by the resolution for the bond issue or by any deed of trust, indenture or other agreement under which the bond is issued”); 53 PA. CONS. STAT. ANN. § 5609(d) (“[i]n an action by the trustee the court costs, attorney fees, and expenses of the trustee and of the receiver and all costs and disbursements allotted by the court shall be a first charge on revenue and receipts derived from the facilities of the authority, the revenue or receipts from which are or may be applicable to the payment of the bonds so in default.”).
14. 53 PA. CONS. STAT. ANN. § 5609(c) (2012) (“[j]urisdiction – The Court of Common Pleas of the judicial district in which the authority is located shall have jurisdiction of an action by the trustee on behalf of the bondholders”).
15. 53 PA. CONS. STAT. ANN. § 5606(i) (2012) (for school district projects, “[t]he liabilities of the merging or consolidating authorities of the members of their boards or officers shall not be affected nor shall the rights of creditors thereof or any persons dealing with such authorities or any liens upon the property of such authorities or any outstanding bonds be impaired by the merger or consolidation, and any claim existing or action or proceeding pending by or against any such authorities shall be prosecuted to judgment as if such merger or consolidation had not taken place, or the surviving authority or the new authority may be proceeded against or substituted in its place”).
16. *In re North & South Shenango Joint Mun. Auth.*, 80 Bankr. 57, 58 (Bankr. W.D. Pa. 1982) (“North and South Shenango Joint Municipal Authority [have] not been generally or otherwise authorized by the Commonwealth of Pennsylvania to be a debtor under Chapter 9 of the Bankruptcy Code, and . . . the Bankruptcy Court was therefore without jurisdiction to grant the Authority relief under said Chapter 9 of the Bankruptcy Code”); *In re Carroll Twp. Auth.*, Bankr. No. 90-02051 (Bankr. W.D. Pa. 1990).
17. E-mail PENNVEST's webmaster at [ra-pv-webmaster@pa.gov](mailto:ra-pv-webmaster@pa.gov), or call PENNVEST at 1-877-787-8137 or (717) 783-6798 between 8 a.m. and 4 p.m. Eastern Time, Monday through Friday, except state holidays. PENNVEST has an automated phone directory from which you can contact anyone you need directly; simply follow [www.portal.state.pa.us/portal/server.pt/community/pennvest/9242/for](http://www.portal.state.pa.us/portal/server.pt/community/pennvest/9242/for) more information.

## VII. Authority Finances

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### Authority Revenues

Operating authority revenues can come from charges levied on users of services, investment earnings or from grants. Some, such as sewer and water authorities, may impose special assessments<sup>1</sup> and collect connection fees.<sup>2</sup> Total revenue must be large enough to defray administrative and debt service costs plus operating and maintenance expenses and coverage.

Revenue problems are minimized in the case of financing authorities that lease back their projects to municipalities. The annual debt service and administrative costs can be estimated with considerable accuracy. The lease rental charge then equals that figure plus a percentage of debt service to care for unforeseen difficulties. The leasing local government may pay the rentals from its tax receipts alone, or it may receive state or federal grants. In some cases, the local government will defray the rental cost in whole or part by levying user charges. The leasing local government may have problems with revenue flows, but the authority does not face any difficulties once the local government has signed the lease.

**Initial Funds.** When an authority is first incorporated, it has no funds. Typically the incorporating municipality advances (loans) the authority sufficient money to get started. The magnitude of the loan will vary depending on the effort to be undertaken by the authority. If the credit worthiness of the incorporating municipality is high enough and the reputation of the authority board members is respected, it may be possible to establish a direct line of credit at a local bank so initial operating funds are readily available. The authority, when getting started, will have some significant bills to pay. These responsibilities should encourage the board to move quickly to make arrangements for operating funds.

### Bond Issue Proceeds

Once a project goes into construction, significant funds will be available from the proceeds of the bond issue. This money is held in trust by the trustee bank and only can be disbursed via approved requisitions. Most of it goes for construction costs and repayment of startup loans. But one of the different funds established under the trust indenture will contain money so the authority can meet its administrative and operating expenses.

### Assessments

**Water and Sewer Authorities.** An authority may assess property owners for all or part of the costs of constructing sewer and water lines. In calculating assessments, the authority may use either the benefits method or the front-foot rule or both simultaneously on the same project.<sup>3</sup> Whether the benefits method or the front-foot rule is used, an assessment must always be related to the benefits conferred on the property owner.<sup>4</sup> The front-foot rule is merely a convenient substitute for the calculation of benefits, usable in an area of uniform lot sizes. Where this method does not fairly reflect the benefits conferred, it is invalid.<sup>5</sup> There is a presumption that properties abutting on the sewer or water line have benefited. This presumption can be rebutted, but the burden of proof is on the property owner.<sup>6</sup> Where the very nature of the use of the property means that it cannot benefit from the sewer or water line extension, the property owner is not subject to an assessment.<sup>7</sup> The municipal authority may not recover more than the net project costs, after deducting any state or federal assistance, through the assessment process.<sup>8</sup>

Foot-front assessments may be used only after the authority has obtained approval from the municipality where the assessment is to be levied. To obtain the approval, the authority must submit the following information to the municipality prior to the start of construction:<sup>9</sup>

- 1) The plan of construction.
- 2) The total estimated cost of the project.
- 3) The total estimated assessable costs of the project.
- 4) The proposed rate per foot-front the authority intends to assess.

The aggregate amount to be assessed against all benefited properties cannot exceed the estimated cost of the project as approved by the municipality.<sup>10</sup>

When the authority employs the benefit method of assessment (Section 5607 (d) (21)), the court will establish the amount of each assessment. Neither the foot-front nor the benefit method of assessment negates or prohibits the authority and a property owner from negotiating an agreement on the amount to be assessed against a benefited property.

Assessment income is used to retire assessment bonds if such bonds were issued to finance part of the capital project. If no assessment bonds were issued, assessment income may be used to replenish any reserve funds used to finance the project. These assessments can be an addition to a tapping fee.

**Business District Authorities.** Business district authorities may also levy assessments (Section 5607 (d) (27) (i)). These assessments are levied on all taxable real estate within the designated business improvement district, either on a pro rata basis or in proportion to benefits conferred as determined by viewers. The municipal governing body must have first approved the plan for business improvements and administrative services.<sup>11</sup>

In the case of business improvement authorities, the authority must submit its plan for business improvements and administrative services, the estimated costs and the proposed method of assessments for business improvements, and charges for administrative services to the municipality where the project is located.<sup>12</sup> Following a public hearing, the municipality must approve the plan, costs, method of assessment, and charges before any assessments or charges can be made.<sup>13</sup> These assessments are levied on all taxable real estate within the designated business improvement district. The assessment is determined either on a pro-rata basis or in proportion to the benefits conferred as determined by a board of view. Authorities may assess for provision of administrative services without providing physical business district improvements.<sup>14</sup>

**Transportation Development District.** A municipal authority must have the prior approval of the municipal governing body before designating or joining with other local units in designating an area as a transportation development district. Any assessments to be imposed on properties benefited by the transportation facility projects undertaken for the district must first be approved by the municipal governing body.

## **Connection Fees and Tapping Fees**

Certain costs may also be charged through to customers in the form of tapping fees or connection fees.<sup>15</sup> Connection and customer facilities fees are limited to the cost of laterals from the authority main, including installation of a water meter. Connection fees can also cover the cost of setting up an account, inspecting and testing the connection, and any material provided to facilitate the connection. Connection fees cannot exceed the actual cost of the connection or be based on the average cost of past connections of a similar type or size.<sup>16</sup> Income from connection fees is a direct offset of expenses incurred in inspecting and testing the connection. The income goes directly to the authority's general fund.

Tapping fees are levied by an authority to recover the customer's share of capital costs. They are charged to recover cost associated with the capacity to provide service, the cost of distribution or collection facilities, the cost of special purpose facilities (such as pumping stations or storage tanks), and the cost of reimbursing private persons who may have originally paid for construction of the facilities. The tapping fee components must be carefully calculated.<sup>17</sup> The fee must be based on actual historical costs, not bid prices.<sup>18</sup> It must exclude interest, financing costs, and grants. It must exclude costs of facilities solely serving existing users. Equipment no longer in use must be deducted from the cost basis. Capacity utilization must be calculated on up-to-date figures. For in-depth information, sample calculations, and frequently asked questions on tapping fees, visit the Pennsylvania Municipal Authorities Association website at [www.municipalauthorities.org](http://www.municipalauthorities.org).

## Rates

Authorities set their rates by either of two methods: metered rates or flat rates. In some cases, a mix of both rates can be used in different parts of the service area. Metered rates are based on use of a meter to measure water consumed. Metered water usage is often provided to sewer authorities who share customer bases, and the sewer authority adjusts their rates to the amount of water used. Flat rates are typically used where systems do not have meters and are based on total usage, divided by number of users, usually in the same rate category such as residential, commercial, industrial, etc. Price thus equals average cost. In setting its charges, the authority must estimate the quantity of service it can sell at each of several possible unit rates. User charges can be levied both to meet operating expenses and to finance construction of a project.

Determining the relative share of capital construction costs to be paid from assessments and from rates is a matter within the discretion of the authority.<sup>19</sup>

**Rate Challenges.** Municipal authorities are given sole responsibility for setting their own rates. The reason for this freedom is to assure bond purchasers the authority will be able to generate enough revenue to pay off the bonds sold to construct the project. Authority rates must be reasonable and uniform.<sup>20</sup> The act establishes the sole method of recourse for any person aggrieved by an authority's rates as appeal to the Court of Common Pleas,<sup>21</sup> regardless of whether the authority is operating inside or outside its incorporating municipality's boundaries.<sup>22</sup>

As a first step, aggrieved ratepayers should argue their case before the authority board before taking the case to the court. Frequently ratepayers are successful in convincing the authority board their argument has merit and have been able to achieve rate relief from the board. Court review of authority rates is limited to determining if there has been a manifest and flagrant abuse of discretion or an arbitrary establishment of the rate system.<sup>23</sup> The burden of proving this rests on the challenger. Absent a court finding of abuse of discretion,<sup>24</sup> it cannot alter rates set by the authority or impose other restrictions.

