§ 123.00 Exclusion of self-liquidating indebtedness in ascertaining the power of a municipality to contract indebtedness. a. As used in this section: 1. The term "outstanding indebtedness", shall mean indebtedness evidenced by bonds and bond anticipation notes.

2. The term "public improvement" shall mean either a single improvement or a group of improvements, which are maintained for the same purpose, including improvements used primarily in connection therewith, and which are producing or are intended to produce revenue.

b. 1. In ascertaining the power of a municipality to contract indebtedness, there may be excluded, to the extent permitted in paragraph e of this section, the outstanding indebtedness contracted by any such municipality for a public improvement or part thereof, or service, owned or rendered by such municipality if such public improvement or part thereof, or service, shall have yielded net revenue to such municipality during the preceding fiscal year in a sum equal to twenty-five per centum or more of the amount required in such year for the payment of the interest on and amortization of, or payment of, such outstanding indebtedness.

2. The outstanding indebtedness of a district corporation, as the term "district corporation" is defined in paragraph a of section 102.00 of this chapter, contracted on or after January first, nineteen hundred thirty-nine, may be excluded, to the extent permitted in paragraph e of this section, in ascertaining the indebtedness of a city or village within which, or of a town within the unincorporated area of which, such district corporation is situated in whole or in part, if such outstanding indebtedness was contracted for a public improvement or part thereof, or service, owned or rendered by such district corporation and if such public improvement or part thereof, or service, shall have yielded net revenue to such district corporation during the preceding fiscal year of the district corporation in a sum equal to twenty-five per centum or more of the amount required in such year for the payment of the interest on and amortization of, or payment of, such outstanding indebtedness.

3. In ascertaining the power of a county or town to contract indebtedness, there may be excluded, to the extent permitted in paragraph e of this section, the outstanding indebtedness contracted by any such county or town on behalf of an improvement district for a public improvement or part thereof, or service, owned or rendered by such district if such public improvement or part thereof, or service, shall have yielded net revenue to such district during the preceding fiscal year in a sum equal to twenty-five per centum or more of the amount required in such year for the payment of the interest on and amortization of, or payment of, such outstanding indebtedness.

c. 1. A proportionate exclusion of indebtedness contracted or proposed to be contracted also may be granted for the period from the date when such indebtedness is first contracted or to be contracted for a public improvement or part thereof, or service, owned or rendered or to be owned or rendered by a municipality, district corporation, or county or town improvement district through the first year of operation of such public improvement or part thereof, or service. The amount of such exclusion shall be computed in the manner provided in this section on the basis of estimated net revenue for the first year of operation. Such estimated net revenue shall be determined by deducting from the gross revenues estimated to be received during the first year of operation of such public improvement or part thereof, or service, all estimated costs of operation, maintenance and repairs for such year. The amount of any such proportionate exclusion shall not exceed seventy-five per centum of the amount which would be excluded if the computation were made on the basis of net revenue instead of estimated net revenue. The term "indebtedness," as used in this subdivision means indebtedness which would be included in ascertaining the power of a municipality to contract indebtedness, including indebtedness evidenced or to be evidenced by bonds or bond anticipation notes.

2. A proportionate exclusion of outstanding indebtedness may be granted, to the extent permitted in paragraph e of this section, in the fiscal year in which the first year of operation of a public improvement or part thereof, or service, is completed if the improvement or part thereof, or service, shall have yielded net revenue during the first

year of operation in a sum equal to twenty-five per centum or more of the amount required in such year for the payment of the interest on and amortization of, or payment of, such indebtedness.

d. The net revenue of a public improvement or part thereof, or service, shall be determined by deducting from its gross revenues of a year all costs of operation, maintenance and repairs for such year. Taxes, assessments, and subsidies by the municipality or district corporation, shall not be included in computing gross revenues.

e. The maximum amount of any such outstanding indebtedness which may be so excluded shall be in the same proportion to the total amount of any such indebtedness as the amount of any such net revenue shall bear to the amount required in any such year for the payment of the interest on and amortization of, or payment of, any such indebtedness.

