WILLISTOWN TOWNSHIP
CHESTER COUNTY
Pennsylvania

WILLISTOWN TOWNSHIP

Wastewater Management Study

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CONTENTS

PROJECT SUMMARY

OVERVIEW

The Board of Supervisors (Board) of Willistown Township, Chester County, PA resolved to develop a long-term plan for the ownership, management, and operation of the public sewerage system within the Township. This plan must take the form of an effective structure that:

- Is strategically feasible
- Is practically sustainable
- Meets current and projected environmental regulations
- Ensures a reasonable approach to costs and customer rates

The selected Consultants for this project offer an independent analysis to provide conclusions and recommendations. In addition, the report provides suggestions toward the next steps to create the recommended organizational structure.

The project work was done in three (3) steps:

- Data Collection - Interview Township officials, staff, Key Third Parties, the Township Solicitor and Township Engineer. Review historic data and technical and financial reports as provided by the Township.
  Note: The study did not independently develop any noted documents but utilized available Township reports and data.
- Review and Analysis - Review and analyze the information collected and determine a list of organizational options for the future operation and management of the sewerage system.
- Conclusions and Presentation - Prepare a report delineating the options and provide a recommendation and implementation suggestions for the consideration of the Board.

In addition to the information review and interviews, the Consultants performed a general engineering review of the current condition of the Township sewerage system and researched the history of the system to learn how and when it was constructed and financed.

BACKGROUND

Based on document reviews and interviews, the Consultants determined the sewerage system was planned, designed, and constructed between 1971 and 1977. For Willistown Township, a “regional” solution was planned that involved the participation of five (5) municipalities that would construct their own municipal sewage collection systems and participate in the design and construction of a major interceptor, to be owned and operated initially by the Tredyffrin Township Sewer Authority (and subsequently today by AQUA) and a wastewater treatment facility (WWTF) to be owned and operated by the Valley Forge Sewer Authority (VFSA).

Willistown Township chartered a “lease-back” type Authority defined under the Municipal Authorities Act of 1935. The Authority undertook the financing and capital construction of the Willistown public sewerage system. The Authority owned the system and leased the system to the Township who was responsible for the operation, operating expenses, permitting and sewer rates and fees.

The “lease-back” Authority continued until 1985 where it appears that due to no further need for financing in the new sewerage system, the Authority was ”amicably” terminated by the Township who assumed the remaining debt of the Authority. The Authority conveyed the ownership at that time to the Township.

The system has expanded to its current form where the use of developer constructed sewerage and contributed property has played a large role. With the inclusion of developer contributions and grant monies, the Township/Authority financed approximately 1/3 of the existing sewerage system.

The most notable examples of developer-contributed infrastructure not a part of the larger contiguous system that flows ultimately to the VFSA are, first, the Penns Preserve System. This is a wholly contained sewerage system with a permitted treatment facility and land disposal zones. The accounting for this system is included within the Township’s current sewer funds with user rates specific to the costs of this system. Additionally, there are small unique areas of the system on the Township boundaries with Easttown and East Goshen Townships that are owned and operated by Willistown but whose flow goes directly to the noted Townships. They are treated as bulk contributors to the adjoining Township systems and user fees are established by sharing the bills charged by the adjoining municipalities among the respective users in each area.

ANALYSIS

The Consultants’ opinion of the general condition of the system is Fair or a Grade C. The system is operating satisfactorily but requires investment and maintenance due to Infiltration and Inflow (I&I) problems. To abate further deterioration, investment in study and capital repair or replacement will be required.

Staffing for the sewerage system is not adequate. The method of operating and maintaining the system is “reactive rather than proactive.” Except for the Director of Public Works, the management team for the Township has limited experience with operating a public sewerage system. The Township must hire a Sewerage System Administrator with the qualifications to adequately manage and operate and budget and approve expenses of a public sewerage system. The Public Works Department (PWD) who provides manpower to maintain the sewerage system needs to dedicate three (3) PWD staff members for the sewerage system, its operation, and daily activities. In order to dedicate these staff members to these tasks, the Township will need to add at least two (2) positions to the PWD.

The Operating Budget for the sewerage system appears adequate and reasonable. The process employed as described to the Consultants also appears reasonable and appropriate. The balance of the sewer account(s) will quickly be consumed as the Township addresses the current I&I issue. The structure of the accounts and balances are correct for the needs of the Township but may not comply strictly with the structure and process outlined by the Sewer Renters Act of 1936. The accounts are audited annually, and audit reports do not indicate any inappropriate practices.

As noted earlier, the rates in the sewerage system differ amongst the areas of the system depending on the location. The predominant area of the system that includes approximately 80% of the public sewer customers has a two-part quarterly rate. The average quarterly rate for this majority is approximately $240 per Equivalent Dwelling Unit (EDU) or single-family residence (SFH). Of that rate, approximately $100 per EDU is a “pass-through” bill from the AQUA Interceptor and the VFSA. The Township is billed by the two (2) service providers and then passes the direct cost to the Township customers without any mark-up for administrative expenses. The remaining $140 per EDU reflects the cost per EDU for the operation and the maintenance of the sewerage system within Willistown Township. Based upon the customer base size and the infrastructure type, age, condition and configuration of the Willistown sewerage system, this rate is fair and reasonable.

The Township rate structure for sanitary sewer is based upon water consumption and appears reasonable and is like other utilities of similar size. Their EDU value calculated by flow versus total EDUs is 260 gallons per day per EDU (gpd/EDU). The EDU value utilized by the Township is fair and reasonable and since it is an actual number rather than a planning number, it reflects the I&I flow within the system.

OTHER CONSIDERATIONS

During the unsuccessful divestment of the Township sewerage system to AQUA, a large group of public sewer customers protested the sale directly with the Township, the Pennsylvania Public Utility Commission and in Civil Court. Upon the decision of the Board to discontinue the divestment process, a small, core group of sewer customers continued to express their displeasure with how the Township approached the sale and, more so, how the Township and staff operate the sewerage facilities. This core group expressed a very vocal general distrust of the Township relative to decisions governing the sewerage system. While it is not a part of this project to address those concerns, they clearly must be considered as a management structure is selected.

OPTIONS AND RECOMMENDATION

Based upon their experience and professional judgement, the Consultants reviewed nine (9) options for a future management structure. The options reviewed are as follows:

- No change to the structure of the ownership and operation of the system except for the inclusion of a Sewerage System Administrator and three (3) new/dedicated Public Works employees dedicated to the sanitary sewer system.
- Similar in scope to the previous option with the formation of a citizens committee to oversee all aspects of the operation, maintenance and financing of the system.
- Pursue dedication of the components of the system to adjacent Townships through their Municipal Authorities.
- Pursue divestment of the sewerage system to an investor-owned utility.
- Pursue divestment of the sewerage system to a municipally-owned utility.
- Lease the sewerage system to a municipal or private Contract Operations firm while the Township retains ownership.
- Form a Lease-Back type Authority like the structure that originally built the system where the Authority owns and finances capital improvements but where the Township operates and maintains the system.
- Form an Operating Authority where the Authority owns, operates and maintains the system, sets rates and fees and finances capital improvements.
- Form an Operating Authority where the Authority operates and maintains the system, sets rates and fees, but the Township owns the system and finances capital improvements.

After detailed review of each option: considering the cost, the four (4) goals of the project, the intangible concerns of the community, the need for significant investment and oversight in the system over the next five (5) to seven (7) years, the Consultants recommend the formation of an Operating Authority where the Authority operates and maintains the system, sets rates and fees, and the Township owns the system and finances capital improvements.

It is recommended that pursuit of this option still includes the hiring of a Sewerage System Administrator and three (3) new/dedicated Public Works employees. It is estimated the time required to establish the Operating Authority will be six (6) to twelve (12) months. The legal, technical and financial costs associated with the formation of an Operating Authority will be approximately $100,000.

NEXT STEPS

There will remain many details that must be addressed to comply with current regulations and prepare the new Operating Authority. To delineate these details, the Consultants recommend the Township Board appoint a five (5) person committee to review and complete the necessary tasks for the formation of an Operating Authority. The committee will have access to legal, technical, and financial support to complete the necessary tasks for forming the new Operating Authority. The committee will meet monthly, will provide for public participation, and will report their progress to the Board. Upon completion of the work this committee will be disbanded in favor of the new Operating Authority.

1.0 INTRODUCTION

Since the termination of the sale of the sewerage system to an investor-owned utility in April 2023, community concern over the disposition of the sewerage infrastructure has risen sharply. The Board response has been to hire unbiased professionals to study the system and the available resources and present prioritized options for an effective structure that:

- Is strategically feasible.
- Is practically sustainable.
- Meets current and projected environmental regulations.
- Ensures a reasonable approach to costs and customer rates.

The selected Consultants for this project offer an independent analysis to provide conclusions and recommendations. In addition, the report provides suggestions toward the next steps to create the recommended organizational structure.

G Matthew Brown, P.E., DEE and ARRO Consulting, Inc. (collectively “Consultants”) were the professional consultants contracted to complete this analysis. The intent is that the Consultants provide the requisite experience level, along with a perspective that is independent from any Township entity (e.g., employee or elected official).

2.0 STUDY PROCESS

The project work was done in three (3) steps:

- Data Collection - Interviewed Township elected officials and staff including, but not limited to, the Board, the Manager, the Finance Director, the Public Works Director, and other internal personnel who could add insight toward reaching the project goal. Interviewed Key Third Parties and Township service providers including the Township Solicitor, Consulting Engineers, Regulators (PADEP), and residents/members of the community. Performed a data review of currently available information involving financial, organizational structure, system condition and valuation, regulatory documents (i.e., operating permits, Chapter 94 Reports), capital planning documents, and Township planning documents.
  Note: The study did not independently develop any noted documents but utilized available Township reports and data.
- Review and Analysis - Reviewed and considered the information collected and performed an analysis on the available resources. Determined a list of organizational and structural options for the future operation and management of the sewerage system considering operational, financial, and service optimization.
- Conclusions and Presentation - Prepared a report delineating the options and provided a recommendation for the consideration of the Board. Prepared a general “roadmap” on how to undertake the recommended option.

During the Data Collection stage, a general email address was created for any Township resident to submit thoughts, concerns, and questions. Several sewerage system customers participated and submitted suggestions by email. Additionally, ten (10) residents agreed to direct interviews to present thoughts and suggestions toward the success of this project. The insight of the community participants was clearly knowledgeable and was critical to the development of the recommended option.

Those community members who met directly with the Consultants and offered thoughts and suggestions were:

- William Lordan
- Richard McDonnell
- Robert Swift
- Martin Kenney
- Matthew McCarry
- Jerry Childers
- Douglas Dreyer
- Michael Kerr
- Peter Batchelor
- Phillip Mayer

Consultants that were interviewed included:

- Yerkes Associates Inc.
- Carrol Engineering Corp.
- Pennoni Associates, Inc.
- Lamb McErlane, P.C.

In addition to the information review and interviews, the Consultants performed a general engineering review of the current condition of the Township sewerage system and researched the history of the system to learn how and when it was constructed and financed. They also researched the form and substance of the municipal authorities in Tredyffrin, Eastown and East Goshen Townships who currently operate their respective public sewerage.

3.0 WASTEWATER SYSTEM BACKGROUND

The Consultants performed an analysis of the data to develop some general opinions of the status of the system management, operation, and finance. This information is presented in summary form.

To the best the Consultants could determine, the sewerage system was planned, designed, and constructed between 1971 and 1977. The public system was in response to the urging of the

Commonwealth following the passage of the Clean Water Act in 1972. With the establishment of the Act, grant monies were made available to local government interested in undertaking projects to protect the waters of the Commonwealth. For Willistown Township, a “regional” solution was planned that involved the participation of five (5) municipalities who would construct their own municipal sewage collection systems and participate in the design and construction of a major interceptor, to be owned and operated initially by the Tredyffrin Township Sewer Authority (and subsequently today by AQUA) and a wastewater treatment facility (WWTF) to be owned and operated by the Valley Forge Sewer Authority (VFSA). The five (5) municipalities include Willistown, Tredyffrin, Eastown and Charlestown Townships, and the Borough of Malvern.

To this end, Willistown Township chartered a “lease-back” type Authority defined under the Municipal Authorities Act of 1945. The Authority undertook the financing and capital construction of the Willistown public sewerage system. The Authority owned the system and leased the system to the Township, which was responsible for the operation, operating expenses, permitting and sewer rates and fees.

Upon completion of the sewer system construction, the “lease-back” Authority continued until 1985 when it appears that due to no further need for financing in the new sewerage system, the Authority was ”amicably” terminated by the Township who assumed the remaining debt of the Authority. The Authority conveyed the ownership at that time to the Township.

The system has expanded to its current form where the use of developer constructed sewerage and contributed property has played a large role. Approximately 33% of the current system has been contributed by the development community. Of the remaining 67%, approximately half was funded by the Authority/Township through bond financing and the remaining half was funded by grant monies made available under the Clean Water Act. Therefore, the Township/Authority and their customers who account for approximately one-half of the Township residents and are ultimate bearers of the financial burden for public sewerage investment, financed approximately 1/3 of the existing sewerage system. The sewerage system in its entirety is an infrastructure asset of the Township and its residents.

The most notable examples of developer-contributed infrastructure not a part of the larger contiguous system that flows ultimately to the VFSA are, first, the Penns Preserve System. This is a wholly contained sewerage system with a permitted treatment facility and land disposal zones. The accounting for this system is included within the Township’s current sewer funds with user rates specific to the costs of this system. Additionally, there are small unique areas of the system on the Township boundaries with Easttown and East Goshen Townships that are owned and operated by Willistown but whose flow goes directly to the noted Townships. They are treated as bulk contributors to the adjoining Township systems and user fees are established by sharing the bills charged by the adjoining municipalities among the respective users in each area.

4.0 SYSTEMS AND RESOURCES

From the general engineering review of the sewerage system, the interviews with Township Staff and the Consulting Engineers for the sewerage system, the Consultants' opinion of the general condition of the system is Fair or a Grade C. The system is operating satisfactorily but requires investment and maintenance due to Infiltration and Inflow (I&I) problems. Therefore, to abate further deterioration, investment in study and capital repair or replacement will be required. This investment has begun in 2024 but will need to be addressed in earnest for future years. This investment most likely will have a negative impact on current rates.

Staffing for the sewerage system is not adequate. It is apparent that the method of operating and maintaining the system is "reactive rather than proactive." In other words, as a problem presents itself, it is addressed to an adequate solution. Little opportunity is available due to lack of staffing to take a proactive approach and address issues before they become problematic. Except for the Director of Public Works, the management team for the Township has limited experience with operating a public sewerage system. The Township must hire a Sewerage System Administrator with the qualifications to adequately manage and operate and budget and approve expenses of a public sewerage system. This is needed regardless of any structural option that includes municipal ownership. Further, the Public Works Department (PWD), which provides manpower to maintain the sewerage system in conjunction with outside contractors, is not adequately staffed to perform needed "pro-active" service in the system. The Consultants recommend hiring/dedicating three (3) PWD staff to the maintenance of the sewerage system. The current finance staff includes one (1) part-time sewer billing clerk. For effective financial management of the increased complexities that come with the management changes, this role would need to be converted to a full-time position, and an additional staff person in finance may need to be hired as well. The total cost for the inclusion of additional PWD staff and converting the part-time clerk to full-time would be an up-front cost for equipment of approximately $60,000, and annual costs of approximately $80,000 plus benefits for personnel, and $20,000 for equipment. This reflects the costs of the recommendations noted being applied to the sewer fund as well as the reduction in costs of current Township personnel whose costs are currently reflected in the sewer fund. Their current contributions to the sewerage system will be greatly diminished with the noted hiring.

The Operating Budget for the sewerage system appears adequate and reasonable. The process employed as described to the Consultants also appears reasonable and appropriate. The balances of the sewer account(s) will quickly be consumed as the Township addresses the current I&I issue. The structure of the accounts and balance of the sewer account(s) are correct for the needs of the Township but may not comply strictly with the structure and process outlined by the Sewer Renters Act of 1936. However, the needs for proper operation of a sanitary sewer system in 2024 have progressed significantly over the past 80+ years and the Consultants find their practices to be like many other Second Class Township-owned and operated sewerage systems. The funds are audited annually, and audit reports do not indicate any inappropriate practices.

The rates in the sewerage system differ amongst the areas of the system depending on the amount of infrastructure and whether sewage is conveyed to the AQUA Interceptor and VFSA WWTF. The predominant area of the system that includes approximately 80% of the public sewer customers has a two-part quarterly rate. The average quarterly rate for this majority is approximately $240 per Equivalent Dwelling Unit (EDU) or single-family residence (SFH). Of that rate, approximately $100 per EDU is a "pass-through" bill from the AQUA Interceptor and the VFSA. The Township is billed by the two (2) service providers and then passes the direct cost to the Township customers without any mark-up for administrative expenses. The remaining $140 per EDU reflects the cost per EDU for the operation and the maintenance of the sewerage system within Willistown Township. Based upon the customer base size and the infrastructure type, age, condition, and configuration of the Willistown sewerage system, this rate is fair and reasonable. I&I plays a big role in the rate amount. AQUA and VFSA bill based upon volume discharged to their facilities. I&I increases that volume significantly during rain events. Further, Township infrastructure is taxed more due to the increased flow. Clearly, a reduction in the volume through I&I abatement can reduce the expenses reflected in the rates. It may not definitively reduce the rates due to inflation increases in labor and material costs. But it will help to keep the rates at a lower and more reasonable figure.

The Township rate structure for sanitary sewer is based upon water consumption and appears reasonable and is like other utilities of similar size. Their EDU value calculated by flow versus total EDUs is 260 gallons per day per EDU (gpd/EDU). The Consultants compared the EDU value to other Chester County, PA sewerage systems. These range from 225 gpd/EDU to 350 gpd/EDU. Therefore, the EDU value utilized by the Township is fair and reasonable and, since it is an actual number rather than a planning number, it reflects the I&I flow within the system.