**Classification.** The power of an authority to set rates allows it to reasonably classify and reclassify its customers.<sup>25</sup> Authorities may set different rates for the same type of user within different geographical service areas or for different types of users within the same service area. The rate variation should be based on a cost of service study showing the difference in costs between providing service to the different classes of customers or to the different districts within the authority's service area. It might be more equitable to commission a cost of service study and establish the rate structure based on that study. The use of a cost of service study should offset a claim of arbitrary establishment of the rate system. The authority may base the rates on the reasonable value of the availability of service as well as the amount of actual use.<sup>26</sup>

**Contract Sales.** Municipal authorities may contract with other municipalities or authorities or private utilities to provide them service.<sup>27</sup> Examples are the bulk sale of water, the use of a defined transmission capacity through the authority's sanitary sewer lines, the treatment of wastewater delivered to the authority's wastewater treatment facility, or the disposal of solid waste delivered to the authority's facility. The requirement that rates be uniform and reasonable applies only in the area where customers are served directly by an authority's facilities.<sup>28</sup> This limitation does not apply where an authority contracts with another entity outside the service area and the two entities have negotiated the rate.<sup>29</sup> Even where a municipal authority makes contracted sales outside the boundaries of the municipality that created it, it is not subject to the jurisdiction of the Public Utility Commission.<sup>30</sup>

**PUC Jurisdiction.** Municipal authorities and the service they provide, including their rate structures whether operating inside or outside the boundaries of the incorporating municipality, are not subject to control by the Pennsylvania Public Utilities Commission.<sup>31</sup> This is not the case for municipalities where services are provided to properties outside its boundaries<sup>32</sup> except for bulk purchases. Nor is it true where authority projects are leased back to a municipality, which then establishes the rates. In these instances, the rate charged may be subject to PUC approval if challenged.



**Cost of Service Study.** When establishing rates, authorities would be well advised to conduct a cost of service study, which should be done by a consultant with recognized expertise in rate making. This will provide the authority with evidence to support the rates if they are challenged by customers in the courts or in the PUC review process where the PUC has jurisdiction. The criteria for approval of rates for the private sector are rigorous and are based on cost of service studies to a large extent. Authorities that are being challenged on matters of rates can expect the same degree of scrutiny by the courts or the PUC, therefore the need for a cost of service study. This is more likely to occur for large authorities with large volume users. Courts recognize that for most small authorities calculation of rates is based on authority management experience and general cost knowledge. This is usually sufficient because most are never challenged. However, when challenged, the authority's rates must be supported by a formal cost of service analysis.<sup>33</sup> Such cost of service study can use either the "cash needs" or "utility" approach.

## Investment of Authority Funds (Section 5611)

The board of directors has the fiduciary responsibility for instituting the necessary financial controls to safeguard all authority funds. The primary areas of control include internal accounting and investment of authority money. Investment of authority funds is regulated by Section 5611 of the Municipality Authorities Act.<sup>34</sup> This section specifies the types of investments permitted. The board can invest the general fund and special funds as provided in the Municipality Authorities Act. Authorized types of investment include the following:<sup>35</sup>

- 1) U.S. Treasury bills.
- 2) Short-term obligations of the U.S. government and federal agencies.
- 3) Savings and checking accounts and certificates of deposit in banks, savings and loan associations, and credit unions where such funds are insured by the FSLIC, FDIC, and the National Credit Union Share Insurance Fund.
- 4) General obligation bonds of the federal government, the Commonwealth of Pennsylvania or any state agency, or of any Pennsylvania political subdivision.
- 5) Shares of mutual funds whose investments are restricted to the above categories.

In addition, the board can invest the authority's sinking funds as authorized for local government units in the Local Government Unit Debt Act, 53 PA. CONS. STAT. § 8224.<sup>36</sup>

The board also is able to maximize the return on authority investments by using one or more of the following strategies:

- 1) Combining money from more than one authority fund in order to purchase a single investment.<sup>37</sup>
- 2) Join with one or more political subdivisions and municipal authorities for the purchase of a single investment provided that appropriate separate accounting requirements are followed.<sup>38</sup>
- 3) Permitting assets pledged as collateral to be pooled in accordance with the act of 1971 P.L. 281, No.72.<sup>39</sup> This act standardizes the procedures for pledging of assets to secure deposits of public funds.

Federal arbitrage regulations must be followed when investing authority funds.<sup>40</sup> This is especially significant when large blocks of funds become available for investment following bond closing. Authority management and the trustee bank must be cautious because violation of the arbitrage regulations can place the tax-exempt status of the authority's bonds at risk.

The board is required to invest authority funds consistent with sound business practice, exercising the standard of prudence applicable to the State Employees' Retirement System at 71 PA. CONS. STAT. § 5931(a).<sup>41</sup> To implement these requirements, authorities need to establish a formal investment policy, which would include the objectives of preservation of capital, return on investment, and liquidity and diversification. The results of the authority investments can then be monitored against these objectives.

## Internal Accounting

Standard fiscal controls and internal financial safeguards used by government and private business need to be practiced by municipal authorities. The act itself does not stipulate financial safeguards to be followed. In most instances, financial controls are spelled out in the bond indenture. In addition, to issue marketable bonds, the authority must have an unqualified audit opinion from its certified public accountant (CPA).<sup>42</sup> This will require the authority to meet governmental generally accepted accounting principles, including acceptable measures of internal control. Authority debt is subject to the antifraud provisions of federal and state securities laws, including disclosure requirements on the accounting practices of the authority.

All funds of the authority must be paid to the treasurer<sup>43</sup> and must be deposited in the first instance by the treasurer in a bank or trust company in one or more special accounts. All revenues are deposited in an approved bank, and money is paid out on warrants. Bank accounts must be either insured or secured by a pledge of direct federal, state, or municipal obligations.<sup>44</sup>

Operating authorities use enterprise fund governmental accounting. This includes accrual accounting and requires capitalization and depreciation of property, plant, and equipment fixed assets. Long-term liabilities are recorded within the body of the fund, and any accrued unfunded pension plan liability is disclosed and listed on the balance sheet.

## Financial Reporting

Each year authorities must file an annual report of their financial affairs with the Department of Community and Economic Development and the incorporating municipality on Form DCED-CLGS 04 issued by the department.<sup>45</sup> All authorities must have an annual audit by a CPA.<sup>46</sup> The CPA audit must be filed along with the annual report. Authorities must also publish a concise version of their financial statement each year in a newspaper of general circulation in the service area of the authority.<sup>47</sup> In addition to the above requirements of the act, the board of directors should require monthly reports from the finance director, controller, or other individual responsible for the internal accounting of the authority books and records. Such a financial report generally includes the following:

- 1) A record of checks drawn during the month. The listing of checks should indicate the payee, the amount, and a brief description of the expense item.
- 2) A listing of bills submitted to the board for approval and ratification.
- 3) Financial statements, which include comparative revenue for the current month and the same month for the previous year, year-to-date statement of income versus budgeted figures, year-to-date revenue report showing the variance from the budgeted amount, year-to-date expense reports by cost center with comparison to budget, and a balance sheet ending with the current month.
- 4) Report on investment of funds authorized by the board at the previous board meeting.
- 5) Board ratification of investment of funds made subsequent to the previous board meeting.
- 6) Recommendation of investments to be made prior to the next board meeting.

If controls similar to the above are implemented and rigorously followed, the board of directors will have performed their duties with due diligence with regard to fiscal matters.

## Tax Liability

Authority property is immune from taxation if used for public purposes.<sup>48</sup> This immunity applies to property used by an authority for its stated governmental purposes. In the case of a solid waste authority, it included not only the actual landfill, but also the surrounding buffer land that cannot be used for any other purpose under local zoning regulations.<sup>49</sup> If an authority owns real estate used partly for private use, the portion not devoted to public use is subject to real estate tax.<sup>50</sup> To qualify for a real estate tax exemption, the property must be actually used for public purposes. A well field undergoing initial development and awaiting regulatory approvals was not actually being used for a public purpose, and there was no certainty it would be so used. It is the present and not an indefinite prospective use that controls whether the use is a public use exempt from taxation.<sup>51</sup> Interest paid on authority bonds is not subject to federal income tax. Interest on authority bonds is exempt from the state personal income tax and from any local earned income taxes in Pennsylvania.