f. Where an exclusion has been granted pursuant to this section, the revenues of such public improvement or part thereof, or service, for the period for which the exclusion is granted, shall be applied to and actually used for payment of all costs of operation, maintenance and repairs for such period, and payment of the amounts required in such period for interest on and amortization of or redemption of the indebtedness excluded, or such revenues shall be deposited in a special fund to be used solely for such payments. The application and use of such payments or the deposits required therefor shall not prohibit a municipality, district corporation or improvement district from using any such revenues, in excess of such payments or deposits, for any lawful purpose of the municipality, district corporation or improvement district.

g. An application may be filed with the state comptroller for the purpose of obtaining an exclusion of such indebtedness. Such application shall be made on behalf of any municipality by its chief fiscal officer in his discretion, or by its chief fiscal officer on the direction of its finance board, and on behalf of any district corporation by its finance board. If the finance board of a district corporation shall refuse or fail to make such application, the application may be made by

the municipality seeking an exclusion of indebtedness. The application shall be verified by the chief fiscal officer or finance board making the application. The application shall be in such form and shall contain such information as shall be prescribed by the state comptroller.

h. Within fifteen days after the filing of such application with the state comptroller, such chief fiscal officer or such finance board making the application shall cause a notice to be published that such application has been filed with the state comptroller. Such notice shall be published in the official newspaper or newspapers of the municipality or district corporation, or if there be no such newspaper or newspapers, then the finance board of the municipality or district corporation shall designate one or more newspapers having a general circulation in such municipality or district corporation for the publication of such notice. The notice also shall contain a statement of the amount of indebtedness for which a proportionate exclusion is sought and a brief description of the public improvement or part thereof, or service. Proof of publication of such notice shall be filed in the office of the state comptroller. A copy of the application and of all financial statements, documents, computations and other data and information which will be submitted by the chief fiscal officer of such municipality or the finance board of such district corporation to the state comptroller in support of such application shall be filed in the office of such chief fiscal officer or finance board and shall be public records.

i. After the filing of such application, the state comptroller shall review the facts set forth therein. The state comptroller shall have the power to examine the accounts and records of the municipality, district corporation or improvement district with respect to such public improvement or part thereof, or service. He may also require the chief fiscal officer and other public officers, boards and agencies of such municipality, district corporation or improvement district to furnish such additional data and information in their possession as he deems necessary to enable him to make his determination.

j. In the case of a municipality, the state comptroller shall issue a written certificate setting forth his determination as to the extent to

which any such indebtedness may be excluded. If an exclusion is allowed by the state comptroller, such certificate shall constitute the authorization for the exclusion of such amount of such indebtedness in ascertaining the power of such municipality to contract indebtedness. In the case of a district corporation, the state comptroller shall issue a written certificate setting forth his determination as to the extent to which any such indebtedness shall be excluded in ascertaining the indebtedness of a city or village within which, or of a town within the unincorporated area of which, such district corporation is situated in whole or in part. If an exclusion is allowed by the state comptroller, such certificate shall constitute the authorization for the exclusion of such amount of such indebtedness in ascertaining the power of such city, village or town to contract indebtedness. If the state comptroller disallows the application, the certificate shall set forth the reasons for such disallowance. The determination of the state comptroller shall be conclusive. The certificate of the state comptroller shall not be issued until ten days after the filing of such proof of publication in the office of the state comptroller and shall be issued within forty-five days after such filing. The certificate of the state comptroller granting an exclusion shall be effective until the first day of the fourth month following the close of the fiscal year in which the application is made, except that where the application is made in connection with a public improvement or part thereof, or service, which has not been in operation for one year the certificate shall be effective until the first day of the fourth month following the close of the first year of operation. The certificate of the state comptroller shall be executed under his hand and seal in duplicate. One of such certificates shall be filed in the department of audit and control and the other in the office of the chief fiscal officer of such municipality or in the office of the finance board of the district corporation. Both of such certificates shall be public records.

k. The provisions of this section shall not affect or impair any existing exclusions of indebtedness, or the power to exclude indebtedness granted by any other provision of this chapter or the constitution.