During the unsuccessful divestment process of the Township sewerage system to AQUA, a large group of public sewer customers protested the sale directly with the Township, the Pennsylvania Public Utility Commission and in Civil Court. Upon the decision of the Board to discontinue the divestment process, a small, core group of sewer customers continued to express their displeasure with how the Township approached the sale and, more so, how the Township and staff operated the sewerage facilities. This core group expressed a very vocal general distrust of the Township relative to decisions governing the sewerage system. While it is not a part of this project to address those concerns, they clearly must be considered as a management structure is selected. The Township sewerage system services a well-educated and sophisticated community. As such, the community is a resource that could greatly help with the future operation of the sewerage system. Therefore, it is valuable to the Township and the community at-large that a general agreement on the direction taken by the sewerage system can be supported by most. It is impossible to please every outspoken opponent, but a management structure that emphasizes the four (4) goals enumerated earlier is critical to acceptance.

5.0 MANAGEMENT STRUCTURE OPTIONS

The Consultants selected nine (9) possible options they believed could be pursued by the Township. Each was determined to generally meet the central criterial of Feasibility, Sustainability, Environmental-Compliance, and Financial-Responsibility. Comparatively, each of the options offers varying positive and negative attributes with respect to these central criteria. Additionally, an opinion on public acceptance of each option has been a part of the analysis based upon information received through the community and Township staff interview process.

Option No. 1 – No change to the structure of the ownership and operation of the system

This option basically has the Township continuing to operate the sewerage system with no change to the ownership or the decision responsibility. It does, as discussed in the Review and Analysis Section of this document, require the hiring of a Sewerage System Administrator to manage the overall operation of the public sewerage system. It also includes the hiring of two (2) Public Works employees dedicated to working on the public sewerage system. The Sewerage System Administrator would report directly to the Township Manager and, like other department heads, provide a monthly update to the Board. The day-to-day operation would be the responsibility of the person holding this position. Decisions involving customer responses, operating expenditures, budget, and planning would remain with the Township Manager and/or Board depending on the magnitude of the decision. This option would have limited cost to implement outside of the labor and equipment expenses associated with the new hires. That, as noted earlier, would be approximately $60,000 initially, and $80,000 plus benefits, and $20,000 respectively annually, minimum.

Since the Board would continue to make most major planning, operational, and capital decisions regarding public sewers with the advice and support of the Sewerage System Administrator, the public sewer system would compete with the other required responsibilities of the Township. Based upon the current and near-future needs of the sewerage system, there would be a concern regarding the system receiving the attention necessary for adequate I&I improvement and the response to customer needs. Further, changes to rates and the agreements with AQUA and the VFSA are forthcoming. This will require the attention of a group authorized to negotiate on behalf of the Township. Again, placing further burden on the elected officials. The public sewer system, while not technically complex, has many components that need to be addressed by an authorized decision maker sensitive to the needs of the system customers.

The Option, while clearly feasible, risks becoming less sustainable and environmentally-compliant should the proper attention not be paid to the sewerage system. This in turn will affect the financial burden placed upon the customers. Also, from a public perception standpoint, concern may continue over how forthright the Township will be with respect to the needs of the sewerage system. This could impact public acceptance of any change such as rate increases, capital financing or environmental regulation.

PROS/CONS: Familiarity & Control of Rates and Operation / Additional Staff Required, Board Oversight and Commitment

Option No. 2 – Use of a Committee to Oversee Operations, Maintenance, and Financing

This Option is the same in terms of the day-to-day operation of the public sewer system. Staff additions would be necessary as with the previous option. The oversight and management of the system, however, would be delegated by the Board to a Citizen's Committee. This committee would interface with Township staff, the Sewerage System Administrator, and the Board to ensure the required attention is provided to the system. Such a committee could be helpful to ensure the various components necessary to successfully operate a public sewerage system are not lost due to other duties of the Township. This option would generally meet all the central criteria of the management structure. It would, however, be making decisions without there being any accountability for the decisions. Operating a public sewerage system impacts personal and environmental health within a community. Such a committee appointed by the Board without legislative sanctioning retains the authority to make operating decisions but has none of the responsibility or accountability for those decisions; that remains with the Board. Further, should the Board disagree with a decision of the committee because it has a broader perspective on liability to the Township, there may be a conflict between the two (2) bodies that does not appropriately serve the customers of the sewerage system. While there are many positive aspects to such an option, without legislative sanctioning that creates responsibility and accountability for decisions rendered, this is not a recommended option.

PROS/CONS: Ease of Creation, Variety of Input, Can Be Dissolved if Needed / Need Correct Advisors, No Accountability, Higher Potential for Disagreement, Additional Staff Required

Option No. 3 – Dedication of the Sewerage System to Adjacent Townships

Except for the service area of the Penns Preserve WWTF, most of the public sewerage system within Willistown Township flows to adjoining municipalities. This includes Tredyffrin Township, Easttown Township, and East Goshen Township. All three (3) of the receiving municipalities have sewer authorities who manage and operate their respective sewerage systems. They have operating staff skilled and experienced with the operation of a sewerage system. As municipal entities, their customer rates are calculated to meet their operating expenses and debt service payments without any type of rate of return for shareholders as would be the case with an investor-owned utility. This likely would limit the municipal authorities from large or unwarranted increases in customer rates. This option would remove the need for the Township to hire additional staff experienced with public sewerage systems. It would also permanently remove the management and operation responsibilities from the Township.

This option would require the dedication of Township-owned infrastructure that has recently been valued at $17.0+MM with no return compensation. This option also assumes that all three (3) of the adjoining municipalities would be receptive to such an option, recognizing the problems Willistown Township currently is experiencing about I&I and the need for investment in the collection system. It relinquishes control of the public sewerage system to the adjacent municipalities and creates a differential in rates across the customers within Willistown Township. The key element of this option is the dedication of such a valuable asset with no return and, as such, this is not a recommended option.

PROS/CONS: No Additional Staff Required, No Operational Responsibility, Lower Costs to the Township / No Financial Return, Loss of a Valuable Asset, Would Require Cooperation and Interest of Adjacent Township(s)

Option No. 4 – Divestment to Investor-Owned Public Utility

This option is a major contributor to why this study has been commissioned. Willistown Township negotiated a sale of the public sewerage system with AQUA in 2022. This divestment was heavily contested by the customers of the system. It is the understanding of the Consultants that the major issue for public opposition was concern over the lack of control over future rates charged by AQUA for service.

This option would bring a large infusion of capital into the Township to be used for infrastructure or service improvement over the whole of the Township. But it would take control of operation, maintenance and rates and fees out of the hands of the Township. Further, an investor-owned utility will be responsive to its shareholders and can establish rates that include not only capital reserve for needed improvements and upgrades, but also a prescribed rate of return as allowed by the Public Utility Commission. This could result in substantial increases in rates for the residents served by public sewerage. Based upon the 2022 decisions of the Board in response to the public outcry, this is not a recommended option.

PROS/CONS: One-Time Large Monetary Gain, No Additional Staff Required / No Rate or Operational Control, Loss of Revenue, PUC Regulates Rates Based upon Utility-Claimed Need

Option No. 5 – Divestment to a Municipally-Owned Public Utility

This option is similar in scope to Option No. 4 apart from the purchaser of the system would be a municipally-owned utility subject to specific laws, such as the First or Second-Class Township Code or Municipal Authorities Act, or possibly the oversight of the Public Utility Commission. The same elements of the Township receiving a large infusion of money and the lack of control relative to the operation, maintenance, and rates and fees would be valid. The principal

exceptions would be the rates would not include a rate of return for investors. This should "soften" any sharp increase in rates to respond to shareholders. Also, the operation and maintenance would no longer be the responsibility of the Township. There could be questions about a municipal buyer's ability to respond to emergencies and the daily operational needs within the Township which could lead to a decline in service to customers. Also, the investment a municipally-owned utility would need to make to purchase the Willistown system would be quite exceptional to a utility responsible for their existing customers and the rates they impose. It is expected that very few municipally-owned utilities would even consider such an investment. Again, due to concerns over service and control and the lack of available buyers at the value level of the Township infrastructure, this is not a recommended option.

PROS/CONS: One-Time Large Monetary Gain, No Additional Staff Required / Significantly Less Rate and Operational Control, Loss of Revenue, PUC May Regulate Rates Based upon Utility-Claimed Need

Option No. 6 – Lease/Outsource System Operation and Maintenance

This option involves no change to the ownership and ultimate responsibility of the system but would lease or outsource the operation and general maintenance of the system to an outside concern. This could include both a private business as well as another municipality.

The Township would retain ownership and remain as the system permittee with the respective Commonwealth agencies. They would outsource the operation and minor maintenance work to a third party. Major capital improvement would remain with the Township at the recommendation of the third-party operator. The Township would control rates and fees and ensure that sufficient revenue is generated to cover the lease/contract of the third party, debt service on capital borrowing, and system expenses not covered in the lease/contract.

Both a private business and a municipal entity would be looking for a rate of return to benefit shareholders (private business) or customers (municipality). While this option provides expertise and management oversight precluding the need to hire additional staff, it is very likely more costly than maintaining the expertise in-house. Also, a lease/contract arrangement requires all possible tasks to be outlined in the contract in that such an operator will generally tend to be "reactive" rather than "proactive" and take on only those tasks delineated. Since day-to-day operation would be performed by the third party, customer concerns or questions would be directed to the third party. This again removes the Township from the direct response to their customers. This could be difficult when a conflict occurs between the third-party operator and a customer. Also, the Township would have little control over the third-party response to emergencies. The Township would be dependent on their reliable response. The Township will still require internal expertise on the sewerage system. While the additional Public Works personnel would not be needed, the Sewer System Administrator would be. This does create an additional cost to the Township of approximately $60,000 to $80,000 annually. Further, the

Township will retain some system administrative duties as a matter of course as the owner of the sewerage system (i.e., Insurance coverage, audit, oversight of the third party, etc.). So, the ability to delegate responsibility and accountability would not be complete. For these reasons, this is not a recommended option.

PROS/CONS: Retain General Overall Control, Fewer Additional Staff Required / Costly Option to be reflected in Rates, Loss of Day-to-Day Operational Control

Option No. 7 – Creation of a Lease-Back Authority

A municipal authority in Pennsylvania is defined as “a body politic and corporate” created to finance (lease-back to the creating municipality) and/or operate specific public works projects without tapping the general taxing powers of the municipality. Authorities are an alternate vehicle for accomplishing public purposes rather than through direct action of counties, municipalities and school districts.

Pennsylvania originally allowed its municipalities to create authorities under the Municipalities Authorities Act of 1935. The present Municipality Authorities Act was approved June 19, 2001 (P.L. 287, No. 22) and is codified at 53 Pa.C.S. § 5601 **-** § 5622. The Act requires that the public works project must be in the proprietary fields of government, must have a public interest and must be self-sustaining.

This option would create an Authority for financing purposes and the Township would transfer ownership of the sewerage system to the Authority. The Township and Authority would sign a “lease” agreement where the Township would lease the system from the Authority and be responsible for the operation and maintenance, establishing rates and fees and providing the Authority with a list of capital improvements with approximate costs. The Authority would assume the current capital debt for the system and undertake any future debt through the issuance of revenue bonds. The Township in the “lease” agreement would set rates at a level where they could make a “lease” payment to the Authority for the purpose of paying the debt service on any financing, current or future. The Township would also pay all expenses and fees for the system as well as be the permittee for the appropriate Commonwealth agencies. The Authority would have no operating responsibility and merely serve as a government entity for the purpose of financing. The Township would also need to support the Authority through the financing and guarantee the debt of the Authority.

This is essentially an option that creates a government entity that would provide no or limited assistance or addition to the benefit of the customers as the Township will still be responsible for the operation and the maintenance of the system, will have to guarantee any borrowing by the Authority, and will still need to hire appropriate staff to properly manage the sewerage system. Also, a new Board will require separate insurances, audit, and administrative (financial)

reporting. This could cost as much as $80,000 annually. For these reasons, this is not a recommended option.

PROS/CONS: Retain Rate and Operational Control / Additional Staff Still Required, Separate Board Entity with Ownership Control, Higher Annual Costs

Option No. 8 – Creation of an Operating Authority (Authority Owns, Operates and Maintains)

This option proposes the creation of an Operating Authority in accordance with the Municipal Authorities Act of 2001 (as noted in the previous option) where the Township would transfer ownership, and the Authority would acquire the current capital debt from the Township for the system. The Authority would undertake future capital debt for system improvements but as with the previous option would require the guarantee of the Township to undertake a borrowing. The Authority would be the permittee for all appropriate Commonwealth agencies and would be responsible for the day-to-day operation and maintenance of the system. The Operating Authority would serve at the convenience of the Township and the elected officials but would be a separate government entity wholly responsible for all facets of the sewerage system including setting rates and fees. While an Operating Authority could employ their own staff, it is not a practical matter as the Authority would have to create all the necessary employer elements to maintain a staff in accordance with Federal and State Laws, and separate equipment essential to the operation and maintenance of a sewerage system. The Township adheres to those requirements presently and has some of the needed equipment and facilities, so this option would include the Authority "purchasing" labor and equipment use from the Township. This means that any current or future employees of the Township including the Sewerage System Administrator would have their time and equipment use funded by the Authority but would be employees of the Township. The Township could submit monthly or quarterly invoices for that expense. Management of the sewerage system would be the responsibility of the Authority with the day-to-day oversight provided by the Sewerage System Administrator who would report to the Operating Authority on matters of the sewerage system. An Operating Authority would create additional costs administratively similar to the previous option.

This also creates a new governmental body with not just system authority, but accountability and responsibility for the proper operation and maintenance of the sewerage system. This body serves at the convenience of the Township and will be responsible for meeting what are the common goals of all sewerage systems toward environmental compliance and customer service. There, however, can be instances where the Township elected officials and Authority officials may not agree on an approach to best serve the residents of the community. This can impact service and may place a financial burden on both the Authority and Township. The elected officials are the representatives chosen by the residents of the Township and are, therefore, the ultimate bearers of the burden to respond to the needs and wants of the community, not an appointed Authority Board. Therefore, while this option has many favorable aspects, it does not integrate or define an interdependency of the Township and Authority

Board. For the success of the system in terms of service and cost, this is imperative. Therefore, without that integration, this is not a recommended option.

PROS/CONS: Retains Rate and Operational Control / Additional Staff Required, Separate Board Entity with Ownership Control, Higher Annual Costs

Option No. 9 – Creation of an Operating Authority (Township Owns; Authority Operates and Maintains)

This option is identical to the previous option in all aspects but one (1); the Township will retain ownership of the system and, therefore, will be responsible for current and future capital debt. The Authority will be responsible, as noted in Option 8, for all aspects of the operation, maintenance, planning, and capital improvement of the system. The Authority will expense staff and equipment from the Township as noted in the previous option and provide direction on all operational aspects of the sewerage system. The Authority will set rates and fees but will, through agreement, warrant that rates will be maintained that support the operating expenses of the system and the debt service for Township borrowing specific to the sewerage system. The Township owns the system and finances capital improvements.

The option provides the missing element discussed in the previous option of integration. It is imperative that the Township and Authority work as a team toward the benefit of the community.

PROS/CONS: Retains Rate and Operational Control, Separate Operational Entity/ Additional Staff Required, Higher Annual Costs

6.0 RECOMMENDATIONS AND IMPLEMENTATION

After detailed review of each option, offering a recommendation must consider the cost, the four (4) goals of the project, the intangible concerns of the community, the need for significant investment and the critical need for system oversight over the next five (5) to seven (7) years as issues with I&I are aggressively addressed. Clearly, the problems with I&I must be addressed as they will only worsen with time. Further, the addition of staffing to operate and maintain the system is critical also. Any option that keeps the Township or potential Authority, in any form, in control, will require the recommended additional staffing.

Option No. 1 provides the least costly path, meets most of the criteria listed above and can be implemented immediately. The concerns with Option No. 1, however, are twofold. First, there remains an outcry from a minority group of concerned citizens over the aborted divestment attempt in 2023. There appears an inherent distrust within this group that the Board of Supervisors may look to divest of the system again in that the value of the system as enumerated in 2023 is significant. The general concerns voiced to the Consultants were that

such action where control of rates and operations were sold to specifically an investor-owned utility would result in unchecked financial burden for the customers of the sewerage system. Secondly, in looking at the current responsibilities of the Township in providing the spectrum of services required of local government, concern exists that the staff and elected officials do not address the sewerage system with the level of attention it warrants. This has also been expressed by concerned citizens. Some of this is, in the opinion of the Consultants, unwarranted and may instead be the result of the existing staff and elected officials being stretched thin to address all the requirements of local government. Regardless of the merit of these issues, the one way to alleviate some citizen concern and provide the sewerage system with the needed governance and operational attention as I&I is addressed and beyond, is to establish an additional Board in the form of an Operating Authority dedicated solely to the proper operation and upkeep of the sewerage system.

While it may increase the financial burden in the operating budget, a properly formed Board of interested volunteers will make a significant impact on the system and essentially remove operational and rate control from the hands of the elected officials, but place them in a role of ultimate oversight.

Therefore, the Consultants recommend Option No. 9, the formation of an Operating Authority where the Authority operates and maintains the system, sets rates and fees, and the Township owns the system and finances capital improvements.

This does not preclude the need for additional staffing resources. It is recommended that pursuit of this option still includes the hiring of a Sewerage System Administrator and two (2) additional Public Works employees to be wholly focused on the sewerage system operation and maintenance. It is estimated the time required to establish the Operating Authority, provide the necessary resources for effective oversight and submit the required documents for approval to the Commonwealth will be six (6) to twelve (12) months. The legal, technical and financial costs associated with the formation of an Operating Authority will be approximately $100,000.

The summary of costs for the recommended Option No. 9 would include the initial Investment in the Authority Formation (year one (1) only) of $100,000, the estimated initial capital equipment cost (year one (1)) of $60,000, annual Staff expenses of $80,000 plus benefits, and $20,000 for equipment and the annual Authority Expenses of $80,000. It should be noted that Option Nos. 7 and 8 also carry a similar formation expense and annual Authority expenses. This, in summary, is an upfront cost of $160,000 and a total annual increase to expenses of $180,000.