## References

1. 53 PA. CONS. STAT. ANN. § 5607(d)(22)(2012) (for sewer construction, “[c]harges may be assessed and collected and liens may be enforced in the manner provided by law for the assessment and collection of charges and the enforcement of liens of the municipality in which such authority is located”).
2. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(A) (2012) (“[a] connection fee shall not exceed an amount based upon the actual cost of the connection of the property extending from the authority’s main to the property line or curb stop of the property connected. The authority may also base the connection fee upon an average cost for previously installed connections of similar type and size”).
3. *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964) (township authority could use both the front-foot method and the benefit method in its assessment of the sewer construction costs).
4. *Palmer Twp. Mun. Sewer Auth. v. Witty*, 388 A.2d 306, 308 (Pa. 1978) (quoting *Whitemarsh Twp. Auth. v. Elwert*, “[w]hen the property is not benefited, our courts have not hesitated to declare that the assessment could not be sustained. While there is a presumption that a property is benefited by the construction of a sanitary sewer adjacent to it, this presumption may be rebutted”); *Catholic Cemeteries Ass’n of Diocese of Pittsburgh, Inc.*, 794 A.2d 435, 440 (Pa. Commw. Ct. 2002) (noting that “an assessment must always be related to benefits conferred upon the property owner”).
5. *Palmer Twp. Mun. Sewer Auth. v. Witty*, 388 A.2d 306, 308 (Pa. 1978); *Exeter Twp. Auth. v. Elways*, 388 A.2d 1131 (Pa. Commw. Ct. 1978) (an assessment made that does not regard a benefit conferred is invalid).
6. *In re Application of the Mun. Auth. of the Twp. of Upper St. Clair, Allegheny County, Pa.*, 184 A.2d 695 (Pa. 1962); *Marnickas v. Tremont Mun. Auth.*, 445 A.2d 1383 (Pa. Commw. Ct. 1982) (landowner, who had to present sufficient evidence to rebut the presumption that a property is benefited, failed to prove the system was unreasonably constructed); *Riehl v. Millcreek Twp. Sewer Auth.*, 441 A.2d 466, 468 (Pa. Commw. Ct. 1982) (“[a]ppellants did not meet their burden of overcoming the factual presumption that their properties were benefited, and whether there was a benefit is a question of fact”); *Upper Gwynedd Twp. Auth. v. Roth*, 536 A.2d 875 (Pa. Commw. Ct. 1988) (owner did not rebut presumption that her property was not benefited by the construction of the sewer).
7. *Benzinger Twp. Auth. v. West Penn Power Co.*, 43 D.&C.3d 238 (C.P. Elk Co., 1985) (land use at best was speculative, therefore the defendants rebutted the presumption that the property would benefit).
8. *Bern Twp. Auth. v. Hartman*, 451 A.2d 567 (Pa. Commw. Ct. 1982) (authority was not permitted by statute to recover more than the project’s construction costs).
9. 53 PA. CONS. STAT. ANN. § 5607(d)(22) (2012) (authority has the power “[t]o charge the cost of construction of a sewer or water main constructed by the authority against the properties benefited, improved, or accommodated by the construction according to the foot-front rule. Charges shall be based upon the foot frontage of the properties benefited and shall be a lien against such properties. Charges may be assessed and collected, and liens may be enforced in the manner provided by law for the assessment and collection of charges and the enforcement of liens of the municipality in which such authority is located. No charge shall be assessed unless prior to the construction of a sewer or water main the authority submitted the plan of construction and estimated cost to the municipality in which the project is to be undertaken and the municipality approved it. The properties benefited, improved, or accommodated by the construction may not be charged an aggregate amount in excess of the approved estimated cost”),
10. *Hartman*, 451 A.2d 567; 53 PA. CONS. STAT. ANN. § 5607(d)(27)(iii) (2012) (“[a]n authority may not assess charges against the improved properties in an aggregate amount in excess of the estimated cost”).
11. 53 PA. CONS. STAT. ANN. § 5607(g) (2012) (“[a]n authority may be established to make business improvements or provide administrative services in districts designated by a municipality or by municipalities acting jointly and zoned commercial or used for general commercial purposes or in contiguous areas if the inclusion of a contiguous area is directly related to the improvements and services proposed by the authority. The authority shall make planning or feasibility studies to determine needed improvements or administrative services”).
12. 53 PA. CONS. STAT. ANN. § 5607(d)(27)(i)(ii); 53 PA. CONS. STAT. ANN. § 5607(g) (2012).
13. 53 PA. CONS. STAT. ANN. § 5607(g)(1) (2012) (“[t]he authority shall be required to hold a public hearing on the proposed improvement or service, the estimated costs thereof and the proposed method of assessment and charges. Notice of the hearing shall be advertised at least 10 days before it occurs in a newspaper whose circulation is within the municipality where the authority is established. At the public hearing any interested party may be heard”).
14. *Wivagg v. Downtown McKeesport Bus. Dist. Auth.*, 503 A.2d 1112, 1115 (Pa. Commw. Ct. 1986) (“[t]he trial court properly relied on this section to refuse the injunction on the grounds that the Authority does have the power to assess for administrative services which are not provided in conjunction with business improvements”).
15. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(A)-(C) (2012) (authority has the power to charge A) connection fees, B) customer facility fees and C) tapping fees); *Pennco Builders, Inc. v. Blair Twp. Water & Sewer Auth.*, 567 A.2d 758 (Pa. Commw. Ct. 1989) (plaintiff was not entitled to a refund of tapping fees for water and sewer connections); *Hornstein Enterprises, Inc. v. Twp. of Lynn*, 634 A.2d 704, 706 (Pa. Commw. Ct. 1993) (quoting *Pennco Builders, Inc.*, “an authority can impose tapping fees on a developer for sewer connections even where the developer constructs the sewer extensions at his own expense”); *Life Serv., Inc. v. Chalfont-New Britain Twp. Joint Sewage Auth.*, 528 A.2d 1038 (Pa. Commw. Ct. 1987) (contribution fee was held to be reasonably related to the value of the service rendered, therefore no refund of the fee was available);
16. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(A) (2012) (“[a] connection fee shall not exceed an amount based upon the actual cost of the connection of the property extending from the authority’s main to the property line or curb stop of the property connected. The authority may also base the connection fee upon an average cost for previously installed connections of similar type and size. Such average cost may be trended to current cost using published cost indexes”); *West v. Hampton Twp. Sanitary Auth.*, 661 A.2d 459 (Pa. Commw. Ct. 1995) (authority based its costs on neither actual nor average costs, therefore the fee was invalid); *Curson v. West Conshohocken Mun. Auth.*, 611 A.2d 775 (Pa. Commw. Ct. 1992) (connecting fee which included the cost of financing the construction and the cost of connection to the system was a reasonable and an appropriate fee); *Hornstein v. Lynn Twp. Sewer Auth.*, 866 A.2d 1192 (Pa. Commw. Ct. 2005) (fees under the connection management plan were reasonable).
17. See generally *West v. Hampton Twp. Sanitary Auth.*, 661 A.2d 459 (Pa. Commw. Ct. 1995).

18. *West v. Hampton Twp. Sanitary Auth.*, 661 A.2d 459 (Pa. Commw. Ct. 1995) (authority could not use bid prices to determine cost because the statute requires using actual historical costs).
19. *Cumru Twp. Auth. v. Snekul, Inc.*, 618 A.2d 1080, 1086 (Pa. Commw. Ct. 1992) (because the contract only allowed one tapping or connection fee against the property, the municipal authority is bound by the terms in the agreement); *Keenan v. Scott Twp. Auth.*, 616 A.2d 751 (Pa. Commw. Ct. 1992) (because agreement between the authority and the homeowners stated no tapping fee could be imposed, the tapping fees that the authority charged were invalid); *Citizens Against Unfair Treatment v. Scott Twp.*, 616 A.2d 756, 151 Pa.Cmwlth. 235, (Pa. Commw. Ct. 1992) (because authority contractually reserved the right to charge tapping fees and connection charges in the agreement, such fees were valid).
20. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012) (authority has the power “[t]o fix, alter, charge, and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance, and operation of its facilities and properties”); *Glen Riddle Park, Inc. v. Middletown Twp.*, 314 A.2d 524, 526 (Pa. Commw. Ct. 1974) (municipal authority has the power to set sewer rates so there was no manifest abuse of discretion, and rates are uniform and reasonable); *Washington Realty Co., Inc. v. Mun. of Bethel*, 937 A.2d 1146 (Pa. Commw. Ct. 2007) (because customer service charge for sewer usage was uniform and reasonable, those charges were valid); *Turley v. North Huntingdon Twp. Mun. Auth.*, 289 A.2d 509 (Pa. Commw. Ct. 1972) (authority could charge old customers the same rate as new customers in order to finance the construction of a sewage collection system to serve the new customers).
21. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012) (authority has the power “[t]o fix, alter, charge, and collect rates and other charges in the area served by its facilities at reasonable and uniform rates”).
22. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012) (“[a]ny person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety, and reasonableness of the authority’s services, including extensions thereof, may bring suit against the authority in the Court of Common Pleas of the county where the project is located or, if the project is located in more than one county, in the Court of Common Pleas of the county where the principal office of the project is located. The Court of Common Pleas shall have exclusive jurisdiction to determine questions involving rates or service”).
23. *Elizabeth Twp. v. Mun. Auth. of the City of McKeesport*, 447 A.2d 245, 498 Pa. 476, at 482, (Pa. 1982) (reasonableness of rates should be determined by a judge of the Court of Common Pleas, not by a jury); *Windber Area Auth. v. Lasky Landfill, Inc.*, 602 A.2d 418 (Pa. Commw. Ct. 1992) (Court of Common Pleas had jurisdiction over the matter).
23. *Hopewell Twp. v. Mun. Water Auth. of Aliquippa*, 475 A.2d 878, 82 Pa.Cmwlth. 134, at 141, (Pa. Commw. Ct. 1982) (court’s finding about modification of rate increase was not an abuse of the municipal authority’s discretion); *South Union Twp. Sewage Auth. v. Kozares*, 320 A.2d 381, 385 (Pa. Commw. Ct. 1974) (authority did not abuse its discretion).
24. *Patton-Ferguson Joint Auth. v. Hawbaker*, 322 A.2d 783, 785 (Pa. Commw. Ct. 1974) (discussing *Turley*, 937 A.2d 1146, “review of a rate resolution is limited to a determination of whether or not there has been a manifest and flagrant abuse of discretion or an arbitrary establishment of the rate system”).
25. *Latrobe Mun. Auth. v. Youngstown Borough Mun. Auth.*, 456 A.2d 234, 237 (Pa. Commw. Ct. 1983) (authority can set reasonable and uniform rates and can also classify and reclassify its customers); *Vener v. Cranberry Twp. Mun. Sewer & Water Auth.*, 289 A.2d 506, 508 (Pa. Commw. Ct. 1972) (authority can exclusively fix rates, and rates do not have to be uniform for all residential users, as long as the rate is uniform within a given classification); *Lowrey v. East Pikeland Twp.*, 562 A.2d 1010 (Pa. Commw. Ct. 1989) (trial court did not have jurisdiction to determine reasonableness of rates); *Glennon’s Milk Service v. West Chester Area Mun. Auth.*, 538 A.2d 138 (Pa. Commw. Ct. 1988) (authority can regulate maintenance responsibilities and can require customers to keep their service pipes in good working order at the customer’s own expense).
26. *Ridgway Twp. Mun. Auth. v. Exotic Metals, Inc.*, 491 A.2d 311, 313 (Pa. Commw. Ct. 1985) (after looking at the value of the service, the court found that the water rate that the authority set was unreasonable); *Scott Twp. Sewer & Water Auth. v. Ease Simulation*, 2 A.3d 1288 (Pa. Commw. Ct. 2010) (the rate structure that the municipal authority set was not unreasonable); *Patton-Ferguson Joint Auth. v. Hawbaker*, 322 A.2d 783, 786 (Pa. Commw. Ct. 1974) (“[water] rental charges, however, must have a reasonable relation to the value of the service rendered either as actually consumed or as readily available for use”); *Life Serv., Inc.*, 528 A.2d 1038.
27. 53 PA. CONS. STAT. ANN. § 5607(d)(18) (2012) (authority has the power to “contract with any municipality, corporation, or a public authority of this and an adjoining state on terms as the authority shall deem proper for the construction and operation of any project which is partly in this Commonwealth and partly in the adjoining state”).
28. 53 PA. CONS. STAT. ANN. § 5607(d)(9) (2012) (authority may “fix, alter, charge, and collect rates and other charges in the area served by its facilities at reasonable and uniform rates”).
29. *Twp. of Aston v. Southwest Del. County Mun. Auth.*, 535 A.2d 725, 728 (Pa. Commw. Ct. 1988) (the requirement that authorities set reasonable and uniform rates do not apply “where an authority contracts with another, presumably outside that area”); *Mun. Auth. of the City of Monongahela v. Carroll Twp. Auth.*, 555 A.2d 264 (Pa. Commw. Ct. 1989) (rates did not have to be reasonable and uniform when authority contracted with another municipality to provide sewer services).
30. *White Rock Sewage Corp. v. Pa. Pub. Util. Comm’n.*, 578 A.2d 984 (Pa. Commw. Ct. 1990) (Pennsylvania Public Utility Corporation does not have subject matter jurisdiction to determine the reasonableness of the municipal authority’s rates).
31. *Id.*
32. *Twp. of Aston*, 535 A.2d 725; *Carroll Twp. Auth.*, 555 A.2d 264.
33. *Allegheny Ludlum Corp. v. Mun. Auth. of Westmoreland County*, 659 A.2d 20 (Pa. Commw. Ct. 1995).
34. 53 PA. CONS. STAT. ANN. § 5611 (2012).
35. 53 PA. CONS. STAT. ANN. § 5611(d) (2012).
36. 53 PA. CONS. STAT. § 8224(a) (2012) (“[a]ny moneys in sinking funds and other funds established by ordinance as provided in this subpart, if not required for prompt expenditure, may be deposited at interest in time accounts or certificates of deposit of any bank or bank and trust company, accounts with any savings bank or deposits in building and loan associations or savings and loan associations”).
37. 53 PA. CONS. STAT. ANN. § 5611(e)(2) (2012).
38. 53 PA. CONS. STAT. ANN. § 5611(e)(3) (2012).

39. 72 PA. CONS. STAT. §§ 3836-1-3836-8 (2012) (“[t]his act provides a standardized procedure for pledging assets to secure deposits of public funds required by other statutes or rules or regulations of public bodies. This act supersedes such other statutes, rules, and regulations to the extent they are inconsistent with this act as to pledging of assets on a pooled basis but does not otherwise repeal or affect such other statutes, rules, and regulations”).
40. 26 U.S.C.A. § 103(a) (2012) ((a) Exclusion – Except as provided in subsection (b), gross income does not include interest on any State or local bond”).
41. 71 PA. CONS. STAT. § 5931(a) (2012) (“[t]he members of the board shall be the trustees of the fund. Regardless of any other provision of law governing the investments of funds under the control of an administrative board of the State government, the trustees shall have exclusive control and management of the said fund and full power to invest the same in accordance with the provisions of this section, subject, however, to the exercise of that degree of judgment, skill, and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence, who are familiar with such matters, exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The trustees shall have the power to hold, purchase, sell, lend, assign, transfer, or dispose of any of the securities and investments in which any of the moneys in the fund shall have been invested as well as of the proceeds of said investments, including any directed commissions which have accrued to the benefit of the fund as a consequence of the investments, and of any moneys belonging to said fund, subject in every case to meeting the standard of prudence set forth in this subsection”).
42. 53 PA. CONS. STAT. ANN. § 5612(b) (2012) (“[e]very authority shall have its books, accounts, and records audited annually by a certified public accountant, and a copy of his audit report shall be filed in the same manner and within the same time period as the annual report”).
43. 53 PA. CONS. STAT. ANN. § 5612(a) (2012) (“[a]ll money of any authority from whatever source derived shall be paid to the treasurer of the authority”).
44. 53 PA. CONS. STAT. ANN. § 5611(d)(3) (2012) (authorized investments that an authority can do include, “[d]eposits in savings accounts or time deposits or share accounts of institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the National Credit Union Share Insurance Fund to the extent that such accounts are so insured and for any amounts above the insured maximum if the approved collateral as provided by law shall be pledged by the depository”).
45. DCED-CLGS-04 (2014) FORM, follow [www.newPA.com](http://www.newPA.com).
46. 53 PA. CONS. STAT. ANN. § 5612(b) (2012) (“[e]very authority shall have its books, accounts, and records audited annually by a certified public accountant, and a copy of his audit report shall be filed in the same manner and within the same time period as the annual report”).
47. *Id.* (“[a] concise financial statement shall be published annually at least once in a newspaper of general circulation in the municipality where the principal office of the authority is located. If the publication is not made by the authority, the municipality shall publish such statement at the expense of the authority. If the authority fails to make such an audit, then the controller, auditor, or accountant designated by the municipality is hereby authorized and empowered from time to time to examine at the expense of the authority the accounts and books of it, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation, and affairs”).
48. 53 PA. CONS. STAT. ANN. § 5620 (2012) (“[s]ince authorities will be performing essential governmental functions in effectuating these purposes, authorities shall not be required to pay taxes or assessments upon property acquired or used by them for such purposes”); *Commonwealth v. Erie Metropolitan Transit Auth.*, 281 A.2d 882 (Pa. 1971) (municipal authority not subject to tax liability); *Southwest Del. County Mun. Auth. v. Aston Twp.*, 198 A.2d 867, 871 (Pa. 1964) (“it is well settled that in the absence of a statute to the contrary, public property used for public purposes is exempt from taxation and from assessments for improvements and no express exemption law is needed”).
49. *Del. County Solid Waste Auth. v. Berks County Brd. of Assessment Appeals*, 626 A.2d 528, (Pa. 1993) (property owned by solid waste authority for landfill was immune from taxation); *Southeastern Pa. Transp. Auth. v. Brd. of Revision of Taxes*, 833 A.2d 710, 713 (Pa. 2003) (the test in Del. County Solid Waste Auth. “continues to be whether the agency actually uses the property for a public purpose”).
50. *West View Borough Auth. Appeal*, 113 A.2d 307, 310 1955 (Pa. 1955) (the portion of the municipal water authority’s building that was used for private social affairs was not a public use and therefore that portion of the property was not tax exempt).
51. *Guilford Water Auth. v. Adams County Brd. of Assessment Appeals*, 570 A.2d 102, 103 (Pa. Commw. Ct. 1990) (appellant was not entitled to tax exemption because “it [was] the present, and not an indefinite prospective use as here, which control[ed] whether the use [was] a public use exempt from taxation”), appeal granted 593 A.2d 426 (Pa. 1990).

## VIII. Types of Municipal Authorities

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### **Economic Development Authorities**

These authorities are involved in tourist promotion, economic development promotion, industrial parks, and small business incubator projects.

### **Airport Authorities<sup>1</sup>**

Airports are recognized as a critical economic development asset for their communities. Towns without ready access to air travel are at a disadvantage. Airport authorities are operating authorities, either using their own staff or by contracting to a private airport management company. Grants from the federal, state, and sometimes local governments provide most of the capital to construct and expand airports. Operating expenses are lowered because the federal government assumes the cost of air traffic control and services, such as weather information. Current revenues come from user charges levied on aircraft using the facilities, rental of space for retail outlets, ticket booths, offices, and hangars.

Revenue is also generated from onsite short- and long-term parking, which at some airports also extends to offsite privately owned facilities. For example, an airport authority's annual permit fee for an off-premises car rental business was levied at 10 percent of gross revenues derived from rentals to passengers picked up at the airport. The court held that the service provided by the authority was the provision of a marketplace from which the car rental business derives a large portion of its customers.<sup>2</sup> The permit fee was a proper method the authority could use to meet its expenses in operation of the airport.

### **Parking Authorities<sup>3</sup>**

Many of the operating parking authorities have a contract with the municipality or private enterprise to ensure adequate revenue. This close relationship with the municipal government is necessary if bonds are to be sold because, unlike water and sewer systems, parking is not a natural monopoly. User charges are too unpredictable to provide security for a bond issue. This close relationship also reflects recognition of the effect of parking on public concerns, such as traffic control and the economic health of the community. Parking authorities are concentrated in the central cities of metropolitan areas and in urban boroughs.

### **Transit Authorities**

The two largest transit systems in the state, those in Philadelphia and Pittsburgh, are operated by authorities formed under special legislation and not under the Municipality Authorities Act. The Southeastern Pennsylvania Transportation Authority (SEPTA)<sup>4</sup> services Philadelphia, and the Port Authority of Allegheny County (PAT)<sup>5</sup> provides service to Pittsburgh. Mass transit systems can be fixed-route bus systems or demand-response bus/van systems, or a combination of both. Generally, the more urban the area, the higher percentage of activity is found on fixed routes. Only SEPTA and PAT operate subway and rail systems in Pennsylvania.

### **Sewer Authorities<sup>6</sup>**

Sewer authorities usually operate collection systems and often complex treatment plants regulated by state and federal agencies. They typically sell bonds<sup>7</sup> to finance acquisition of existing systems, construction of new systems, and extensions or improvements to existing systems. For sewer operating authorities, current revenues come from charges on the users of the system.<sup>8</sup> The charge can be based on metered water usage, provided by the water supplier, or on a flat rate based on average use by classification type (residential, commercial, industrial). Payment can be enforced by the ability to direct the water utility to terminate water service, as well as the sewer authority's right to file a lien against the property.

## **Stormwater Authorities**

The federal Clean Water Act places stormwater requirements and controls on Pennsylvania municipalities to manage stormwater runoff. In 2013, legislation passed that specifically allowed the creation of stormwater authorities for the planning, management, and implementation of stormwater controls.<sup>9</sup> In 2014, additional legislation was enacted that allowed stormwater authorities to adjust rates to recognize the implementation of best management practices (BMPs), approved and inspected by the authority, to control stormwater on private property.<sup>10</sup> Municipalities can create stormwater authorities for this one purpose or add this project to an existing sewer, water, or other authority.

## **Water Authorities<sup>11</sup>**

These include multi-purpose authorities with water projects, some of which operate both water and sewer systems. In addition, financing water systems for lease back to the municipality is one of the principal activities of local government financing authorities.

An operating water authority issues bonds to purchase existing facilities or to construct, extend, or improve a system. The primary source of revenues is user charges based on metered usage or flat rates based on classification type. The cost of constructing or extending water supply lines can be funded, completely or partially, by special assessments against abutting property owners. Tapping fees also help fund water system capital costs.<sup>12</sup>

## **Recreation Authorities<sup>13</sup>**

Recreation authorities are formed to fund and/or operate parks,<sup>14</sup> recreation centers, auditoriums, civic centers, stadiums, convention centers, swimming pools,<sup>15</sup> and golf courses.

## **Solid Waste Authorities<sup>16</sup>**

Solid waste authorities fund and operate sanitary landfills, incinerators, transfer stations, resource recovery projects and solid waste collection systems, and recycling. As well as authorities, municipal governments and the private sector are very active in solid waste collection and disposal.

## **Flood Control Authorities<sup>17</sup>**

Flood control authorities fund and operate flood control protection systems. For many years, the Sunbury Municipal Authority operated the only authority of this type. It funded its operations through a graduated fee structure on residential, commercial, and industrial properties within the city.