Option No. 1 would have no initial investment for Authority formation but, with a change in the accounting and administration for the sewerage system, may see an increased annual cost of $20,000 plus the annual expenses delineated above. So, in summary, the upfront cost of this option would be $60,000 and an annual increase to expenses of $100,000.

7.0 NEXT STEPS

It is the intent of this project to outline in general terms the means and methods for achieving the recommended option. However, there will remain many details that must be addressed to comply with current regulations and prepare the new Operating Authority for successfully providing the needed oversight to the sewerage system. To delineate these details, the Consultants recommend the Township Board appoint a five (5) person committee to review and complete the necessary tasks for the formation of an Operating Authority. It is expected that the committee will be populated by community volunteers who are customers of the public sewerage system and who are committed to the goals set forth by the Board and delineated in this report. The committee will have access to legal, technical and financial support to complete the necessary tasks for forming the new Operating Authority as authorized by the Board of Supervisors. The committee will meet on a regular basis, at least monthly, with advertised meetings to allow attendance by the public. They will conduct business in accordance with Roberts' Rules, produce minutes of the discussions for public review and will permit public questions, comments, and participation in an orderly fashion. It is the intent that this committee will report its progress to the Board monthly and will complete the necessary tasks to establish a new Operating Authority. It, with prior approval of the Board of Supervisors, will have the ability to develop and recommend the legal, technical, and financial consultants to undertake required tasks and will form a new Operating Authority structured in accordance with the Municipal Authorities Act of 2001. Upon completion of its work this committee will be disbanded in favor of the new Operating Authority.

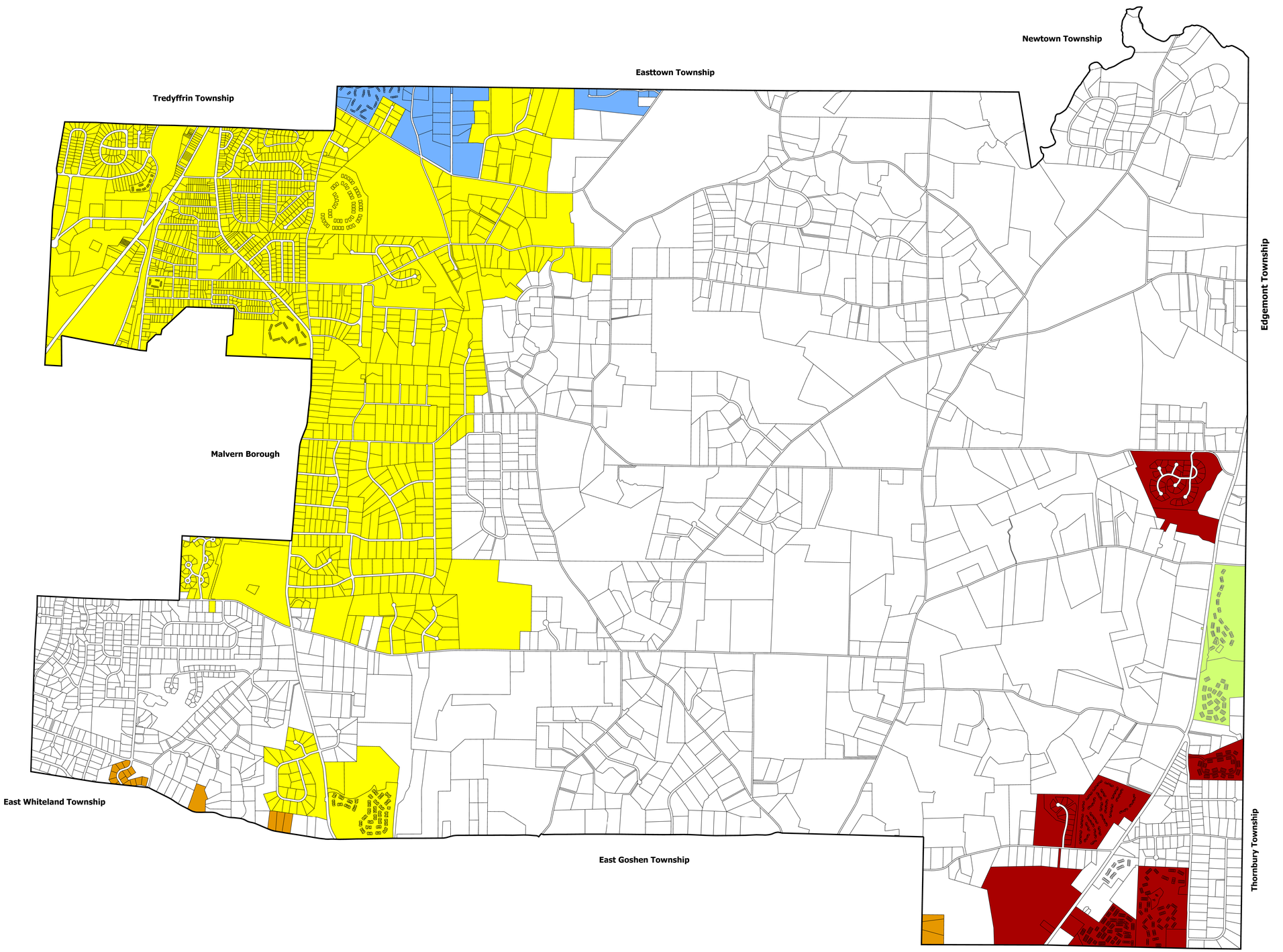
While the committee will ensure the public can participate in the process, it is critical for success that the goal of establishing an Operating Authority be its focus. Public participation by those who do not share in this goal cannot be allowed to impede the process.

APPENDICES

APPENDIX A – PUBLIC SEWERAGE SYSTEM MAP

PUBLIC SEWERAGE SYSTEM MAP

Willistown Township
Chester County County, PA



Boundary
- Municipal Boundary

Drainage Areas
- Tredyffrin Township
- Easttown Township
- AQUA
- East Goshen
- Penn's Preserve

0 3,000 6,000 Feet

1:14,000

Date Produced/Author: CFN 09/11/2024
Projection/Coordinate System:
NAD 1983 StatePlane Pennsylvania South FIPS 3702 Feet
Data Source:
Data.pa.gov, OpenStreetMap, Chester County GIS

ARRO

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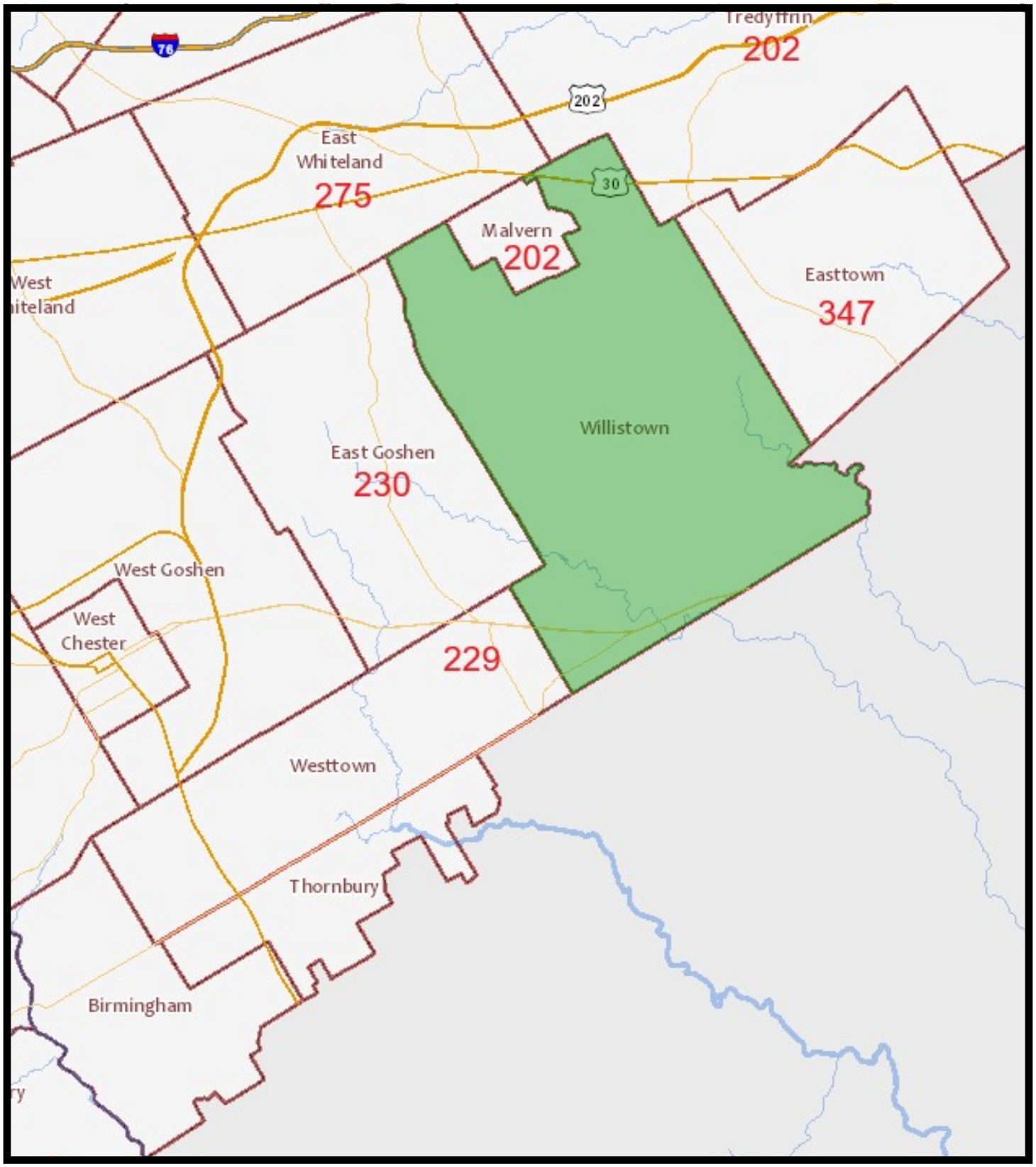
APPENDIX B – TABLE OF MUNICIPAL RATES AND EDU VALUES

TABLE OF MUNICIPAL RATES FOR SURROUNDING MUNICIPALITIES

Township	Billing Cycle	Fixed	Variable	Notes
Easttown	Quarterly	$156.64 $173.14 $236.03	$13.96 per 1,000 gallons (Residential) $15.08 per 1,000 gallons (Non-Residential) Unmetered	Quarterly Rates are based on water consumption as supplied by Aqua, PA. The Base Rate includes usage up to 10K gallons per quarter.
East Goshen	Quarterly	$60.61	$12.00 per thousand gallons	Fixed rate based on sewer system costs. Variable based on water usage per customer.
East Whiteland	Quarterly	n/a	$100 - EDU - District A & B $135 - EDU District C $150 - EDU District D $120 - EDU District E	There are 5 Sewer districts per ecode: §154-104 Sewer Districts
Tredyffrin	Yearly		$250 per EDU	EDU = Equivalent Dwelling Unit, 3,550 sq ft.
Westtown	Quarterly	$205		
Birmingham	Quarterly	$165		
Upper Uwchlan	Quarterly	$190		
Uwchlan	Quarterly	$105		
West Chester	Monthly	$33 first 2,000 gallons	>2,000 - $8.76 per 1,000 gallons	
West Goshen	Quarterly	$120		



MAP OF EDU VALUES FOR ADJACENT TOWNSHIPS (Gallons/EDU)

APPENDIX C – MUNICIPAL AUTHORITIES ACT OF 2001

CHAPTER 56
MUNICIPAL AUTHORITIES

Sec.

Enactment. Chapter 56 was added June 19, 2001, P.L.287, No.22, effective immediately.

Special Provisions in Appendix. See sections 2 and 4 of Act 22 of 2001 in the appendix to this title for special provisions relating to applicability to authorities incorporated under former laws and continuation of Municipality Authorities Act of 1945.

Cross References. Chapter 56 is referred to in sections 1103, 13B53 of Title 4 (Amusements); sections 1105.1, 25B01 of Title 8 (Boroughs and Incorporated Towns); sections 10102, 12434 of Title 11 (Cities); sections 2102, 3402, 3902 of Title 12 (Commerce and Trade); section 16106 of Title 16 (Counties); section 206 of Title 26 (Eminent Domain); section 1504 of Title 64 (Public Authorities and Quasi-Public Corporations); sections 3201, 3208 of Title 66 (Public Utilities); section 3101 of Title 72 (Taxation and Fiscal Affairs).

§ 5601. Short title of chapter.

This chapter shall be known and may be cited as the Municipality Authorities Act.

§ 5602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative service." In the case of authorities created for the purpose of making business improvements or providing administrative services, the term means those services which improve the ability of the commercial establishments of a district to serve the consumers, such as free or reduced-fee parking for customers, transportation repayments, public relations programs, group advertising and district maintenance and security services.

"Authority." A body politic and corporate created under this chapter; under the former act of June 28, 1935 (P.L.463, No.191), known as the Municipality Authorities Act of one thousand nine hundred and thirty-five; or under the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

"Board." The governing body of an authority.

"Bonds." Notes, bonds and other evidence of indebtedness or obligations which each authority is authorized to issue pursuant to section 5608 (relating to bonds).

"Business improvement." In the case of authorities created for the purpose of making business improvements or providing administrative services, the term means those improvements designated by an authority to be needed by a district in general or by specific areas or individual properties within or near the district, including, but not limited to, sidewalks, retaining walls, street paving, street lighting, parking lots, parking garages, trees and shrubbery, pedestrian walks, sewers, water lines, rest areas and acquisition and remodeling or demolition of blighted buildings or structures. Improvements shall not be made to property not acquired by purchase or lease other than those improvements made within a right-of-way.

"Construction." Acquisition and construction. The term "to construct" shall mean and include to acquire and to construct, all in such manner as may be deemed desirable.

"Eligible 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.

"Federal agency." The United States of America, the President of the United States of America and any department of or corporation, agency or instrumentality created, designated or established by the United States of America.

"Financing," "to finance" or "financed." The lending or providing of funds to or on behalf of a person for payment of the costs of a project or for refinancing such costs, repayment of loans previously incurred to pay the cost of a project or otherwise.

"Health center." A facility which:

(1) is operated by a nonprofit corporation and:

(i) provides health care services to the public;

(ii) provides health care-related services or assistance to one or more organizations in aid of the provision of health care services to the public, including, without limitation, such facilities as blood banks, laboratories, research and testing facilities, medical and administrative office buildings and ancillary facilities;

(iii) constitutes an integrated facility which provides substantial health care services on a nonsectarian basis and other reasonably related services, including, without limitation, life care or continuing care communities and nursing, personal care or assisted living facilities for the elderly, handicapped or disabled; or

(iv) provides educational and counseling services regarding the prevention, diagnosis and treatment of health care problems; and

(2) if required by law to be licensed to provide such services by the Department of Health, the Department of Public Welfare or the Insurance Department, is so licensed or, in the

case of a facility to be constructed, renovated or expanded, is designed to comply with applicable standards for such licensure.

"Improvement." Extension, enlargement and improvement. The term "to improve" shall mean and include to extend, to enlarge and to improve all in such manner as may be deemed desirable.

"Local government unit." This term shall have the same meaning as provided under section 8002 (relating to definitions).

"Municipal authority." The body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality.

"Municipality." A county, city, town, borough, township or school district of the Commonwealth.

"Project." Equipment leased by an authority to the municipality or municipalities that organized it or to any municipality or school district located wholly or partially within the boundaries of the municipality or municipalities that organized it, or any structure, facility or undertaking which an authority is authorized to acquire, construct, finance, improve, maintain or operate, or provide financing for insurance reserves under the provisions of this chapter, or any working capital which an authority is authorized to finance under the provisions of this chapter.

"Provide financing for insurance reserves." Financing, on behalf of one or more local government units or authorities, all or any portion of a reserve or a contribution toward a combined reserve, pool or other arrangement relating to self-insurance which has been established by one or more local government units pursuant to 42 Pa.C.S. § 8564 (relating to liability insurance and self-insurance) up to, but not exceeding, the amount provided in section 8007 (relating to cost of project).

"Working capital." Shall include, but not be limited to, funds for supplies, materials, services, salaries, pensions and any other proper operating expenses, provided that the term shall be limited solely to hospitals and health centers, and private, nonprofit, nonsectarian colleges and universities, State-related universities and community colleges, which are determined by the authority to be eligible educational institutions. Nothing in this chapter shall prohibit the borrowing of working capital as may be necessary or incidental to the undertaking or placing in operation of any project undertaken in whole or in part pursuant to this chapter.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended the defs. of "authority" and "provide financing for insurance reserves," retroactive to June 19, 2001.

References in Text. The act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, referred to in the def. of "authority," was repealed by the act of June 19, 2001 (P.L.287, No.22).

The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 5602 is referred to in sections 2305, 2307, 2314 of this title; section 1201.3 of Title 8 (Boroughs and Incorporated Towns).

§ 5603. Method of incorporation.

(a) Resolution of intent.--Whenever the municipal authorities of any municipality singly or of two or more municipalities jointly desire to organize an authority under this chapter, they shall adopt a resolution or ordinance signifying their intention to do so. No such resolution or ordinance shall be adopted until

after a public hearing has been held, the notice of which shall be given at least 30 days before the hearing and in the same manner as provided in subsection (b) for the giving of notice of the adoption of the resolution or ordinance.

(b) General notice of adopted resolution.--If the resolution or ordinance is adopted, the municipal authorities of such municipality or municipalities shall cause a notice of such resolution or ordinance to be published at least one time in the legal periodical of the county or counties in which the authority is to be organized and at least one time in a newspaper published and in general circulation in such county or counties. The notice shall contain a brief statement of the substance of the resolution or ordinance, including the substance of the articles making reference to this chapter. In the case of authorities created for the purpose of making business improvements or providing administrative services, if appropriate, the notice shall specifically provide that the municipality or municipalities have retained the right which exists under this chapter to approve any plan of the authority. The notice shall state that on a day certain, not less than three days after publication of the notice, articles of incorporation of the proposed authority shall be filed with the Secretary of the Commonwealth. No municipality shall be required to make any other publication of the resolution or ordinance under the provisions of existing law.