As a result of the levee-raising project in the Wyoming Valley and problems managing and maintaining an extensive flood protection system, an authority was formed to manage operations and maintenance of this much larger system. The Luzerne County Flood Protection Authority<sup>18</sup> assumed responsibilities previously managed by individual municipalities within the river watershed.

## **Business District Authorities<sup>19</sup>**

These are generally small authorities that operate within designated business improvement districts within commercial areas, develop a plan for the improvements and administrative services, and, with the approval of the municipal governing body, levy assessments to pay their costs.

Administrative costs improve the ability of commercial establishments to serve consumers. They include free or reduced fee parking, transportation subsidies, public relations programs, group advertising, and district maintenance and security services. Business improvements are capital improvements designed to make the district more commercially attractive and functional, including sidewalks, street paving, street lighting, parking facilities, trees and plantings, pedestrian walks, sewers, waterlines, rest areas, and rehabilitation or clearance of blighted structures.<sup>20</sup>

Transportation improvement authorities operate under the provisions of the Transportation Partnership Act, 53 PA. CONS. STAT.1621,<sup>21</sup> as well as the Municipality Authorities Act. Transportation improvement authorities build transportation improvements and fund them through property assessments,<sup>22</sup> with the prior approval of the elected municipal officials. This allows creation of public-private sector partnerships to fund projects where benefits are restricted to a small area. Various types of transportation improvements, including those related to railroads, mass transit, ports, and airports, are authorized, but the existing transportation improvement authority projects all involve highway interchanges, intersections, and access roads.<sup>23</sup>

### **Community Facilities Authorities<sup>24</sup>**

These authorities operate the following community facilities: ambulance services, flood control projects, community centers, libraries, markets, and museums.

### **School Financing Authorities<sup>25</sup>**

These authorities are formed by school districts to finance construction or repair of public school buildings.<sup>26</sup> The act limits the powers of authorities formed by school districts to finance public school projects.<sup>27</sup> School authority debt is completely offset by bond fund assets and lease rentals receivable from school districts, resulting in zero net debt. In the 1950s and 1960s, school authorities were the largest type of authority in terms of outstanding debt. However, over the past 30 years, the amount of school debt issued by authorities has decreased precipitately as school districts have switched to funding their capital needs through their own direct obligations.

All school authority projects are leased back to the district. The Department of Education must approve the lease as well as construction plans.<sup>28</sup> The school district pays its lease rentals out of current revenues of the school district. Their sources are local taxes and state school subsidies, since there are no user fees for school buildings.

### **Local Government Facility Financing Authorities**

This group includes several authorities operating bond pools that loan funds to outside local governments. Their debt is completely offset by bond fund assets and lease rentals receivable from municipalities, resulting in zero net debt. These authorities borrow funds for the construction of various types of projects that are leased back to municipal governments to operate. The vast majority of these authorities finance water and sewer projects. Municipalities operate the projects and make lease rental payments from the user fees charged to customers. Other projects include municipal buildings,<sup>29</sup> parking structures<sup>30</sup> and equipment leasing.<sup>31</sup>

### **Nonprofit Institution Financing Authorities**

The debt of these authorities is almost completely offset by bond fund assets and lease rentals receivable from nonprofit institutions. As more financing authorities have been adopting Governmental Accounting Standards Board Statement No. 14 (GASB 14),<sup>32</sup> this category of authority debt is declining. GASB 14 removes the liability for debt repaid directly by the nonprofit institution from the authority's balance sheet. In addition, changes to federal income tax laws have now restricted borrowing for nonprofits to some extent.

Nonprofit institution financing authorities issue debt to finance construction projects of nonprofit institutions. They engage in financing hospitals<sup>33</sup> and nursing homes, community colleges and private nonprofit colleges and universities, and miscellaneous nonprofit institutions.

### **Multipurpose Authorities**

Multipurpose authorities operate and/or finance more than a single category of project. Operation of both water and sewer systems is the most common combinations for multipurpose authorities, although there are authorities that manage multiple projects, including financing, water, sewer, solid waste, etc.



## References

1. 53 PA. CONS. STAT. ANN. § 5607(a)(3) (2012).
2. *Helmerick Drive-It-Yourself, Inc. v. Erie Mun. Airport Auth.*, 612 A.2d 562 (Pa. Commw. Ct. 1989), affirmed 608 A.2d 495 (Pa. 1992) (airport authority could collect an annual permit fee and the permit fee was reasonable); *Susquehanna Area Reg'l Airport Auth. v. Pa. Pub. Util. Comm'n.*, 911 A.2d 612 (Pa. Commw. Ct. 2006) (citing *Helmerick Drive-It-Yourself, Inc. v. Erie Mun. Airport Auth.*)
3. 53 PA. CONS. STAT. ANN. § 5607(a)(3) (2012).
4. SEPTA's website, follow [www.septa.org](http://www.septa.org).
5. PAT's website, follow [www.portauthority.org](http://www.portauthority.org).
6. 53 PA. CONS. STAT. ANN. § 5607(a)(5)(6) (2012).
7. 53 PA. CONS. STAT. ANN. § 5607(d)(12) (2012) (municipal authority has the power "[t]o borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, hereinafter called bonds, of the authority").
8. 53 PA. CONS. STAT. ANN. § 5607(d)(22) (2012) (an authority may "charge the cost of construction of a sewer or water main constructed by the authority against the properties benefited, improved, or accommodated by the construction according to the foot-front rule").
9. 53 PA. CONS. STAT. ANN. § 5607(a)(18).
10. 53 PA. CONS. STAT. ANN. § 5607(d)(34).
11. 53 PA. CONS. STAT. ANN. § 5607(a)(10) (2012).
12. 53 PA. CONS. STAT. ANN. § 5607(d)(24)(i)(C) (2012) (to connect to a sewer or water system, an authority may charge a tapping fee).
13. 53 PA. CONS. STAT. ANN. § 5607(a)(4) (2012).
14. *Id.*
15. 53 PA. CONS. STAT. ANN. § 5607(a)(13) (2012).
16. 53 PA. CONS. STAT. ANN. § 5607(a)(7) (2012).
17. 53 PA. CONS. STAT. ANN. § 5607(a)(3) (2012).
18. Luzerne County Flood Protection Authority website, follow [www.luzernecounty.org/county/departments\\_agencies/flood-protection-authority](http://www.luzernecounty.org/county/departments_agencies/flood-protection-authority)
19. 53 PA. CONS. STAT. ANN. § 5607(a)(17) (2012).
20. 53 PA. CONS. STAT. ANN. § 5607(a)(3) (2012).
21. 53 PA. CONS. STAT. § 1621 (2012).
22. 53 PA. CONS. STAT. § 1623(a) (2012).
23. 53 PA. CONS. STAT. § 1622(b)(c) (2012).
24. 53 PA. CONS. STAT. ANN. § 5607(a)(15) (2012).
25. 53 PA. CONS. STAT. ANN. § 5607(a)(15) (2012).
26. 53 PA. CONS. STAT. ANN. § 5606 (2012).
27. 53 PA. CONS. STAT. ANN. § 5607(b)(2) (2012).
28. 53 PA. CONS. STAT. ANN. § 5602 (2012) ("[e]ligible educational institution – An independent institution of higher education located in and chartered by the Commonwealth or a private secondary school located in this Commonwealth and approved by the Department of Education which is not a State-owned institution, which is operated not for profit, which is determined by the authority not to be a theological seminary or school of theology or a sectarian and denominational institution, and which is approved as eligible by the authority pursuant to regulations approved by it").
29. 53 PA. CONS. STAT. ANN. § 5607(a)(2) (2012).
30. 53 PA. CONS. STAT. ANN. § 5607(a)(3) (2012).
31. 53 PA. CONS. STAT. ANN. § 5607(a)(1) (2012).
32. The Financial Reporting Entity, Summary of Governmental Accounting Standards Board Statement No. 14 (Issued Jun. 1991), follow [www.gasb.org/st/summary/gstsm14.html](http://www.gasb.org/st/summary/gstsm14.html).
33. 53 PA. CONS. STAT. ANN. § 5607(a)(14), (15) (2012).

## **IX. Local Authorities Formed Under Special Legislation**

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In addition to the Municipality Authorities Act, a number of state laws authorize formation of local authorities of a specialized nature. Many of these are similar to municipal authorities with special added powers or extra restrictions.

### **Convention Center/Stadium Authorities**

Pennsylvania Convention Center Authority. Originally organized under the Pennsylvania Convention Center Authority Act (53 PA. CONS. STAT. § 16201),<sup>1</sup> this mixed state/local authority is now governed by 64 PA. CONS. STAT. ANN. § 6001 (2012)<sup>2</sup> as of 2004. The old law constructed and operated the Pennsylvania Convention Center Authority in center city Philadelphia and was governed by a nine-member board. The old law stated that two members were appointed by the governing bodies of the four suburban counties, two were appointed by the Governor from a list of nominees supplied by the legislative leadership, two were appointed by the mayor of Philadelphia, two were appointed by Philadelphia City Council, and these eight members selected the ninth member who served as chairman of the board.<sup>3</sup>

The new law authorizes a governing board composed of a 15-member<sup>4</sup> (instead of a nine-member) board. A member is appointed by each board of county commissioners or each county council for each county within the Philadelphia Metropolitan Statistical Area. One member is appointed by the president pro tempore of the Senate, the chief executive officer of the city, the president of the council of the city, the minority leader of the council of the city, and the Governor. The chief executive officer of the city also appoints one member from five lists of four nominees prepared by several organizations.<sup>5</sup> These appointed members vote for an additional member who shall serve as a chairman of the board.<sup>6</sup>

The old act authorizes Philadelphia to levy a 6 percent hotel room rental tax; one-third of the revenue from the tax goes to the city tourist promotion agency, and two-thirds go to financial support of the convention center.<sup>7</sup> The new act does not specifically allow Philadelphia to levy a hotel room rental tax. Some specific powers that are granted include the power to acquire, purchase, hold, lease, sell, and dispose of property, to maintain and operate parts of a convention center, to make, enter into and award contracts, to borrow money and accept grants, to invest its money, and to have the power of eminent domain.<sup>8</sup> The authority has no power to pledge the credit or taxing powers of the Commonwealth.<sup>9</sup>

**Public Auditorium Authorities.** Public auditorium authorities can be formed by second class counties and second class cities, acting singly or jointly, or by second class A cities and the county in which they are located.<sup>10</sup> They are governed by a five-member board appointed by the county commissioners or by the city mayor, or jointly in the case of a joint authority.

These authorities may acquire, own and operate public auditoriums, including places for large public assemblies, holding conventions, sporting events, musical and dramatic performances, and other business, social, cultural, scientific, and recreation events.<sup>11</sup> Facilities can include off-street parking. These authorities can also construct structures on adjacent sites for the purpose of generating revenues.<sup>12</sup> They have the power of eminent domain.<sup>13</sup>

Two such authorities have been formed. The Stadium Authority of the City of Pittsburgh<sup>14</sup> constructed Three Rivers Stadium; its operation is managed by a contracted management company. The Public Auditorium Authority of Pittsburgh and Allegheny County,<sup>15</sup> which constructed the Civic Center, leases it to a private operator. Since 1999, the successor to the Public Auditorium Authority of Pittsburgh and Allegheny County is now called the Sports and Exhibition Authority (SEA).<sup>16</sup> The authority also has a long-term lease on the Lawrence Convention Center from the Pennsylvania Department of General Services. Both facilities are designated regional assets and receive financial support from the Allegheny Regional Asset District, replacing prior city and county subsidies.<sup>17</sup>

Although second class counties were authorized to levy a hotel room rental tax not to exceed 7 percent in 16 CONS. STAT. § 4970.2, this law was repealed in 2008. 16 P.S. § 3000-3061 still allows for a 7 percent hotel tax in central county.<sup>18</sup> Previously, a portion of the receipts from this tax in Allegheny County had been used for financial support of the convention center.

**Third Class County Convention Center Authorities.** The Third Class County Convention Center Authority Act authorizes the creation of convention center authorities in third class counties, either by action of the county governing body alone or jointly with the governing body of the county seat.<sup>19</sup> These authorities may build and operate convention centers/arenas,<sup>20</sup> issue bonds to pay for them<sup>21</sup> and pledge their revenues or mortgage real estate as security. The authority does not have the power of eminent domain.<sup>22</sup> They are governed by an appointed seven-member board with overlapping four-year terms.<sup>23</sup>

The governing body of the county appoints three members,<sup>24</sup> the governing body of the county seat appoints three members,<sup>25</sup> and the appointment of the seventh member rotates between both governing bodies.<sup>26</sup> The county governing body is authorized to enact a hotel room rental tax of up to 5 percent<sup>27</sup>; 80 percent of the tax receipts go toward support of the authority, and the remaining 20 percent to the tourist promotion agency.<sup>28</sup> Convention center authorities have been formed under this act in Berks, Luzerne, Lancaster,<sup>29</sup> and Erie counties<sup>30</sup>.

## Financing Authorities for Allegheny County and Philadelphia

**Allegheny Regional Asset District.** The Allegheny Regional Asset District was created by Act 77 of 1993.<sup>31</sup> The district is designated as a special purpose area-wide unit of local government under Article IX, Section 7, of the Pennsylvania Constitution.<sup>32</sup> While not truly an authority in the strictest definition of the term, the district has many of the characteristics of an authority. The governing body of the district is composed of seven members: four appointed by the governing body of the county, two by the mayor of Pittsburgh, and one by the vote of at least five of the six members appointed to the board. One nonvoting member appointed by the Governor serves at the pleasure of the Governor.<sup>33</sup>

The Allegheny Regional Asset District assumed the traditional role of the county and city in providing support for institutions determined to be regional assets.<sup>34</sup> Regional assets include regional parks, libraries, professional sports facilities, and regional cultural facilities.<sup>35</sup> The act authorizes the county to levy a 1 percent sales tax.<sup>36</sup> Half the proceeds of this tax are allocated to the district. The board is prohibited from directly operating any regional asset. It contracts with public and private bodies operating the assets, setting performance and financial goals.<sup>37</sup> The district commits operating funds by signing an operating and support agreement with each asset. The district can also underwrite capital expenditures through the negotiation of capital development agreements.

**Pennsylvania Intergovernmental Cooperation Authority.** The Pennsylvania Intergovernmental Cooperation Authority was established by Act 6 of 1991.<sup>38</sup> The authority was created to assist in restoring confidence<sup>39</sup> of the financial community when Philadelphia was facing critical financial problems and threatened with loss of access to financial markets. The governing body of the authority consists of five members appointed by the Governor and leaders of the Pennsylvania General Assembly.<sup>40</sup>

The Secretary of the Budget for the Commonwealth and the Director of Finance for the city are ex officio members of the board.<sup>41</sup> The authority borrowed money and issued bonds to assist the city. The city may pledge any available revenues, including tax revenues for repayment of the bonds.<sup>42</sup> Philadelphia has pledged 1.5 percent of the city's wage tax to pay the authority's bonds. The act requires the city to develop a financial plan aimed at restoring fiscal health and to submit the plan to the authority for approval.<sup>43</sup> The plan must include the current fiscal year and the next four fiscal years.<sup>44</sup> The act also authorizes a 1 percent sales tax for the city.<sup>45</sup> Sales tax revenues replace the diverted wage tax revenues in the city's general fund.

## Housing Authorities

Housing authorities may be created by cities and counties.<sup>46</sup> They are governed by boards of five members appointed by the county commissioners and mayors of third class cities.<sup>47</sup> In second class cities, the mayor appoints seven members. In first class cities, the mayor appoints two members, the city controller appoints two, and these four select an additional member. All serve for five-year terms.

Housing authorities can exercise the power of eminent domain to clear slum areas and to provide safe and sanitary dwellings through new construction or rehabilitation of existing structures.<sup>48</sup> An early court case upheld use of eminent domain for these two purposes as a public use.<sup>49</sup> Housing authorities qualify as local housing agencies for implementing federal housing laws. They receive a variety of federal subsidies.

Housing authorities may issue bonds to be repaid from the revenues of housing projects and state and federal subsidies. The bonds can be backed by a pledge of revenues and mortgages on property owned by an authority.

## Industrial and Commercial Development Authorities

Industrial and commercial development authorities may be created by counties, cities, boroughs, or townships.<sup>50</sup> They are governed by a board of seven members appointed by the Governor with overlapping four-year terms.<sup>51</sup> They finance, construct, and lease projects for industrial or commercial development using tax-exempt revenue bonds.<sup>52</sup>

These authorities may issue bonds backed by a pledge of revenues or mortgage of assets.<sup>53</sup> Sale of bonds and construction of a project must be approved in advance by the Secretary of Community and Economic Development.<sup>54</sup>

Authorities are authorized to undertake industrial, specialized, or commercial development projects<sup>55</sup> and sponsor disaster relief projects.<sup>56</sup> Industrial projects include pollution control, manufacturing, research and development, warehouse, distribution and headquarters facilities, and tourist and recreation complexes. Commercial projects include wholesale, retail and mercantile facilities, office buildings, hotels or motels, shopping centers, department stores, and headquarters facilities.

Specialized projects include airports, docks, wharves, mass transit facilities, public parking facilities, intermodal transportation facilities, nursing homes, industrial parks, public utility facilities, energy source conversions, energy-producing activities, and construction of rail sidings, spurs, and branch lines. Disaster relief projects include replacement or repair of structures and equipment of industrial, specialized, or commercial enterprises damaged in a federally declared disaster.

## Parking Authorities

Parking authorities can be formed by cities, boroughs, and first class townships under the terms of the Parking Authority Law.<sup>57</sup> With the exception of first class cities, parking authorities are governed by boards of five members. Board members are appointed by the city mayor, president of borough council, or president of the board of township commissioners for overlapping five-year terms.<sup>58</sup> In contrast to authorities organized under the Municipality Authorities Act, parking authority board members may be removed at any time by the appointing official.<sup>59</sup>

Parking authorities can operate off-street parking facilities, either lots or structures.<sup>60</sup> Portions of parking structures may be leased for commercial use. Air space above or ground space below a parking structure may be sold or leased to private interests. Parking authorities may also administer on-street parking regulations for municipalities.

Parking authorities may issue bonds to be secured by a pledge of revenues.<sup>61</sup> They have the power of eminent domain.<sup>62</sup> Public parking spaces created by a parking authority, whether self-operated or leased to others, are exempt from all taxes, whether levied as property taxes or excise taxes.<sup>63</sup> However, those portions of structures leased for commercial use lose tax-exempt status.<sup>64</sup>

## Port Authorities

**Philadelphia Regional Port Authority.** The Philadelphia Regional Port Authority was established by Act 50 of 1989.<sup>65</sup> The authority includes the City of Philadelphia and Bucks and Delaware counties. The authority is governed by a board of 11 members appointed by the Governor and state legislative leaders.<sup>66</sup> The purpose of the authority is to administer regional port facilities and port-related projects and activities along the Delaware River.<sup>67</sup> The authority assumed the functions, rights, powers, duties, and obligations formerly exercised by the Philadelphia Port Corporation.<sup>68</sup> The port authority is expected to promote economic growth and generate employment and tax revenues for the entire commonwealth.<sup>69</sup>

The authority has the power to fix, alter, charge, and collect fees, rates, and rentals for port facilities and port-related projects.<sup>70</sup> It also can establish carrier routes and services between port facilities and port terminals, including water routes.<sup>71</sup> The authority may issue bonds secured by its revenues.<sup>72</sup> It has the power of eminent domain.<sup>73</sup>

**Port of Pittsburgh Commission.** The Port of Pittsburgh Commission was established by Act 133 of 1992.<sup>74</sup> The geographic area covered by the commission consists of 10 counties in western Pennsylvania. The governing body of the commission is made up of 15 members appointed by the Governor and leaders of the Pennsylvania General Assembly.<sup>75</sup> The purpose of the commission is to develop port facilities in the area to enhance commerce and industry.<sup>76</sup> In addition, the commission is to develop and promote recreational facilities in the port district.<sup>77</sup>

The commission has the power to fix, alter, charge, and collect fees, rates, and rentals for port facilities and port-related projects.<sup>78</sup> It may acquire and construct port facilities, port-related projects, and recreational facilities. The commission may issue bonds secured by its revenues.<sup>79</sup> It also has the power of eminent domain.<sup>80</sup>

**Third Class City Port Authorities.** Governed by the Third Class City Port Authority Law, these authorities may be formed by third class cities to own and operate port facilities and equipment.<sup>81</sup> They are governed by a board of 11 members.<sup>82</sup> The Governor and Secretary of Transportation appoint two members, and the city mayor appoints the remaining nine members for three-year terms.<sup>83</sup> The Erie-Western Pennsylvania Port Authority has been organized under this act.<sup>84</sup> The port authority may issue bonds secured by a pledge of its revenues.<sup>85</sup> It has the power of eminent domain.<sup>86</sup> It operates port facilities in Erie Harbor.