(c) Filing articles of incorporation.--On or before the day specified in the notice required under subsection (b), the municipal authorities shall file with the Secretary of the Commonwealth articles of incorporation together with proof of publication of the notice required under subsection (b). The articles of incorporation shall set forth:

(1) The name of the authority.

(2) A statement that the authority is formed under this chapter.

(3) A statement whether any other authority has been organized under this chapter or under the former act of June 28, 1935 (P.L.463, No.191), entitled "An act providing for the incorporation, as bodies corporate and politic, of "Authorities" for municipalities, counties, and townships; defining the same; prescribing the rights, powers, and duties of such Authorities; authorizing such Authorities to acquire, construct, improve, maintain, and operate projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds, and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; authorizing such Authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and for other purposes," or the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, and is in existence in or for the incorporating municipality or municipalities. If any one or more of the municipalities have already joined with other municipalities not composing the same group in organizing a joint authority, the application shall set forth the name of that authority together with the names of the municipalities joining in it.

(4) The name of the incorporating municipality or municipalities together with the names and addresses of its municipal authorities.

(5) The names, addresses and term of office of the first members of the board of the authority.

(6) In the case of authorities created for the purpose of making business improvements or providing administrative services, if appropriate, a statement that the municipality or

municipalities have retained the right which exists under this chapter to approve any plan of the authority.

(7) Any other matter which shall be determined in accordance with the provisions of this chapter.

(d) Execution of articles.--The articles of incorporation shall be executed by each incorporating municipality by its proper officers and under its municipal seal.

(e) Certification of incorporation.--If 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.

(f) Certification of officers.--When an authority has been organized and its officers elected, its secretary shall certify to the Secretary of the Commonwealth the names and addresses of its officers as well as the principal office of the authority. Any change in the location of the principal office shall likewise be certified to the Secretary of the Commonwealth within ten days after such change. An authority created under the laws of the Commonwealth and existing at the time this chapder is enacted, in addition to powers granted or conferred upon the authority, shall possess all the powers provided under this chapter.
(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (f), retroactive to June 19, 2001.

References in Text. The act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, referred to in subsec. (c)(3), was repealed by the act of June 19, 2001 (P.L.287, No.22).

Cross References. Section 5603 is referred to in sections 5605, 5612 of this title.

§ 5604. Municipalities withdrawing from and joining in joint authorities.

(a) Power to withdraw.--When an authority has been incorporated by two or more municipalities, any one or more of such municipalities may withdraw from it, but no municipality shall be permitted to withdraw from an authority after an obligation has been incurred by that authority.

(b) Power to join.--When an authority has been incorporated by one or more municipalities, a municipality not having joined in the original incorporation may subsequently join in the authority.

(c) Procedure.--Any municipality wishing to withdraw from or to become a member of an existing authority shall signify its desire by resolution or ordinance. If the authority shall by resolution express its consent to such withdrawal or joining, the municipal authorities of the withdrawing or joining municipality shall cause a notice of its resolution or ordinance to be published at least one time in the legal periodical of the county or counties in which the authority is organized and at least one time in a newspaper published and in general circulation in such county or counties. This notice shall contain a brief statement of the substance of the resolution or ordinance, making reference to this chapter, and shall state that on a day certain, not less than

three days after publication of the notice, an application to withdraw from or to become a member of the authority, as the case may be, will be filed with the Secretary of the Commonwealth.

(d) Filing an application to withdraw or join.--On or before the day specified in the notice, the municipal authorities shall file an application with the Secretary of the Commonwealth together with proof of publication of the notice required under subsection (c). In the case of a municipality seeking to become a member of the authority, the application shall set forth all of the information required in the case of original incorporation insofar as it applies to the incoming municipality, including the name and address and term of office of the first member or members of the board of the authority from the incoming municipality and, if there is to be a reapportionment of representation or revision of the terms of office of the members of the board, the names, addresses and terms of office of all the members of the board as so reapportioned or revised. The application in all cases shall be executed by the proper officers of the withdrawing or incoming municipality under its municipal seal and shall be joined in by the proper officers of the governing body of the authority and, in the case of a municipality seeking to become a member of the authority, also by the proper officers of each of the municipalities that are then members of the authority pursuant to resolutions by the municipal authorities of the participating municipalities.

(e) Certification of withdrawal or joinder.--If 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.

Cross References. Section 5604 is referred to in section 5610 of this title.

§ 5605. Amendment of articles.

(a) Purpose.--An authority may amend its articles for the following reasons:

(1) To adopt a new name.

(2) To modify or add a provision to increase its term of existence to a date not exceeding 50 years from the date of approval of the articles of amendment.

(3) To change, add to or diminish its powers or purposes or to set forth different or additional powers or purposes.

(4) To increase or decrease the number of members of the board of the authority, to reapportion the representation on the board of the authority and to revise the terms of office of members, all in a manner consistent with the provisions of section 5610 (relating to governing body).

(b) Procedure.--Every amendment to the articles shall first be proposed by the board by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to the governing authorities of the municipality or municipalities composing the authority. The resolution shall contain the language of the proposed amendment to the articles by providing that the articles shall be amended so as to read as set forth in full in the resolution, that any provision of the articles be amended so as to read as set forth in full in the resolution or that the matter stated in the resolution be added to or stricken from the articles. After the amendments have been submitted to the municipality or municipalities, such municipality or

municipalities shall adopt or reject such amendment by resolution or ordinance.

(c) Execution and verification.--After an amendment has been adopted by the municipality or municipalities, articles of amendment shall be executed under the seal of the authority and verified by two duly authorized officers of the corporation and shall set forth:

(1) The name and location of the registered office of the authority.

(2) The act under which the authority was formed and the date when the original articles were approved and filed.

(3) The resolution or ordinance of the municipality or municipalities adopting the amendment.

(4) The amendment adopted by the municipality or municipalities which shall be set forth in full.

(d) Advertisement.--The authority shall advertise its intention to file articles of amendment with the Secretary of the Commonwealth as provided under section 5603 (relating to method of incorporation) for forming an authority. Advertisements shall appear at least three days prior to the day upon which the articles of amendment are presented to the Secretary of the Commonwealth and shall set forth briefly:

(1) The name and location of the registered office of the authority.

(2) A statement that the articles of amendment are to be filed under the provisions of this chapter.

(3) The nature and character of the proposed amendment.

(4) The time when the articles of amendment will be filed with the Secretary of the Commonwealth.

(e) Filing the amendment.--The articles of amendment and proof of the required advertisement shall be delivered by the authority or its representative to the Secretary of the Commonwealth. If the Secretary of the Commonwealth finds that the articles conform to law, he shall forthwith, but not prior to the day specified in the advertisement required in subsection (d), endorse his approval of it and, when all fees and charges have been paid, shall file the articles and issue to the authority or its representative a certificate of amendment to which shall be attached a copy of the approved articles.

Cross References. Section 5605 is referred to in section 5607 of this title.

§ 5606. School district projects.

(a) Merger and consolidation authorized.--Any two or more existing authorities, all the projects of all of which are leased to the same school district, may be merged into one authority, hereinafter designated as the surviving authority, or consolidated into a new authority.

(b) Articles of merger or consolidation.--Articles of merger or articles of consolidation, as the case may be, shall first be proposed by the board of school directors of the school district leasing the projects. The governing body of the school district and of any other municipality or municipalities incorporating one or more of the existing authorities shall each adopt a resolution which shall contain the language of the proposed merger or consolidation. The articles of merger or consolidation shall be signed by the proper officers of the respective school districts and other municipalities, if any, and under their respective municipal seals and shall set forth the following:

(1) The name of the surviving or new authority.

(2) The location of the registered office of the surviving or new authority.

(3) The names and addresses and term of office of the members of the board of the surviving or new authority as specified in the plan of merger or consolidation, and the initial terms of office shall be staggered as provided in this chapter with respect to the incorporation of an authority.

(4) A statement indicating the date on which each existing authority was formed and the purpose for which it was formed, taken from the articles of incorporation, the name of the original incorporating school district or districts or other incorporating municipality or municipalities and the name of any successor to any thereof.

(5) The time and place of the meetings of the governing bodies of the school district and other municipalities parties to the plan of merger or consolidation.

(6) A statement of the plan of merger.

(7) Any changes in the articles of incorporation of the surviving authority in the case of a merger and a statement of the articles of incorporation in full in the case of the new authority to be formed, in each case in conformity with the provisions of this chapter relating to the incorporation of authorities, except that any item required to be stated which is covered elsewhere in the articles of merger or consolidation need not be repeated.

(c) Publication of resolution.--The reorganized school district and each other municipality party to the plan of merger or consolidation shall cause a notice of the resolution setting forth the merger or consolidation to be published at least one time in the legal periodical of the county or counties in which the surviving authority is to be organized and at least one time in a newspaper published and in general circulation in such county or counties. The notice shall contain a brief statement of the substance of the resolution, including the substance of the articles of merger making reference to this chapter, and shall state that on a day certain, not less than three days after publication of the notice, articles of merger or consolidation shall be filed with the Secretary of the Commonwealth. The publication shall be sufficient compliance with the laws of this Commonwealth or any existing laws dealing with publication for municipalities.

(d) Documentation.--The articles of merger or consolidation shall be filed on or before the day specified in the advertisement with the Secretary of the Commonwealth together with the proof of publication of the notice required under subsection (c).

(e) Certification of merger or consolidation.--The Secretary of the Commonwealth shall file the articles of merger or consolidation and the proof of advertisement required in subsection (c) but not prior to the day specified in the advertisement, certify the date of such filing when all fees and charges have been paid and issue to the surviving or new authority or its representative a certificate of merger or consolidation to which shall be attached a copy of the filed articles of merger or consolidation.

(f) Filing the articles of merger or consolidation.--Upon the filing of the articles of merger or the articles of consolidation by the Secretary of the Commonwealth, the merger or consolidation shall be effective, and in the case of a consolidation the new authority shall come into existence, and in either case the articles of merger and consolidation shall constitute the articles of incorporation of the surviving or new authority, and the reorganized school district, lessee of the projects, shall be deemed to be the incorporating municipality of the authority.

(g) Creation of surviving or new authority.--Upon the merger or consolidation becoming effective, the several existing

authorities to the plan of merger or consolidation shall become a single authority, which in the case of a merger shall be that authority designated in the articles of merger as the surviving authority and in the case of a consolidation shall be a new authority as provided in the articles of consolidation. The separate existence of all existing authorities named in the articles of merger or consolidation shall cease, except that of the surviving authority in the case of a merger.

(h) Disposition of property and accounts.--All of the property, real, personal and mixed, and all interests therein of each of the existing authorities named in the plan of merger or consolidation, all debts due and whatever amount due to any of them, including their respective right, title and interest in and to all lease rentals, sinking funds on deposit, all funds deposited under lease or trust instruments shall be taken and deemed to be transferred to and vested in the surviving or new authority as the case may be without further act or deed.

(i) Continuation of contracts.--The surviving authority or the new authority shall be responsible for the liabilities and obligations of each of the existing authorities so merged or consolidated but shall be subject to the same limitations, pledges, assignments, liens, charges, terms and conditions as to revenues and restrictions as to and leases of properties as were applicable to each existing authority. The 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.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (d), retroactive to June 19, 2001.

§ 5607. Purposes and powers.

(a) Scope of projects permitted.--Every 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:

(1) Equipment to be leased by an authority to the municipality or municipalities that organized it or to any municipality or school district located wholly or partially within the boundaries of the municipality or municipalities that organized it.

(2) Buildings to be devoted wholly or partially for public uses, including public school buildings, and facilities for the conduct of judicial proceedings and for revenue-producing purposes.

(3) Transportation, marketing, shopping, terminals, bridges, tunnels, flood control projects, highways, parkways, traffic distribution centers, parking spaces, airports and all facilities necessary or incident thereto.

(4) Parks, recreation grounds and facilities.

(5) Sewers, sewer systems or parts thereof.

(6) Sewage treatment works, including works for treating and disposing of industrial waste.

(7) Facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, landfill or other methods.

(8) Steam heating plants and distribution systems.

(9) Incinerator plants.

(10) Waterworks, water supply works, water distribution systems.

(11) Facilities to produce steam which is used by the authority or is sold on a contract basis for industrial or similar use or on a sale-for-resale basis to one or more entities authorized to sell steam to the public, provided that such facilities have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing such authority and that the approval does not obligate the taxing power of the municipality in any way.

(12) Facilities 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, to section 3 of the Federal Power Act (41 Stat. 1063, 16 U.S.C. § 796) and section 210 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 16 U.S.C. § 824a-3) or Title IV of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 16 U.S.C. §§ 2701 to 2708) if:

(i) electric power generated from the facilities is sold or distributed only on a sale-for-resale basis to one or more entities authorized to sell electric power to the public;

(ii) the facilities have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing the authority and the approval does not obligate the taxing power of the municipality in any way; and

(iii) the incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants are or will be located within or contiguous with a county in which at least one of the municipalities organizing the authority is located, except that this subparagraph shall not apply to incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants located in any county which have been or will be constructed by or acquired by the authority to perform functions the primary purposes of which are other than that of generation of electric power for which the authority has been organized.

(13) Swimming pools, playgrounds, lakes and low-head dams.

(14) Hospitals and health centers.

(15) Buildings and facilities for private, nonprofit, nonsectarian secondary schools, colleges and universities, State-related universities and community colleges, which are determined by the authority to be eligible educational institutions, provided that such buildings and facilities shall have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing the authority and that the approval does not obligate the taxing power of the governing body in any way.

(16) Motor buses for public use, when such motor buses are to be used within any municipality, and subways.

(17) Industrial development projects, including, but not limited to, projects to retain or develop existing industries and the development of new industries, the development and

administration of business improvements and administrative services related thereto.

(18) Storm water planning, management and implementation as defined in the articles of incorporation by the governing body. Authorities, existing as of the effective date of this paragraph, already operating storm water controls as part of a combined sewer system, sanitary sewer system or flood control project may continue to operate those projects.

(b) Limitations.--This section is subject to the following limitations:

(1) 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.

(2) 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, 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. This limitation shall not apply to the exercise of the powers granted under this section:

(i) for facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, landfill or other methods if each municipality organizing or intending to use the facilities of an authority having such powers shall declare by resolution or ordinance that it is desirable for the health and safety of the people of such municipality that it use the facilities of the authority and state if any contract between such municipality and any other person, firm or corporation for the collection, removal or disposal of ashes, garbage, rubbish and other refuse material has by its terms expired or is terminable at the option of the municipality or will expire within six months from the date such ordinance becomes effective;

(ii) for industrial development projects if the authority does not develop industrial projects which will compete with existing industries;

(iii) for authorities created for the purpose of providing business improvements and administrative services if each municipality organizing an authority for such a project shall declare by resolution or ordinance that it is desirable for the entire local government unit to improve the business district;

(iv) to hospital projects or health centers to be leased to or financed with loans to public hospitals, nonprofit corporation health centers or nonprofit hospital corporations serving the public or to school building projects and facilities to be leased to or financed with loans to private, nonprofit, nonsectarian secondary schools, colleges and universities, State-related universities and community colleges or to facilities, as limited under the provisions of this section, to produce steam or to generate electric power if each municipality organizing an authority for such a project shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in the area served

by such facilities to have such facilities provided by or financed through an authority;

(v) to provide financing for insurance reserves if each municipality or authority intending to use any proceeds thereof shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in such local government unit or served by such authority; or

(vi) to projects for financing working capital.

(3) It is the intent of this chapter in specifying and defining the authorized purposes and projects of an authority to permit the authority to benefit the people of this Commonwealth by, among other things, increasing their commerce, health, safety and prosperity while not unnecessarily burdening or interfering with any municipality which has not incorporated or joined that authority. Therefore, notwithstanding any other provisions of this chapter, an authority shall not have as its purpose and shall not undertake as a project solely for revenue-producing purposes the acquiring of buildings, facilities or tracts of land which in the case of an authority incorporated or joined by a county or counties are located either within or outside the boundaries of the county or counties and in the case of all other authorities are located outside the boundaries of the municipality or municipalities that incorporated or joined the authority unless either:

(i) the governing body of each municipality in which the project will be undertaken has by resolution evidenced its approval; or

(ii) in cases where the property acquired is not subject to tax abatement, the authority covenants and agrees with each municipality in which the authority will acquire real property as part of the project either to make annual payments in lieu of real estate taxes and special assessments for amounts and time periods specified in the agreement or to pay annually the amount of real estate taxes and special assessments which would be payable if the real property so acquired were fully taxable and subject to special assessments.

(c) Effect 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.

(d) Powers.--Every 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:

(1) To have existence for a term of 50 years and for such further period or periods as may be provided in articles of amendment approved under section 5605(e) (relating to amendment of articles).

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(3) To adopt, use and alter at will a corporate seal.

(4) To 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.

(5) To acquire by purchase, lease or otherwise and to construct, improve, maintain, repair and operate projects.

(6) To finance projects by making loans which may be evidenced by and secured as may be provided in loan agreements, mortgages, security agreements or any other contracts, instruments or agreements, which contracts, instruments or agreements may contain such provisions as the authority shall deem necessary or desirable for the security or protection of the authority or its bondholders.

(7) To make bylaws for the management and regulation of its affairs.

(8) To appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation.

(9) To 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 and, in the case of an authority created for the purpose of making business improvements or providing administrative services, a charge for such services which is to be based on actual benefits and which may be measured on, among other things, gross sales or gross or net profits, the payment of the principal of and interest on its obligations and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations, or with a municipality and to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served. If the service area includes more than one municipality, the revenues from any project shall not be expended directly or indirectly on any other project unless such expenditures are made for the benefit of the entire service area. Any 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. Except in municipal corporations having a population density of 300 persons or more per square mile, all owners of real property in eighth class counties may decline in writing the services of a solid waste authority. The owner of multiple residential units that are served by a single water meter may periodically request the authority to adjust the amount billed by showing a minimum of five consecutive years of actual usage data to determine if the amount billed exceeds the actual usage by 30% or more. If the usage data shows that an adjustment is needed, the authority shall appropriately adjust the billing and use the adjusted amount going forward. When calculating the new amount, the authority may include up to 10% over the amount used. After an initial adjustment, the owner may not request another adjustment for five years after the adjustment is completed.