## Redevelopment Authorities

Redevelopment authorities may be organized by cities and counties.<sup>87</sup> They are governed by a board of five members appointed for a five-year term by the city mayor or the board of county commissioners.<sup>88</sup> Redevelopment authorities have the power to condemn properties in designated blighted areas under eminent domain, clear the land, and resell it to private interests for redevelopment.<sup>89</sup> Any redevelopment proposal must be approved in advance by the local governing body. Each sale of land within a redevelopment area must also be approved by the governing body.<sup>90</sup>

Authorities may acquire blighted properties located outside a certified redevelopment area. Such properties must be certified to the authority by a blighted property review committee with representation from the governing body, the redevelopment authority, the planning commission and the chief executive officer. A 1988 amendment to the Urban Redevelopment Law authorizes redevelopment authorities to finance the purchase, construction, rehabilitation, demolition, or equipping of commercial or industrial development projects or residential housing projects.<sup>91</sup> Redevelopment authorities also may make loans to owners, purchasers, or financial institutions for these purposes.<sup>92</sup> These projects are to have a reasonable likelihood of preventing, slowing, or reversing the deterioration of a designated area. Redevelopment authorities may issue bonds backed by a pledge of revenues or mortgages of real estate.<sup>93</sup> Redevelopment authorities rely heavily on federal community development block grant funds, now channeled through the city or county, to carry out their projects.

## Residential Finance Authorities

Residential finance authorities may be formed by second class counties.<sup>94</sup> The authority has most of the powers of municipal authorities, but it is specifically authorized to issue mortgage revenue bonds and make residential loans to be serviced by lending institutions or purchase residential loans from lending institutions.<sup>95</sup> It is governed by a board of not fewer than five members appointed by the county commissioners.<sup>96</sup>

Bonds issued by the authority are tax exempt under U.S. Treasury regulations. Proceeds from the bonds can be used to issue below-market rate mortgages to qualifying home purchasers.

## Transit Authorities

**Metropolitan Transportation Authorities – SEPTA.** A 1963 act created a transportation authority within metropolitan areas, defined as a county of the first class and all other counties located entirely within or partly within a 20-mile radius of such county.<sup>97</sup> The authority operates a transportation system in the area. It is governed by a board composed of one member appointed by the Governor and two by the commissioners of each county and the mayor of Philadelphia for five-year terms.<sup>98</sup> The Majority Leader and Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representative may also each appoint one person to serve as a board member.<sup>99</sup>

The Southeastern Pennsylvania Transportation Authority (SEPTA) was formed under this act.<sup>100</sup> SEPTA operates a mass-transit system in Bucks, Chester, Delaware, Montgomery, and Philadelphia counties. It includes subways and elevated rapid rail-transit lines, commuter railroad services, and bus and trolley lines. The authority has the power of eminent domain,<sup>101</sup> and it may issue bonds secured by a pledge of revenues or mortgage of properties.<sup>102</sup> The system is funded through farebox receipts and federal, state, and local subsidies.

**Second Class County Port Authorities – PAT.** These authorities are formed by second class counties to operate port facilities and transportation systems within the county and in adjacent areas to the extent necessary for an integrated transportation system.<sup>103</sup> They are governed by a board of up to nine members appointed by the county commissioners for five-year terms.<sup>104</sup> In addition, when the transportation system is extended into adjoining counties, a representative may be appointed by each additional county to have a vote only on matters affecting rates and services within that county. The Port Authority of Allegheny County has been organized under this act.

Since 1964, the authority has run a unified mass transit system known as PAT. It includes bus and streetcar lines, a rapid rail-transit line, and exclusive busways. The system is funded by farebox receipts and federal, state, and county subsidies. Operation of port terminal facilities has been assumed by the Port of Pittsburgh Commission, and PAT is now a purely transit authority.<sup>105</sup>

## References

1. 53 P.S. § 16201 (2004).
2. 64 PA. CONS. STAT. ANN. § 6001 (2012).
3. 53 P.S. §§ 16201-16224 (2004).
4. 64 PA. CONS. STAT. ANN. § 6005(a) (2012) (“[a]ppointment – Power of the authority shall be exercised by a governing board of 15 members”).
5. 64 PA. CONS. STAT. ANN. § 6005(a)(1)-(7) (2012).
6. 64 PA. CONS. STAT. ANN. § 6005(a)(8) (2012).
7. 53 P.S. § 16201 (2004).
8. 64 PA. CONS. STAT. ANN. § 6006(b) (2012).
9. 64 PA. CONS. STAT. ANN. § 6006(c) (2012) (“[l]imitation – The authority shall have no power to pledge the credit or taxing powers of the commonwealth”).
10. 53 P.S. § 23841 (2012).
11. 53 P.S. § 23845(A) (2012) (“[e]very Authority incorporated under this act shall be a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, public auditoriums, the purpose and interest of this act being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity and promoting their educational, cultural, physical, civic, social, and moral welfare”).
12. 53 P.S. § 23845(B)(e) (2012) (authority has the power to “acquire by purchase, lease, or otherwise and to construct, improve, maintain, repair, and operate projects”).
13. 53 P.S. § 23845(B)(l) (2012) (authority has to “have the power of eminent domain”).
14. Stadium Authority of the City of Pittsburgh website, follow [www.city.pittsburgh.pa.us/mayor/BAC/bac\\_pages/stadium.html](http://www.city.pittsburgh.pa.us/mayor/BAC/bac_pages/stadium.html); see also [www.pghsea.com/StadiumAuthority.htm](http://www.pghsea.com/StadiumAuthority.htm).
15. Information about the Public Auditorium Authority of Pittsburgh and Allegheny County, go to [www.city.pittsburgh.pa.us/mayor/bac/bac\\_pages/sports\\_exhibition.html](http://www.city.pittsburgh.pa.us/mayor/bac/bac_pages/sports_exhibition.html).
16. Sports and Exhibition Authority website, follow [www.city.pittsburgh.pa.us/mayor/bac/bac\\_pages/sports\\_exhibition.html](http://www.city.pittsburgh.pa.us/mayor/bac/bac_pages/sports_exhibition.html); see also [www.pghsea.com/](http://www.pghsea.com/)
17. Report on Regional Destination Financing Plan, see [www.pghsea.com/rdfpintroduction.htm](http://www.pghsea.com/rdfpintroduction.htm).
18. 16 P.S. § 4970.2 (2008); 16 P.S. § 3000.3061 (2012).
19. 16 P.S. § 2399.4 (2012) (“[t]he governing bodies of a third class county and the political subdivision constituting the county seat or the county acting alone may create a body corporate and politic to be named the ..... County Convention Center Authority”).
20. 16 P.S. § 2399.5(a) (2012) (“[a]n authority created under this subdivision shall be a public body, corporate and politic, exercising public powers of the Commonwealth as an agency and instrumentality and shall be for the purpose, without limitation, by itself or by agreement in cooperation with others, of acquiring, holding, developing, designing, constructing, improving, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing, either in the capacity of lessor or lessee or sublessor or sublessee, and owning a convention center, or parts thereof”).

21. 16 P.S. § 2399.5(b)(10) (2012) (an authority has the power to “make and issue negotiable bonds of the authority”).
22. 16 P.S. § 2399.5(c)(2) (2012) (“[t]he authority shall have no power of eminent domain”).
23. 16 P.S. § 2399.11 (2012).
24. 16 P.S. § 2399.11(a)(2) (2012).
25. 16 P.S. § 2399.11(a)(1) (2012).
26. 16 P.S. § 2399.11(a)(3) (2012).
27. 16 P.S. § 1770.5(a) (2012) (“[t]he county commissioners of any county of the third class having a population under the 1990 Federal Decennial Census in excess of 237,000 residents, but less than 240,000 residents, may impose a hotel tax not to exceed 5 per centum of the consideration received by each operator of a hotel within the county from each transaction of renting a room or rooms to transients”).
28. 16 P.S. § 1770.2 (2012) (excise tax cannot exceed 3 percent); 16 P.S. § 1770.4(a) (2012) (“a hotel tax cannot exceed 4 percent of the consideration received by each operator of a hotel within the county from each transaction of renting a room or room to transients”); 16 P.S. § 1770.4(c) (2012) (“[t]he county commissioners of each county shall designate the entity or agency responsible to collect and to enforce the collection of the tax on their behalf. All revenues received from the tax shall be deposited into a special fund, which is to be established by the county’s legally sanctioned and duly designated Tourist Promotion Agency (TPA). The disposition of the revenues from the TPA hotel tax fund shall be as follows: a minimum of 20 per centum of all revenues received per annum shall be used by the TPA for the appropriate and reasonable operational, marketing, and promotional expenses of the TPA. Other tax revenues received and amounting to not more than 80 per centum of total annual revenues shall be used for reasonable expenses associated with collection and enforcement of the tax; for county-owned tourist and recreational facilities, sports facilities, or visitor centers; or for other tourism-related activities as determined by the county commissioners”).
29. Lancaster County Convention Center website, go to [www.lccca.com/](http://www.lccca.com/).
30. Erie Bayfront Convention Center website, follow [www.macdonaldillig.com/work/w/Case%20Study/erie\\_bayfront\\_convention\\_center/](http://www.macdonaldillig.com/work/w/Case%20Study/erie_bayfront_convention_center/).
31. 16 P.S. § 6101-B (2012).
32. 16 P.S. § 6110-B(a) (2012) (“[a] body corporate and politic to be known as the Allegheny Regional Asset District is hereby authorized to be created by a county as a special purpose area-wide unit of local government pursuant to Section 7 of Article IX of the Constitution of Pennsylvania, exercising powers as a unit of local government under this article. The exercise by the district of the powers conferred by this act is hereby declared to be, and shall for all purposes be deemed and held to be, the performance of an essential public function”); PA. CONST. ART. 9, § 7 (“[t]he General Assembly may grant powers to area governments or to municipalities within a given geographical area in which there exists intergovernmental cooperation or area government and designate the classes of municipalities subject to such legislation”).
33. 16 P.S. § 6111-B(a) (2012).
34. 16 P.S. § 6112-B (2012).
35. 16 P.S. § 6102-B (2012) (“[r]egional asset,” a civic, recreational, library, sports, or cultural facility or project designated as such by the district under this article”).
36. 16 P.S. § 6152-B(d)(1) (2012) (“[t]he tax authorized by subsections (a), (b), and (c) may be imposed at a rate of one per centum (1percent”).
37. 16 P.S. § 6112-B(b)(4) (2012) (the district has the power “[t]o make, enter into, and award contracts with any person, association, partnership, or corporation for the development, design, financing, construction, improvement, maintenance, operation, furnishing, fixturing, equipping, and repair of regional assets or parts of regional assets”).
38. 53 P.S. § 12720.101 (2012).
39. 53 P.S. § 12720.102 (2012).
40. 53 P.S. § 12720.202(a)(1)-(5) (2012) (“[t]he powers and duties of the authority shall be exercised by a governing board composed of five members”).
41. 53 P.S. § 12720.202(a)(6) (2012) (“[t]he Secretary of the Budget of the Commonwealth and the Director of Finance of each assisted city shall serve as ex officio members of the board. The ex officio members may not vote, shall not be counted for purposes of establishing a quorum, and may designate in writing a representative of their respective offices to attend meetings of the board on their behalf”).
42. 53 P.S. § 12720.203(c) (2012).
43. 53 P.S. § 12720.209(a) (2012) (“[r]equirement of a financial plan – While any bonds issued by the authority to assist a city remain outstanding, an assisted city shall develop, implement, and periodically revise a financial plan as described in this section” but this was overruled by *City of Philadelphia v. Com.*, 838 A.2d 566).
44. 53 P.S. § 12720.209(b) (2012).
45. 53 P.S. § 12720.503(a) (2012) (city may impose a sales tax); 53 P.S. § 12720.503(d) (the tax authorized “may be imposed at a rate of either 0.5 percent or 1 percent”).
46. 35 P.S. § 1544 (2012).
47. 35 P.S. § 1545 (2012) (“[t]he board of county commissioners for any county upon issuing a certificate declaring the need for an Authority to operate in such county or upon receiving notice of the issuance of such certificate by the Governor, shall appoint five citizens, residents of the county, to be members of the housing authority which is to operate within such county. Such members shall be citizens residing within the county for which the Authority is created”).
48. 35 P.S. § 1550(h) (2012) (the authority can “acquire by eminent domain any real property, including improvements and fixtures, for the public purposes set forth in this act, in the manner hereinafter provided”).
49. *Dornan v. Phila. Housing Auth.*, 200 A. 834 (Pa. 1938) (clearing slums for a housing project was considered a public use; therefore eminent domain power was allowed).
50. 73 P.S. § 371 (2012).
51. 73 P.S. § 376.1(b)(1) (2012).
52. 73 P.S. § 376.2(6) (2012).

53. 73 P.S. § 377(a) (2012) (“[a]n authority shall have the power to issue bonds for any of its corporate purposes, provided, however, the principal, interest, and other charges thereon are payable solely and exclusively (i) from revenues received from the project applicant or project user or from the income, revenues, and property of the project financed, in whole or in part, with the proceeds of such bonds; (ii) from the income and revenues of certain designated projects whether or not they were financed, in whole or in part, with the proceeds of such bonds; or (iii) from its revenues generally”).
54. 73 P.S. § 377(d) (2012) (“[n]o bonds shall be issued and sold until the secretary shall have first determined, based on the application material submitted, that the project and the financing thereof are in apparent conformity with this act and any regulations, statements of policy, guidelines, or rulings promulgated pursuant to this act. If the project and financing thereof are found to be in conformity with this act and any regulations, statements of policy, guidelines, and rulings promulgated thereunder, then the secretary shall, within 20 days after receipt thereof, approve the same and certify his approval to the authority. The decision of the secretary shall be final”).
55. 73 P.S. § 376.5 (2012).
56. 1972 Op.Atty.Gen. No. 154.
57. 53 PA. CONS. STAT. ANN. § 55 (2012).
58. 53 PA. CONS. STAT. ANN. § 5508 (2012).
59. 53 PA. CONS. STAT. ANN. § 5508(b)(6) (2012) (“[m]embers of the board may be removed at the will of the appointing authority”).
60. 53 PA. CONS. STAT. ANN. § 5505(b)(1) (2012) (authority may “[c]onduct necessary research activity to maintain current data leading to efficient operation of off-street parking and parking terminal facilities for the fulfillment of public needs in relation to such parking”).
61. 53 PA. CONS. STAT. ANN. § 5505(b)(10) (2012) (authority has the power “[t]o borrow money and to make and issue bonds”).
62. 53 PA. CONS. STAT. ANN. § 5505(b)(15) (2012) (parking authority has “the power of eminent domain”).
63. 53 PA. CONS. STAT. ANN. § 5515 (2012) (“[s]ince authorities will be performing essential governmental functions in effectuating these purposes, authorities shall not be required to pay taxes or assessments upon property acquired or used by them for such purposes. In lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any political subdivision. The bonds issued by an authority, their transfer and the income from the bonds, including profits made on their sale, shall be free from taxation within this commonwealth”).
64. *Pub. Parking Auth. of Pittsburgh v. Brd. of Prop. Assessment, Appeals & Review*, 105 A.2d 165 (Pa. 1954) (property used for public use was tax exempt while property used for non-public use was not tax exempt); *Price v. Phila. Parking Auth.*, 221 A.2d 138 (Pa. 1966) (parking authority exceeded its statutory authority when it leased air space without competitive bidding); *City of Pittsburgh v. Pub. Parking Auth. of Pittsburgh*, 314 A.2d 887 (Pa. Commw. Ct. 1974).
65. 55 P.S. § 697.1 (2012).
66. 55 P.S. § 697.5(b) (2012).
67. 55 P.S. § 697.6(a) (2012).
68. *Id.*
69. 55 P.S. § 697.2(b) (2012) (“[d]eclaration of policy – It is hereby declared to be the policy of the Commonwealth to promote the health, safety, employment, business opportunities, and general welfare of the people of this Commonwealth by providing for the creation of a regional port authority, to be known as the Philadelphia Regional Port Authority, which shall exist and operate as a public instrumentality of this Commonwealth for the purpose contained in this act.”).
70. 55 P.S. § 697.6(b)(22) (2012) (authority has the power “to fix, alter, charge, and collect fees, rates, rentals, and other charges for port facilities and port-related projects of the authority at reasonable rates to be determined exclusively by the authority, subject to appeal, for the purpose of providing for the payment of the expenses of the authority, the acquisition, construction, improvement, repair, maintenance, and operation of the port facilities, port-related projects and properties of the authority, the payment of the principal and interest on obligations of the authority, and to comply fully with the terms and provisions of any agreements made with the purchasers or holders of any such obligations”).
71. 55 P.S. § 697.6(b)(23) (2012) (authority can “establish carrier routes and services between port facilities and port terminals, including water routes and water services, as it deems necessary for the efficient operation of port facilities”).
72. 55 P.S. § 697.7 (2012).
73. 55 P.S. § 697.6(b)(19) (2012).
74. 55 P.S. § 698.21 (2012).
75. 55 P.S. § 698.23(b) (2012).
76. 55 P.S. § 698.24(a)(5) (2012).
77. 55 P.S. § 698.24(a)(4) (2012).
78. 55 P.S. § 698.25(b)(23) (2012) (authority has the power to “fix, alter, charge, and collect fees, rates, rentals, and other charges for port facilities and port-related projects of the commission at reasonable rates to be determined exclusively by the commission, subject to appeal, for the purpose of providing for the payment of the expenses of the commission, the acquisition, construction, improvement, repair, and maintenance of the port facilities, port-related projects, and properties of the commission and the payment of the principal and interest on obligations of the commission and to comply fully with the terms and provisions of any agreements made with the purchasers or holders of any such obligations”).
79. 55 P.S. § 698.26 (2012).
80. 55 P.S. § 698.25(b)(24) (2012).
81. 55 P.S. § 571 (2012).
82. 55 P.S. § 576(a) (2012).
83. *Id.*
84. Port Erie website, follow [www.porterie.org/](http://www.porterie.org/).
85. 55 P.S. § 574 (2012).
86. 55 P.S. § 577 (2012).
87. 35 P.S. § 1701 (2012).



88. 35 P.S. § 1705 (2012).
89. 35 P.S. § 1709(i) (2012).
90. 35 P.S. § 1709(k) (2012).
91. 35 P.S. § 1709(aa) (2012).
92. 35 P.S. § 1709(bb) (2012).
93. 35 P.S. § 1713 (2012).
94. 16 P.S. § 5201-A (2012).
95. 16 P.S. § 5204-A(2) (2012) (authority has the power to “sell, at public or private sale, with or without public bidding, any mortgage, mortgage loan or other instrument or asset, or any item of real or personal property owned by the authority”).
96. 16 P.S. § 5203-A(a) (2012) (“[t]he powers of each authority shall be exercised by a board consisting of such number of members as the county commissioners may by resolution prescribe, but not fewer than five. The members shall be appointed by the county commissioners who may remove any member at any time with cause. In the case where a resolution is adopted decreasing the number of members, a member may be removed without cause to provide for the number of members authorized by the resolution”).
97. 74 PA.C.S. § 1701 (2012).
98. 74 PA.C.S. § 1713(1), (3) (2012).
99. 74 PA.C.S. § 1713(2) (2012).
100. SEPTA’s website, follow [www.septa.org](http://www.septa.org).
101. 74 PA.C.S. § 1744(b) (2012).
102. 74 PA.C.S. § 1763(a)-(i) (2012).
103. 55 P.S. § 551 (2012).
104. 55 P.S. § 556 (2012).
105. Port Authority of Allegheny County website, follow [www.portauthority.org](http://www.portauthority.org).

## X. Other Pertinent Laws

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### Other Pertinent Laws Applicable to Municipal Authorities\*

- Tort Claims Immunity Act
- Eminent Domain Code
- Right-to-Know Act (Open Records)
- Sunshine Act (Open Meetings)
- Ethics Act
- Local Government Unit Debt Act
- Public Works Contract Regulation Law
- Bonds Required on Contracts (bond posting by contractor)
- Anti-Bid Rigging Act
- Steel Products Procurement Act
- Separations Act
- Procurement Code
- Public Employee Relations Act
- Worker and Community Right-to-Know Act
- Prevailing Wage Act
- Federal Fair Labor Standards Act
- Americans with Disabilities Act
- Family Leave Act
- Piggyback Purchasing (through State)
- Municipal Records Act (refer to PA Historical and Museum Commission website)
- Municipalities Planning Code
- Authority Reports to Incorporating Municipalities (53 P.S. § 401)

\*Not all inclusive

**Pennsylvania Department of Community & Economic Development  
Governor's Center for Local Government Services**

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