(10) In the case of an authority which has agreed to provide water service through a separate meter and separate service line to a residential dwelling unit in which the owner does not reside, to impose and enforce the owner's duty to pay

a tenant's bill for service rendered to the tenant by the authority only if the authority notifies the owner and the tenant within 30 days after the bill first becomes overdue. Notification shall be provided by first class mail to the address of the owner provided to the authority by the owner and to the billing address of the tenant, respectively. Nothing in this paragraph shall be construed to require an authority to terminate service to a tenant, and the owner shall not be liable for any service which the authority provides to the tenant 90 or more days after the tenant's bill first becomes due unless the authority has been prevented by court order from terminating service to that tenant.

(11) In the case of an authority which has agreed to provide sewer service to a residential dwelling unit in which the owner does not reside, to impose and enforce the owner's duty to pay a tenant's bill for service rendered by the authority to the tenant. The authority shall notify the owner and the tenant within 30 days after the tenant's bill for that service first becomes overdue. Notification shall be provided by first class mail to the address of the owner provided to the authority by the owner and to the billing address of the tenant, respectively. Nothing in this paragraph shall be construed to relieve the owner of liability for such service unless the authority fails to provide the notice required in this paragraph.

(12) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations, hereinafter called bonds, of the authority. Bonds shall have a maturity date not longer than 40 years from the date of issue except that no refunding bonds shall have a maturity date later than the life of the authority; also, to secure the payment of the bonds or any part thereof by pledge or deed of trust of all or any of its revenues and receipts; to make agreements with the purchasers or holders of the bonds or with others in connection with any bonds, whether issued or to be issued, as the authority shall deem advisable; and in general to provide for the security for the bonds and the rights of the bondholders. In respect to any project constructed and operated under agreement with any authority or any public authority of any adjoining state, to borrow money and issue notes, bonds and other evidences of indebtedness and obligations jointly with that authority. Notwithstanding any of the foregoing, no authority shall borrow money on obligations to be paid primarily out of lease rentals or other current revenues other than charges made to the public for the use of the capital projects financed if the net debt of the lessee municipality or municipalities shall exceed any limit provided by any law of the Commonwealth.

(13) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(14) Without limitation of the foregoing, to borrow money and accept grants from and to enter into contracts, leases or other transactions with any Federal agency, the Commonwealth or a municipality, school district, corporation or authority.

(15) To have the power of eminent domain.

(16) To pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority.

(17) To 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 chapter or other law, including, but not limited to, the adoption of

reasonable rules and regulations that apply to water and sewer lines located on a property owned or leased by a customer and to refer for prosecution as a summary offense any violation dealing with rules and regulations relating to water and sewer lines located on a property owned or leased by a customer. Under this paragraph, an authority established by a county of the second class A which is not a home rule county shall have powers for the inspection and repair of sewer facilities comparable to the powers of health officials under section 3007 of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code.

(18) 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.

(19) To enter into contracts to supply water and other services to and for municipalities that are not members of the authority or to and for the Commonwealth, municipalities, school districts, persons or authorities and fix the amount to be paid therefor.

(20) (i) To 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. Statutory requirements for such insurance, including, but not limited to, requisite number of eligible employees, appointed officers and officials, as provided for in section 621.2 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, and sections 1, 2, 6, 7 and 9 of the act of May 11, 1949 (P.L.1210, No.367), known as the Group Life Insurance Policy Law, shall be met.

(ii) To 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.

(iii) For the purposes set forth under this paragraph, to agree to pay part or all of the cost of this insurance, including the premiums or charges for carrying these contracts, and to appropriate out of its treasury any money necessary to pay such costs, premiums or charges. The proper officers of the authority who are authorized to enter into such contracts are authorized, enabled and permitted to deduct from the officers' or employees' pay, salary or compensation that part of the premium or cost which is payable by the officer or employee and as may be so authorized by the officer or employee in writing.

(21) To charge the cost of construction of any sewer or water main constructed by the authority against the properties benefited, improved or accommodated thereby to the extent of such benefits. These benefits shall be assessed in the manner

provided under this chapter for the exercise of the right of eminent domain.

(22) To 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.

(23) To require the posting of financial security to insure the completion in accordance with the approved plat and with the rules and regulations of the authority of any water mains or sanitary sewer lines, or both, and related apparatus and facilities required to be installed by or on behalf of a developer under an approved land development or subdivision plat as these terms are defined under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code. If financial security is required by the authority and without limitation as to other types of financial security which the authority may approve, which approval shall not be unreasonably withheld, federally chartered or Commonwealth-chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in these lending institutions shall be deemed acceptable financial security. Financial security shall be posted with a bonding company or federally chartered or Commonwealth-chartered lending institution chosen by the party posting the financial security if the bonding company or lending institution is authorized to conduct business within this Commonwealth. The bond or other security shall provide for and secure to the authority the completion of required improvements within one year from the date of posting of the security. The amount of financial security shall be equal to 110% of the cost of the required improvements for which financial security is to be posted. The cost of required improvements shall be established by submitting to the authority a bona fide bid from a contractor chosen by the party posting the financial security. In the absence of a bona fide bid, the cost shall be established by an estimate prepared by the authority's engineer. If the party posting the financial security requires more than one year from the date of posting the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from the initial posting date or to 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure. As the work of installing the required improvements proceeds, the party posting the financial security may request the authority to release or authorize the release of, from time to time, portions of the financial security necessary to pay the contractor performing the work. Release requests shall be in writing addressed to the authority, and the authority shall have 45 days after receiving a request to ascertain from the

authority engineer, certified in writing, that the portion of the work has been completed in accordance with the approved plat. Upon receiving written certification, the authority shall authorize release by the bonding company or lending institution of an amount estimated by the authority engineer to fairly represent the value of the improvements completed. If the authority fails to act within the 45-day period, it shall be deemed to have approved the requested release of funds. The authority may, prior to final release at the time of completion and certification by its engineer, retain 10% of the original amount of the posted financial security for the improvements. If the authority accepts dedication of all or some of the required improvements following completion, it may require the posting of financial security to secure structural integrity of the dedicated improvements as well as the functioning of the improvements in accordance with the design and specifications as depicted on the final plat and the authority's rules and regulations. This financial security shall expire not later than 18 months from the date of acceptance of dedication and shall be of the same type as set forth in this paragraph with regard to that which is required for installation of the improvements, except that it shall not exceed 15% of the actual cost of installation of the improvements. Any inconsistent ordinance, resolution or statute is null and void.

(24) To charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system. Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection or at a time to which the property owner and the authority agree. In the case of projects to serve existing development, fees shall be payable at a time to be determined by the authority. An authority may require that no capacity be guaranteed for a property owner until the tapping fees have been paid or secured by other financial security. The fees shall be in addition to any charges assessed against the property in the construction of a sewer or water main by the authority under paragraphs (21) and (22) as well as any other user charges imposed by the authority under paragraph (9), except that no reservation of capacity fee or other similar charge shall be imposed or collected from a property owner who has applied for service unless the charge is based on debt and fixed operating expenses. A reservation of capacity fee or other similar charge may not exceed 60% of the average sanitary sewer bill for a residential customer in the same sewer service area for the same billing period. Any authority opting to collect a reservation of capacity fee or other similar charge may not collect the tapping fee until the time as the building permit fee is due. Tapping fees shall not include costs included in the calculation of any other fees, assessments, rates or other charges imposed under this act.

(i) The fees may include any of the following if they are separately set forth in a resolution adopted by the authority:

(A) Connection fee. 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. In lieu of payment of the fee,

an authority may require the construction of those facilities by the property owner who requested the connection.

(B) Customer facilities fee. A customer facilities fee shall not exceed an amount based upon the actual cost of facilities serving the connected property from the property line or curb stop to the proposed dwelling or building to be served. The fee shall be chargeable only if the authority installs the customer facilities. In lieu of payment of the customer facilities fee, an authority may require the construction of those facilities by the property owner who requests customer facilities. In the case of water service, the fee may include the cost of a water meter and installation if the authority provides or installs the water meter. If the property connected or to be connected with the sewer system of the authority is not equipped with a water meter, the authority may install a meter at its own cost and expense. If the property is supplied with water from the facilities of a public water supply agency, the authority shall not install a meter without the consent and approval of the public water supply agency.

(C) Tapping fee. A tapping fee shall not exceed an amount based upon some or all of the following parts which shall be separately set forth in the resolution adopted by the authority to establish these fees. In lieu of payment of this fee, an authority may require the construction and dedication of only such capacity, distribution-collection or special purpose facilities necessary to supply service to the property owner or owners.

(I) Capacity part. The capacity part shall not exceed an amount that is based upon the cost of capacity-related facilities, including, but not limited to, source of supply, treatment, pumping, transmission, trunk, interceptor and outfall mains, storage, sludge treatment or disposal, interconnection or other general system facilities. Except as specifically provided in this paragraph, such facilities may include only those that provide existing service. The cost of capacity-related facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon their historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has

been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The capacity part of the tapping fee per unit of design capacity of said facilities required by the new customer shall not exceed the total cost of the facilities as described herein divided by the system design capacity of all such facilities. Where the cost of facilities to be constructed or acquired in the future are included in the calculation of the capacity part as permitted herein, the total cost of the facilities shall be divided by the system design capacity plus the additional capacity to be provided by the facilities to be constructed or acquired in the future. An authority may allocate its capacity-related facilities to different sections or districts of its system and may impose additional capacity-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers. The cost of facilities to be constructed or acquired in the future that will increase the system design capacity may be included in the calculation of the capacity part, subject to the provisions of clause (VI). The cost of such facilities shall not exceed their reasonable estimated cost set forth in a duly adopted annual budget or a five-year capital improvement plan. The authority shall have taken at least two of the following actions toward construction of the facilities:

(a) obtained financing for the facilities;

(b) entered into a contract obligating the authority to construct or pay for the cost of construction of the facilities or its portion thereof in the event that multiple parties are constructing the facilities;

(c) obtained a permit for the facilities;

(d) obtained title to or condemned additional real estate upon which the facilities will be constructed;

(e) entered into a contract obligating the authority to purchase or acquire facilities owned by another;

(f) prepared an engineering feasibility study specifically related to the facilities, which study recommends the construction of the facilities within a five-year period;

(g) entered into a contract for the design or construction of the facilities or adopted a budget which includes the use of in-house

resources for the design or construction of the facilities.

(II) Distribution or collection part. The distribution or collection part may not exceed an amount based upon the cost of distribution or collection facilities required to provide service, such as mains, hydrants and pumping stations. Facilities may only include those that provide existing service. The cost of distribution or collections facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The distribution or collection part of the tapping fee per unit of design capacity of said facilities required by the new customer shall not exceed the cost of the facilities divided by the design capacity. An authority may allocate its distribution-related or collection-related facilities to different sections or districts of its system and may impose additional distribution-related or collection-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(III) Special purpose part. A part for special purpose facilities shall be applicable only to a particular group of customers or for serving a particular purpose or a specific area based upon the cost of the facilities, including, but not limited to, booster pump stations, fire service facilities, water or sewer mains, pumping stations

and industrial wastewater treatment facilities. Such facilities may include only those that provide existing service. The cost of special purpose facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The special purpose part of the tapping fee per unit of design capacity of such special purpose facilities required by the new customer shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Where an authority constructs special purpose facilities at its own expense, the design capacity for the facilities may be expressed in terms of the number of equivalent dwelling units to be served by the facilities. In no event shall an authority continue to collect any tapping fee which includes a special purpose part after special purpose part fees have been imposed on the total number of design capacity units used in the original calculation of the special purpose part. An authority may allocate its special purpose facilities to different sections or districts of its system and may impose additional special purpose tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(IV) Reimbursement part. The reimbursement part shall only be applicable to the users of certain specific facilities when a fee required to be collected from such users will be reimbursed to the person at whose expense the facilities were

constructed as set forth in a written agreement between the authority and such person at whose expense such facilities were constructed.

(V) Calculation of tapping fee.

(a) In arriving at the cost to be included in the tapping fee, the same cost shall not be included in more than one part of the tapping fee.

(b) No tapping fee may be based upon or include the cost of expanding, replacing, updating or upgrading facilities serving only existing customers in order to meet stricter efficiency, environmental, regulatory or safety standards or to provide better service to or meet the needs of existing customers.

(c) The cost used in calculating tapping fees shall not include maintenance and operation expenses.

(d) As used in this subclause, "maintenance and operation expenses" are those expenditures made during the useful life of a sewer or water system for labor, materials, utilities, equipment accessories, appurtenances and other items which are necessary to manage and maintain the system capacity and performance and to provide the service for which the system was constructed. Costs or expenses to reduce or eliminate groundwater infiltration or inflow may not be included in the cost of facilities used to calculate tapping fees unless these costs or expenses result in an increase in system design capacity.

(e) Except as otherwise provided for the calculation of a special purpose part, the design capacity required by a new residential customer used in calculating sewer or water tapping fees shall not exceed an amount established by multiplying 65 gallons per capita per day for water capacity, 90 gallons per capita per day for sewer capacity times the average number of persons per household as established by the most recent census data provided by the United States Census Bureau. If an authority service area is entirely within a municipal boundary for which there is corresponding census data specifying the average number of persons per household, issued by the United States Census Bureau, the average shall be used. If an authority service area is not entirely within a municipal boundary but is entirely within a county or other geographic area within Pennsylvania for which the United States Census Bureau has provided the average number of persons per household, then that average for the county or geographic area shall be used. If an authority service area is not entirely within a municipal, county or other geographic area within Pennsylvania for which the United States Census Bureau has calculated an average number of persons per household, then the Pennsylvania average number of persons per household shall be used as published by the United States Census Bureau. Alternatively, the

design capacity required for a new residential customer shall be determined by a study but shall not exceed:

(i) for water capacity, the average residential water consumption per residential customer, or, for sewage capacity, the average residential water consumption per residential customer plus ten percent. The average residential water consumption shall be determined by dividing the total water consumption for all metered residential customers in the authority's service area over at least a 12-consecutive-month period within the most recent five years by the average number of customers during the period; or

(ii) for sewer capacity, the average sewage flow per residential customer determined by a measured sewage flow study. Such study shall be completed in accordance with sound engineering practices within the most recent five years for the lesser of three or all residential subdivisions of more than ten lots which have collection systems in good repair and which connected to the authority's facilities within the most recent five years. The study shall calculate the average sewage flow per residential customer in such developments by measuring actual sewage flows over at least 12 consecutive months at the points where such developments connected to the authority's sewer main.

(iii) All data and other information considered or obtained by an authority in connection with determining capacity under this subsection shall be made available to the public upon request.

(iv) If any person required to pay a tapping fee submits to the authority an opinion from a professional engineer that challenges the validity of the results of the calculation of design capacity required to serve new residential customers prepared under subparagraph (i) or (ii), the authority shall within 30 days obtain a written certification from another professional engineer, who is not an employee of the authority, verifying that the results and the calculations, methodology and measurement were performed in accordance with this title and generally accepted engineering practices. If an authority does not obtain a certification required under this subsection within 30 days of receiving such challenge, the authority may not impose or collect tapping fees based on any such challenged calculations or study until such engineering certification is obtained.

(f) An authority may use lower design capacity requirements and impose lower tapping fees for multifamily residential dwellings than imposed on other types of residential customers.

(VI) Separate accounting for future facility costs. Any portion of tapping fees collected which, based on facilities to be constructed or acquired in the future in accordance with this section, shall be separately accounted for and shall be expended only for that particular facility or a substitute facility accomplishing the same purpose which is commenced within the same period. Such accounting shall include, but not be limited to, the total fees collected as a result of including facilities to be constructed in the future, the source of the fees collected and the amount of fees expended on specific facilities. The proportionate share of tapping fees based upon facilities to be constructed or acquired in the future under this section shall be refunded to the payor of such fees within 90 days of the occurrence of the following:

(a) the authority abandons its plan or a part thereof to construct or acquire a facility or facilities which are the basis for such fee; or

(b) the facilities have not been placed into service within seven years, or, for an authority which provides service to five or more municipalities, the facilities have not been placed into service within 20 years, after adoption of a resolution which imposes tapping fees which are based upon facilities to be constructed or acquired in the future. Any refund of fees held for 20 years shall include interest for the period the money was held.

(VII) Definitions. As used in this clause, the following words and phrases shall have the meanings given to them in this subclause:

"BOD5." The five-day biochemical-oxygen demand.

"Design capacity." For residential customers, the permitted or rated capacity of facilities expressed in million gallons per day. For nonresidential customers, design capacity may also be expressed in pounds of BOD5 per day, pounds of suspended solids per day or any other capacity-defining parameter that is separately and specifically set forth in the permit governing the operation of the system and based upon its original design as modified by those regulatory agencies having jurisdiction over these facilities. Additionally, for separate fire service customers, the permitted or rated capacity of fire service facilities may be expressed in peak flows. The units of measurement used to express design capacity shall be the same units of measurement used to express the system design capacity. Except as otherwise provided for special purpose facilities, design capacity may not be expressed in terms of equivalent dwelling units.

"Outstanding debt." The principal amount outstanding of any bonds, notes, loans or other form of indebtedness used to finance or refinance facilities included in the tapping fee.

"Service line." A water or sewer line that directly connects a single building or structure to a distribution or collection facility.

"System design capacity." The design capacity of the system for which the tapping fee is being calculated which represents the total design capacity of the treatment facility or water sources.

(ii) Every authority charging a tapping, customer facilities or connection fee shall do so only pursuant to a resolution adopted at a public meeting of the authority. The authority shall have available for public inspection a detailed itemization of all calculations, clearly showing the maximum fees allowable for each part of the tapping fee and the manner in which the fees were determined, which shall be made a part of any resolution imposing such fees. A tapping, customer facilities or connection fee may be revised and imposed upon those who subsequently connect to the system, subject to the provisions and limitations of the act.

(iii) No authority shall have the power to impose a connection fee, customer facilities fee, tapping fee or similar fee except as provided specifically under this section.

(iv) A municipality or municipal authority with available excess sewage capacity, wishing to sell a portion of that capacity to another municipality or municipal authority, may not charge a higher cost for the capacity portion of the tapping fee as the selling entity charges to its customers for the capacity portion of the tapping fee. In turn, the municipality or municipal authority buying this excess capacity may not charge a higher cost for the capacity portion of the tapping fee to its residential customers than that charged to them by the selling entity.

(v) As used in this paragraph, the term "residential customer" shall also include those developing property for residential dwellings that require multiple tapping fee permits. This paragraph shall not be applicable to intermunicipal or interauthority agreements relative to the purchase of excess capacity by an authority or municipality in effect prior to February 20, 2001.

(25) To construct tunnels, bridges, viaducts, underpasses or other structures and relocate the facilities of public service companies to effect or permit the abolition of a grade crossing or grade crossings subject to approval of and in accordance with a duly issued order of the Pennsylvania Public Utility Commission. A commission order shall provide that costs payable by a public utility, political subdivision, the Commonwealth or others shall be payable to the authority. Before proceedings are instituted before the commission, the authority and the public utilities or the political subdivisions shall enter an agreement to provide for the conveyance to the authority of title to the land, structure or improvement involved as security for bonds issued to finance the improvement and the leasing of the improvement to the utility or utilities or the political subdivision or subdivisions involved on such terms as will provide for interest and sinking fund charges on the bonds issued for the improvement.

(26) To appoint police officers who shall have the same rights as other peace officers in this Commonwealth with respect to the property of the authority.

(27) (i) In the case of an authority created to provide business improvements and administrative services, to impose an assessment on each benefited property within a business improvement district. This assessment shall be

based upon the estimated cost of the improvements and services in the district stated in the planning or feasibility study and shall be determined by one of the following methods:

(A) The authority may determine an assessment determined by multiplying the total improvement and service cost by the ratio of the assessed value for real estate tax purposes of the benefited property to the total assessed value of all benefited properties in the district.

(B) The authority may determine assessments upon the several properties in the district in proportion to benefits as ascertained by viewers appointed in accordance with municipal law.

(C) If the district served by the authority contains single-family residential properties, including those that are part of a planned unit development, residential cooperative properties or condominium properties formed under 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums) and other properties, the authority may elect to calculate assessments based on all of the following:

(I) The business improvement district assessed value of each benefited single-family or residential cooperative property shall be one-half of the assessed value of the property for real estate tax purposes.

(II) In the case of a condominium, the unit owners' association formed under 68 Pa.C.S. Pt. II Subpt. B shall be assessed. Individual units may not be assessed. The business improvement district assessed value of the unit owners' association shall be the sum of the assessed value for real estate tax purposes of any real estate owned by the association and such assessed value of all units, including their undivided interests in the common elements and any limited common elements, except that the value of any single-family residential unit shall be one-half of such assessed value of the unit for real estate tax purposes. The authority shall provide to the unit owners' association the calculation of the business improvement district assessed value of the unit owners' association, itemizing the assessed value of each unit as provided in this clause. The unit owners' association shall add to the condominium fee charged to a unit owner the amount of the district assessment attributable to the unit which amount shall be separately itemized on any assessment, invoice, bill or other document presented to the unit owner for payment of the condominium fee.

(III) The district assessment shall be calculated on each benefited single-family residential property, benefited residential cooperative property and benefited unit owners' association by multiplying in each case the total improvement and services cost by the ratio of the district assessed value of the benefited single-family residential property, benefited residential cooperative property or benefited unit owners' association to the sum of the district assessed value of all benefited single-family residential

properties, the district assessed value of all residential cooperative properties, the district assessed value of all benefited unit owners' associations and the assessed value of all remaining benefited properties in the business improvement district.

(IV) The remaining benefited properties shall be assessed by multiplying in each case the total improvement and services cost by the ratio of the assessed value of the remaining benefited property to the sum of the district assessed value of all benefited single-family residential properties, the district assessed value of all residential cooperative properties, the district assessed value of all benefited unit owners' associations and the assessed value of all remaining benefited properties in the business improvement district.

(V) An election by an authority under this clause shall not be revoked except through the procedures stated in subparagraph (ii) and subsection (g).

(ii) An assessment or charge may not be made unless:

(A) An authority submits a plan for business improvements and administrative services, together with estimated costs and the proposed method of assessments for business improvements and charges for administrative services, to the municipality in which the project is to be undertaken.

(B) The municipality approves the plan, the estimated costs and the proposed method of assessment and charges.

(iii) An authority may not assess charges against the improved properties in an aggregate amount in excess of the estimated cost.

(iv) An authority may by resolution authorize payment of an assessment or charge in equal, annual or more frequent installments over a fixed period of time and bearing interest of 6% or less. If bonds, notes or guarantees are used to raise revenue to provide for the cost of improvements or services, the installments shall not be payable beyond the term for which the bonds, notes or guarantees are payable.

(v) Claims to secure the payment of assessments shall be entered in the prothonotary's office of the county at the same time and in the same form and shall be collected in the same manner as municipal claims are filed and collected notwithstanding the provisions of this section as to installment payments.

(vi) In case of default of 60 days or more after an installment is due, the entire assessment and interest shall be due.

(vii) An owner of property against whom an assessment has been made may pay the assessment in full at any time along with accrued interest and costs. Upon proof of payment the lien shall be discharged.

(viii) For purposes of determining assessments in accordance with subparagraph (i)(A) and (C), the assessed value of a benefited property shall be without reduction for any value attributable to improvements for which an exemption or abatement has been granted under law.

(ix) Any claim entered to secure the payment of an assessment against a unit owners' association shall be enforceable as a judgment for money against the unit

owners' association within the meaning of and under the provisions of 68 Pa.C.S. § 3319 (relating to other liens affecting the condominium), provided that if an assessment against a unit owners' association is paid in part and the unit owners' association specifies in writing to the authority the units with respect to which full payment was made, the claim shall not be enforceable against units with respect to which full payment was made or against the unit owners' association. An authority shall discharge a lien against a unit owners' association to the extent that it constitutes a lien on a particular unit upon proof of payment, either to the unit owners' association or to the authority, by the owner of the particular unit of his itemized share of the assessment on the unit owners' association.

(x) An authority that has made an election under subparagraph (i)(C) may further elect to calculate, for the assessment years included in a plan and budget, the assessments on single-family residential properties, including those that are part of a planned unit development, residential cooperative properties and residential condominium properties, at the lower of the amount determined under subparagraph (i)(C) or that aggregate value of assessments that will not exceed 5% of the authority's total annual assessments, subject to the following:

(A) Any aggregate reduction in assessments on residential properties shall increase the assessments on the remaining properties in proportion to the assessments of the remaining properties calculated under subparagraph (i)(C)(IV).

(B) Any further election shall be made for all assessment years included in a plan and budget, except that, for a current plan and budget, the further election shall be made for the years remaining in the plan and budget. Once made, the further election shall remain in effect for all such assessment years included in the plan and budget.

(C) An authority making the further election shall hold a hearing on the proposed method of calculation. Written notice of the hearing shall be given to all owners of properties assessed by the district at least 30 days prior to the hearing. The notice shall state the proposed method of calculation.

(D) The authority shall take no action on the proposed method of calculation if objection is made in writing by owners of properties representing one-third of the amount of all assessments in the district. In the case of a condominium formed under 68 Pa.C.S. Pt. II Subpt. B, the condominium association and all condominium units shall be treated as one property, valued in the manner described in subparagraph (i)(C)(II). Any objection must be made within 30 days of the hearing in writing signed by the property owner and filed in the registered office of the authority.

(E) No further hearing shall be required, no amendment of the authority's plan and budget shall be required and no action on the part of the municipality shall be required.

(28) To adopt rules and regulations to provide for the safety of persons using facilities of an airport authority pertaining to vehicular traffic control. Police officers appointed under paragraph (26) shall enforce them.

(29) To provide financing for insurance reserves by making loans evidenced and secured by loan agreements, security agreements or other instruments or agreements. These instruments or agreements may contain provisions the authority deems necessary or desirable for the security or protection of the authority or its bondholders.

(30) Where a sewer or water system of an authority is to be extended at the expense of the owner of properties or where the authority otherwise would construct customer facilities referred to in paragraph (24), other than water meter installation, a property owner shall have the right to construct the extension or install the customer facilities himself or through a subcontractor approved by the authority, which approval shall not be unreasonably withheld. The authority shall have the right, at its option, to perform the construction itself only if the authority provides the extension or customer facilities at a lower cost and within the same timetable specified or proposed by the property owner or his approved subcontractor. Construction by the property owner shall be in accordance with an agreement for the extension of the authority's system and plans and specifications approved by the authority and shall be undertaken only pursuant to the existing regulations, requirements, rules and standards of the authority applicable to such construction. Construction shall be subject to inspection by an inspector authorized to approve similar construction and employed by the authority during construction. When a main is to be extended at the expense of the owner of properties, the property owner may be required to deposit with the authority, in advance of construction, the authority's estimated reasonable and necessary cost of reviewing plans, construction inspections, administrative, legal and engineering services. The authority may require that construction shall not commence until the property owner has posted appropriate financial security in accordance with paragraph (23). The authority may require the property owner to reimburse it for reasonable and necessary expenses it incurred as a result of the extension. If an independent firm is employed for engineering review of the plans and the inspection of improvements, reimbursement for its services shall be reasonable and in accordance with the ordinary and customary fees charged by the independent firm for work performed for similar services in the community. The fees shall not exceed the rate or cost charged by the independent firm to the authority when fees are not reimbursed or otherwise imposed on applicants. Upon completion of construction, the property owner shall dedicate and the authority shall accept the extension of the authority's system if dedication of facilities and the installation complies with the plans, specifications, regulations of the authority and the agreement. An authority may provide in its regulations those facilities which, having been constructed at the expense of the owner of properties, the authority will require to be dedicated and which facility or facilities the authority will accept as a part of its system.

(i) In the event the property owner disputes the amount of any billing in connection with the review of plans, construction inspections, administrative, legal and engineering services, the property owner shall, within 60 days of the date of billing, notify the authority that the billing is disputed as excessive, unreasonable or unnecessary, in which case the authority shall not delay or disapprove any application or any approval or permit related to the extension or facilities due to the property owner's dispute over the disputed billings unless the

property owner has failed to make payment in accordance with the decision rendered under clause (iii) within 60 days after the mailing date of such decision.

(ii) If, within 60 days from the date of billing, the authority and the property owner cannot agree on the amount of billings which are reasonable and necessary, the property owner shall have the right to request the appointment of another professional consultant to serve as arbitrator. The property owner and the authority whose fees are being challenged shall, by mutual agreement, appoint a professional of the same profession or discipline licensed in Pennsylvania to review the billings and make a determination as to the amount of billings which is reasonable and necessary.

(iii) The professional appointed as arbitrator under clause (ii) shall hear evidence and review the documentation as the professional in his or her sole opinion deems necessary and shall render a decision within 50 days of the date of appointment. Based upon the decision of the arbitrator, the property owner or authority shall be required to pay any amounts necessary to implement the decision within 60 days. In the event the property owner has paid the authority or retained professional consultant an amount in excess of the amount determined to be reasonable and necessary, the authority or retained professional consultant shall within 60 days reimburse the excess payment.

(iv) In the event that the authority and property owner cannot agree upon the professional to be appointed within 20 days of the request for appointment of an arbitrator, the president judge of the court of common pleas of the judicial district in which the municipality is located, or if at the time there is no president judge, the senior active judge then sitting upon application of either party shall appoint a professional, who shall be neither the authority engineer nor any professional who has been retained by or performed services for the authority or the property owner within the preceding five years.

(v) The fee of the arbitrator shall be paid by the property owner if the disputed fee is upheld by the arbitrator. The fee of the arbitrator shall be paid by the authority if the disputed fee is $2,500 or greater than the payment decided by the arbitrator. The fee of the arbitrator shall be paid in an equal amount by the property owner and the authority if the disputed fee is less than $2,500 of the payment decided by the arbitrator.

(vi) In the event that the disputed fees have been paid and the arbitrator finds that the disputed fees are unreasonable or excessive by more than $10,000, the arbitrator shall:

(A) award the amount of the fees found to be unreasonable or excessive to the party that paid the disputed fee; and

(B) impose a surcharge of 4% of the amount found as unreasonable or excessive to be paid to the party that paid the disputed fee.

(vii) An authority or property owner shall have 100 days after paying a fee to dispute any fee charged as being unreasonable or excessive.

(31) Where a property owner constructs or causes to be constructed at his expense any extension of a sewer or water system of an authority, the authority shall provide for the reimbursement to the property owner when the owner of another

property not in the development for which the extension was constructed connects a service line directly to the extension within ten years of the date of the dedication of the extension to the authority in accordance with the following provisions:

(i) Reimbursement shall be equal to the distribution or collection part of each tapping fee collected as a result of subsequent connections. An authority may deduct from each reimbursement payment an amount equal to 5% of it for administrative expenses and services rendered in calculating, collecting, monitoring and disbursing the reimbursement payments to the property owner.

(ii) Reimbursement shall be limited to those lines which have not previously been paid for by the authority.

(iii) The authority shall, in preparing necessary reimbursement agreements with a property owner for whose benefit reimbursement will be provided, attach as an exhibit an itemized listing of all sewer and water facilities for which reimbursement shall be provided.

(iv) The total reimbursement which a property owner may receive may not exceed the cost of labor and material, engineering design charges, the cost of performance and maintenance bonds, authority review and inspection charges as well as flushing and televising charges and any and all charges involved in the acceptance and dedication of such facilities by the authority, less the amount which would be chargeable to the property owner based upon the authority's collection and distribution tapping fees which would be applicable to all lands of the property owner directly or indirectly served through extensions if the property owner did not fund the extension.

(v) An authority shall notify by certified mail, to the last known address, the property owner for whose benefit a reimbursement shall apply. This shall be done within 30 days of the authority's receipt of the reimbursement payment. If a property owner does not claim a reimbursement payment within 120 days after the mailing of the notice, the payment shall become the sole property of the authority with no further obligation on the part of the authority to refund the payment to the property owner.

(32) (Deleted by amendment).

(33) Provisions of paragraphs (30) and (31) shall apply to residential customers in a municipality where the sewer service is being purchased by the municipality or sewer authority from another municipality or sewer authority having excess sewage capacity.

(34) In the case of an authority that performs storm water planning, management and implementation, reasonable and uniform rates may be based in whole or in part on property characteristics, which may include installation and maintenance of best management practices approved and inspected by the authority.

(e) Prohibition.--

(1) An authority may not pledge the credit or taxing power of the Commonwealth or its political subdivision.

(2) The obligations of an authority are not obligations of the Commonwealth or its political subdivision.

(3) Neither the Commonwealth nor a political subdivision shall be liable for the payment of principal of or interest on obligations of an authority.

(f) Authorization to control airports.--Nothing in this chapter shall be construed to prevent an authority which owns or operates an airport as a project from leasing airport land on a short-term or long-term basis for commercial, industrial or

residential purposes when the land is not immediately needed for aviation or aeronautical purposes in the judgment of the authority.

(g) Authorization to make business improvements and provide administrative services.--An 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. The following shall also apply:

(1) The 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 ten 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.

(2) Written notice of the proposed improvement or service, its estimated cost, the proposed method of assessment and charges and project cost to individual property owners shall be given to each property owner and commercial lessee in benefited properties in the district at least 30 days prior to the public hearing.

(3) Except as otherwise provided in paragraph (4), the authority shall take no action on proposed improvement or service if objection is made in writing by:

(i) persons representing the ownership of one-third of the benefited properties in the district; or

(ii) property owners of the proposed district whose property valuation as assessed for taxable purposes shall amount to more than one-third of the total property valuation of the district.

(4) In the case of an authority that has elected to make assessments under subsection (d)(27)(i)(C), the objections in writing must be made by either:

(i) one-third of the owners of benefited commercial properties; or

(ii) owners of properties representing one-third of the amount of all business improvement district assessments for the first year of the proposed plan and budget after the reduction in district assessments under subsection (d)(27)(i)(C).

For purposes of calculating one-third of the benefited commercial properties, the term benefited commercial properties shall include all nonresidential property, each condominium association formed under 68 Pa.C.S. Pt. II Subpt. B as one property and may not include any individual condominium so formed nor any single-family residential property.

(5) Objection must be made within 45 days after the conclusion of the public hearing. Objections must be in writing, signed and filed in the office of the governing body of the municipality in which the district is located and in the registered office of the authority.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.; Dec. 30, 2003, P.L.404, No.57; Feb. 14, 2012, P.L.83, No.12, eff. 60 days; Oct. 24, 2012, P.L.1263, No.155, eff. 60 days; July 9, 2013, P.L.569, No.68, eff. 60 days; Dec. 23, 2013, P.L.1254, No.128, eff. 60 days; July 9, 2014, P.L.1045, No.123, eff. 60 days; July 7, 2017, P.L.299, No.19, eff. 60 days; June 30, 2021, P.L.208, No.43, eff. 60 days)

2021 Amendment. Act 43 amended subsec. (d)(9).
2017 Amendment. Act 19 amended subsec. (d)(24)(i)(C)(VI)(b).
2014 Amendment. Act 123 added subsec. (d)(34).
2013 Amendments. Act 68 added subsec. (a)(18) and Act 128 added subsec. (d)(27)(x).
2012 Amendments. Act 12 amended subsecs. (d)(27) and (g) and Act 155 amended subsec. (d)(23) and (30).
2003 Amendment. Act 57 amended subsec. (d)(17), (24), (30) and (33) and deleted subsec. (d)(32), effective immediately as to subsec. (d)(17) and 18 months as to the remainder of the section. See sections 2, 3 and 4 of Act 57 in the appendix to this title for special provisions relating to applicability to connection, customer facilities, tapping or similar fees, applicability of mandatory refund provisions and applicability to sewer tapping fees and original financing.
2001 Amendment. Act 110 amended subsecs. (a) intro. par., (d)(9), (10), (11), (22), (23), (24)(i)(B) and (v) and (32), (e)(1) and (g) intro. par., retroactive to June 19, 2001.
Cross References. Section 5607 is referred to in section 5613 of this title; sections 2053, 2463 of Title 8 (Boroughs and Incorporated Towns); section 13201.1 of Title 11 (Cities).

§ 5608. Bonds.

(a) Authorization.--

(1) A bond must be authorized by resolution of the board. The resolution may specify all of the following:

(i) Series.

(ii) Date of maturity not exceeding 40 years from date of issue.

(iii) Interest.

(iv) Denomination.

(v) Form, either coupon or fully registered without coupons.

(vi) Registration, exchangeability and interchangeability privileges.

(vii) Medium of payment and place of payment.

(viii) Terms of redemption not exceeding 105% of the principal amount of the bond.

(ix) Priorities in the revenues or receipts of the authority.

(2) A bond must be signed by or shall bear the facsimile signature of such officers as the authority determines. Coupon bonds must have attached interest coupons bearing the facsimile signature of the treasurer of the authority as prescribed in the authorizing resolution. A bond may be issued and delivered notwithstanding that one or more of the signing officers or the treasurer has ceased to be an officer when the bond is actually delivered. A bond must be authenticated by an authenticating agent, a fiscal agent or a trustee, if required by the authorizing resolution.

(3) A bond may be sold at public or private sale for a price determined by the authority.

(4) Pending the preparation of a definitive bond, interim receipts or temporary bonds with or without coupons may be issued to the purchaser and may contain terms and conditions as the authority determines.

(b) Provisions.--A resolution authorizing a bond may contain provisions which shall be part of the contract with the bondholder as to the following:

(1) Pledging 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

to all or any of the revenue of the authority from all or any projects or properties.

(2) The construction, financing, improvement, operation, extension, enlargement, maintenance and repair of the project, the financing for insurance reserves and the duties of the authority with reference to these matters.

(3) Terms and provisions of the bond.

(4) Limitations on the purposes to which the proceeds of the bond or of a loan or grant by the United States may be applied.

(5) Rate of tolls and other charges for use of the facilities of or for the services rendered by the authority.

(6) The setting aside, regulation and disposition of reserves and sinking funds.

(7) Limitations on the issuance of additional bonds.

(8) Terms and provisions of any deed of trust or indenture securing the bond or under which any deed of trust or indenture may be issued.

(9) Other additional agreements with the holder of the bond.

(c) Deeds of trust.--An 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, including provisions as to the following:

(1) Construction, financing, improvement, operation, maintenance and repair of a project; financing for insurance reserves; and the duties of the authority with reference to these matters.

(2) Application of funds and the safeguarding of funds on hand or on deposit.

(3) Rights and remedies of trustee and bondholder, including restrictions upon the individual right of action of a bondholder.

(4) Terms and provisions of the bond or the resolution authorizing the issuance of the bond.

(d) Negotiability.--A bond shall have all the qualities of negotiable instruments under 13 Pa.C.S. Div. 3 (relating to negotiable instruments).

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsecs. (a)(1) intro. par. and (iii), (2) and (3), (b)(1) and (2) and (c), retroactive to June 19, 2001.

Cross References. Section 5608 is referred to in section 5602 of this title.

§ 5609. Bondholders.

(a) Rights and remedies.--The 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.

(b) Trustee.--

(1) The holders of 25% of the aggregate principal amount of outstanding bonds may appoint a trustee to represent the bondholders for purposes of this chapter if any of the following apply:

(i) The authority defaults in the payment of principal or interest on a bond at maturity or upon call for

redemption, and the default continues for 30 days.

(ii) The authority fails to comply with this chapter.

(iii) The authority defaults in an agreement made with the bondholders.

(2) The trustee must be appointed by instrument:

(i) filed in the office of the recorder of deeds of the county where the authority is located; and

(ii) proved or acknowledged in the same manner as a deed to be recorded.

(3) A trustee under this subsection and a trustee under any deed of trust, indenture or other agreement may and, upon written request of the holders of 25% of the aggregate principal amount of outstanding bonds or such other percentage specified in the deed of trust, indenture or other agreement, shall in the trustee's name do any of the following:

(i) By action at law or in equity enforce rights of the bondholders. This subparagraph includes the right to require the authority to:

(A) collect rates, rentals or other charges adequate to carry out any agreement as to or pledge of revenues or receipts of the authority;

(B) carry out any other agreements with or for the benefit of bondholders; and

(C) perform its and their duties under this chapter.

(ii) Bring suit upon the bond.

(iii) By action in equity require the authority to account as if it were the trustee of an express trust for the bondholders.

(iv) Enjoin an action which may be unlawful or in violation of the rights of the bondholders.

(v) By notice in writing to the authority, declare all bonds due and payable and, if all defaults are made good, with the consent of the bondholders of 25% of the principal amount of outstanding bonds or such other percentage specified in the deed of trust, indenture or other agreement, to annul such declaration and its consequences.

(4) A trustee under this subsection or a trustee under any deed of trust, indenture or other agreement, whether or not all bonds have been declared due and payable, shall be entitled to the appointment of a receiver.

(5) A receiver under paragraph (4):

(i) may enter and take possession of a facility of the authority or any part of a facility the revenues or receipts from which are or may be applicable to the payment of the bonds in default;

(ii) may operate and maintain the facility or part of the facility;

(iii) may collect and receive all rentals and other revenues arising from the facility after entry and possession in the same manner as the authority or the board might do; and

(iv) shall deposit money collected under subparagraph (iii) in a separate account and apply the money as the court directs.

(6) Nothing in this chapter authorizes a receiver appointed under paragraph (4) to sell, assign, mortgage or otherwise dispose of assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of the receiver to the operation and maintenance of the facilities of the authority as the court directs. No bondholder or trustee shall have the right in an action at law or in equity to compel a receiver, nor shall a

receiver be authorized or a court empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of assets of whatever kind or character belonging to the authority.

(7) The trustee has all powers necessary or appropriate for the exercise of functions specifically set forth in this subsection or incident to the general representation of the bondholders in the enforcement or protection of their rights.

(c) Jurisdiction.--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.

(d) Costs and fees.--In an action by the trustee the court costs, attorney fees and expenses of the trustee and of the receiver and all costs and disbursements alloted 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.

(e) Definition.--(Deleted by amendment).

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (b)(5)(ii) and (7) and deleted subsec. (e), retroactive to June 19, 2001.

§ 5610. Governing body.

(a) Board.--Except as set forth in subsection (a.1), the powers of each authority shall be exercised by a board composed as follows:

(1) If the authority is incorporated by one municipality, the board shall consist of a number of members, not less than five, as enumerated in the articles of incorporation. The governing body of the municipality shall appoint the members of the board, whose terms of office shall commence on the effective date of their appointment. One member shall serve for one year, one for two years, one for three years, one for four years and one for five years commencing with the first Monday in January next succeeding the date of incorporation or amendment. If there are more than five members of the board, their terms shall be staggered in a similar manner for terms of one to five years from the first Monday in January next succeeding. Thereafter, whenever a vacancy has occurred by reason of the expiration of the term of any member, the governing body shall appoint a member of the board for a term of five years from the date of expiration of the prior term to succeed the member whose term has expired.

(2) If the authority is incorporated by two or more municipalities, the board shall consist of a number of members at least equal to the number of municipalities incorporating the authority, but in no event less than five. When one or more additional municipalities join an existing authority, each of the joining municipalities shall have similar membership on the board as the municipalities then members of the authority and the joining municipalities may determine by appropriate resolutions. The members of the board of a joint authority shall each be appointed by the governing body of the incorporating or joining municipality he represents, and their terms of office shall commence on the effective date of their appointment. One member shall serve for one year, one for two years, one for three years, one for four years and one for five years from the first Monday in January next succeeding the date of incorporation, amendment or joinder, and if there are more than five members of the board, their terms shall be staggered in a similar manner for terms of from one to five years commencing with the first Monday in January next succeeding.

Thereafter, whenever a vacancy has occurred by reason of the expiration of the term of any member, the governing body of the municipality which has the power of appointment shall appoint a member of the board for a term of five years from the date of expiration of the prior term.

(a.1) Water authorities and sewer authorities.--If a water or sewer authority incorporated by one municipality provides water or sewer services to residents in at least two counties and has water or sewer projects in more than two counties where the combined population of the served municipalities, excluding the incorporating municipality, is at least five times the population of the incorporating municipality, all of the following apply:

(1) Ninety days after the effective date of this subsection, the governing body in existence on the effective date of this subsection shall be replaced by a governing body comprised of the following:

(i) Three members appointed by the governing body from each county in which the services to residents are provided. A member under this subparagraph must reside in a town, township or borough, which receives services from the authority.

(ii) Three members appointed by the governing body of the incorporating municipality.

(2) A member serving under paragraph (1) shall serve for a term of five years.

(b) Residency.--

(1) Except as provided for in subsection (c), the members of the board, each of whom shall be a taxpayer in, maintain a business in or be a citizen of the municipality by which he is appointed or 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, shall be appointed, their terms fixed and staggered and vacancies filled pursuant to the articles of incorporation or the application of membership under section 5604 (relating to municipalities withdrawing from and joining in joint authorities). Where two or more municipalities are members of the authority, they shall be apportioned pursuant to the articles of incorporation or the application for membership under section 5604. Except 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 municipality or incorporating municipalities of the authority.

(2) Each member of the board of a business improvement district authority that was established by a borough pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, on or before the effective date of this paragraph shall be a taxpayer in, maintain a business in or be a citizen of the borough by which that member is appointed.

(c) Grade crossings.--If the authority is created for the purpose of eliminating grade crossings, the members of the board, the majority of whom shall be citizens of the municipality by which they are appointed or 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 of the projects has been or is to be leased, shall be appointed, their terms fixed and staggered and vacancies filled pursuant to the articles of incorporation or the application of membership under section 5604. Where two or more municipalities are members of the authority, they shall be

apportioned pursuant to the articles of incorporation or the application for membership under section 5604.

(d) Successor.--Members 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. Members of the board of any authority organized or created by a school district shall receive no compensation for their services. 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 ten days and after having been provided a full hearing by the court. If 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.

(e) Quorum.--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. The 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. The 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. The treasurer of the board of any authority organized or created by a school district shall give bond in such sums as may be fixed by the bylaws, which bond shall be subject to the approval of the board and the premiums for which shall be paid by the authority.

(f) Removal.--Unless 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.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Water or sewer authority." An authority incorporated by a city of the third class, a borough, a town or a township to provide water or sewer services.

"Water or sewer project." Any pumping station, filtering plant, impoundment facility, dam, spillway or reservoir.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.; Dec. 30, 2002, P.L.2001, No.230, eff. imd.; June 27, 2012, P.L.653, No.73, eff. 60 days)

2013 Effectuation of Declaration of Unconstitutionality. The Legislative Reference Bureau effectuated the 2004 unconstitutionality.

2012 Amendment. Act 73 amended subsec. (a) intro. par. and added subsecs. (a.1) and (g).

2004 Unconstitutionality. Act 230 of 2002 was declared unconstitutional. City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003).

2001 Amendment. Act 110 amended subsecs. (a) and (b), retroactive to June 19, 2001. See section 4 of Act 110 in the appendix to this title for special provisions relating to continuation of membership on board.

References in Text. The act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, referred to in subsec. (b)(2), was repealed by the act of June 19, 2001 (P.L.287, No.22).

Cross References. Section 5610 is referred to in section 5605 of this title.

§ 5611. Investment of authority funds.

(a) Powers.--The board shall have the power to:

(1) Invest authority sinking funds in the manner provided for local government units by Subpart B of Part VII (relating to indebtedness and borrowing).

(2) Invest moneys in the General Fund and in special funds of the authority other than the sinking funds as authorized by this section.

(3) Liquidate any such investment in whole or in part by disposing of securities or withdrawing funds on deposit. Any action taken to make or to liquidate any investment shall be made by the officers designated by action of the board.

(b) Investment.--The board shall invest authority funds consistent with sound business practice and the standard of prudence applicable to the State Employees' Retirement System set forth in 71 Pa.C.S. § 5931(a) (relating to management of fund and accounts).

(c) Program.--The board shall provide for an investment program subject to restrictions contained in this chapter and in any other applicable statute and any rules and regulations adopted by the board.

(d) Types.--Authorized types of investments for authority funds shall be:

(1) United States Treasury bills.

(2) Short-term obligations of the United States Government or its agencies or instrumentalities.

(3) Deposits 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.

(4) Obligations 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.

(5) Shares of an investment company registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) whose shares are registered under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) if the only investments of that company are in the authorized investments for authority funds listed in paragraphs (1) through (4).

(6) Sovereign debt if the instruments are dollar denominated and backed by the full faith and credit of the sovereign government and if the investments do not exceed more

than 2% of the market value of the authority's assets at the time of investment and if the maturity of the instruments does not exceed 15 years and if the obligations are permitted investments of the State Employees' Retirement System and it is established that the issuer had issued such sovereign debt over a period of at least 30 years and has not defaulted on the payment either of principal or interest on its obligations. This paragraph shall only apply to a board in a county of the first class, second class or second class A or in a city of the first class, second class, second class A or third class.

(7) Commercial paper rated in the highest rating category, without reference to a subcategory, by a rating agency. This paragraph shall only apply to an airport authority board in a county of the second class.

(e) Authority.--In making investments of authority funds, the board shall have authority to:

(1) Permit assets pledged as collateral under subsection (d)(3), to be pooled in accordance with the act of August 6, 1971 (P.L.281, No.72), entitled "An act standardizing the procedures for pledges of assets to secure deposits of public funds with banking institutions pursuant to other laws; establishing a standard rule for the types, amounts and valuations of assets eligible to be used as collateral for deposits of public funds; permitting assets to be pledged against deposits on a pooled basis; and authorizing the appointment of custodians to act as pledgees of assets."

(2) Combine moneys from more than one fund under authority control for the purchase of a single investment if lack of the funds combined for the purpose shall be accounted for separately in all respects and if earnings from the investment are separately and individually computed, recorded and credited to the accounts from which the investment was purchased.

(3) Join with one or more other political subdivisions and municipal authorities in accordance with Subchapter A of Chapter 23 (relating to intergovernmental cooperation) in the purchase of a single investment pursuant to the requirements of paragraph (2).

(Sept. 24, 2014, P.L.2452, No.131, eff. 60 days)

2014 Amendment. Act 131 added subsec. (d)(7).

§ 5612. Money of authority.

(a) Treasurer.--The treasurer of an authority, or other designated recipient, shall receive the money due the authority and deposit the money in an account with a designated depository. The money shall be remitted in the name of the authority or designated recipient and may not include the name of an individual.

(a.1) Prohibition.--

(1) Money of the authority may not be used for any grant, loan or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set forth in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation).

(2) A ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation of paragraph (1) from the recipient.

(3) Paragraph (1) shall not apply to the following:

(i) A monetary contribution to a nonprofit community organization or activity that does not exceed $1,000.

(ii) An in-kind service, including the provision of water or other resources to a nonprofit community

organization or activity, the value of which does not exceed $1,000.

(iii) An agreement for the joint purchase and use of equipment.

(iv) An agreement for the sharing of equipment during emergency situations.

(a.2) Fiscal procedures.--

(1) An authority shall establish, according to generally accepted accounting principles, procedures to bill customers, collect payments, issue receipts, handle funds received and deposit money in an account or accounts managed by a designated depository. All bill payments shall be made in the name of the authority or designated public or contracted entity collecting revenue and shall not include the name of an individual.

(2) The required annual audit and financial report of the authority shall be presented at a meeting of the authority board, discussed publicly and require an official vote of acceptance.

(3) Nothing in this subsection shall be construed to preclude an authority from adopting rules and regulations regarding fiscal controls that are more stringent than required by this section.

(b) Report.--A required annual report shall be published in accordance with the following:

(1) Every authority shall file, on or before 180 days following the end of its fiscal year, an annual report of its fiscal affairs covering the preceding fiscal year with the Department of Community and Economic Development and with the municipality or municipalities creating the authority on forms prepared and distributed by the Department of Community and Economic Development. The reports shall also be provided, and may be provided electronically, to any other municipality that has residents served by the authority.

(2) Every authority shall have its books, accounts and records audited annually by a certified public accountant, and a copy of the audit report shall be filed in the same manner and within the same time period as the annual report. The audit shall comply with the following, if applicable:

(i) The generally accepted government auditing standards, including the standards published by the Government Accountability Office.

(ii) The Single Audit Act of 1984 (31 U.S.C. § 7501 et seq.).

(iii) 2 CFR Pt. 200 (relating to uniform administrative requirements, cost principles, and audit requirements for Federal awards).

(iv) Any other Federal or State requirements for an audit relating to the finances of an authority.

(3) 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.

(4) If the authority fails to make such an audit or if the municipality determines that there is a need for a review, then the controller, auditor or accountant designated by the municipality is hereby authorized and empowered from time to time to examine the accounts and books of it, including its receipts, billing systems, disbursements, transparency of contracts and how the contracts are awarded, leases, sinking funds, investments, compliance with relevant Federal and State statutes, conflicts of interest by the authority and its board

members, staff and contractors and any other matters relating to its finances, operation and affairs. The review by the municipality shall be conducted within one year of an authority's annual audit required under paragraph (2), the review shall be done at the expense of the municipality and the authority shall be exempt the following fiscal year from conducting an audit. If the review by the municipality is being done due to the failure of the authority to make an annual audit, the review shall be at the expense of the authority.

(c) Attorney General.--The Attorney General of the Commonwealth shall have the right to examine the books, accounts and records of any authority.

(Dec. 30, 2002, P.L.2001, No.230, eff. imd.; June 27, 2012, P.L.653, No.73, eff. 60 days; May 1, 2019, P.L.25, No.4; Nov. 27, 2019, P.L.689, No.99, eff. 60 days)

2019 Amendments. Act 4 amended subsecs. (a) and (b) and added subsec. (a.2), effective in 180 days as to the amendment of (b)(1) and 90 days as to the remainder of the section, and Act 99 amended subsec. (b).

2013 Effectuation of Declaration of Unconstitutionality. The Legislative Reference Bureau effectuated the 2004 unconstitutionality.

2012 Amendment. Act 73 added subsec. (a.1).

2004 Unconstitutionality. Act 230 of 2002 was declared unconstitutional. City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003).

§ 5613. Transfer of existing facilities to authority.

(a) Authorization.--Any 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, any interest in real or personal property, any funds available for building construction or improvement purposes, including the proceeds of bonds previously or hereafter issued for building construction or improvement purposes, which may be used by the authority in the construction, improvement, maintenance or operation of any project. Any municipality or school district may transfer, assign and set over to any authority any contracts which may have been awarded by the municipality or school district for the construction of projects not initiated or completed. The territory being served by any project or the territory within which a project is authorized to render service at the time of the acquisition of a project by an authority shall include the area served by the project and the area in which the project is authorized to serve at the time of acquisition and any other area into which the service may be extended, subject to the limitations of section 5607(a) (relating to purposes and powers).

(b) Acquisition.--

(1) An 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.

(2) The 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.

(c) Complete provision.--Notwithstanding any other provision of law, this section, without reference to any other law, shall be deemed complete for the acquisition by agreement of projects as defined in this chapter located wholly within or partially without the municipality causing such authority to be incorporated, and no proceedings or other action shall be required except as provided for in this section.

Cross References. Section 5613 is referred to in section 5614 of this title.

§ 5614. Competition in award of contracts.

(a) Services.--

(1) Except as set forth in paragraph (2), all construction, reconstruction, repair or work of any nature made by an authority if the entire cost, value or amount, including labor and materials, exceeds a base amount of $18,500, subject to adjustment under subsection (c.1), shall be done only under contract to be entered into by the authority with the lowest responsible bidder upon proper terms after public notice asking for competitive bids as provided in this section.

(2) Paragraph (1) does not apply to construction, reconstruction, repair or work done by employees of the authority or by labor supplied under agreement with a Federal or State agency with supplies and materials purchased as provided in this section.

(3) No contract shall be entered into for construction or improvement or repair of a project or portion thereof unless the contractor gives an undertaking with a sufficient surety approved by the authority and in an amount fixed by the authority for the faithful performance of the contract.

(4) The contract must provide among other things that the person or corporation entering into the contract with the authority will pay for all materials furnished and services rendered for the performance of the contract and that any person or corporation furnishing materials or rendering services may maintain an action to recover for them against the obligor in the undertaking as though such person or corporation was named in the contract if the action is brought within one year after the time the cause of action accrued.

(5) Nothing in this section shall be construed to limit the power of the authority to construct, repair or improve a project or portion thereof or any addition, betterment or extension thereto directed by the officers, agents and employees of the authority or otherwise than by contract.

(b) Supplies and materials.--All supplies and materials with a base price costing at least $18,500, 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.

(c) Quotations.--Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for a contract in excess of the base amount of $10,000, subject to adjustment under subsection (c.1), but is less than the

amount requiring advertisement and competitive bidding. In lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation; the name of the contractor and the contractor's representative; the construction, reconstruction, repair, maintenance or work which was the subject of the quotation; and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

(c.1) Adjustments.--Adjustments to the base amounts specified under subsections (a)(1), (b) and (c) shall be made as follows:

(1) The Department of Labor and Industry shall determine the percentage change in the Consumer Price Index for All Urban Consumers: All Items (CPI-U) for the United States City Average as published by the United States Department of Labor, Bureau of Labor Statistics, for the 12-month period ending September 30, 2012, and for each successive 12-month period thereafter.

(2) If the department determines that there is no positive percentage change, then no adjustment to the base amounts shall occur for the relevant time period provided for in this subsection.

(3) (i) If the department determines that there is a positive percentage change in the first year that the determination is made under paragraph (1), the positive percentage change shall be multiplied by each base amount, and the products shall be added to the base amounts, respectively, and the sums shall be preliminary adjusted amounts.

(ii) The preliminary adjusted amounts shall be rounded to the nearest $100 to determine the final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(4) In each successive year in which there is a positive percentage change in the CPI-U for the United States City Average, the positive percentage change shall be multiplied by the most recent preliminary adjusted amounts, and the products shall be added to the preliminary adjusted amount of the prior year to calculate the preliminary adjusted amounts for the current year. The sums thereof shall be rounded to the nearest $100 to determine the new final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(5) The determinations and adjustments required under this subsection shall be made in the period between October 1 and November 15 of the year following the effective date of this subsection and annually between October 1 and November 15 of each year thereafter.

(6) The final adjusted base amounts and new final adjusted base amounts obtained under paragraphs (3) and (4) shall become effective January 1 for the calendar year following the year in which the determination required under paragraph (1) is made.

(7) The department shall publish notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined under paragraph (1) and the unadjusted or final adjusted base amounts determined under paragraphs (3) and (4) at which competitive bidding is required under subsection (a)(1) and (b) and written or telephonic price quotations are required under subsection (c), for the calendar year beginning the first day of January after publication of the notice. The notice shall include a written and illustrative explanation of the calculations performed by the department in establishing the unadjusted or final adjusted

base amounts under this subsection for the ensuing calendar year.

(8) The annual increase in the preliminary adjusted base amounts obtained under paragraphs (3) and (4) shall not exceed 3%.

(d) Notice.--The term "advertisement" or "public notice," wherever used in this section, shall mean a notice published at least ten days before the award of a contract in a newspaper of general circulation published in the municipality where the authority has its principal office or, if no newspaper of general circulation is published therein, in a newspaper of general circulation in the county where the authority has its principal office. Notice may be waived if the authority determines that an emergency exists which requires the authority to purchase the supplies and materials immediately.

(e) Conflict of interest.--No 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.

(f) Entry into contracts.--

(1) Subject to subsection (e), an authority may enter into and carry out contracts or establish or comply with rules and regulations concerning labor and materials and other related matters in connection with a project or portion thereof as the authority deems desirable or as may be requested by a Federal agency to assist in the financing of the project or any part thereof. This paragraph shall not apply to any of the following:

(i) A case in which the authority has taken over by transfer or assignment a contract authorized to be assigned to it under section 5613 (relating to transfer of existing facilities to authority).

(ii) A contract in connection with the construction of a project which the authority may have had transferred to it by any person or private corporation.

(2) This subsection is not intended to limit the powers of an authority.

(g) Compliance.--A contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.

(h) Evasion.--

(1) An authority may not evade the provisions of this section as to bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under the amount required by this section upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than the amount required by this section.

(2) This subsection is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts each for less than the advertising requirement price or by making several simultaneous purchases or contracts each below that price when in either case the transaction involved should have been made as one transaction for one price.

(3) An authority member who votes to unlawfully evade the provisions of this section and who knows that the transaction upon which the member votes is or ought to be a part of a

larger transaction and that it is being divided in order to evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.; Nov. 3, 2011, P.L.367, No.90, eff. imd.)

2011 Amendment. Act 90 amended subsecs. (a)(1), (b), (c) and (h)(1) and added subsec. (c.1). Section 4 of Act 90 provided that Act 90 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 4.

2001 Amendment. Act 110 amended subsecs. (a)(2) and (d), retroactive to June 19, 2001.

§ 5615. Acquisition of lands, water and water rights.

(a) Authorization.--

(1) Except as provided in paragraph (2), the 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.

(2) The right of eminent domain does not apply to:

(i) Property owned or used by the United States, the Commonwealth or any of its political subdivisions, or an agency of any of them, or any body politic and corporate organized as an authority under any law of the Commonwealth or by any agency.

(ii) Property of a public service company.

(iii) Property used for burial purposes.

(iv) Places of public worship.

(b) Exercise.--The right of eminent domain shall be exercised by the authority in the manner provided by law for the exercise of such right by municipalities of the same class as the municipality which organized the authority. Eminent domain shall be exercised by a joint authority in the same manner as is provided by law for the exercise of such right by municipalities of the same class as the municipality in which the right of eminent domain is to be exercised. The right of eminent domain herein conferred by this section may be exercised either within or without the municipality.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (a)(2)(i), retroactive to June 19, 2001.

§ 5616. Acquisition of capital stock.

(a) Acquisition.--In the event that the authority shall own 90% or more of all the outstanding capital stock entitled to vote upon liquidation and dissolution and which is not subject by its terms to be called for redemption of any corporation owning a project and organized and existing under the laws of this Commonwealth, the authority shall have the power to acquire the remainder of the stock by eminent domain as a part of a plan for the liquidation of the corporation.

(b) Exercise.--The right of eminent domain with respect to the remainder of capital stock shall be exercised by the authority pursuant to this subsection. In the event that the authority has not agreed with an owner of any of the capital stock as to the value of the stock, the authority shall file with the court of common pleas of the county in which the corporation's principal place of business is located its bond for the benefit of the owner and for any other persons who may be found entitled to receive

damages for the taking of the capital stock, of which the owner shall be obligee, the condition of which bond shall be that the authority shall pay or cause to be paid to the owner of the stock or to such other persons as may be found entitled to receive damages for the taking of the capital stock, an amount as the owner or such other persons shall be entitled to receive for the taking of the stock, after the amount shall have been agreed upon by the parties or assessed in the manner provided by subsection (d). The bond shall be accompanied by proof that notice of the proposed filing was mailed by registered mail not less than ten days prior to the proposed filing to the owner of the stock at his address as shown by the records of the corporation. Upon approval by the court of the bond, the authority shall be vested with all the right, title and interest in and to the stock, and the owner and all other persons shall cease to have any rights or interest with regard to the stock other than the right to compensation for the taking of it under the procedure set forth in subsection (d). The word "owner," as used in this subsection, shall mean the person in whose name the stock is registered on the books of the corporation.

(c) Approval.--In the event that the authority shall have contracted in writing to purchase 90% or more of any outstanding capital stock, it shall have the right to obtain the approval of the court to the bond required by the provisions of subsection (b), but the approval shall not be effective for the purposes of this section unless and until there is also filed with the prothonotary of the court within ten days after the approval a sworn statement by the chairman of the board of the authority, duly attested by the secretary of the authority, that the authority has become the owner of 90% or more of the capital stock.

(d) Appraisal.--

(1) If the authority and the former owner of the stock fail to agree as to the amount which the former owner is entitled to receive as compensation for the taking of the stock within 30 days after the approval of the bond by the court under the provisions of subsection (b) or the filing of the required statement under the provisions of subsection (c), either party may apply by petition to the court for the appointment by the court of three disinterested persons to appraise the fair value of the stock immediately prior to its acquisition by the authority without regard to any depreciation or appreciation in consequence of the acquisition.

(2) The appraisers or a majority of them shall file their award, which shall include the costs of the appraisal, with the court and shall mail a copy to each party with the date of filing stated thereon. When the award is filed with the court, the prothonotary shall mark the same "confirmed nisi" and, if no exceptions are filed within ten days, he shall enter a decree that the award is confirmed absolutely. If exceptions to the award are filed by either party before the award is confirmed, the court shall hear the same and shall have the power to confirm, modify, change or otherwise correct the award or refer the same back to the same or new appraisers with similar power as to their award.

§ 5617. Use of projects.

The use of the facilities of the authority and the operation of its business shall be subject to the rules and regulations as adopted by the authority. The authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefit.

§ 5618. Pledge by Commonwealth.

(a) Power of authorities.--The Commonwealth pledges to and agrees with any person, firm or corporation or Federal agency subscribing to or acquiring the bonds to be issued by the authority for the construction, extension, improvement or enlargement of a project or part thereof that the Commonwealth will not limit or alter the rights vested by this chapter in the authority until all bonds and the interest on them are fully met and discharged.

(b) Federal matters.--The Commonwealth pledges to and agrees with the United States and all Federal agencies that, if a Federal agency constructs or contributes funds for the construction, extension, improvement or enlargement of a project or any portion thereof:

(1) the Commonwealth will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the project or the improvement thereof or which would be inconsistent with the due performance of agreements between the authority and any Federal agency; and

(2) the authority shall continue to have and may exercise all powers granted in this chapter as long as the powers are necessary or desirable for carrying out the purposes of this chapter and the purposes of the United States in the construction or improvement or enlargement of the project or portion thereof.

§ 5619. Termination of authority.

(a) Conveyance of projects.--When an authority has finally paid and discharged all bonds, with interest due, which have been secured by a pledge of any of the revenues or receipts of a project, the authority may, subject to agreements concerning the operation or disposition of the project, convey the project to the municipality creating the authority or, if the project is a public school project, to the school district to which the project is leased.

(b) Conveyance of property.--When an authority has finally paid and discharged all bonds issued and outstanding and the interest due on them and settled all other outstanding claims against it, the authority may convey all its property to the municipality or municipalities or, if the property is public school property, then to the school district for which the property was financed, and terminate its existence.

(c) Certificate.--An authority requesting to terminate its existence must submit a certificate requesting termination to the municipality which created it. If the certificate is approved by the municipality by its ordinance or resolution, the certificate shall be filed in the office of the Secretary of the Commonwealth; and the secretary shall note the termination of existence on the record of incorporation and return the certificate with approval to the board. The board shall cause the certificate to be recorded in the office of the recorder of deeds of the county. Upon recording, the property of the authority shall pass to the municipality or municipalities or, if the property is public school property, then to the school district for which the property was financed; and the authority shall cease to exist. (Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsecs. (b) and (c), retroactive to June 19, 2001.

§ 5620. Exemption from taxation and payments in lieu of taxes.

The effectuation of the authorized purposes of authorities created under this chapter shall be for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health and living

conditions. Since 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. Whenever in excess of 10% of the land area of any political subdivision in a sixth, seventh or eighth class county has been taken for a waterworks, water supply works or water distribution system having a source of water within a political subdivision which is not provided with water service by the authority, in lieu of such taxes or special assessments the authority may agree to make payments in the county to the taxing authorities of any or all of the political subdivisions where any land has been taken. The 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.

§ 5621. Constitutional construction.

The provisions of this chapter shall be severable, and if any of the provisions are held to be unconstitutional it shall not affect the validity of any of the remaining provisions of this chapter. It is hereby declared as the legislative intent that this chapter would have been adopted had such unconstitutional provisions not been included.

§ 5622. Conveyance by authorities to municipalities or school districts of established projects.

(a) Project.--If a project established under this chapter by a board appointed by a municipality is of a character which the municipality has power to establish, maintain or operate and the municipality desires to acquire the project, it may by appropriate resolution or ordinance adopted by the proper authorities signify its desire to do so, and the authorities shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project.

(b) Public school project.--A public school project undertaken under this chapter may be acquired by a school district to which the project was leased if the school district by appropriate resolution signifies a desire to do so. An authority shall convey the public school project to the school district by appropriate instrument upon the assumption by the school district of all the obligations incurred by the authority with respect to that project.

(c) Conveyance.--An authority formed by any county for the purpose of acquiring, constructing, improving, maintaining or operating any project for the benefit of any one or more but not all of the cities, boroughs, towns and townships of the county may, with the approval of the board of county commissioners of the county, convey the project to the cities, boroughs, towns or townships of the county for the benefit of which the project was acquired, constructed, improved, maintained or operated or to any authority organized by such cities, boroughs, towns or townships for the purpose of taking over such project. All such conveyances shall be made subject to any and all obligations incurred by the authority with respect to the project conveyed.

(d) Reserves.--Following transfer of a project pursuant to this section, the 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.
(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (b), retroactive to June 19, 2001.

§ 5623. Revival of an expired authority.

(a) Retroactive revival.--Upon the filing of the required municipal statements of revival with the Secretary of the Commonwealth and issuance of a certificate of revival, an expired authority shall become a retroactively revived authority.

(b) Municipal statement of revival.--A municipal statement of revival shall be executed in the name of each municipality that incorporated or subsequently joined in and had not withdrawn from the expired authority and shall set forth:

(1) The name of the expired authority and of each municipality that incorporated or subsequently joined in and had not withdrawn from the expired authority.

(2) The date on which the authority's term of existence expired.

(3) The address, including street and number of the expired authority.

(4) A statement that the municipality desires the revival of the authority as a body politic and corporate for an additional term not exceeding 50 years.

(5) A statement that the filing of the municipal statement of revival has been authorized and approved by the municipal authorities of the municipality by resolution.

(c) Expiration interval.--An expired authority may not become a retroactively revived authority if its term of expiration exceeds five years.

(d) Certificate of revival.--The Secretary of the Commonwealth shall issue a certificate of revival after verifying that required municipal statements of revival have been filed in proper form.

(e) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Certificate of revival." A certification issued by the Secretary of the Commonwealth that, as a result of required municipal statements of revival having been filed in proper form, the expired authority which is the subject of the municipal statements of revival is certified as having been retroactively revived for the term specified.

"Expired authority." An authority whose term of existence has expired in accordance with this chapter.

"Municipal statement of revival." A written statement prepared in accordance with subsection (b) and filed with the Secretary of the Commonwealth by the municipal authorities of each municipality that incorporated or subsequently joined in and had not withdrawn from an expired authority indicating that approval has been given for the retroactive revival of the expired authority by municipal authorities by resolution.

"Retroactively revived authority." An expired authority whose existence has been revived retroactively so that the authority is restored to its previous legal position in the same manner and to the same extent as if its term of existence had never expired. Retroactive revival shall have the effect of validating the business and affairs of the authority during its term of expiration, including all contracts and other transactions made and effected within the scope of the articles of the authority by its representatives and any rights, privileges, liabilities and obligations that the authority would have had if its term of existence had not expired.

"Term of expiration." The period of time that commences when an authority becomes an expired authority and that ends when the expired authority is retroactively revived in accordance with this section.
(Dec. 30, 2003, P.L.454, No.67, eff. imd.)

2003 Amendment. Act 67 added section 5623.